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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.

ORDER AND
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. Plaintiff has made two attempts at providing information for service of process on defendant Burgett, but the U.S. Marshal has been unable to serve defendant Burgett based on the information provided. Dckt. No. 77, 87, 93. Because plaintiff has been unable to locate defendant Burgett, and to avoid further delay in this action, defendant Burgett must be dismissed, and the remaining defendants must respond to the complaint as narrowed by the court's February 10, 2012 Screening Order. *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); Fed. R. Civ. P. 12(a)(1).

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1 Accordingly, it is hereby ORDERED that defendants Swingle, Medina, Barker, Luther,
2 Harper, and Lankford respond to plaintiff's allegations in accordance with Rule 12(a)(1) of the
3 Federal Rules of Civil Procedure.

4 Further, it is hereby RECOMMENDED that defendant Burgett be dismissed without
5 prejudice.

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

13 DATED: March 7, 2013.

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15 EDMUND F. BRENNAN
16 UNITED STATES MAGISTRATE JUDGE
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