

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

DWAYNE EICHLER, No. CIV S-06-2894-JAM-CMK-H

Plaintiff,

VS.

FINDINGS AND RECOMMENDATIONS

TILTON, et al.,

Defendants.

Plaintiff, a state prisoner proceeding pro se and in forma pauperis, brings this civil rights action pursuant to 42 U.S.C. § 1983. On March 28, 2008, service of process directed to defendants Romary and Yamamoto was returned unexecuted. On April 24, 2008, plaintiff was ordered to provide information sufficient to serve defendants Romary and Yamamoto. On July 11, 2008, the court granted plaintiff's request for additional time to submit service documents for defendant Yamamoto (Doc. 72). Plaintiff was allowed an additional 30 days to submit the documents necessary for the U.S. Marshal to serve defendant Yamamoto. To date, plaintiff has failed to submit the necessary documents.

25 Plaintiff did submit additional information for service on defendant Romary.
26 However, on January 9, 2009, service of process directed to defendant Romary was again

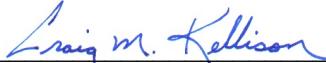
1 returned unserved. Service directed to the address plaintiff provided for defendant Romary, a
2 Post Office Box number, rendered no response, and "per CDC locator" there is "no DDS Romary
3 (only c/o); unable to locate/identify."

4 Plaintiff has been provided sufficient opportunity to serve these two defendants.
5 He was cautioned that failure to effect service may result in the dismissal of unserved defendants.
6 See Fed. R. Civ. P. 4(m). Plaintiff has named and served several other defendants, and this case
7 will proceed against those defendants. The dismissal of these two defendants will not prejudice
8 plaintiff as he still has several defendants to proceed against, including other Directors of CDC
9 and other dentists.

10 Based on the foregoing, the undersigned recommends that defendants Yamamoto
11 and Romary be dismissed from this action for failure to effect service. This action will continue
12 as to the other served defendants.

13 These findings and recommendations are submitted to the United States District
14 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 20 days
15 after being served with these findings and recommendations, any party may file written
16 objections with the court. The document should be captioned "Objections to Magistrate Judge's
17 Findings and Recommendations." Failure to file objections within the specified time may waive
18 the right to appeal. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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20 DATED: January 26, 2009

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22 CRAIG M. KELLISON
23 UNITED STATES MAGISTRATE JUDGE
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