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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JORGE NEGRETE,
Plaintiff,
v.
LINDA LEE CURKAN,
Defendant.

Case No. 1:16-cv-00956-LJO-MJS

**FINDINGS AND RECOMMENDATION TO
DISMISS ACTION WITHOUT PREJUDICE
PURSUANT TO FEDERAL RULE OF CIVIL
PROCEDURE 4(m)**

Plaintiff Jorge Negrete initiated this action on July 5, 2016 against Defendant Linda Lee Curkan. (ECF No. 1.) A summons issued the same day. (ECF No. 2.) An initial scheduling conference was set. (ECF No. 3.) The scheduling conference was continued several times due to Plaintiffs' apparent failure to serve Defendant. (ECF Nos. 4, 5, 6.) Plaintiff was reminded of the obligation to serve Defendant in compliance with Federal Rule of Civil Procedure 4(m). (Id.) Eventually, on April 6, 2017, the Court ordered Plaintiff to show cause, within fourteen days, why the action should not be dismissed for failure to serve Defendant. (ECF No. 7.) Plaintiff did not respond to the order to show cause and, to date, the docket reflects no efforts to serve Defendant.

Federal Rule of Civil Procedure 4(m) provides, in pertinent part: "If a defendant is not served within 90 days after the complaint is filed, the court--on motion or on its own

1 after notice to the plaintiff--must dismiss the action without prejudice against that
2 defendant or order that service be made within a specified time. But if the plaintiff shows
3 good cause for the failure, the court must extend the time for service for an appropriate
4 period.”

5 Here, service of the complaint is more than 180 days overdue. Plaintiff was
6 provided notice of the Court’s intention to dismiss the action but did not respond. No
7 good cause has been show that would require the Court to extend the time for service.
8 Accordingly, dismissal of the action is appropriate.

9 Based on the foregoing, it is HEREBY RECOMMENDED that the action be
10 dismissed without prejudice pursuant to Rule 4(m).

11 The findings and recommendation will be submitted to the United States District
12 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1).
13 Within fourteen (14) days after being served with the findings and recommendation,
14 Plaintiff may file written objections with the Court. The document should be captioned
15 “Objections to Magistrate Judge’s Findings and Recommendation.” Plaintiff is advised
16 that failure to file objections within the specified time may result in the waiver of rights on
17 appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v.
18 Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

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20 IT IS SO ORDERED.

21 Dated: April 24, 2017

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE

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