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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

MUHAMMAD NURIDDIN,) Case No.: 1:11-cv-01448-LJO-SAB (PC)
)
Plaintiff,)
)
v.) FINDINGS AND RECOMMENDATION
) RECOMMENDING DISMISSAL OF
) DEFENDANT MILLER PURSUANT TO RULE
ESTRELLA, et al.,) 4(M) OF THE FEDERAL RULES OF CIVIL
) PROCEDURE
Defendants.) [ECF Nos. 19, 23, 26]
)

Plaintiff Muhammad Nuriddin is appearing pro se and in forma pauperis in this civil rights action pursuant to Bivens v. Six Unknown Agents, 403 U.S. 388 (1971). Bivens actions and actions under 42 U.S.C. § 1983 “are identical save for the replacement of a state actor under § 1983 by a federal actor under Bivens.” Van Strum v. Lawn, 940 F.2d 406, 409 (9th Cir. 1991).

**I.
DISCUSSION**

On October 1, 2014, the Court issued an order to show cause why Defendants Miller and Bell should not be dismissed pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. (ECF No. 23.) Plaintiff filed a response on October 23, 2014. (ECF No. 26.)

On August 8, 2014, personal service on Defendant Miller was attempted but not successful. The last known address provided by the prison is no longer accurate and personal service has not been successful. (ECF No. 21.)

1 In his response to the order to show cause, Plaintiff indicates that the last known address for
2 Defendant Miller was the United States Penitentiary in Atwater, California, where he was working as
3 a Lieutenant. Plaintiff contends he is not allowed information relating to the address and/or telephone
4 numbers of any staff members.

5 Plaintiff fails to provide good cause as to why Defendant Miller should not be dismissed, as
6 Plaintiff does not specify any alternatives to effectuate service on Defendant Miller. Nothing in
7 Plaintiff's response to the order to show cause suggests Plaintiff can provide any further information
8 relevant to effectuating service upon Defendant Miller. Accordingly, Plaintiff fails to show good
9 cause to extend the time for serving Defendant Miller, and dismissal of Defendant Miller, without
10 prejudice, is appropriate.

11 **II.**
12 **RECOMMENDATION**

13 Based on the foregoing, IT IS HEREBY RECOMMENDED that Defendant Miller be
14 dismissed from the action, without prejudice, pursuant to Rule 4(m) of the Federal Rules of Civil
15 Procedure.

16 This Findings and Recommendation will be submitted to the United States District Judge
17 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **thirty (30) days**
18 after being served with this Findings and Recommendation, Plaintiff may file written objections with
19 the Court. The document should be captioned "Objections to Magistrate Judge's Findings and
20 Recommendation." Plaintiff is advised that failure to file objections within the specified time may
21 result in the waiver of rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014)
22 (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

23
24 IT IS SO ORDERED.

25 Dated: January 13, 2015

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27 UNITED STATES MAGISTRATE JUDGE

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