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

JAMES W. WILLIAMS,

Plaintiff,

No. CIV S-08-1923 FCD DAD P

vs.

MED. AUTHORIZATION
REVIEW COMM., et al.,

Defendants.

FINDINGS & RECOMMENDATIONS

_____/

Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. On March 10, 2009, the court ordered plaintiff to submit a new USM-285 form for purposes of effecting service on defendant Anita David. Plaintiff was informed that the United States Marshal had attempted service at the address provided by plaintiff and that the documents had been returned unexecuted. The Marshal had also determined that defendant David was no longer employed by the California Department of Corrections and Rehabilitation (CDCR) and was not in the CDCR database. On April 13, 2009, plaintiff submitted a new USM-285 form but it provides the same address for defendant David that appeared on the previous USM-285 form. Plaintiff explains that defendant David was employed at High Desert State Prison on April 30, 2008. However, the Marshal's inquiries were made on December 15, 2008

1 and January 14, 2009, and are based on more recent information. It does not appear that plaintiff
2 can discover and provide a current address for the defendant.

3 The court is authorized to dismiss claims against a defendant who has not been
4 served with process within 120 days after the filing of the complaint, unless the plaintiff shows
5 good cause for failing to effect service. Fed. R. Civ. P. 4(m). The undersigned finds that
6 plaintiff cannot show good cause for the failure to effect service on defendant Anita David.

7 Accordingly, IT IS HEREBY RECOMMENDED that plaintiff's claims against
8 defendant Anita David be dismissed without prejudice. See Fed. R. Civ. P. 4(m) and 41(b).

9 These findings and recommendations are submitted to the United States District
10 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty
11 days after being served with these findings and recommendations, any party may file written
12 objections with the court and serve a copy on all parties. Such a document should be captioned
13 "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections
14 shall be served and filed within ten days after service of the objections. The parties are advised
15 that failure to file objections within the specified time may waive the right to appeal the District
16 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

17 DATED: April 20, 2009.

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21 DALE A. DROZD
22 UNITED STATES MAGISTRATE JUDGE

20 DAD:4
21 will1923.4m