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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

ROBERT JAMES DIXON,

Plaintiff,

v.

JAMES A. YATES, et al.,

Defendants.

CASE NO. 1:09-CV-00657-AWI-DLB PC

FINDINGS AND RECOMMENDATION
RECOMMENDING DISMISSAL OF
ACTION

OBJECTIONS, IF ANY, DUE WITHIN
EIGHTEEN DAYS

_____ /

Plaintiff Robert James Dixon (“Plaintiff”) is a California state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on Plaintiff’s first amended complaint, filed October 15, 2009. Doc. 1. On April 30, 2010, the Court directed the United States Marshal to effect service on two Defendants, including Defendant Diep. Doc. 18. On August 20, 2010, the United States Marshal returned the summons unexecuted. Doc. 19. On February 2, 2011, the Court issued an order directing the United States Marshal to re-attempt service of process on Defendant Diep. Doc. 32. The Marshal Service was unable to locate Defendant Diep, and returned the summons unexecuted on December 21, 2011. Doc. 47. Defendant Diep is the only Defendant remaining in this action.

Pursuant to Rule 4(m),

If a defendant is not served within 120 days after the complaint is filed, the court - on motion or on its own after notice to the plaintiff - must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Fed. R. Civ. P. 4(m).

