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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LAWRENCE BENNETTO,
Plaintiff,
v.
GREGORY AHERN,
Defendant.

Case No. 16-cv-05464-SK

**ORDER OF DISMISSAL WITHOUT
PREJUDICE**

Plaintiff Lawrence Bennetto filed this action on September 24, 2016, 481 days ago. (Dkt. 1.) Since that time, the Plaintiff’s claims against all named and served parties have been dismissed. Most recently, on October 19, 2017, Plaintiff filed a third amended complaint which included 42 U.S.C. § 1983 and negligence claims, as well as a new claim for medical malpractice. On November 30, 2017, this Court granted a motion to dismiss with prejudice the claims against the only remaining party who had been both named and served with a complaint. The Court held that Plaintiff’s section 1983 and negligence claims were time barred. Thus, only “Doe” Defendants and the medical malpractice cause of action remain.

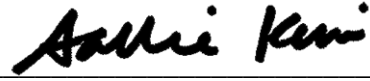
In response to this Court’s order to show cause as to why the case should not be dismissed, Plaintiff stated that this Court has diversity jurisdiction and that Plaintiff intends to assert a malpractice claim against the Plaintiff’s attending doctor while in custody at the Santa Rita Jail in April of 2014. (Dkt. 51.) However, Plaintiff has yet to effectuate service on the doctor. Ninety one days have passed since Plaintiff filed his third amended complaint and Plaintiff has yet to name or serve any party with the remaining claim. Therefore, the Court dismisses this action pursuant to Fed.R.Civ.P. 4(m) for failure to serve within ninety days.

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IT IS SO ORDERED.

Dated: January 18, 2018



SALLIE KIM
United States Magistrate Judge