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

VICTORIA REYES;  
JOSE REYES, JR.,

Plaintiffs,

No. 2:09-cv-03114 KJM KJN PS

v.

JOSEPH MODESTO; DAVID  
JAKABOSKY; MICHELLE DAVIS-  
TATE; RICHARD WINTERS; and  
NANCY MEUER

Defendants.

FINDINGS AND RECOMMENDATIONS

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As previously scheduled and noticed, the undersigned conducted a Status (Pretrial Scheduling) Conference (“Scheduling Conference”) in this case on June 16, 2011, at 10:00 a.m., in Courtroom 25.<sup>1</sup> (Minutes, June 16, 2011, Dkt. No. 29; Order, Mar. 23, 2011, at 3-4, Dkt. No. 28; Order Setting Status Conf. at 2, Dkt. No. 17.) The undersigned called this matter during the civil law and motion calendar, and no appearance was made on behalf of the plaintiffs. By these findings and recommendations, the undersigned recommends that plaintiffs’ action be dismissed without prejudice for failure to effectuate service of the First Amended Complaint

<sup>1</sup> This action proceeds before the undersigned pursuant to Eastern District of California Local Rule 302(c)(21) and 28 U.S.C. § 636(b)(1).

1 within the time period permitted by Federal Rule of Civil Procedure 4(m).

2 Plaintiffs filed their First Amended Complaint on September 22, 2010 (First Am.  
3 Compl., Dkt. No. 14), and are proceeding without counsel and in forma pauperis. On  
4 September 29, 2010, the undersigned ordered service of plaintiffs' First Amended Complaint on  
5 the five named defendants. (Order, Sept. 29, 2010, Dkt. No. 16.) In order to effectuate service of  
6 the First Amended Complaint on defendants, the court's order required plaintiffs to submit to the  
7 United States Marshal within 30 days, among other things, completed USM-285 forms for each  
8 defendant to be served. The USM-285 form requires that plaintiffs enter the addresses for  
9 service and other information for each defendant to be served.

10 On October 28, 2010, plaintiffs filed a one-page request for assistance in  
11 acquiring the addresses and other information pertaining to the named defendants that plaintiffs  
12 require to complete the USM-285 forms. (Dkt. No. 19.) The undersigned denied plaintiffs'  
13 request without prejudice. (Order, Nov. 9, 2010, Dkt. No. 20.)

14 On December 2, 2010, plaintiff Jose Reyes, Jr. filed a request for a 60-day  
15 extension of time in which to complete the USM-285 forms and return them to the United States  
16 Marshal. (Dkt. No. 21.) The undersigned granted the request for an extension of time. (Order,  
17 Jan. 20, 2011, Dkt. No. 23.) Plaintiffs failed to submit the required service-related documents  
18 within the extended period of time.

19 On March 18, 2011, Mr. Reyes filed yet another request for an extension of time  
20 in which to complete the USM-285 forms and return them to the United States Marshal. (Dkt.  
21 No. 27.) It appeared that plaintiffs had secured the service-related information for two of the  
22 named defendants, but had not secured the information pertaining to the remaining named  
23 defendants. It appears that plaintiffs did not provide the information they had to the U.S.  
24 Marshal. The undersigned granted plaintiffs' request for an extension and provided plaintiffs  
25 with 30 additional days to submit the required service related information and documents. (See  
26 Order, March 23, 2011, at 2-3.) The undersigned warned plaintiffs that "*This extension*

1 *constitutes the final extension that the undersigned will approve,”* and that “[i]f plaintiffs fail to  
2 submit the required service-related information and documents to the United States Marshal in  
3 the time permitted, the undersigned will dismiss plaintiffs’ case without prejudice pursuant to  
4 Federal Rule of Civil Procedure 4(m).” (*Id.* at 2 (footnote omitted).)

5           It appears from the court’s docket that plaintiffs have taken no action in response  
6 to the court’s March 23, 2011 order. Additionally, plaintiffs failed to appear at the Scheduling  
7 Conference to explain any such failure to act. In relevant part, Federal Rule of Civil  
8 Procedure 4(m) provides:

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

15 The court ordered service of the First Amended Complaint on September 29, 2010, and service  
16 has not been effectuated on any defendant. Accordingly, the undersigned recommends that  
17 plaintiffs’ action be dismissed without prejudice pursuant to Rule 4(m).

18           For the reasons stated above, IT IS HEREBY RECOMMENDED that plaintiffs’  
19 action be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 4(m).

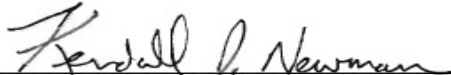
20           These findings and recommendations are submitted to the United States District  
21 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen  
22 days after being served with these findings and recommendations, any party may file written  
23 objections with the court and serve a copy on all parties. *Id.*; see also E. Dist. Local Rule 304(b).  
24 Such a document should be captioned “Objections to Magistrate Judge’s Findings and  
25 Recommendations.” Any response to the objections shall be filed with the court and served on  
26 all parties within fourteen days after service of the objections. E. Dist. Local Rule 304(d).  
Failure to file objections within the specified time may waive the right to appeal the District

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1 Court's order. Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998); Martinez v. Ylst, 951 F.2d  
2 1153, 1156-57 (9th Cir. 1991).

3 IT IS SO RECOMMENDED.

4 DATED: June 17, 2011

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7 KENDALL J. NEWMAN  
8 UNITED STATES MAGISTRATE JUDGE  
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