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PATRICK E. DUFFY, CLERK

By _____
DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA

HELENA DIVISION

ROBERT L. ROSE,)	CV 10-48-H-DWM
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
ROSS SWANSON, et al.,)	
)	
Defendants.)	
_____)	

Plaintiff Robert L. Rose, a state prisoner proceeding pro se, brought this action pursuant to 42 U.S.C. § 1983. United States Magistrate Judge Keith Strong entered Findings and Recommendation on January 4, 2011 and recommended dismissing Defendant Anita Lerner because she has not been served and Mr. Rose has provided insufficient information for the United States Marshal to effectuate

service. Plaintiff did not timely object to the Findings and Recommendation, and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1).

This Court will review the Findings and Recommendation for clear error.


McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

In Rose’s case, Legal Counsel for the Department of Corrections waived service for some defendants but declined to waive service on behalf of Anita Larner. Acknowledging that for a state prisoner proceeding in forma pauperis the United States Marshal will serve a complaint on a Defendant, Judge Strong ordered Mr. Rose to provide an address for Anita Larner. Mr. Rose responded on December 27, 2010 and indicated that Defendant Larner is in Wyoming somewhere.

I find no clear error in Judge Strong’s Findings and Recommendations. Mr. Rose provided inadequate information to aid the United States Marshal in serving Defendant Larner. See Puett v. Blandford, 912 F.2d 270, 275 (9th Cir. 1990). Mr. Rose is on notice that his claim against Larner will be dismissed if service is not effectuated by March 4, 2011.

IT IS HEREBY ORDERED that Judge Strong's Findings and Recommendation (dkt # 11) are adopted. Defendant Larner will be dismissed if she is not served and a notice of service is not filed with the court by March 4, 2011.

Dated this 9th day of February, 2011.



Donald W. Molloy, District Judge
United States District Court