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

MICHAEL CHESS,

Plaintiff,

No. CIV S-07-1767 LKK DAD P

vs.

J. DOVEY, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

_____ /

Plaintiff is a state prisoner proceeding pro se and in forma pauperis with this civil rights action.

On August 5, 2008, the court ordered the United States Marshal to serve the complaint on ten defendants. The Marshal was unable to effect service on defendant Horensten, reporting that the California Department of Corrections and Rehabilitation locator has no record of this defendant in its database. On September 4, 2008, the court advised plaintiff that if he wished to proceed with his claims against defendant Horensten he needed to provide the court with additional information that would enable the United States Marshal to serve him. The court instructed plaintiff to promptly seek such information through any means available to him and cautioned plaintiff that when service of a complaint is not made upon a defendant within 120 days after the complaint was filed, the court may be required to dismiss the plaintiff's claims against

1 that defendant. See Fed. R. Civ. P. 4(m). The court also ordered plaintiff to submit within thirty
2 days the documents necessary to effect service on defendant Horensten. Plaintiff submitted the
3 necessary service documents. However, once again, based on the information plaintiff provided
4 to the court the Marshal was unable to effect service on defendant Horensten.

5 Under the circumstances of this case, the undersigned finds that plaintiff cannot
6 show good cause for the failure to effect service on defendant Horensten. Although plaintiff has
7 had more than sufficient time to provide the court with the additional information necessary to
8 enable the United States Marshal to serve this defendant, on two separate occasions plaintiff has
9 failed to provide the court with a current address for the defendant. Accordingly, the court
10 concludes that defendant Horensten should be dismissed from this action. See Fed. R. Civ. P.
11 4(m).

12 For the reasons discussed above, IT IS HEREBY RECOMMENDED that
13 defendant Horensten be dismissed from this action without prejudice. See Fed. R. Civ. P. 4(m)
14 and 41(b).

15 These findings and recommendations are submitted to the United States District
16 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty
17 days after being served with these findings and recommendations, plaintiff may file written
18 objections with the court. The document should be captioned "Objections to Magistrate Judge's
19 Findings and Recommendations." Plaintiff is advised that failure to file objections within the
20 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d
21 1153 (9th Cir. 1991).

22 DATED: July 2, 2009.

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25 _____
26 DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

25 DAD:9
ches1767.4m