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

TIMOTHY MULGREW, JR.,

No. 2:14cv2998-MCE-CMK

Plaintiff,

vs.

ORDER

GREEN TREE SERVICING LLC,  
et al.,

Defendants.

\_\_\_\_\_/

Plaintiff, proceeding in propria persona, brings this civil action under 28 U.S.C. § 1332. Pending before the court are plaintiff’s objections to the undersigned’s October 10, 2015, findings and recommendations (Doc. 14). Plaintiff has also filed a motion to vacate the order of dismissal (Doc. 13).

As set forth in the court’s previous orders, the court determined service of the complaint was appropriate on May 21, 2015, and required plaintiff to submit to the United States Marshal a completed summons and copies of the complaint, and to file a statement with the court within 20 days that said documents have been submitted. Plaintiff failed to do so within the time provided. In addition, mail directed to plaintiff was returned to the court as undeliverable. Accordingly, dismissal of this action was recommended for plaintiff’s lack of prosecution,

1 failure to keep the court informed as to his current address, and failure to comply with court rules  
2 and orders. See Local Rule 110.

3 In his objections, plaintiff informed the court that he did not receive the order  
4 authorizing service, not because he had failed to inform the court as to his current address, but  
5 apparently due to an error by the United States Postal Service. His mailing address has remained  
6 the same as that which the court mailed the order. Further, he indicates that he had attempted  
7 several times to determine the status of the issuance of the summons, but had been informed that  
8 none had been issued yet. Plaintiff asks the court to vacate the order of dismissal. However, no  
9 order of dismissal has been issued, on the recommendation that this action be dismissed.

10 Good cause appearing therefor, the undersigned will vacate the findings and  
11 recommendations. If plaintiff desires service of process by the U.S. Marshal, he is required to  
12 submit the service documents to the U.S. Marshal as directed in the court's prior order, within 15  
13 days of this order. Plaintiff must further inform the court that the documents have been  
14 submitted for service within 10 days thereafter. Otherwise, plaintiff is required to effect service  
15 of process pursuant to Federal Rule of Civil Procedure 4. Failure to effect service either way  
16 may result in dismissal of this action for lack of prosecution and failure to comply with court  
17 rules and orders. See Local Rule 110.

18 Accordingly, IT IS HEREBY ORDERED that:

19 1. The Findings and Recommendations issued October 22, 2015, are vacated;  
20 2. Plaintiff's motion to vacate the order for dismissal (Doc. 13) is granted to  
21 the extent that the recommendation for dismissal is vacated;

22 3. The Clerk of the Court is directed to send plaintiff a copy of the order  
23 authorizing service (Doc. 8), a new summons, a USM-285 form, a copy of the complaint, and  
24 new case documents; and

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