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

SAMUEL KENNETH PORTER,  
  
Plaintiff,  
  
v.  
  
CAPTAIN JENNINGS, et al.,  
  
Defendants.

Case No. 1:10-cv-01811-AWI-DLB PC

**FINDINGS AND RECOMMENDATIONS  
RECOMMENDING DEFENDANT  
DARLENE BE DISMISSED FROM  
ACTION WITHOUT PREJUDICE**

ECF No. 113

**OBJECTIONS DUE WITHIN FOURTEEN  
DAYS**

Plaintiff Samuel Kenneth Porter (“Plaintiff”) is a prisoner in the custody of the California Department of Corrections and Rehabilitation (“CDCR”). On April 26, 2012, the Court directed the United States Marshal to re-attempt service on Defendant Darlene Austin. ECF No. 55. On January 28, 2013, the Marshal returned the summons unexecuted. ECF No. 113. As indicated by the Marshal, personal service was attempted, but no such individual could be located.

Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure,

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.

Fed. R. Civ. P. 4(m). Where a pro se plaintiff fails to provide the Marshal with accurate and sufficient information to effect service of the summons and complaint, the Court’s sua sponte dismissal of the unserved defendants is appropriate. *Walker v. Sumner*, 14 F.3d 1415, 1421-22 (9th Cir. 1994), *abrogated in part on other grounds*, *Sandin v. Conner*, 515 U.S. 472 (1995).

1 Based on the foregoing, it is HEREBY RECOMMENDED that Defendant Darlene Austin be  
2 dismissed from this action without prejudice for failure to effect service pursuant to Rule 4(m) of the  
3 Federal Rules of Civil Procedure.

4 These Findings and Recommendations will be submitted to the United States District Judge  
5 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **fourteen (14) days**  
6 after being served with these Findings and Recommendations, the parties may file written objections  
7 with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and  
8 Recommendations.” A party may respond to another party’s objections by filing a response within  
9 **fourteen (14) days** after being served with a copy of that party’s objections. The parties are advised  
10 that failure to file objections within the specified time may waive the right to appeal the District  
11 Court’s order. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991).

12  
13  
14 IT IS SO ORDERED.

15 Dated: February 11, 2013

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