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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

JOHN T. MISKO,	)	1:10-cv-00713-LJO-BAM (PC)
	)	
Plaintiff,	)	ORDER ADOPTING FINDINGS AND
	)	RECOMMENDATIONS REGARDING
v.	)	DISMISSAL OF DEFENDANT CLEINLIN
	)	(CEILINE) FOR FAILURE TO
WILLIAM SULLIVAN, et al.,	)	EFFECTUATE SERVICE OF PROCESS
	)	
Defendants.	)	(ECF Nos. 51, 58, 62)
	)	
	)	

Plaintiff John T. Misko (“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 currently proceeds against Defendants Cleinlin and Williams for deliberate indifference in violation of the Eighth Amendment.

On May 15, 2014, the Magistrate Judge issued Findings and Recommendations that this action be dismissed against Defendant Cleinlin (Ceiline), without prejudice, based on Plaintiff’s failure to effect service of the summons and complaint pursuant to Federal Rule of Civil Procedure 4(m). The Findings and Recommendations were served on the parties appearing in this action and contained notice that any objections were to be filed within fifteen days. (ECF No. 62.) Plaintiff filed objections on June 5, 2014. (ECF No. 65.)

Plaintiff states that he was unaware that he had missed an order to respond issued by the Court. Presumably, Plaintiff refers to the second order to show cause issued on March 31, 2014, which directed Plaintiff to show cause why Defendant Cleinlin should not be dismissed from this

1 action. Although Plaintiff did not respond to the show cause order, Plaintiff's objections do not  
2 provide any new information for the U.S. Marshal to effect service of the summons and  
3 complaint. Instead, Plaintiff refers to the medication records attached to his original complaint.  
4 Plaintiff contends that these records provide sufficient information and suggests that the failure  
5 to effectuate service is the fault of the U.S. Marshal.

6 Plaintiff's objection is unsupported. The U. S. Marshals Service, with the assistance of a  
7 special investigator from the California Department of Corrections and Rehabilitation, has  
8 attempted to locate Defendant Cleinlin (Ceiline) on multiple occasions without success based on  
9 information supplied by Plaintiff. (ECF Nos. 25, 29, 43, 51.) There is no indication that the  
10 failure to effect service is the fault of the U.S. Marshal. Rather, the inability to effect service  
11 appears to be the result of Plaintiff's difficulty ascertaining the correct name of the defendant.  
12 The Court has reviewed the cited records, but cannot decipher the signature that has been  
13 attributed to Defendant Cleinlin (or Ceiline). Therefore, as recommended by the Magistrate  
14 Judge, Defendant Cleinlin shall be dismissed from this action. This dismissal shall be *without*  
15 *prejudice* in the event Plaintiff is able to properly identify this defendant as the action proceeds.

16 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted  
17 a de novo review of this case. Having carefully reviewed the entire file, including Plaintiff's  
18 objections, the Court finds the Findings and Recommendations to be supported by the record and  
19 by proper analysis.

20 Accordingly, IT IS HEREBY ORDERED that:

- 21 1. The Findings and Recommendations, issued on May 15, 2014, are adopted in full; and
- 22 2. Defendant Cleinlin is dismissed from this action, without prejudice, based on  
23 Plaintiff's failure to effect service of the summons and complaint pursuant to Federal Rule of  
24 Civil Procedure 4(m).

25 IT IS SO ORDERED.

26 Dated: June 6, 2014

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