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

GARY R. XAVIER,

Plaintiff,

No. 2:09-cv-0783 LKK CKD P

vs.

M. FRENCH, et al.,

Defendants.

ORDER

\_\_\_\_\_/

Plaintiff, a state prisoner represented by counsel, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. On April 12, 2012, the court ordered plaintiff to complete and submit USM-285 forms and a summons, as required to effect service on defendants French and Holland. (Dkt. No. 29.) One day later, plaintiff submitted copies of the complaint but failed to supply defendants' addresses on either the USM-285 forms or summons. Thus, on April 25, 2012, the Clerk of Court was directed to return the forms to plaintiff so that plaintiff could properly fill them out and re-submit them within 30 days. Plaintiff was advised that failure to do so would result in a recommendation that this action be dismissed. (Dkt. No. 31; see Dkt. No. 30.)

1 On June 11, 2012, having heard nothing more from plaintiff, the court issued  
2 findings and a recommendation of dismissal of this action without prejudice. (Dkt. No. 32.) On  
3 June 20, 2012, plaintiff through counsel filed objections to the findings and recommendations,  
4 stating that the forms he submitted were “rejected due to some technical deficiency.” He states  
5 that he has corrected this deficiency and submitted the forms. (Dkt. No. 33.)<sup>1</sup>

6 Plaintiff through counsel also expresses some confusion as to the “foreign and  
7 byzantine” process by which service is to be effected on defendants. As the court explained in its  
8 order of April 12, 2012:

9 Plaintiff need not attempt service on defendants and need not  
10 request waiver of service. Upon receipt of the above-described  
11 documents, the court will direct the United States Marshal to serve  
the above-named defendants pursuant to Federal Rule of Civil  
Procedure 4 without payment of costs.

12 (Dkt. No. 29 at 2.)

13 In light of plaintiff’s objections, the court will vacate its June 11, 2012 findings  
14 and recommendations and grant plaintiff an additional 30 days to submit the completed service  
15 documents.

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25 <sup>1</sup> At this time, the docket does not reflect plaintiff’s re-submission of the forms. At any  
26 rate, plaintiff will be granted additional time to complete and submit them.

1                   Accordingly, IT IS HEREBY ORDERED that:

2                   1. The court's June 11, 2012 recommendation that this action be dismissed (Dkt.  
3 No. 32) is VACATED;

4                   2. The Clerk of Court shall send plaintiff two USM-285 forms, one summons,  
5 and an instruction sheet.

6                   3. Within thirty days from the date of this order, plaintiff shall complete the  
7 attached Notice of Submission of Documents and submit the following documents to the court:

- 8                   a. The completed Notice of Submission of Documents;
- 9                   b. One completed summons;
- 10                  c. Two USM-285 forms; and
- 11                  d. Three copies of the endorsed complaint filed September 1, 2011.

12 Dated: June 21, 2012

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15 CAROLYN K. DELANEY  
16 UNITED STATES MAGISTRATE JUDGE

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No. 2:09-cv-0783 LKK CKD P

vs.

M. FRENCH et al. ,

Defendants.

NOTICE OF SUBMISSION  
OF DOCUMENTS

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Plaintiff hereby submits the following documents in compliance with the court's  
order filed \_\_\_\_\_:

\_\_\_\_\_ completed summons form

\_\_\_\_\_ completed USM-285 forms

\_\_\_\_\_ copies of the \_\_\_\_\_  
Complaint/Amended Complaint

DATED:

\_\_\_\_\_  
Plaintiff