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

ANTHONY R. TURNER,

Plaintiff,

No. 2: 10-cv-1848 MCE KJN P

vs.

WARDEN SALINAS, et al.,

Defendants.

ORDER AND

FINDINGS & RECOMMENDATIONS

_____ /

Plaintiff is a state prisoner proceeding without counsel with a civil rights action pursuant to 42 U.S.C. § 1983. For the following reasons, the undersigned recommends that defendant Vertinelli be dismissed from this action.

On September 22, 2010, the court ordered the United States Marshal to serve the complaint on defendants. On February 16, 2011, process directed to defendant Vertinelli was returned unserved because he was not employed at the prison listed on the USM 285 form. Service was also ineffective because defendant Vertinelli’s name was not contained on the California Department of Corrections and Rehabilitation Locator (“CDCRL”) list. Accordingly, on February 23, 2011, the court granted plaintiff sixty days to provide additional information to serve this defendant.

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1 On April 27, 2011, plaintiff submitted the forms necessary to serve defendant
2 Vertinelli. On May 12, 2011, the court ordered the United States Marshal to serve this
3 defendant. On May 25, 2011, process directed to defendant Vertinelli was again returned
4 unserved. Service was again ineffective because defendant Vertinelli was not employed at the
5 prison listed on the USM 285 form and his name was not contained on the CDCRL list.

6 The address provided by plaintiff for defendant Vertinelli on April 27, 2011 is the
7 same address that plaintiff originally provided. Under these circumstances, it appeared that
8 service of defendant Vertinelli could not be effected. Accordingly, on June 9, 2011, plaintiff was
9 ordered to show cause within twenty-one days why defendant Vertinelli should not be dismissed.
10 Plaintiff did not respond to the show cause order. For the reasons discussed above, the
11 undersigned recommends that defendant Vertinelli be dismissed.

12 On June 3, 2011, the court received from plaintiff a motion to compel defendants
13 to produce the “true” identity of defendant Vertinelli. In the motion to compel, plaintiff also
14 seeks a subpoena directing the warden and director of the California Department of Corrections
15 and Rehabilitation (“CDCR”) to produce records concerning the sergeants who worked at DVI
16 on May 5, 2010. It is not entirely clear when, pursuant to the mailbox rule, plaintiff filed this
17 motion. However, plaintiff signed his motion on May 27, 2011.

18 On June 8, 2011, defendants filed an opposition to plaintiff’s motion to compel.
19 Defendants argue that the motion to compel is untimely because, pursuant to the January 21,
20 2011 scheduling order, discovery closed on May 13, 2011.

21 Plaintiff’s motion to compel is denied because it is untimely. In making this
22 finding, the undersigned observes that process directed to defendant Vertinelli was returned
23 unserved in February 2011. As discussed above, the USM-285 form returned by the United
24 States Marshal stated that defendant Vertinelli was not employed at the prison listed by plaintiff
25 on the form and that “per CDCRL, not listed.” Rather than engaging in timely discovery to
26 locate defendant Vertinelli or identify the “true” identify of this defendant, on April 27, 2011,

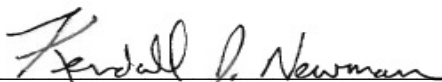
1 plaintiff instead provided the same ineffective address for service of defendant Vertinelli as he
2 originally provided. Because plaintiff had adequate opportunity to conduct timely discovery
3 regarding the location and/or “true” identify of defendant Vertinelli, the motion to compel is
4 denied as untimely.

5 Accordingly, IT IS HEREBY ORDERED that plaintiff’s motion to compel (Dkt.
6 No. 63) is denied; and

7 IT IS HEREBY RECOMMENDED that defendant Vertinelli be dismissed.

8 These findings and recommendations are submitted to the United States District
9 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty-
10 one days after being served with these findings and recommendations, any party may file written
11 objections with the court and serve a copy on all parties. Such a document should be captioned
12 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
13 objections shall be filed and served within fourteen days after service of the objections. The
14 parties are advised that failure to file objections within the specified time may waive the right to
15 appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

16 DATED: July 7, 2011

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19 KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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