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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHANNON LEWIS AVERY, SR.,
Plaintiff,
vs.
CDCR DIRECTOR, et al.,
Defendants.

1:07-cv-01175-LJO-GSA-PC
ORDER ADOPTING FINDINGS
AND RECOMMENDATIONS
(Doc. 95)
ORDER DISMISSING DEFENDANT
BASCOM FROM THIS ACTION
PURSUANT TO RULE 4(m)

_____ /

Shannon Lewis Avery, Sr. (“Plaintiff”), is a former state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. On February 23, 2012, [findings and recommendations](#) were entered, recommending that defendant Bascom be dismissed from this action pursuant to Federal Rule of Civil Procedure 4(m), based on Plaintiff’s failure to provide information to enable service of process. On March 21, 2012, Plaintiff filed [objections](#) to the findings and recommendations.

In accordance with the provisions of 28 U.S.C. § 636 (b)(1)(B) and Local Rule 304, this Court has conducted a de novo review of this case. Having carefully reviewed the entire file, including Plaintiff’s objections, the Court finds the findings and recommendations to be supported by the record and proper analysis.

Plaintiff maintains that the Court should make further efforts to identify and locate defendant Bascom to enable the United States Marshal (Marshal) to serve him with process. Plaintiff requests the

1 Court to direct the Marshal to locate defendant Bascom through work records at Avenal State Prison
2 from the morning of August 20, 2006. Plaintiff also maintains that the Court should require other
3 defendants and witnesses to further identify the defendant they call "Bascom." Plaintiff requests the
4 Court to locate Registered Nurse A. McGraw, who witnessed the incident at issue on August 20, 2006,
5 and request information from her about defendant Bascom's identity. Plaintiff also requests a court order
6 directing the Legal Affairs Division of the CDCR to question defendants and witnesses about the
7 "Defendant who dropped Plaintiff." (Doc. 96 at 3:26-28.)

8 As discussed by the Magistrate Judge in the findings and recommendations, the Court and the
9 Marshal have exhausted the avenues available to them for identifying and locating this defendant on
10 behalf of Plaintiff. The Court has twice issued orders directing the Marshal to attempt service upon
11 defendant Bascom, without success. In the second order, the Court required the Marshal to enlist the
12 assistance of the Legal Affairs Division of the CDCR. Both times, prison officials found no record of
13 a current or former correctional officer named Bascom. It is Plaintiff's responsibility to provide the
14 Marshal with accurate and sufficient information to effect service of the summons and complaint, and
15 Plaintiff appears unable to provide such information. Therefore, defendant Bascom shall be dismissed
16 from this action. Walker, 14 F.3d at 1421-22.

17 Accordingly, THE COURT HEREBY ORDERS that:

- 18 1. The Findings and Recommendations issued by the Magistrate Judge on February 23,
19 2012, are adopted in full;
- 20 2. Defendant Bascom is dismissed from this action pursuant to Rule 4(m), based on
21 Plaintiff's failure to effect service upon him; and
- 22 3. The Clerk of Court is directed to reflect the dismissal of defendant Bascom from this
23 action on the court's docket.

24 IT IS SO ORDERED.

25 **Dated: April 16, 2012**

26 **/s/ Lawrence J. O'Neill**
27 **UNITED STATES DISTRICT JUDGE**