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

TROY COOPER,

Plaintiff,

No. CIV S-10-1057 DAD P

vs.

KAUR, et al.,

Defendants.

ORDER AND

FINDINGS AND RECOMMENDATIONS

_____ /

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with this civil rights action.

On July 7, 2010, the court ordered the United States Marshal to serve plaintiff's amended complaint on three defendants. Service has been effected on two defendants. However, the Marshal was unable to effect service on defendant Naku. On September 3, 2010, the court advised plaintiff that if he wished to proceed with his claims against defendant Naku, he would be required to provide additional information to the court that would enable the United States Marshal to serve this defendant. The court instructed plaintiff to promptly seek such information through any means available to him and cautioned plaintiff that when service of a complaint is not made upon a defendant within 120 days after the complaint was filed, the court may be required to dismiss the plaintiff's claims against that defendant. See Fed. R. Civ. P.

1 4(m). The court also ordered plaintiff to submit within sixty days the documents necessary to
2 effect service on defendant Naku. Although plaintiff submitted the necessary service documents,
3 once again, based on the information plaintiff provided to the court the Marshal was unable to
4 effect service on defendant Naku.

5 Under the circumstances of this case, the undersigned finds that plaintiff cannot
6 show good cause for the failure to effect service on defendant Naku. Discovery was left open in
7 this case from October 18, 2010, to February 4, 2011. Plaintiff has had more than sufficient time
8 to provide the court with the additional information necessary to enable the United States
9 Marshal to serve this defendant. Accordingly, the court concludes that defendant Naku should be
10 dismissed from this action. See Fed. R. Civ. P. 4(m).

11 For the reasons discussed above:

12 IT IS HEREBY ORDERED that the Clerk of the Court is directed to randomly
13 assign a United States District Judge to this action.

14 IT IS HEREBY RECOMMENDED that defendant Naku be dismissed from this
15 action without prejudice. See Fed. R. Civ. P. 4(m) and 41(b).

16 These findings and recommendations are submitted to the United States District
17 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-
18 one days after being served with these findings and recommendations, plaintiff may file written
19 objections with the court. The document should be captioned "Objections to Magistrate Judge's
20 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
21 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
22 F.2d 1153 (9th Cir. 1991).

23 DATED: March 2, 2011.

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25 DAD:9
26 coop1057.56



DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE