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7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF CALIFORNIA
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10 TRENELL MONSON,

11 Plaintiff,

12 v.

13 R. MELKONIAN and M. MARTINEZ,

14 Defendants.
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Case No. 1:17-cv-00395-LJO-EPG (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS

(ECF NOS. 26 & 31)

ORDER DISMISSING DEFENDANT M.
MARTINEZ FROM THIS ACTION,
WITHOUT PREJUDICE

17 Trenell Monson (“Plaintiff”) is a prisoner¹ being held at Fresno County Jail. He is
18 proceeding *pro se* and *in forma pauperis* with this civil rights action filed pursuant to 42 U.S.C.
19 § 1983. This case now proceeds on Plaintiff’s Second Amended Complaint (ECF No. 10)
20 against defendants R. Melkonian and M. Martinez on Plaintiff’s claim for failure to protect in
21 violation of the Fourteenth Amendment (ECF Nos. 12 & 24). The matter was referred to a
22 United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

23 On October 9, 2018, Magistrate Judge Erica P. Grosjean entered findings and
24 recommendations, recommending that “defendant Martinez be dismissed from this action
25 because of Plaintiff’s failure to provide the Marshal with accurate and sufficient information to
26 effect service of the summons and complaint on defendant Martinez within the time period

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28 ¹ Plaintiff has alleged that he was a pretrial detainee at the time of the incidents described in the
complaint.

1 prescribed by Federal Rule of Civil Procedure 4(m).” (ECF No. 31, p. 4). Judge Grosjean
2 noted that the findings and recommendations would be vacated “if during the objection period
3 Plaintiff provides another address for defendant Martinez, requests the issuance of a third party
4 subpoena on an appropriate entity, or shows good cause for the failure to timely serve
5 defendant Martinez....” (Id. at p. 3).

6 The parties were provided an opportunity to file objections to the findings and
7 recommendations. (Id. at 4). On October 17, 2018, Plaintiff filed his objections (ECF No. 34)
8 and requested that a third party subpoena be issued on “the U.S. Military” (ECF No. 35).

9 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(B) and Local Rule 304, this
10 Court has conducted a *de novo* review of this case. Having carefully reviewed the entire file,
11 the Court finds the findings and recommendations to be supported by the record and proper
12 analysis.

13 In his objections, Plaintiff states that he never received a document from the United
14 States Marshals Service (“the Marshal”) stating that the summons was returned unexecuted. If
15 he had received the document, he would have requested the issuance of a third party subpoena
16 so that he could attempt to find defendant Martinez’s current address. Plaintiff also states that
17 due to his incarceration he is unable to find any other addresses for defendant Martinez.

18 While the Court is sympathetic to Plaintiff’s situation, it is Plaintiff’s responsibility to
19 provide the Marshal with accurate and sufficient information to effect service of the summons
20 and complaint on defendant Martinez, and he has failed to do so. While Plaintiff did request
21 the issuance of a third party subpoena, he did not request that it be issued on an appropriate
22 entity. The Court cannot direct the Marshal to serve a subpoena on “the U.S. Military.”

23 Accordingly, THE COURT HEREBY ORDERS that:

- 24 1. The Findings and Recommendations issued by the Magistrate Judge on October 9,
25 2018, are ADOPTED IN FULL;
- 26 2. Defendant Martinez is dismissed from this action, without prejudice, because of
27 Plaintiff’s failure to provide the Marshal with accurate and sufficient information to
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effect service of the summons and complaint on defendant Martinez within the time period prescribed by Federal Rule of Civil Procedure 4(m); and

3. The Clerk of Court is directed to reflect the dismissal of defendant M. Martinez on the Court's docket.

IT IS SO ORDERED.

Dated: October 22, 2018

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