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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MONICO J. QUIROGA III,  
Plaintiff,  
v.  
C. COOPER, et al.,  
Defendants.

Case No. 1:17-cv-00004-DAD-JDP  
FINDINGS AND RECOMMENDATIONS  
TO DISMISS DEFENDANT J. MORENO  
WITHOUT PREJUDICE  
OBJECTIONS, IF ANY, DUE IN 14 DAYS

Plaintiff Monico J. Quiroga III is a state prisoner proceeding without counsel in this civil rights action under 42 U.S.C. § 1983. He brings an excessive force claim under the Eighth Amendment against Defendants C. Cooper and J. Moreno. The undersigned will recommend that defendant J. Moreno be dismissed under Rule 4(m) for plaintiff’s failure to serve process.

Federal Rule of Civil Procedure 4(m) provides for a “time limit for service” as follows:

**(m) Time Limit for Service.** If a defendant is not served within 90 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).

The court ordered service as to both defendants on July 10, 2017, and service was returned unexecuted as to J. Moreno on November 27, 2017.<sup>1</sup> (Doc. Nos. 20, 30.) Despite the

<sup>1</sup> Service has been executed as to defendant C. Cooper, and he has filed an answer to the complaint. (Doc. No. 44.)

1 court's efforts to assist with service as to J. Moreno (Doc. Nos. 27, 36), he remains unserved.  
2 Counsel for defendants has informed the court that the Kern County Sheriff's Office has neither  
3 a current employee named J. Moreno nor any record of employing a J. Moreno at the time of the  
4 alleged incident. (Doc. No. 50 at 2.)

5 On June 20, 2018, the court ordered plaintiff to show cause why defendant J. Moreno  
6 should not be dismissed from this case without prejudice based on plaintiff's failure to serve him.  
7 (Doc. No. 51.) Plaintiff was directed to file a written response within 21 days of the order and  
8 warned that failure to respond may result in the dismissal of defendant J. Moreno without  
9 prejudice. (Id.) Plaintiff did not file a response to the order to show cause within 21 days and  
10 has thus failed to show good cause for the failure to serve J. Moreno.

11 Accordingly, it is recommended that defendant J. Moreno be dismissed from this case  
12 without prejudice based on plaintiff's failure to effectuate service of process.

13 The undersigned submits the findings and recommendations to the district judge  
14 presiding over this case under 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the Local Rules of  
15 Practice for the United States District Court, Eastern District of California. Within 14 days of  
16 the service of the findings and recommendations, plaintiff may file written objections to the  
17 findings and recommendations with the court and serve a copy on all parties. That document  
18 should be captioned "Objections to Magistrate Judge's Findings and Recommendations." The  
19 district judge will review the findings and recommendations under 28 U.S.C. § 636(b)(1)(C).  
20 Plaintiff's failure to file objections within the specified time may result in the waiver of rights on  
21 appeal. See *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014).

22  
23 IT IS SO ORDERED.

24 Dated: July 22, 2018

25   
26 UNITED STATES MAGISTRATE JUDGE  
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