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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

LAMAVIS A. COMUNDOIWILLA,

Plaintiff,

v.

M. S. EVANS, et al.,

Defendants.

CASE NO. 1:04-cv-06721-LJO-SKO PC

ORDER ADOPTING FINDINGS AND RECOMMENDATIONS RECOMMENDING DEFENDANTS' MOTION TO DISMISS BE GRANTED AND GRANTING PLAINTIFF LEAVE TO FILE AN AMENDED COMPLAINT

(ECF Nos. 40, 53)

ORDER DISMISSING DEFENDANT M. S. EVANS FROM ACTION

/ THIRTY-DAY DEADLINE

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on the [second amended complaint](#), filed July 17, 2009, against Defendants Alamedia, Woodford, Evans, Todd, Lopez, and Chapman for violation of Plaintiff's rights under Religious Land Use and Institutionalized Persons Act of 2000. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On August 5, 2010, Defendants Alamedia and Woodford filed a [motion to dismiss](#). On September 1, 2010, Defendants Chapman, Lopez, and Todd filed a [motion for joinder](#) in the motion to dismiss. Plaintiff filed an [opposition](#) on December 2, 2010, and Defendants filed a [reply](#) on December 13, 2010. On January 28, 2011, the Magistrate Judge issued an [order to show cause](#) why Defendant M. S. Evans should not be dismissed from the action because he had not been located and served. Plaintiff was given thirty days to file a response and warned that failure to show cause would

1 result in Defendant M. S. Evans being dismissed from the action. More than thirty days has passed
2 no response has been filed. On February 7, 2011, the Magistrate Judge issued [findings and](#)
3 [recommendations](#) recommending that Defendant's motion to dismiss be granted, with leave to
4 amend. The parties were given thirty days in which to file objections. More than thirty days has
5 passed and no objections have been filed.

6 The United States Marshal has attempted service on Defendant M. S. Evans and has been
7 unable to locate him. Plaintiff has failed to provide the Marshal with sufficient information to effect
8 service of process. Therefore, Defendant Evans shall be dismissed from this action.

9 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted a
10 de novo review of this case. Having carefully reviewed the entire file, the undersigned finds the
11 findings and recommendations to be supported by the record and by proper analysis.

12 Accordingly, IT IS HEREBY ORDERED that:

- 13 1. The findings and recommendations, filed February 7, 2011, are adopted in full;
- 14 2. Defendant's motion to dismiss based on qualified immunity, filed August 5, 2010,
15 is GRANTED;
- 16 3. Within **thirty (30) days** from the date of service of this order, Plaintiff must file a
17 third amended complaint raising only his claims for injunctive relief due to his
18 classification points;
- 19 4. Defendant M. S. Evans is dismissed from this action due to Plaintiff's failure to
20 provide sufficient information to effect service of process; and
- 21 5. If Plaintiff fails to comply with this order, this action will be dismissed for failure to
22 obey a court order.

23 IT IS SO ORDERED.

24 **Dated: March 18, 2011**

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE