

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LIONELL THOLMER,  
Plaintiff,

No. CIV S-04-1368 GEB CMK P

vs.

ORDER VACATING FINDINGS  
AND RECOMMENDATIONS

CHERYL K. PLILER, et al.,  
Defendants

\_\_\_\_\_ /

Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. On October 9, 2008, the court issued an order authorizing service on five additional defendants: Pliler, Stratton, Stiles, Wilson and Morrow. Plaintiff was directed to complete and submit a summons as well as USM-285 forms and provide the court with copies of his third amended complaint. Plaintiff returned the service documents, but the summons he returned was not properly filled out. On November 12, 2008, plaintiff was informed of the error, was provided a new summons to complete properly, and was directed to return the completed summons within 20 days. By December 29, 2008, no new summons had been received by the court. The undersigned, therefore, issued Findings and Recommendations recommending that the five additional defendants be dismissed from the case for plaintiff's failure to comply with court

1 rules and orders.

2           On January 8, 2009, plaintiff filed objections to the recommendation that the new  
3 defendants be dismissed. In his objections, plaintiff indicates that he did submit a new summons  
4 to the court on or about December 1, 2008. Unfortunately, the new summons has not been  
5 received by the court. However, as plaintiff attempted to comply with the court order requiring  
6 him to submit a new summons, the undersigned will vacate the Findings and Recommendations  
7 issued on December 29, 2008 and will provide plaintiff another opportunity to properly complete  
8 and return a summons to the court.

9           Accordingly, IT IS HEREBY ORDERED that:

10           1.     The Findings and Recommendations (Doc. 97) issued December 29, 2008,  
11 are vacated;

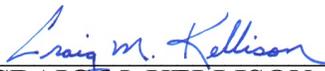
12           2.     The Clerk of the Court is directed to send plaintiff another new summons;  
13 and

14           3.     Within twenty days of the date of service of this order, plaintiff shall submit  
15 to the court the properly completed summons required to effect service on defendants Plier,  
16 Stratton, Stiles, Wilson and Morrow.

17

18 DATED: January 15, 2009

19

  
\_\_\_\_\_  
**CRAIG M. KELLISON**  
UNITED STATES MAGISTRATE JUDGE

20

21

22

23

24

25

26