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

TERRENCE LAMONT DAVIS,

Plaintiff,

No. CIV S-11-1027 CKD P

vs.

SACRAMENTO COUNTY JAIL, et al.,

ORDER AND

Defendants.

FINDINGS AND RECOMMENDATIONS

_____ /

Plaintiff is a California prisoner proceeding pro se with an action for violation of civil rights under 42 U.S.C. § 1983. On November 21, 2011, the court ordered the U.S. Marshal to serve defendants Woodward and Hernandez with process. Hernandez was served and has answered. The Marshal attempted to serve Woodward at the Sacramento County Sheriff’s Department, and an employee of that office accepted service on behalf of Woodward. However, Woodward was not employed at the Sheriff’s Department at the time service was accepted on his behalf so service was not valid. See Fed R. Civ. P. 4(e).

The attorney appearing on behalf of defendant Woodward argues that Woodward should be dismissed pursuant to Federal Rule of Civil Procedure 4(e) because process was not served within 120 days of the date plaintiff filed his complaint. However, Rule 4(e) also indicates dismissal is not warranted if there is good cause for failure to serve within 120 days.

1 As an incarcerated litigant, any pleadings filed by plaintiff are subject to the
2 screening requirements found in 28 U.S.C. § 1915A(a). As a litigant proceeding in forma
3 pauperis, plaintiff is entitled to have the U.S. Marshal serve his complaint. Most of the delay in
4 serving defendant Woodward is attributable to the court's screening process and the Marshal's
5 service process. Because the delay in serving defendant Woodward, for the most part, has not
6 been caused by plaintiff, dismissal under Rule 4(e) is not warranted.

7 For these reasons, the court will recommend that defendant Woodward's motion
8 to dismiss be denied.

9 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court assign a
10 district court judge to this case; and

11 IT IS HEREBY RECOMMENDED that defendant Woodward's April 2, 2012
12 motion to dismiss be denied.

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

21 Dated: May 7, 2012

22 
23 CAROLYN K. DELANEY
24 UNITED STATES MAGISTRATE JUDGE