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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

JOHN WASHINGTON,  
Plaintiff,

No. CIV S-08-0386-MCE-CMK-P

vs.

ORDER

SALEM MOHAMMED, et al.,  
Defendants.

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Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Service of process directed to defendant Martinez was returned unexecuted on October 8, 2008. On October 20, 2008, plaintiff was ordered to promptly seek additional information sufficient to effect service on any unserved defendants, and to notify the court once such information has been ascertained. Plaintiff has not responded to that order, and no additional information regarding service information for defendant Martinez has been submitted. Plaintiff was cautioned that failure to effect service may result in the dismissal of unserved defendants pursuant to Federal Rule of Civil Procedure 4(m).

Rule 4(m) provides, in part, that “[i]f a defendant is not served within 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must

1 dismiss the action without prejudice against that defendant or order that service may be made  
2 within a specified time.” Fed. R. Civ. Proc. 4(m). Here, plaintiff’s complaint was filed on  
3 February 21, 2008. Service was authorized on July 2, 2008, and the United States Marshal was  
4 directed to complete service on August 6, 2008. Service as to defendant Martinez was returned  
5 unexecuted on October 8, 2008. Thus, more than 120 days have passed since the filing of the  
6 complaint, as well as the attempted service of defendant Martinez. Plaintiff has not provided any  
7 additional information for which the United States Marshal to attempt additional service on  
8 defendant David.

9           Accordingly, the undersigned finds it appropriate to dismiss the unserved  
10 defendant from this action, pursuant to Rule 4(m).

11           Based on the foregoing, the undersigned recommends that defendant Martinez be  
12 dismissed from this action for failure to effect timely service.

13           These findings and recommendations are submitted to the United States District  
14 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days  
15 after being served with these findings and recommendations, any party may file written  
16 objections with the court. Responses to objections shall be filed within 14 days after service of  
17 objections. Failure to file objections within the specified time may waive the right to appeal.  
18 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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20 DATED: June 15, 2018

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22 **CRAIG M. KELLISON**  
23 UNITED STATES MAGISTRATE JUDGE  
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