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

MALIK JONES,

Plaintiff,

No. 2:09-cv-0619 GEB EFB P

vs.

D. SWINGLE, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

_____/

Plaintiff is a prisoner proceeding *in forma pauperis* and without counsel in a civil rights action pursuant to 42 U.S.C. § 1983. The U.S. Marshal was unable to serve defendant Burgett with process was because defendant Burgett could not be located based on the information provided by plaintiff. On October 17, 2012, the court directed plaintiff to provide new instructions for service of process upon defendant Burgett. Plaintiff has not provided new instructions for service of process upon defendant Burgett or otherwise responded to the court’s order. The court has given plaintiff two opportunities to locate defendant Burgett and warned plaintiff that failure to provide new instructions or to show good cause for such failure would result in a recommendation that this action be dismissed as to that defendant. *See* Fed. R. Civ. P. 4(m) (service of process must be effected within 120 days of the filing of the complaint unless plaintiff demonstrates good cause).

1 Accordingly, it is hereby RECOMMENDED that defendant Burgett be dismissed without
2 prejudice.

3 These findings and recommendations are submitted to the United States District Judge
4 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
5 after being served with these findings and recommendations, any party may file written
6 objections with the court and serve a copy on all parties. Such a document should be captioned
7 “Objections to Magistrate Judge’s Findings and Recommendations.” Failure to file objections
8 within the specified time may waive the right to appeal the District Court’s order. *Turner v.*
9 *Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

10 DATED: November 19, 2012.

11 
12 EDMUND F. BRENNAN
13 UNITED STATES MAGISTRATE JUDGE