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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RUDY AROCHA,
Plaintiff,
v.
E. SAUCEDA, et al.,
Defendant.

No. 2: 11-cv-2959 KJN P

ORDER and
FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. For the following reasons, the undersigned recommends that defendants Munoz and Montanez be dismissed.

On June 11, 2013, the court ordered service of defendants Munoz and Montanez. (ECF No. 50.) On June 25, 2013, service as to defendants Munoz and Montanez was returned unexecuted because they could not be located in the “CDCR” locator. (ECF No. 53.) On July 5, 2013, the court granted plaintiff sixty days to provide additional information for service of these defendants. (ECF No. 54.)

On September 6, 2013, plaintiff filed a motion to compel requesting that defendants be ordered to provide him with information regarding the location of defendants Munoz and Montanez. (ECF No. 73.) In their opposition to this motion, defendants argued that the information plaintiff sought did not exist, as demonstrated by a letter from the Mule Creek State

1 Prison (“MCSP”) Litigation Coordinator attached to plaintiff’s motion to compel. (ECF No. 77.)
2 This letter, dated August 8, 2013, states that MCSP does not have a record of either employee,
3 i.e., defendants Munoz and Montanez, whom plaintiff is requesting information about. (ECF No.
4 73 at 20.)

5 On October 22, 2013, the undersigned denied plaintiff’s motion to compel requesting that
6 defendants be ordered to provide him with information regarding the location of defendants
7 Munoz and Montanez. (ECF No. 80.) The undersigned found that defendants’ objection that the
8 information sought did not exist was well taken. (Id.) The returned USM-285 forms indicated
9 that there was no record that either defendant was currently employed by the California
10 Department of Corrections and Rehabilitation. (Id.) The letter from the MCSP Litigation
11 Coordinator indicated that there was no record of either defendants ever being employed at
12 MCSP. (Id.) In addition, the undersigned noted that the exhibits attached to plaintiff’s third
13 amended complaint did not mention either defendant Munoz or Montanez. (Id.)

14 For the reasons discussed above, the undersigned finds that defendants Munoz and
15 Montanez cannot be served. For this reason, they should be dismissed.

16 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court shall assign a district
17 judge to this action;

18 IT IS HEREBY RECOMMENDED that defendants Munoz and Montanez be dismissed.

19 These findings and recommendations are submitted to the United States District Judge
20 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
21 after being served with these findings and recommendations, any party may file written
22 objections with the court and serve a copy on all parties. Such a document should be captioned
23 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
24 objections shall be filed and served within fourteen days after service of the objections. The

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1 parties are advised that failure to file objections within the specified time may waive the right to
2 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

3 Dated: November 8, 2013

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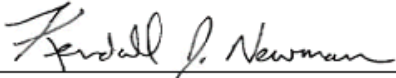
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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE