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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

NICK WOODALL,

Plaintiff,

v.

STATE OF CALIFORNIA, et al.,

Defendants.

CASE NO. 1:08-CV-01948-OWW-DLB PC

FINDINGS AND RECOMMENDATION  
RECOMMENDING DISMISSAL OF  
DEFENDANT VALDEZ WITHOUT  
PREJUDICE FOR FAILURE TO EFFECT  
SERVICE OF PROCESS

OBJECTIONS, IF ANY, DUE WITHIN  
EIGHTEEN DAYS

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Plaintiff Nick Woodall (“Plaintiff”) is a California state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on Plaintiff’s complaint, filed December 22, 2008. Doc. 1. On November 30, 2009, the Court directed the United States Marshal to effect service on seven Defendants, including Defendant Valdez. Doc. 18. A person by the name of L. Valdez filed a waiver of service and appeared in this action. Doc. 22. However, Plaintiff later sought dismissal of L. Valdez as she was the incorrect party. Doc. 52. On October 19, 2010, the Court issued an order directing the United States Marshal to re-attempt service of process on the correct Defendant Valdez. Doc. 56. The Marshal Service was unable to locate Defendant Valdez, and returned the summons unexecuted on March 25, 2011. Doc. 87.

Pursuant to Rule 4(m),

If a defendant is not served within 120 days after the complaint is filed, the court - on motion or on its own after notice to the plaintiff - must dismiss the action 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.

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

2 Where a pro se plaintiff fails to provide the Marshal with accurate and sufficient  
3 information to effect service of the summons and complaint, the Court's *sua sponte* dismissal of  
4 the unserved defendants is appropriate. *Walker v. Sumner*, 14 F.3d 1415, 1421-22 (9th Cir. 1994)  
5 (quoting *Puett v. Blandford*, 912 F.2d 270, 275 (9th Cir. 1990)), *abrogated in part on other*  
6 *grounds, Sandin v. Conner*, 515 U.S. 472 (1995). The United States Marshal has now twice  
7 attempted to effect service of process on the correct Defendant Valdez in this action, but was  
8 unsuccessful.

9 Accordingly, it is HEREBY RECOMMENDED that Defendant Valdez be dismissed  
10 from this action without prejudice for failure to effect service of process pursuant to Federal Rule  
11 of Civil Procedure 4(m).

12 These Findings and Recommendations will be submitted to the United States District  
13 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **eighteen**  
14 **(18) days** after being served with these Findings and Recommendations, the parties may file  
15 written objections with the Court. The document should be captioned "Objections to Magistrate  
16 Judge's Findings and Recommendations." The parties are advised that failure to file objections  
17 within the specified time may waive the right to appeal the District Court's order. *Martinez v.*  
18 *Ylst*, 951 F.2d 1153, 1156-57 (9th Cir. 1991).

19 IT IS SO ORDERED.

20 **Dated: June 7, 2011**

/s/ Dennis L. Beck  
UNITED STATES MAGISTRATE JUDGE