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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 ALEX D. ROSS,

No. CIV S-09-0984-KJM-CMK-P

12 Plaintiff,

13 vs.

FINDINGS AND RECOMMENDATIONS

14 A. DAVID, et al.,

15 Defendants.
16 _____/

17 Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant
18 to 42 U.S.C. § 1983. Service of process directed to defendant David was returned unexecuted on
19 September 21, 2009. On February 3, 2011, plaintiff was ordered to promptly seek additional
20 information sufficient to effect service on any unserved defendants, and to notify the court once
21 such information has been ascertained. Plaintiff has not responded to that order, and no
22 additional information regarding service information for defendant David has been submitted.
23 Plaintiff was cautioned that failure to effect service may result in the dismissal of unserved
24 defendants pursuant to Federal Rule of Civil Procedure 4(m).

25 Rule 4(m) provides, in part, that “[i]f a defendant is not served within 120 days
26 after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must

1 dismiss the action without prejudice against that defendant or order that service may be made
2 within a specified time.” Fed. R. Civ. Proc. 4(m). Here, plaintiff’s complaint was filed on April
3 13, 2009. Service was authorized on May 6, 2009, and the United States Marshal was directed to
4 complete service on June 1, 2009. Service as to defendant David was returned unexecuted on
5 September 21, 2009. Thus, more than 120 days have passed since the filing of the complaint, as
6 well as the attempted service of defendant David. Plaintiff has not provided any additional
7 information for which the United States Marshal to attempt additional service on defendant
8 David.

9 Accordingly, the undersigned finds it appropriate to dismiss the unserved
10 defendant from this action, pursuant to Rule 4(m).

11 Based on the foregoing, the undersigned recommends that defendant David be
12 dismissed from this action for failure to effect timely service.

13 These findings and recommendations are submitted to the United States District
14 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days
15 after being served with these findings and recommendations, any party may file written
16 objections with the court. Responses to objections shall be filed within 14 days after service of
17 objections. Failure to file objections within the specified time may waive the right to appeal.
18 See Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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20 DATED: April 21, 2011

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22 **CRAIG M. KELLISON**
23 UNITED STATES MAGISTRATE JUDGE
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