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

AVERY HYPOLITE,)	Case No.: 1:14-cv-01199-LJO-SAB (PC)
)	
Plaintiff,)	
)	FINDINGS AND RECOMMENDATION
v.)	RECOMMENDING DISMISSAL OF
)	DEFENDANT N. SCHULTZ PURSUANT TO
R. ZAMORA, et al.,)	RULE 4(M) OF THE FEDERAL RULES OF
)	CIVIL PROCEDURE
Defendants.)	
)	[ECF Nos. 23, 24]
)	

Plaintiff Avery Hypolite is appearing pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

This action is proceeding against Defendant Zamora for use of excessive force and against Defendant Schultz for failure to intervene in violation of the Eighth Amendment.

On September 16, 2015, the United States marshal returned the USM-285 form unexecuted as to Defendant Schultz. (ECF No. 23.) On September 18, 2015, the Court issued an order for Plaintiff to show cause within thirty days as to why Defendant N. Schultz should not be dismissed from the action pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. (ECF No. 24.) More than thirty days have passed and Plaintiff has not responded to the Court’s September 18, 2015, order.

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1 Accordingly, it is HEREBY RECOMMENDED that Defendant N. Schultz be DISMISSED
2 from the action pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

3 This Findings and Recommendation will be submitted to the United States District Judge
4 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within **thirty (30) days** after
5 being served with this Findings and Recommendation, the parties may file written objections with the
6 Court. The document should be captioned “Objections to Magistrate Judge’s Findings and
7 Recommendation.” The parties are advised that failure to file objections within the specified time may
8 result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014)
9 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

10
11 IT IS SO ORDERED.

12 Dated: November 10, 2015



UNITED STATES MAGISTRATE JUDGE