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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

WAMEEDH AL AZZAWI,  
Plaintiff,  
v.  
DEPARTMENT OF THE ARMY, et al.,  
Defendants.

No. 2:15-cv-1138 GEB CKD PS

ORDER AND  
FINDINGS AND RECOMMENDATIONS

This action was referred to the undersigned pursuant to Local Rule 302(c)(21). As provided by 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 setting status conference, filed May 27, 2015, plaintiff was cautioned that this action may be dismissed if service was not timely completed. This action was filed May 27, 2015 and plaintiff has not yet served defendants with summons in compliance with the Federal Rules of Civil Procedure.

Because plaintiff had not properly completed service of summons in this action, plaintiff was ordered to serve defendants in compliance with Federal Rule of Civil Procedure 4(i)(1)(A) (service of summons and complaint on the United States Attorney for the district where the action is brought required under Rule 4). Plaintiff was ordered to complete said service no later than September 11, 2015. ECF No. 6. By order filed September 14, 2015, plaintiff was again ordered to serve defendants in compliance with Federal Rule of Civil Procedure 4 and to do so no later

1 than October 1, 2015. ECF No. 8. Because plaintiff failed to comply with the court's order,  
2 plaintiff was ordered to show cause no later than October 15, 2015 why this action should not be  
3 dismissed for failure to properly serve summons in this action. ECF No. 11. In the order to show  
4 cause, the court specifically noted that “[P]laintiff has not yet completed proper service in that  
5 the instant action has been brought in the Eastern District of California and the docket does  
6 not reflect that the United States Attorney for this District has been properly served with  
7 summons and the complaint.” ECF No. 11 at 1:24-27 (emphasis in original).

8 Plaintiff has filed several executed returns of summons which indicate service on several  
9 United States Attorney's offices. ECF Nos. 5, 7, 9, 12. However, none of those returns  
10 demonstrate that plaintiff has completed proper service in that the instant action has been brought  
11 in the Eastern District of California and the United States Attorney for this District has not yet  
12 been properly served with summons and the complaint. Despite repeated admonitions to plaintiff  
13 that service of summons has not been properly effectuated, and despite the court's clear  
14 instruction to plaintiff that he must serve the United States Attorney for the Eastern District of  
15 California, as required under Federal Rule of Civil Procedure 4(i)(1)(A), plaintiff continues to  
16 serve United States Attorneys in other districts.<sup>1</sup>

17 The court's orders could not be clearer. At this point, it appears plaintiff, for whatever  
18 reasons, cannot properly serve defendants with summons. In addition, plaintiff has failed to  
19 timely file the status report required under the order setting status conference. ECF No. 3.  
20 Because plaintiff has failed to timely serve summons and properly prosecute this action, the court  
21 will recommend that the action be dismissed.

22 Accordingly, IT IS HEREBY ORDERED that the status conference set for October 28,  
23 2015 is vacated and will be reset as necessary; and

24 IT IS HEREBY RECOMMENDED that this action be dismissed without prejudice.

25 These findings and recommendations are submitted to the United States District Judge  
26 assigned to the case pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days

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28 <sup>1</sup> Plaintiff has also been informed by at least one United States Attorney's Office that he must  
serve the United States Attorney for the Eastern District of California. ECF No. 10 at 3-4.

1 after being served with these findings and recommendations, any party may file written  
2 objections with the court and serve a copy on all parties. Such a document should be captioned  
3 “Objections to Findings and Recommendations.” Any reply to the objections shall be served and  
4 filed within ten days after service of the objections. The parties are advised that failure to file  
5 objections within the specified time may waive the right to appeal the District Court's order.

6 Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

7 Dated: October 19, 2015



CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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