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

LEE THIEL PAYNE,

Plaintiff,

No. 2:11-cv-1970 LKK EFB P

vs.

J. MARTIN, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

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Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. The U.S. Marshal was unable to effect service of process on defendant Martin based on the information provided by plaintiff. Therefore, on October 17, 2012, the court directed plaintiff to provide new instructions for service. Plaintiff has not provided new instructions or otherwise responded to the court’s order. The court has given plaintiff two opportunities to locate defendant Martin and warned plaintiff that failure to provide new instructions or to show good cause for such failure would result in a recommendation that this action be dismissed as to defendant Martin. *See* Fed. R. Civ. P. 4(m) (service of process must be effected within 120 days of the filing of the complaint unless plaintiff demonstrates good cause).

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1           Accordingly, it is hereby RECOMMENDED that defendant Martin be dismissed without  
2 prejudice.

3           These findings and recommendations are submitted to the United States District Judge  
4 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
5 after being served with these findings and recommendations, any party may file written  
6 objections with the court and serve a copy on all parties. Such a document should be captioned  
7 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections  
8 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*  
9 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

10 DATED: December 19, 2012.

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12 EDMUND F. BRENNAN  
13 UNITED STATES MAGISTRATE JUDGE  
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