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8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF CALIFORNIA**
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11 DENNIS L. HAMILTON,
12 Plaintiff,
13 vs.
14 JOHN HART, *et al.*
15 Defendants.
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**Case No. 1:10-cv-00272-DAD-EPG
(PC)**

**FINDINGS AND
RECOMMENDATIONS
RECOMMENDING DISMISSAL OF
DOE DEFENDANT**

**OBJECTIONS, IF ANY, DUE
WITHIN 30 DAYS**

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18 Plaintiff Dennis Hamilton is a state prisoner proceeding *pro se* and *in forma pauperis* in
19 this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on the original
20 complaint for a number of alleged Eighth Amendment violations. Among the defendants is a
21 Doe Lieutenant whom Plaintiff was unable to identify at the time he filed the Complaint. As
22 explained in the Court's Scheduling Order (ECF No. 92), Defendants were required to assist
23 Plaintiff in identifying any Doe defendants and Plaintiff then had the responsibility to move to
24 amend the Complaint no later than January 6, 2017. On January 11, 2017, the parties appeared
25 for a discovery status conference and explained that they had been unable to identify the Doe
26 Lieutenant from Plaintiff's Complaint. Plaintiff was also unable to provide any other identifying
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1 information for the Doe Lieutenant and did not offer any reason why the Doe Lieutenant should
2 not be dismissed from this action.

3 Rule 4(m) of the Federal Rules of Civil Procedure provides, in relevant part:

4 If a defendant is not served within 90 days after the complaint is filed, the
5 court—on motion or on its own after notice to the plaintiff, must dismiss the
6 action without prejudice against that defendant or order that service be made
7 within a specified time. But if the plaintiff shows good cause for the failure, the
8 court must extend the time for service for an appropriate period.

9 Plaintiff has failed to set forth good cause for his failure to identify the Doe Lieutenant
10 so that the United States Marshal could serve a summons and the complaint. Accordingly, the
11 Court RECOMMENDS that Defendant Doe Lieutenant be DISMISSED from this action,
12 without prejudice, pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

13 These findings and recommendations will be submitted to the United States District
14 Judge assigned to this case pursuant to the provisions of Title 28 of the United States Code
15 section 636(b)(1). Within **thirty (30) days** after being served with these findings and
16 recommendations, the parties may file written objections with the Court. The document should
17 be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” The parties
18 are advised that failure to file objections within the specified time may waive the right to appeal
19 the District Court’s order. *Bastidas v. Chappell*, 791 F.3d 1155, 1159 (9th Cir. 2015).

20 IT IS SO ORDERED.

21 Dated: January 18, 2017

22 /s/ Eric P. Gray
23 UNITED STATES MAGISTRATE JUDGE
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