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

DAMEN SMITH,

Plaintiff,

No. CIV S-09-0993 FCD EFB P

vs.

TUCKER, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

_____/

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. For the reasons stated below, the court recommends that defendants Alvarez, Long, Borgus, Jenkins, and Ganal be dismissed pursuant to Federal Rule of Civil Procedure (“Rule”) 4(m).

On August 10, 2010, the court screened plaintiff’s June 4, 2010 amended complaint, and found that service was appropriate for defendants Alvarez, Long, Borgus, Jenkins, and Ganal (“defendants”). Dckt. No. 33. On September 13, 2010, the court ordered service of the amended complaint on the defendants. Dckt. No. 37. On October 19, 2010, the United States Marshal returned process directed to the defendants, certifying that the defendants could not be located based on the information provided by plaintiff. See Dckt. No. 41. Accordingly, on November 2, 2010, the court ordered plaintiff to provide new information about where defendants may be

1 served with process. Dckt. No. 42. The court also warned plaintiff that Rule 4(m) requires that
2 an action be dismissed as to a defendant not served within 120 days after filing the complaint
3 unless the time is enlarged based upon a demonstration of good cause. *Id.*

4 On November 12, 2010, plaintiff submitted documents for service on the defendants, but
5 the documents did not provide any *new* information. Dckt. No. 43. Nor did plaintiff address any
6 alternative means of service under the Federal Rules of Civil Procedure. Therefore, on
7 November 22, 2010, the court issued an order, which again directed plaintiff to provide new
8 information for service of process within 30 days, and warned plaintiff that failure to provide
9 new instructions within the time allowed or to show good cause for such failure would result in a
10 recommendation that this action be dismissed as to defendants Alvarez, Long, Borgus, Jenkins,
11 and Ganal. Dckt. No. 44.

12 The 30-day period has expired and plaintiff has neither provided new instructions for
13 service nor shown good cause for such failure.

14 Accordingly, it is hereby RECOMMENDED that defendants Alvarez, Long, Borgus,
15 Jenkins, and Ganal be dismissed from this action without prejudice.

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

23 DATED: February 15, 2011.

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25 EDMUND F. BRENNAN
26 UNITED STATES MAGISTRATE JUDGE