

## EASTERN DISTRICT OF CALIFORNIA

Defendants.

(ECF No. 69)

<sup>1</sup> Plaintiff indicates that Defendant O’Neil was served on November 21, 2017.

1 Here, service has not been effected on Defendant O'Neil, nor has he waived service  
2 under Rule 4(d). Plaintiff cites the return of service form which was returned by the United  
3 States Marshal as proof that Defendant O'Neil was served. (ECF No. 53.) However, that  
4 summons was returned unexecuted, and the Marshal indicated that service could not be  
5 completed on Defendant O'Neil at the Tulare County Sheriff's Department because that  
6 Defendant was no longer employed by Tulare County.

7 On December 1, 2016, the Court directed re-service by the Marshal with additional  
8 information provided by defense counsel. On May 18, 2017, the United States Marshal again  
9 filed a return of service unexecuted as to Defendant O'Neil. (ECF No. 66). The Marshall  
10 indicated that an attempt at service was made with all available information, but service was not  
11 effected on Defendant O'Neil.

12 On May 23, 2017, this Court issued an order to show cause to Plaintiff why Defendant  
13 O'Neil should not be dismissed from this action for the failure to provide sufficient information  
14 to effectuate service of process. (ECF No. 67.) That order may have crossed in the mail with the  
15 current motion.

16 Based on the foregoing, Defendant O'Neil has not yet been served with the summons and  
17 complaint, and thus default judgment is premature.

18 Accordingly, Plaintiff's request for entry of default, filed May 30, 2017 is DENIED.

19  
20 IT IS SO ORDERED.

21 Dated: June 1, 2017

22   
UNITED STATES MAGISTRATE JUDGE