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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TORIBIO MENDOZA,
Plaintiff,
v.
SPADARO, et al.,
Defendants.

No. 2:16-cv-0855 CKD P

ORDER

Plaintiff is a California prisoner proceeding pro se with an action for violation of civil rights under 42 U.S.C. § 1983. Plaintiff has consented to have all matters in this action before a United States Magistrate Judge. See 28 U.S.C. § 636(c).

On May 11, 2016, the court approved service of process for defendant Boyt and instructed plaintiff to provide the court with an address where defendant Boyt could be served. Plaintiff indicated that defendant Boyt could be served at High Desert State Prison. When the U.S. Marshal attempted to serve defendant Boyt there, prison officials informed the Marshal that there was no person named “Boyt” that worked there. ECF No. 25. Plaintiff was given a second opportunity to provide the court with an address where defendant Boyt could be served. Plaintiff again indicated that Boyt could be served at High Desert. The Marshal’s attempt to serve defendant Boyt a second time at High Desert was again unsuccessful and this time prison officials indicated there has never been an employee named “Boyt” at High Desert. ECF No. 36.

1 Because it does not appear that defendant "Boyt" can be served at High Desert, and it does
2 not appear plaintiff can provide an alternate address for service, defendant Boyt will be dismissed
3 without prejudice. See Fed. R. Civ. P. 4(m). It is possible that the person plaintiff identifies as
4 "Boyt" in his complaint might have another name. If plaintiff learns that this is the case at some
5 point, he is free to file a motion for leave to amend his complaint along with a proposed amended
6 complaint. If the court finds good cause for permitting leave to amend, and that plaintiff states a
7 claim upon which relief can be granted against the new defendant, the court will consider
8 ordering service of process on that defendant at that time.

9 In accordance with the above, IT IS HEREBY ORDERED that defendant Boyt is
10 dismissed from this action without prejudice.

11 Dated: December 5, 2016



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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