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

ROBERT DEARMON,

Plaintiff,

No. CIV S-08-2834 MCE KJM PS

vs.

S. IWANICK, et al.,

Defendants.

_____ /

ROBERT DEARMON,

Plaintiff,

No. CIV S-09-1309 LKK KJN P

vs.

CITY OF ALBANY, et al.,

Defendants.

ORDER AND

FINDINGS AND RECOMMENDATIONS

_____ /

Defendants' motion to consolidate was submitted on the papers due to plaintiff's current incarceration. Upon consideration of the documents in support, no opposition having been filed, and good cause appearing therefor, THE COURT FINDS AND ORDERS AS FOLLOWS:

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1 1. These actions involve the same incident and consolidation of the actions is
2 appropriate under Federal Rule of Civil Procedure 42. The motion to consolidate (docket no. 60)
3 is granted. Case no. CIV S-09-1309 LKK KJN P is hereby consolidated with Case no. CIV S-08-
4 2834 MCE KJM PS for all purposes, including trial. The Clerk of Court is directed to
5 administratively close Case no. CIV S-09-1309 LKK KJN P.

6 2. Plaintiff has requested a postponement of proceedings (docket nos. 65, 66).
7 Plaintiff is advised that hand copies of documents may be submitted to the court and lack of
8 access to a copier is not sufficient cause for postponement of the proceedings. However, due to
9 the consolidation of these actions, the court will revise the scheduling order.

10 3. Discovery, including the hearing of discovery motions, shall be completed by
11 January 19, 2011. Discovery motions, if needed, shall be filed in accordance with Local Rule 37-
12 251.

13 4. Dispositive motions, other than discovery motions, shall be noticed to be
14 heard by March 23, 2011.

15 5. The pretrial conference and trial dates shall be set at a later time as necessary.

16 6. As provided by Federal Rule of Civil Procedure 4(m), the court may dismiss an
17 action where service of summons is not made within 120 days after the filing of the complaint.
18 This action was filed November 24, 2008. Plaintiff has not provided the information necessary
19 to serve defendant Iwanick despite several extensions of time to do so. Plaintiff was previously
20 cautioned in the May 14, 2010 scheduling order that failure to provide sufficient information to
21 serve defendant Iwanick would result in a recommendation that defendant Iwanick be dismissed.
22 This action is almost two years old and defendant Iwanick has yet to be served. This defendant
23 should therefore be dismissed.

24 Accordingly, IT IS HEREBY ORDERED that plaintiff's requests for
25 postponement (docket nos. 65, 66) are denied.

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1 IT IS HEREBY RECOMMENDED that defendant Iwanick be dismissed.

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

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

10 DATED: September 21, 2010.

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14 U.S. MAGISTRATE JUDGE