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

ALEX D. ROSS,

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

Plaintiff,

vs.

ORDER

A. DAVID, et al.,

Defendants.

_____ /

Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court are plaintiff’s objections to the undersigned’s findings and recommendations (Doc. 46), issued April 22, 2011.

In the findings and recommendations, the undersigned has recommended the dismissal of defendant David for failure to effect timely service. As set forth therein, service of process directed to defendant David was returned unexecuted on September 21, 2009. Plaintiff was ordered to provide additional information for the United States Marshal to serve defendant David, but no information has been received and no additional attempts have been made to serve defendant David. In his opposition, plaintiff is requesting the court allow an additional attempt at service be made. He argues that sufficient time has passed since the original service attempt

1 was returned indicating defendant David was deployed to Iraq, that she may now have returned to
2 the United States. Plaintiff is requesting the court allow him time to attempt to re-serve
3 defendant David.

4 Good cause appearing therefor, plaintiff's request is granted. The undersigned
5 will vacate the findings and recommendations wherein it is recommended that defendant David
6 be dismissed from this action, and will authorize the United States Marshal to attempt to reserve
7 defendant David. Plaintiff, however, will first be required to submit new service documents for
8 defendant David. Plaintiff is warned that failure to comply with this order may result in
9 dismissal of the action. See Local Rule 110. In addition, plaintiff is informed that if service
10 directed at defendant David is returned unexecuted again, the undersigned will reissue the
11 findings and recommendations that defendant David be dismissed for lack of service pursuant to
12 Federal Rule of Civil Procedure 4(m).

13 Accordingly, IT IS HEREBY ORDERED that:

- 14 1. The findings and recommendations issued April 22, 2011, are vacated;
- 15 2. Plaintiff's request to attempt re-service on defendant David is granted;
- 16 3. The Clerk of the Court shall send plaintiff one USM-285 form for
17 defendant David, one summons, and an instruction sheet; and
- 18 3. Within 20 days of the date of service of this order, plaintiff shall complete
19 the attached Notice of Submission of Documents and submit it with the completed summons and
20 USM-285 form.

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23 DATED: June 6, 2011

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25 **CRAIG M. KELLISON**
26 UNITED STATES MAGISTRATE JUDGE

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

ALEX D. ROSS,

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

Plaintiff,

vs.

A. DAVID, et al.,

Defendants.

_____ /

NOTICE OF SUBMISSION OF DOCUMENTS

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

 1 completed summons form; and

 completed USM-285 form(s).

DATED: _____

Plaintiff