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

SHEPARD JOHNSON,

Plaintiff,

No. 2:10-cv-1968 GEB GGH PS

vs.

CHESTER MITCHELL, et al.,

Defendants.

FINDINGS AND RECOMMENDATIONS

_____ /

This action was referred to the undersigned pursuant to Local Rule 302(c)(21). Pursuant to Federal Rule of Civil Procedure 4(m), the court may dismiss an action where service of summons is not made within 120 days after the filing of the complaint. In the order requiring timely service filed July 23, 2010, plaintiff was cautioned that this action may be dismissed if service was not timely completed. On January 31, 2012, plaintiff was directed to show cause why Solarte Inn Corporation (“Solarte) (among other defendants) should not be dismissed pursuant to Fed. R. Civ. P. 41(b) for failure to prosecute and follow court orders. By order filed March 2, 2012, plaintiff was granted a final 60 day period in which to complete service of process on all defendants, including Solarte. On October 10, 2012, plaintiff was ordered to file a declaration outlining service on Solarte. Plaintiff was again advised that this defendant would be dismissed if plaintiff failed to comply with the order. In response, plaintiff filed a declaration on

1 October 19, 2012, stating that he had no proof that Solarte was served with process. (Dkt. no.
2 241). This action was filed July 23, 2010 and plaintiff has not yet served defendant Solarte with
3 summons.

4 Accordingly, IT IS HEREBY RECOMMENDED that: Defendant Solarte be
5 dismissed for failure to serve process pursuant to Federal Rule of Civil Procedure 4(m).

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

14 DATED: May 10, 2013

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16 /s/ Gregory G. Hollows
UNITED STATES MAGISTRATE JUDGE

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