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

ERIC CHARLES RODNEY KNAPP,

No. CIV S-05-2520-FCD-CMK-P

Plaintiff,

vs.

FINDINGS AND RECOMMENDATIONS

RODERICK HICKMAN, et al.,

Defendants.

_____ /

Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. On August 19, 2009, the court issued Plaintiff an order to show case why the unserved defendants, Gunning, Marshall, Murray and Warvarovski, should not be dismissed from this action for failure to effect timely service.

Plaintiff filed a response to the order to show case, wherein he conceded that he cannot provide any additional information as to these defendants, despite his diligent efforts. He does not provide any reason for the court to not to dismiss these unserved defendants.

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1 Federal Rule of Civil Procedure 4(m) provides, in part, that “[i]f a defendant is
2 not served within 120 days after the complaint is filed, the court – on motion or on its own after
3 notice to the plaintiff – must dismiss the action without prejudice against that defendant or order
4 that service may be made within a specified time.” Here, Plaintiff’s operative complaint was
5 filed December 1, 2006. More than 120 days have passed since the third amended complaint was
6 filed. Notice has been given to Plaintiff that the court finds it appropriate to dismiss these
7 unserved defendants. Plaintiff has not provided sufficient reason for the court to delay dismissal
8 of these defendants from this action.

9 In addition, pursuant to the order adopting the undersigned’s August 21, 2009,
10 findings and recommendations, claims 1g and 8f were not dismissed. However, these two claims
11 only name defendants Gunning, Marshall, and/or defendants who were previously dismissed
12 from this action. As the undersigned finds it appropriate to dismiss these unserved defendants, it
13 is also appropriate to dismiss these claims which name no other defendant remaining in this
14 action.

15 Based on the foregoing, the undersigned recommends that:

- 16 1. The Order to Show Cause (Doc. 189) be discharged;
- 17 2. Defendants Gunning, Marshall, Murray and Warvarovski be dismissed as
18 defendants to this action for failure to effect timely service;
- 19 3. Claims 1g and 8f be dismissed as failing to name any defendant remaining
20 in this action; and
- 21 4. This action proceed as against the remaining defendants, as identified in
22 the court’s September 17, 2009 order.

23 These findings and recommendations are submitted to the United States District
24 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 20 days
25 after being served with these findings and recommendations, any party may file written

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1 objections with the court. The document should be captioned "Objections to Magistrate Judge's
2 Findings and Recommendations." Failure to file objections within the specified time may waive
3 the right to appeal. See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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7 DATED: October 13, 2009

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9 **CRAIG M. KELLISON**
UNITED STATES MAGISTRATE JUDGE