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

Phillip Rosenblum,)	No. CV 1-08-0448-SMM
Plaintiff,)	ORDER
vs.)	
Mule Creek State Prison Medical Staff, et)	
al.,)	
Defendants.)	

Before the Court is Plaintiff’s Motion for Voluntary Dismissal of Defendant Cliforde Without Prejudice (Doc. 34), filed November 30, 2009.

Plaintiff filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983 on March 27, 2008 (Doc. 1). The case was reassigned to the undersigned judge on November 25, 2008 (Doc. 13). The Court screened the Complaint in an Order filed on April 8, 2009 (Doc. 15). On May 11, 2009, the Court ordered service on Defendants Akintola, Nale, Diep, Vilaysane, Das, Galloway, Mclean, Williams, Stocker, Hall, Jensen, Igbinoso, Cliforde, O’Shaughnessy, and Robinson (Doc. 17). In the service Order, the Court warned Plaintiff that if he failed to either obtain a waiver of service of the summons or complete service of the Summons and Complaint on a Defendant within 120 days of the filing of the service Order, the action may be dismissed as to each Defendant not served (Id.)

Defendants Akintola, Nale, Diep, Das, Galloway, Mclean, Stocker, Hall, Jensen, Igbinoso, O’Shaughnessy, and Robinson waived service of process (Docs. 19,20,24,26). However, on June 25, 2009, service as to Defendants Vilaysane and Cliforde was returned

1 unexecuted (Doc. 18). The summons as to Defendant Williams was not returned by the
2 service deadline.

3 Consequently, on October 5, 2009, the Court ordered the served Defendants to
4 provide under seal the last known addresses of Defendants Vilaysane, Cliforde, and Williams
5 by October 23, 2009 (Doc. 27). Thereafter, on October 23, the served Defendants submitted
6 the last known address of Defendant Vilaysane under seal (Doc. 29). In her attached
7 Declaration, defense counsel Ellen Hung stated that she manually submitted Defendant
8 Vilaysane's address to the Fresno Division of the District Court for the Eastern District of
9 California for service by the U.S. Marshal. The service package for Defendant Vilaysane
10 was completed and forwarded to the U.S. Marshal for in Sacramento on October 26, 2009.
11 No waiver has been returned yet, nor has service been completed as to Defendant Vilaysane.

12 Additionally, Ms. Hung confirmed with the litigation coordinator for California Prison
13 Health Care Services, Allie Baker, that she was authorized to accept service on behalf of
14 Defendant Dr. Williams. Ms. Baker also indicated that she had recently accepted service of
15 the summons and complaint in the present action. Thereafter, on November 13, 2009, the
16 waiver sent to Defendant Dr. Williams was returned executed to the Court (Doc. 33).

17 However, as to Defendant Cliforde, Ms. Hung has been unable to ascertain his contact
18 information. The litigation office at Pleasant Valley State Prison returned attempted service
19 by the U.S. Marshal as no one was employed there by that name. Furthermore, exhaustive
20 searches of the California Department of Corrections and Rehabilitation's personnel
21 database, the computer client database at the Office of the Attorney General, and PACER
22 database returned no matches for Defendant Cliforde other than the present action. Despite
23 Ms. Hung's good faith efforts, the location of Defendant Cliforde is still unknown, and thus,
24 he has not been served.

25 Under Federal Rule of Civil Procedure 4(m), if a summons and complaint are not
26 served upon a defendant within 120 days after filing, the court shall, after notice to the
27 plaintiff, either dismiss the action or, if the plaintiff shows good cause for the failure, direct
28 that service be effected within a specified time. Fed. R. Civ. P. 4(m). On October 28, 2009,

1 the Court ordered Plaintiff to show good cause why this action should not be dismissed as
2 to Defendant Cliforde for failure to serve under Rule 4(m) of the Federal Rules of Civil
3 Procedure. The Court gave Plaintiff until November 30, 2009 to show good cause for the
4 failure to serve Defendant Cliforde. On that date, Plaintiff filed the present Motion for
5 Voluntary Dismissal of Defendant Cliforde Without Prejudice (Doc. 34). In this Motion,
6 Plaintiff asks that Defendant Cliforde be dismissed without prejudice subject to him learning
7 this defendant's true identity during discovery.

8 Accordingly,

9 **IT IS HEREBY ORDERED GRANTING** Plaintiff's Motion for Voluntary
10 Dismissal of Defendant Cliforde Without Prejudice (Doc. 34).

11 **IT IS FURTHER ORDERED** that Defendant Cliforde shall be dismissed without
12 prejudice from the present action.

13 DATED this 2nd day of December, 2009.

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17 Stephen M. McNamee
18 United States District Judge
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