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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

CLEOFAS GONZALEZ,	)	1:12cv01053 LJO DLB PC
	)	
Plaintiff,	)	FINDINGS AND RECOMMENDATIONS
	)	REGARDING DISMISSAL OF
vs.	)	DEFENDANT GRIMM
	)	PURSUANT TO RULE 4(M)
DR. BOPARI, et al.,	)	
	)	<b>TWENTY-ONE DAY DEADLINE</b>
Defendants.	)	

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Plaintiff Cleofas Gonzalez (“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 28 U.S.C. § 1983. Plaintiff filed this action on June 28, 2012.

**PROCEDURAL HISTORY**

On April 23, 2014, the Court screened Plaintiff’s Second Amended Complaint and found that it stated a claim against Defendants Bopari and Grimm. On May 9, 2014, after Plaintiff completed and returned service documents, the Court ordered the United States Marshal to initiate service of process.

On August 11, 2014, service was returned executed as to Defendant Bopari. Defendant Bopari filed a motion to dismiss on September 15, 2014. The motion is pending.

1 On September 3, 2014, the United States Marshal returned service unexecuted as to  
2 Defendant Grimm.

3 On September 10, 2014, the Court issued an order to show cause to Plaintiff why  
4 Defendant Grimm should not be dismissed pursuant to Federal Rule of Civil Procedure 4(m) for  
5 failure to effectuate service. On October 14, 2014, the Court granted Plaintiff a thirty-day  
6 extension of time to locate an address for Defendant Grimm. Despite the extension, Plaintiff has  
7 failed to file a response or provide an alternate address.  
8

### 9 DISCUSSION

10 Rule 4(m) of the Federal Rules of Civil Procedure provides:

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

16 In cases involving a plaintiff proceeding in forma pauperis, the Marshal, upon order of  
17 the Court, shall serve the summons and the complaint. 28 U.S.C. § 1915(d); Fed. R. Civ. P.  
18 4(c)(3). “[A]n incarcerated pro se plaintiff proceeding in forma pauperis is entitled to rely on the  
19 U.S. Marshal for service of the summons and complaint and [he] should not be penalized by  
20 having his action dismissed for failure to effect service where the U.S. Marshal or the court clerk  
21 has failed to perform his duties.” *Walker v. Sumner*, 14 F.3d 1415, 1422 (9th Cir. 1994) (internal  
22 quotations and citation omitted), *abrogated on other grounds by Sandin v. Connor*, 515 U.S. 472  
23 (1995).

24 “So long as the prisoner has furnished the information necessary to identify the  
25 defendant, the marshal’s failure to effect service is automatically good cause. . . .” *Walker*, 14  
26 F.3d at 1422 (internal quotations and citation omitted). However, where a pro se plaintiff fails to  
27 provide the Marshal with accurate and sufficient information to effect service of the summons  
28 and complaint, the Court’s sua sponte dismissal of the unserved defendants is appropriate.  
*Walker*, 14 F.3d at 1421-22.

1 At this juncture, the Marshal's Office has exhausted the avenues available to it in  
2 attempting to locate and serve Defendant Grimm. Using information provided by Plaintiff when  
3 he returned service documents, the Marshal mailed service documents to Defendant Grimm at  
4 Avenal State Prison. However, the CDCR Litigation Coordinator was unable to locate or  
5 identify Defendant Grimm. *Walker*, 14 F.3d at 1421-22. The Court has also been informed by  
6 its service of process contact that although Defendant Grimm was a contract doctor with CDCR,  
7 he never worked at Avenal State Prison.

8 Plaintiff has not provided any additional information.

9  
10 **FINDINGS AND RECOMMENDATIONS**

11 Based on the above, the Court RECOMMENDS that Defendant Grimm be DISMISSED  
12 from this action for Plaintiff's failure to effectuate service of process.

13 These Findings and Recommendations are submitted to the United States District Judge  
14 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within twenty-  
15 one (21) days after being served with these Findings and Recommendations, any party may file  
16 written objections with the Court and serve a copy on all parties. Such a document should be  
17 captioned "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the  
18 objections shall be served and filed within seven (7) days after service of the objections. The  
19 parties are advised that failure to file objections within the specified time may waive the right to  
20 appeal the District Court's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir.1991).

21  
22 IT IS SO ORDERED.

23 Dated: December 2, 2014

24 /s/ Dennis L. Beck  
25 UNITED STATES MAGISTRATE JUDGE  
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