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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

NICOLAS MORAN,	Case No. 1:11-cv-0914-LJO-MJS PC
Plaintiff,	FINDINGS AND
v.	RECOMMENDATIONS FOR
K. DUTRA, et al.,	DISMISSAL OF DEFENDANT DEDEE
Defendants.	FROM THIS ACTION PURSUANT TO
	RULE 4(M)
	(ECF Nos. 48, 49, 51)
	FOURTEEN-DAY DEADLINE

Plaintiff Nicolas Moran (“Plaintiff”), a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on June 7, 2011.

The action proceeds on Plaintiff’s First Amended Complaint against Defendants Auten, Dedee, Dutra, and Ryan.

Defendants Auten, Dutra, and Ryan waived service and entered appearances in the action. The United States Marshal was not able to locate Defendant Dedee and service was returned un-executed on January 7, 2013. (ECF No. 21.) The Court ordered the California Department of Corrections and Rehabilitation (“CDCR”) to provide additional contact information for Defendant Dedee to the U.S. Marshall (ECF No. 31), but the United States Marshal remained unable to locate Defendant Dedee and the summons was returned unexecuted on July 29, 2013 (ECF No. 32).

On October 10, 2013, the Court issued an order directing Plaintiff to show cause

1 why Defendant Dedee should not be dismissed pursuant to Federal Rule of Civil
2 Procedure 4(m). (ECF No. 48.) This rule provides that:

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

10 Plaintiff has failed to show cause why Defendant Dedee should not be dismissed
11 from this action. Instead of addressing the issues raised by the Court's order, Plaintiff
12 filed a motion for the Court to make additional service attempts on Defendant Dedee.
13 (ECF No. 49.) Plaintiff also filed a motion alleging, without substantiation and apparently
14 based solely on speculation, that the CDCR was withholding Defendant Dedee's contact
15 information. (ECF No. 30.) That motion was denied. (ECF No. 62.) Neither response
16 was found to provide good cause for extending the time for service on this defendant.

17 At this stage of the proceedings, the Court has no practical option but to
18 recommend Defendant Dedee be dismissed from the action without prejudice. We are
19 now well over a year from the Court's finding that Plaintiff had a cognizable claim against
20 Defendant Dedee and ordered service. Plaintiff has provided no additional contact
21 information for Defendant Dedee, and there is nothing to suggest a third attempt to serve
22 her would be any more productive than the first two.

23 Accordingly, the Court hereby RECOMMENDS that Defendant Dedee be
24 dismissed from this action without prejudice pursuant to Federal Rule of Civil Procedure
25 4(m).

26 These Findings and Recommendations are submitted to the United States District
27 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1).
28 Within fourteen (14) days after being served with these Findings and Recommendations,
any party may file written objections with the Court and serve a copy on all parties. Such
a document should be captioned "Objections to Magistrate Judge's Findings and
Recommendations." The parties are advised that failure to file objections within the

1 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst,
2 951 F.2d 1153 (9th Cir. 1991).

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4 IT IS SO ORDERED.

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6 Dated: April 1, 2014

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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