

1 objections, plaintiff states that she never received a copy of the motion for summary judgment
2 and that she would have opposed the motion had she received it. The proof of service appended
3 to defendants' motion for summary judgment states that the motion was served on plaintiff on
4 June 30, 2014, at the following address:

5 Ryan Bigoski Odom
6 223972
7 Central California Women's Facility (1508)
8 P.O. Box 1508
9 Chowchilla, CA 93610-1508

10 ECF No. 33-5.

11 A docket entry in this action on July 21, 2014 shows that a court order served on
12 plaintiff on June 18, 2014 at the identical address was returned as undeliverable as addressed
13 because the name and CDC number did not match. On July 22, 2014, the order was subsequently
14 reserved on plaintiff at the same address using the CDC number WE7977. The latter CDC
15 number is on the notice of change of address previously filed by plaintiff, on November 25, 2013,
16 ECF No. 29. These facts support plaintiff's assertion that she did not receive defendants'
17 summary judgment motion. For that reason, the current motion will be denied without prejudice
18 to its renewal accompanied by proof that it has been properly served on plaintiff.

19 The magistrate judge correctly observes that defendant Dr. James Firman has not
20 yet been served with process and recommends dismissal of this defendant pursuant to Federal
21 Rule of Civil Procedure 4(m) for failure to timely effect service of process. In the objections,
22 plaintiff presents an address for service on defendant Firman. Plaintiff also requests an
23 opportunity to obtain a statement from Dr. Margaret Vincent, a physician at Sutter Health who
24 treated plaintiff. The court will refer the matter back to the magistrate judge for such further
25 orders regarding service of process and scheduling in this matter as may be appropriate.

26 Finally, plaintiff seeks reconsideration of a prior order denying his motion for
27 appointment of counsel.¹ She has concurrently filed a motion for appointment of counsel which
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¹ The magistrate judge denied a prior request for appointment of counsel by order filed May 23, 2013, ECF No. 21. To the extent plaintiff seeks reconsideration of that order, the request is untimely. *See* Local Rule 303(b).

1 is pending before the magistrate judge. Plaintiff's request for appointment of counsel by this
2 court will be denied without prejudice.

3 In accordance with the above, IT IS HEREBY ORDERED that:


4 1. The findings and recommendations filed March 3, 2015, are not adopted;

5 2. Defendant's unopposed motion for summary judgment (ECF No. 33) is
6 denied without prejudice;

7 3. Plaintiff's request for appointment of counsel by this court contained in his
8 objections, ECF No. 38, is denied without prejudice; and

9 4. This matter is referred back to the magistrate judge for further proceedings
10 consistent with this order.

11 DATED: March 30, 2015.

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14 UNITED STATES DISTRICT JUDGE

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