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4 **IN THE UNITED STATES DISTRICT COURT**
5 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
6

7 NICK WOODALL,

CASE NO. 1:08-cv-01948-OWW-DLB (PC)

8 Plaintiff,

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSAL OF
9 DEFENDANT FERRO FOR FAILURE TO
10 PROVIDE INFORMATION SUFFICIENT TO
EFFECT SERVICE OF PROCESS

v.

11 STATE OF CALIFORNIA, et al.,

(Doc. 21)

12 Defendants.

13 _____ /
14 Plaintiff is a California state prisoner proceeding pro se and in forma pauperis in this civil
15 rights action pursuant to 42 U.S.C. § 1983. The United States Marshal was unable to find and
16 serve Defendant Ferro in this action, and on January 29, 2010, returned the summons
17 unexecuted. (Doc. 21.) On April 8, 2010, the Court issued an order to show cause, requiring
18 Plaintiff to furnish information sufficient for the Marshal to effect service on Defendant Ferro.
(Doc.26.) Plaintiff did not respond to the Court’s order.

19 Rule 4(m) of the Federal Rules of Civil Procedure provides, in relevant part:

20 If a defendant is not served within 120 days after the complaint is filed, the court -
21 on motion or on its own after notice to the plaintiff - must dismiss the action
22 without prejudice against that defendant or order that service be made within a
specified time. But if the plaintiff shows good cause for the failure, the court
must extend the time for service for an appropriate period.

23 Fed. R. Civ. P. 4(m).

24 In cases involving a plaintiff proceeding in forma pauperis, a United States Marshal, upon
25 order of the court, shall serve the summons and the complaint. Fed. R. Civ. P. 4(c)(2). “[A]n
26 incarcerated pro se plaintiff proceeding in forma pauperis is entitled to rely on the U.S. Marshal
27 for service of the summons and complaint and ... should not be penalized by having his action
28 dismissed for failure to effect service where the U.S. Marshal or the court clerk has failed to

1 perform his duties.” *Walker v. Sumner*, 14 F.3d 1415, 1422 (9th Cir. 1994) (quoting *Puett v.*
2 *Blandford*, 912 F.2d 270, 275 (9th Cir. 1990)), *abrogated on other grounds by Sandin v. Conner*,
3 515 U.S. 472 (1995). “So long as the prisoner has furnished the information necessary to
4 identify the defendant, the marshal’s failure to effect service is ‘automatically good cause’”
5 *Walker*, 14 F.3d at 1422 (quoting *Sellers v. United States*, 902 F.2d 598, 603 (7th Cir.1990)).
6 However, where a pro se plaintiff fails to provide the Marshal with accurate and sufficient
7 information to effect service of the summons and complaint, the court’s sua sponte dismissal of
8 the unserved defendants is appropriate. *Walker*, 14 F.3d at 1421-22.

9 In this instance, the United States Marshal mailed the summons and complaint to the
10 address provided by Plaintiff, at Corcoran State Prison. However, the prison indicated that there
11 is no Ferro employed. The CDC locator also could not find Defendant Ferro. Plaintiff was
12 provided an opportunity to show cause why Defendant Ferro should not be dismissed, but
13 Plaintiff has been unable to provide further information for the United States Marshal to effect
14 service.

15 Accordingly, the Court HEREBY RECOMMENDS that pursuant to Federal Rule of Civil
16 Procedure 4(m), Defendant Ferro be dismissed from this action, without prejudice, based on
17 Plaintiff’s failure to provide the Marshal with information sufficient to effect timely service of
18 the summons and complaint.

19 These Findings and Recommendations will be submitted to the United States District
20 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
21 **twenty (20) days** after being served with these Findings and Recommendations, the parties may
22 file written objections with the court. The document should be captioned “Objections to
23 Magistrate Judge’s Findings and Recommendations.” The parties are advised that failure to file
24 objections within the specified time may waive the right to appeal the District Court’s order.
25 *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

26 IT IS SO ORDERED.

27 **Dated: June 1, 2010**

/s/ Dennis L. Beck
28 UNITED STATES MAGISTRATE JUDGE