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

TYRONE ADAMS,

Plaintiff,

No. CIV S-11-0826 GEB CKD PS

vs.

CHARLES EASLEY, et al.,

Defendants.

FINDINGS & RECOMMENDATIONS

\_\_\_\_\_ /

This action was referred to the undersigned pursuant to Local Rule 302(c)(21). As provided by Federal Rule of Civil Procedure 4(m), the court may dismiss an action where service of summons is not made within 120 days after the filing of the complaint. In the order setting status conference, filed March 29, 2011, plaintiff was cautioned that this action may be dismissed if service was not timely completed. This action was filed March 25, 2011 and plaintiff has not yet served all of the defendants with summons.

In the order filed May 26, 2011 after hearing on defendant Waggoman’s motion to dismiss, the court again cautioned plaintiff that defendants must be timely served with summons. In the order filed September 1, 2011 after hearing on the motions to dismiss brought by defendant Waggoman and the Sutter defendants, the court noted that plaintiff had submitted no competent evidence regarding any alleged attempts to serve the nonappearing defendants. The

1 court granted plaintiff an extension of time until September 30, 2011 to complete service of  
2 summons in compliance with Federal Rule of Civil Procedure 4. This action has now been  
3 pending over six months. The record reflects that the nonappearing defendants have not been  
4 properly served despite the court's repeated admonitions and plaintiff being afforded additional  
5 time to complete service of process.

6 Accordingly, IT IS HEREBY RECOMMENDED that this action be dismissed.

7 These findings and recommendations are submitted to the United States District  
8 Judge assigned to the case pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen  
9 days after being served with these findings and recommendations, any party may file written  
10 objections with the court and serve a copy on all parties. Such a document should be captioned  
11 "Objections to Findings and Recommendations." Any reply to the objections shall be served and  
12 filed within ten days after service of the objections. The parties are advised that failure to file  
13 objections within the specified time may waive the right to appeal the District Court's order.

14 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

15 Dated: October 4, 2011

16   
17 CAROLYN K. DELANEY  
18 UNITED STATES MAGISTRATE JUDGE

19 <sup>4</sup>  
20 adams.4m.57