

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

TYRONE ADAMS,

Plaintiff,

No. CIV S-11-0826 GEB CKD PS

vs.

CHARLES EASLEY, et al.,

Defendants.

ORDER AND

FINDINGS AND RECOMMENDATIONS

_____ /

This action was referred to the undersigned pursuant to Local Rule 302(c)(21). On October 4, 2011, findings and recommendations were filed recommending that all the non-appearing defendants be dismissed because plaintiff had not timely served these defendants despite repeated warnings from the court that timely service of summons must be completed. After the findings and recommendations were filed, defendants Easley, Goodrich, Bass, Homepointe Property Management, Fisher, Machado, Stearman, Pensco, Inc., Radich, Weaver, Trefcer, Rodriques and Anderson appeared in the action by filing motions to dismiss, which are presently calendared for hearing on January 25, 2012.¹ The findings and recommendations

¹ The court recommended the motions to dismiss brought by defendants Sutter County, Boyer, Cagle, Bagley and Waggoman be granted and by order filed September 28, 2011, the district court adopted that recommendation. (Dkt. nos 32, 38.)

1 recommending dismissal for failure to serve as to these defendants will accordingly be vacated.

2 The remaining defendants still have not been served with service of summons.

3 As provided by Federal Rule of Civil Procedure 4(m), the court may dismiss an action where
4 service of summons is not made within 120 days after the filing of the complaint. In the order
5 setting status conference, filed March 29, 2011, plaintiff was cautioned that this action may be
6 dismissed if service was not timely completed. This action was filed March 25, 2011 and
7 plaintiff has not yet served all of the defendants with summons.

8 In the order filed May 26, 2011 after hearing on defendant Waggoman's motion to
9 dismiss, the court again cautioned plaintiff that defendants must be timely served with summons.
10 In the order filed September 1, 2011 after hearing on the motions to dismiss brought by
11 defendant Waggoman and the Sutter defendants, the court noted that plaintiff had submitted no
12 competent evidence regarding any alleged attempts to serve the nonappearing defendants. The
13 court granted plaintiff an extension of time until September 30, 2011 to complete service of
14 summons in compliance with Federal Rule of Civil Procedure 4. Over two months have elapsed
15 since that time period. This action has now been pending over eight months. The record reflects
16 that the nonappearing defendants have not been properly served despite the court's repeated
17 admonitions and plaintiff being afforded additional time to complete service of process. The
18 non-appearing defendants should therefore be dismissed.

19 Plaintiff has filed numerous motions,² none of which are well taken.

20 Accordingly, IT IS HEREBY ORDERED that:

21 1. The findings and recommendations filed October 4, 2011 (dkt. no. 42) are
22 vacated as to defendants Easley, Goodrich, Bass, Homepointe Property Management, Fisher,
23 Machado, Stearman, Pensco, Inc., Radich, Weaver, Trefcer, Rodriques and Anderson;

24 ² On October 13, 2011, plaintiff filed a motion for reconsideration; on October 17, 2011,
25 plaintiff filed a motion to amend; on October 18, 2011, plaintiff filed a motion to recuse; and on
26 October 27, 2011, plaintiff filed a motion for extension of time to file an interlocutory appeal,
which was rendered moot when the appeal was dismissed for lack of jurisdiction.

1 2. Plaintiff's motions (dkt. nos. 46, 47, 49, 62) are denied; and

2 IT IS HEREBY RECOMMENDED that this action be dismissed as to the non-
3 appearing defendants.

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

12 Dated: December 6, 2011

13 
14 CAROLYN K. DELANEY
15 UNITED STATES MAGISTRATE JUDGE

16 ⁴
17 adams.vac.4m.57