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

DARIUS SIMS,

Plaintiff,

No. CIV S-09-2582 GGH P

vs.

ANN WHOLERS, et al.,

Defendants.

ORDER

_____/

Plaintiff, a state prisoner, is proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. The parties have consented to the jurisdiction of the undersigned. See Docket #'s 8 & 23.

By an Order, filed November 1, 2010, plaintiff was directed to provide additional information to serve defendants Silvia Garcia, M. Bunnell and S. Andrews, for whom process had been returned unserved. See Order, filed on 11/01/10 (docket # 24).

On December 13, 2010, plaintiff submitted copies of his complaint but failed to supply new addresses for defendants on the USM-285 forms.¹ Although unsuccessfully to date, plaintiff indicated he had made an effort to obtain the correct addresses. See Letter, filed on

¹ Waivers have been returned for the other named defendants, and a motion to dismiss as to those defendants who have been served was filed on December 16, 2010.

1 12/13/10 (docket # 29), pp. 1, 5.

2 In an effort not to delay this matter further, the court directed defendants' counsel
3 to query the Department of Corrections and Rehabilitation to ascertain the business addresses of
4 defendants Garcia, Bunnell and Andrews. See Order, filed on 12/21/10 (docket # 31).

5 Defendants' counsel has responded by way of declaration setting forth her efforts, ultimately
6 unfruitful, to obtain the addresses. See Declaration of Marta Barlow, filed on 1/10/11 (docket #
7 32). The court finds, based on the declaration, that counsel has conducted a good faith inquiry
8 but cannot ascertain the business addresses of defendants Garcia, Bunnell and Andrews.

9 In relevant part, Fed. R. Civ. 4(m) states:

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

16 The amended complaint in this action was filed on April 2, 2009; deemed timely by an Order,
17 filed on April 14, 2010; and an Order, directing service of the amended complaint issued on
18 August 9, 2010.² See Docket #'s 13, 14 & 15. More than 165 days have passed since service
19 was directed upon defendants Garcia, Bunnell and Andrews; therefore, they will be dismissed
20 without prejudice under Fed. R. Civ. P. 4(m), if plaintiff is unable to show good cause within
21 fourteen days, why further efforts to serve them at this point would not be futile. Johnson v.
22 Meltzer, 134 F.3d 1393, 1396 (9th Cir. 1998) (Fed. Rule Civ. P. 4(m) provides that a defendant,
23 unserved after 120 days, shall be dismissed by the district court without prejudice).

24 Accordingly, IT IS HEREBY ORDERED that:

25 1. By a response, dated 1/10/11, defendants' counsel has discharged the Order,

26 ² The original complaint in this action was filed on September 2, 2009, and transferred
into this court from the Northern District on September 16, 2009. The complaint was dismissed
by order, filed on February 10, 2010. See Docket #'s 1, 5 & 6.

