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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA

9 DALE L. COTTRELL,

10 Plaintiff,

11 v.

12 FELIX IGBINOSA, et al.,

13 Defendants.

Case No. 1:13-cv-01530-LJO-SAB (PC)

ORDER

(ECF Nos. 78, 85-92, 96, 99, 100, 101)

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15 Plaintiff Dale L. Cottrell is appearing pro se and in forma pauperis in this civil rights
16 action pursuant to 42 U.S.C. § 1983. Defendants filed a motion for summary judgment on July
17 25, 2016, which was referred to a United States Magistrate Judge pursuant to 28 U.S.C. §
18 636(b)(1)(B) and Local Rule 302.

19 On February 8, 2017, an order issued requiring Plaintiff to show cause why Doe
20 defendants 1 through 3 should not be dismissed from this action. On February 9, 2017, the
21 Magistrate Judge filed a findings and recommendations. The findings and recommendations
22 recommended granting in part and denying in part Defendants' motion for summary judgment.
23 The findings and recommendations was served on the parties and contained notice that any
24 objections to the findings and recommendations were to be filed within thirty days from the date
25 of service. Plaintiff filed objections to the findings and recommendations on March 16, 2017.
26 Plaintiff did not respond to the order to show cause.

27 At the time that the complaint in this action was filed, Rule 4(m) of the Federal Rules of
28 Civil Procedure provided, in relevant part:

1 If a defendant is not served within 120 days after the complaint is filed, the court -
2 on motion or on its own after notice to the plaintiff - must dismiss the action
3 without prejudice against that defendant or order that service be made within a
4 specified time. But if the plaintiff shows good cause for the failure, the court
5 must extend the time for service for an appropriate period.

6 Plaintiff has failed to set forth good cause for his failure to identify the Doe defendants so
7 that the United States Marshal could serve a summons and the complaint. Therefore, the Doe
8 defendants are dismissed from this action for Plaintiff's failure to effect service of process in
9 compliance with Rule 4(m).

10 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this Court has conducted
11 a de novo review of this case. Having carefully reviewed the entire file, the Court finds the
12 findings and recommendations to be supported by the record and by proper analysis.

13 Accordingly, IT IS HEREBY ORDERED that:

- 14 1. Doe Defendants 1 through 3 are DISMISSED from this action,
15 without prejudice, pursuant to Federal Rule of Civil Procedure 4(m);
- 16 2. The findings and recommendations, filed February 9, 2017, is ADOPTED
17 IN FULL;
- 18 3. Defendants' motion for summary judgment is GRANTED IN PART AND
19 DENIED IN PART as follows:
 - 20 a. Defendants Das, Duenas, Igbinosa, Ogbuehi, and Park's motion for
21 summary judgment is GRANTED; and
 - 22 b. Defendants Lackey and Berard's motion for summary judgment is
23 DENIED.

24 IT IS SO ORDERED.

25 Dated: March 20, 2017

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