

1 legal correspondence and for conspiracies to violate such rights and (2) Defendant Elizabeth
2 Alvarez for violating Plaintiff's right of access to the courts. (ECF No. 26). These findings and
3 recommendations were adopted on October 21, 2020. (ECF 30).

4 Thereafter, the Court ordered Plaintiff to return service documents necessary to complete
5 service on the Defendants. (ECF No. 31, 34). Plaintiff submitted the service documents, and the
6 Court directed the United States Marshals Service to pursue service on Defendants using the
7 documents that Plaintiff provided. (ECF Nos. 36, 37).

8 On December 17, 2020, the summons was returned unexecuted as to Defendant Kasandra
9 Sanchez with the following notation: "Service returned unexecuted. Sanchez no longer employee
10 and Madera Co. will not accept service. No alternate address known." (ECF No. 45). To date,
11 there has been no return of service demonstrating that service of the complaint and summons on
12 Defendant Kasandra Sanchez was accomplished nor has a waiver of service been filed by this
13 Defendant.

14 Given these circumstances, the Court entered an order on April 14, 2022, directing
15 Plaintiff to show cause why the case against Defendant Kasandra Sanchez should not be
16 dismissed without prejudice for failure to complete service pursuant to Federal Rule of Civil
17 Procedure 4(m). (ECF No. 111). Plaintiff's response was due no later than May 5, 2022. To date,
18 Plaintiff has not filed any response.

19 **II. LEGAL STANDARDS**

20 Under Federal Rule of Civil Procedure 4(m), "[i]f a defendant is not served within 90 days
21 after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must
22 dismiss the action without prejudice against that defendant or order that service be made within a
23 specified time." Fed. R. Civ. P. 4(m). However, "if the plaintiff shows good cause for the failure,
24 the court must extend the time for service for an appropriate period." *Id.* When a plaintiff
25 proceeds *in forma pauperis*, the Court must order the United States Marshals Service to pursue
26 service. Fed. R. Civ. P. 4(c)(3). However, "Plaintiff is responsible for providing the Marshal with
27 sufficient information to serve the defendants" and, where he fails to do so, "the Court's sua
28 sponte dismissal of the unserved defendants is appropriate." *Colon v. Zia*, No. 1:10-CV-01642-

1 GSA-PC, 2011 WL 6025657, at *3 (E.D. Cal. Dec. 2, 2011).

2 **III. ANALYSIS**

3 Here, there is no indication on the docket that Plaintiff has served Defendant Kasandra
4 Sanchez. Moreover, despite being directed to show cause why Defendant Kasandra Sanchez
5 should not be dismissed under Rule 4(m), Plaintiff has not filed anything to excuse his failure to
6 serve Defendant Kasandra Sanchez. Accordingly, Plaintiff having failed to offer proof of service
7 or good cause to excuse service, the Court will recommend that Defendant Kasandra Sanchez be
8 dismissed from this action without prejudice.

9 **IV. RECOMMENDATION**

10 Based on the foregoing, IT IS RECOMMENDED that the case against Defendant
11 Kasandra Sanchez be dismissed without prejudice because of Plaintiff's failure to complete
12 service pursuant to Federal Rule of Civil Procedure 4(m).

13 These Findings and Recommendations are submitted to the assigned United States District
14 Court Judge, pursuant to the provisions of 28 U.S.C. § 636 (b)(1)(B) and Rule 304 of the Local
15 Rules of Practice for the United States District Court, Eastern District of California. Within
16 fourteen (14) days after service of the Findings and Recommendations, any party may file written
17 objections with the Court and serve a copy on all parties. Such a document should be captioned
18 "Objections to Magistrate Judge's Findings and Recommendation." Replies to the objections
19 shall be served and filed within fourteen (14) days after service of the objections. The assigned
20 United States District Court Judge will then review the Magistrate Judge's ruling pursuant to 28
21 U.S.C. § 636(b)(1)(C). The parties are advised that failure to file objections within the specified
22 time may waive the right to appeal the District Court's order. *Wilkerson v. Wheeler*, 772 F.3d
23 834, 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).
24 IT IS SO ORDERED.

25 Dated: May 11, 2022

26 /s/ Eric P. Gray
27 UNITED STATES MAGISTRATE JUDGE
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