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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

TIMOTHY L. GASTILE,
Plaintiff,
v.
T. VIRGA, et al.,
Defendants.

No. 2:11-cv-2829-JAM-EFB P

FINDINGS AND RECOMMENDATIONS

Plaintiff is a state prisoner proceeding without counsel in an action brought under 42 U.S.C. § 1983. Despite two attempts, the U.S. Marshal was unable to effect service of process on defendants Day or Washington based upon the information provided by plaintiff. ECF Nos. 16, 29. The court has given plaintiff two opportunities to locate defendants Day and Washington and warned plaintiff that failure to provide new instructions or to show good cause for such failure would result in a recommendation that these defendants be dismissed. ECF Nos. 7, 17; *see also* Fed. R. Civ. P. 4(m) (service of process must be effected within 120 days of the filing of the complaint unless plaintiff demonstrates good cause). The time for serving defendants has passed and plaintiff has failed to demonstrate the requisite good cause. *See* ECF No. 18.

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1 Accordingly, it is hereby RECOMMENDED that defendants Day and Washington be
2 dismissed without prejudice.

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

10 DATED: July 17, 2013.

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12 EDMUND F. BRENNAN
13 UNITED STATES MAGISTRATE JUDGE
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