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

TOMMY LEE THOMPSON,  
Plaintiff,  
v.  
GARCIA-FERNANDEZ, *et al.*,  
Defendants.

Case No. 1:22-cv-01208-JLT-BAM (PC)  
FINDINGS AND RECOMMENDATIONS  
RECOMMENDING DISMISSAL OF  
DEFENDANT ESPANOZA, WITHOUT  
PREJUDICE, FOR FAILURE TO SERVE  
**FOURTEEN (14) DAY DEADLINE**

Plaintiff Tommy Lee Thompson (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action under 42 U.S.C. § 1983. This action proceeds against Defendants E. Garcia-Fernandez, Bravo, Guerro, C. Castillo, Gonzales, and Espanoza for excessive force in violation of the Eighth Amendment.

**I. Procedural Background**

On February 28, 2023, the Court issued an order directing service on Defendants in this case under the Court’s E-Service pilot program for civil rights cases for the Eastern District of California. (ECF No. 18-1.) The order included the following information regarding Defendant Espanoza: “Correctional Officer Espanoza; NKSP; Facility A Gym; on or about June 1, 2022.” (*Id.* at 2.) On April 4, 2023, the Court received information that Defendant Espanoza could not be identified.

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1           On April 5, 2023, the Court issued an order for Plaintiff to show cause within thirty (30)  
2 days why Defendant Espanoza should not be dismissed from this action. (ECF No. 23.) Plaintiff  
3 was warned that the failure to respond or failure to show cause would result in the dismissal of  
4 Defendant Espanoza from this action due to Plaintiff’s failure to serve process pursuant to Federal  
5 Rule of Civil Procedure 4(m). (*Id.* at 3.) Plaintiff did not file a response, and the deadline to do  
6 so has expired.

7       **II.     Legal Standard**

8           Federal Rule of Civil Procedure 4(m) provides as follows:

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

14       Fed. R. Civ. P. 4(m).

15           In cases involving a plaintiff proceeding *in forma pauperis*, the Marshal, upon order of the  
16 court, shall serve the summons and the complaint. Fed. R. Civ. P. 4(c)(3). “[A]n incarcerated pro  
17 se plaintiff proceeding in forma pauperis is entitled to rely on the U.S. Marshal for service of the  
18 summons and complaint, and . . . should not be penalized by having his or her action dismissed  
19 for failure to effect service where the U.S. Marshal or the court clerk has failed to perform the  
20 duties required of each of them . . . .” *Puett v. Blandford*, 912 F.2d 270, 275 (9th Cir. 1990). “So  
21 long as the prisoner has furnished the information necessary to identify the defendant, the  
22 marshal’s failure to effect service is ‘automatically good cause . . . .’” *Walker v. Sumner*, 14 F.3d  
23 1415, 1422 (9th Cir. 1994), abrogated on other grounds by *Sandin v. Connor*, 515 U.S. 472, 115  
24 (1995). However, where a *pro se* plaintiff fails to provide the Marshal with accurate and  
25 sufficient information to effect service of the summons and complaint, the Court’s *sua sponte*  
26 dismissal of the unserved defendant is appropriate. *Walker*, 14 F.3d at 1421–22.

27       **III.    Discussion**

28           The Marshal attempted to serve Defendant Espanoza with the information that Plaintiff  
provided. However, the information provided was not sufficient to identify Defendant Espanoza

1 for service of process.

2 Plaintiff was afforded an opportunity to provide further information to locate Defendant  
3 Espanoza, (ECF No. 23), but he failed to file a response.

4 As it appears Plaintiff has no further information that can be used to locate Defendant  
5 Espanoza, and as the Marshal has already attempted to serve Defendant Espanoza with the  
6 information that was provided, the Court finds that Plaintiff has not provided sufficient  
7 information to identify and locate Defendant Espanoza for service of process.

8 **IV. Conclusion and Recommendation**

9 Based on the foregoing, it is HEREBY RECOMMENDED that Defendant Espanoza be  
10 dismissed from this action, without prejudice, for failure to serve process pursuant to Federal  
11 Rule of Civil Procedure 4(m).

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

20  
21 IT IS SO ORDERED.

22 Dated: May 24, 2023

23 /s/ Barbara A. McAuliffe  
24 UNITED STATES MAGISTRATE JUDGE  
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