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

JABIR SADIQ,

Plaintiff,

No. CIV S-09-1171 LKK EFB P

vs.

LT. ROBERTS, 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. Plaintiff's amended complaint was filed on March 3, 2010, screened by the court on July 2, 2010, and forwarded to the U.S. Marshal for service on defendants on August 5, 2010.

On October 27, 2010, process was returned unexecuted because defendant Roberts could not be located. On November 2, 2010, the court directed plaintiff to provide new instructions for service of process upon defendant Roberts and warned plaintiff that Federal Rule of Civil Procedure 4(m) requires that an action be dismissed as to a defendant not served within 120 days after filing the complaint, unless good cause exists. The court further warned plaintiff that failure to provide new instructions for service of process upon defendant Roberts or to show good cause for such failure would result in a recommendation that Roberts be dismissed. *See*

1 Fed. R. Civ. P. 4(m) (service of process must be effected within 120 days of the filing of the
2 complaint unless plaintiff demonstrates good cause).

3 The time for acting has passed and plaintiff has not provided new instructions for service
4 of process upon defendant Roberts or otherwise responded to the court's order.

5 Accordingly, it is hereby RECOMMENDED that defendant Roberts be dismissed
6 without prejudice.

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

14 DATED: January 20, 2011.

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16 EDMUND F. BRENNAN
17 UNITED STATES MAGISTRATE JUDGE
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