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2  
3 UNITED STATES DISTRICT COURT  
4 EASTERN DISTRICT OF CALIFORNIA

5 MARCUS R. WILLIAMS,  
6

7 Plaintiff,

8 v.

9 KELLY HARRINGTON, et al.,  
10

11 Defendants.

Case No. 1:12-cv-00226-LJO-EPG (PC)

ORDER DISMISSING DEFENDANT D.  
JAYVINDER FROM THIS ACTION  
WITHOUT PREJUDICE  
(ECF NOS. 126 & 135)

12 **I. RELEVANT PROCEDURAL HISTORY**

13 Marcus Williams ("Plaintiff") is a state prisoner proceeding *pro se* and *in forma*  
14 *pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. On February 17, 2012,  
15 Plaintiff commenced this action by filing a complaint. (ECF No. 1). The Court found  
16 cognizable claims against seven defendants (ECF Nos. 10, 16, 20, & 22), and, after the  
17 appropriate service documents were completed and returned (ECF No. 23), ordered the United  
18 States Marshal Service ("the Marshal") to serve the defendants (ECF No. 24).

19 Because there was no information before the Court as to whether defendant D.  
20 Jayvinder had ever been served, on October 21, 2016, the Court gave Plaintiff the option to  
21 have the Marshal re-serve defendant D. Jayvinder. (ECF No. 110). On November 9, 2016,  
22 Plaintiff informed the Court that he wanted to have the Marshal re-serve defendant D.  
23 Jayvinder. (ECF No. 112). Once Plaintiff submitted the appropriate service documents, the  
24 presiding magistrate judge issued an order directing the Marshal to serve process upon  
25 defendant D. Jayvinder. (ECF No. 118). On January 9, 2017, the Marshal filed a return of  
26 service unexecuted, indicating that the California Department of Corrections and Rehabilitation  
27 ("CDCR") had nobody by the name of D. Jayvinder in their records. (ECF No. 123).  
28 Accordingly, the presiding magistrate judge issued an order to show cause, directing Plaintiff to

1 show cause why the presiding magistrate judge should not issue findings and  
2 recommendations, recommending that defendant D. Jayvinder be dismissed from this action  
3 without prejudice. (ECF No. 126).

4 On February 13, 2017, Plaintiff filed a motion to dismiss defendant D. Jayvinder  
5 without prejudice for failure to locate. (ECF No. 135). According to Plaintiff, he is currently  
6 unable to locate defendant D. Jayvinder. Plaintiff asks that defendant D. Jayvinder be  
7 dismissed from the action without prejudice “until said time that defendant Doe can be properly  
8 identified and located.”

9 The Court will dismiss defendant D. Jayvinder from this action without prejudice. The  
10 Court notes that if Plaintiff does locate defendant D. Jayvinder he will need to file a motion for  
11 leave to have defendant D. Jayvinder served. If this case is resolved against the remaining  
12 defendants before defendant D. Jayvinder is located, the case will be closed.

13 Accordingly, based on the foregoing, IT IS ORDERED that defendant D. Jayvinder is  
14 DISMISSED from this action, without prejudice.

15  
16 IT IS SO ORDERED.

17 Dated: February 15, 2017

/s/ Lawrence J. O’Neill  
UNITED STATES CHIEF DISTRICT JUDGE