

**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

CARLOS HERRERA,

Plaintiff,

v.

C. HALL, et al.,

Defendants.

CASE NO. 1:08-cv-01882-LJO-SKO PC

FINDINGS AND RECOMMENDATIONS  
RECOMMENDING THAT DEFENDANTS DILL  
AND BLUFORD BE DISMISSED

OBJECTIONS DUE WITHIN 30 DAYS

Plaintiff Carlos Herrera ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On June 21, 2010, the Court ordered Plaintiff to show cause why Defendants Dill and Bluford should not be dismissed from this action due to Plaintiff's failure to effect service of process on them. (Doc. #49.) The Court noted that it received unexecuted summonses addressed to Defendants Dill and Bluford that indicated that the U.S. Marshal was unable to effect service of process because they could not be located using the information provided by Plaintiff. Plaintiff was directed to provide the Court with updated information on Dill and Bluford's whereabouts.

Plaintiff responded to the order to show cause on July 12, 2010. (Doc. #55.) Plaintiff states that Defendant Dill should not be dismissed from this action because Dill violated Plaintiff's constitutional rights. Plaintiff did not provide an updated home or work address for Defendant Dill. Instead, Plaintiff stated that Defendant Dill's wife works as a correctional counselor at Kern Valley State Prison and that she should know the whereabouts of Defendant Dill. Plaintiff provides no information about Defendant Bluford's whereabouts.

1 Under Federal Rule of Civil Procedure 4(m), if a defendant is not served within 120 days  
2 after the complaint is filed, the Court must dismiss the action without prejudice against that  
3 defendant, or order that service be made within a specified time. Plaintiff is entitled to have process  
4 served by a U.S. Marshal because he is proceeding in forma pauperis. 28 U.S.C. § 1915(d), Federal  
5 Rule of Civil Procedure 4(c)(3).

6 On August 14, 2009, the Court directed the U.S. Marshal to serve Defendants Dill and  
7 Bluford using the address provided by Plaintiff. (Doc. #13.) The Court effectively extended the  
8 deadline for effecting service to provide the U.S. Marshal an opportunity to effect service using the  
9 information provided by Plaintiff. Although the Ninth Circuit has held that incarcerated pro se  
10 plaintiffs should not be penalized where the failure to effect service was caused by the U.S.  
11 Marshal's failure to perform their duties under 28 U.S.C. § 1915 and Federal Rule of Civil Procedure  
12 4, Puett v. Blandford, 912 F.2d 270, 275 (9th Cir. 1990), the failure to effect service here was caused  
13 by Plaintiff's failure to provide the Court with a current addresses for Defendants Dill and Bluford.  
14 There is no indication that the U.S. Marshal failed to perform the duties required by Section 1915  
15 or Rule 4.

16 The Court is unaware of any authority that states that the U.S. Marshal must conduct an  
17 investigation on Plaintiff's behalf to locate Defendants. The U.S. Marshal is only obligated to  
18 attempt service at the address provided by Plaintiff. The U.S. Marshal is not obligated to question  
19 Defendant Dill's family members to locate Dill. Thus, the Court will not direct the U.S. Marshal  
20 to interrogate Defendant Dill's wife about her husband's whereabouts.

21 Accordingly, it is HEREBY RECOMMENDED that Defendants Dill and Bluford be  
22 dismissed from this action pursuant to Federal Rule of Civil Procedure 4(m) due to Plaintiff's failure  
23 to effect service of process.

24 These Findings and Recommendations are submitted to the United States District Judge  
25 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)  
26 days after being served with these Findings and Recommendations, any party may file written  
27 objections with the Court and serve a copy on all parties. Such a document should be captioned  
28 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections

1 shall be served and filed within ten (10) days after service of the objections. The parties are advised  
2 that failure to file objections within the specified time may waive the right to appeal the District  
3 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

4  
5 IT IS SO ORDERED.

6 **Dated: July 19, 2010**

**/s/ Sheila K. Oberto**  
UNITED STATES MAGISTRATE JUDGE