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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

TYRONE JOHNSON,

Plaintiff,

v.

KEN CLARK,

Defendant.

CASE NO. 1:08-cv-00382-OWW-SMS PC

FINDINGS AND RECOMMENDATIONS
RECOMMENDING DISMISSAL OF ACTION
FOR FAILURE TO EFFECT SERVICE OF
PROCESS

(ECF Nos. 7, 12, 13, 14, 15, 20)

Plaintiff Tyrone Johnson (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. On March 19, 2010, the Court screened Plaintiff’s complaint pursuant to 28 U.S.C. § 1915A(a) and found that the complaint stated cognizable claims against Defendant Ken Clark. (ECF No. 5.) Plaintiff was ordered to serve Defendant Clark with a summons and a copy of the complaint within 120 days of the date of service of the March 19, 2010 order. Plaintiff failed to submit proof of service and an order to show cause why Defendant Clark should not be dismissed from this action was issued on September 27, 2010. (ECF No. 12.) Plaintiff filed a response on October 29, 2010, stating that he did not receive the order directing service. (ECF No. 13.) On November 4, 2010, an order was issued directing Plaintiff to effect service within 120 days. (ECF No. 14.) On April 7, 2011, a second order to show cause why Defendant Clark should not be dismissed from this action was issued, ordering Plaintiff to respond within thirty days. (ECF No. 20.) More than thirty days have passed and Plaintiff has not complied with or otherwise responded to the Courts order.

Federal Rule of Civil Procedure 4(m) provides,

1 [i]f service of the summons and complaint is not made upon a defendant within
2 120 days after the filing of the complaint, the court, upon motion or on its own
3 initiative after notice to the plaintiff, shall dismiss the action without prejudice
4 as to that defendant or direct that service be effected within a specified time;
5 provided that if the plaintiff shows good cause for the failure, the court shall
6 extend the time for service for an appropriate period.

7 This action has been pending since March 17, 2008, and Plaintiff was first ordered to effect
8 service on Defendant on March 19, 2010. In compliance with Rule 4(m), Plaintiff was ordered to
9 effect service within a specified time and then provided with the opportunity to show cause why this
10 action should not be dismissed. Plaintiff neither effected service nor showed cause why this action
11 should not be dismissed. Therefore, pursuant to Rule 4(m), this action must be dismissed, without
12 prejudice.

13 Based on the foregoing, it is HEREBY RECOMMENDED that this action be dismissed,
14 without prejudice, based on Plaintiff's failure to effect service of the summons and complaint
15 pursuant to Federal Rule of Civil Procedure 4(m).

16 These findings and recommendations will be submitted to the United States District Judge
17 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within thirty (30)
18 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 F.2d
22 1153 (9th Cir. 1991).

23 IT IS SO ORDERED.

24 Dated: June 7, 2011

25 /s/ Sandra M. Snyder
26 UNITED STATES MAGISTRATE JUDGE
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