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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 VANCE BLAINE, ) Case No. CV 10-9038-CJC (JPR)  
12 )  
13 Plaintiff, ) MEMORANDUM OPINION AND ORDER  
14 ) DISMISSING COMPLAINT FOR  
15 v. ) FAILURE TO SERVE  
16 LESLEY KLEIN et al., )  
17 Defendants. )  
18

19 On October 27, 2011, Plaintiff Vance Blaine lodged with the  
20 Court what he purported were proofs of service on the named  
21 Defendants in this case, along with a motion for default judgment  
22 against each one. He also filed a Motion for Appointment of  
23 Counsel. Because Plaintiff has had numerous extensions of time  
24 within which to properly serve Defendants and has repeatedly  
25 failed to do so, this action is hereby DISMISSED and Plaintiff's  
26 Motion for Appointment of Counsel is DENIED as moot.

27 On November 23, 2010, Plaintiff filed a § 1983 civil rights  
28 action pro se against the Compton Police Department and numerous  
other defendants. He paid the \$350 filing fee; his prisoner

1 trust-account statement demonstrated that he had more than \$35,000  
2 in that account at the time and had maintained a monthly average  
3 of more than \$36,000 for the prior six months. On December 17,  
4 2010, the previously assigned U.S. Magistrate Judge dismissed the  
5 original Complaint for failure to state a claim but allowed  
6 Plaintiff 30 days in which to file a First Amended Complaint.

7 Plaintiff filed the First Amended Complaint on January 24,  
8 2011. On April 15, 2011, the Court ordered Plaintiff to effect  
9 service on the Defendants within 120 days and warned Plaintiff  
10 that failure to do so could result in dismissal of the action.

11 On June 13, 2011, Plaintiff filed what he claimed were proofs  
12 of service of the First Amended Complaint on each named Defendant.  
13 On July 28, 2011, the Court issued an order finding that Plaintiff  
14 had failed to properly effect service on the Defendants and  
15 ordered him to do so within 30 days or face dismissal. The Court  
16 carefully delineated the service rules and explained to Plaintiff  
17 what he needed to do to properly effect service.

18 On August 8, 2011, Plaintiff filed a request that the U.S.  
19 Marshal's Service be ordered to serve the Defendants. On August  
20 19, 2011, the Court denied Plaintiff's request on the ground that  
21 he is not indigent and therefore did not meet the requirements of  
22 28 U.S.C. § 1915 for service by the Marshal's Service.

23 On August 24, 2011, Plaintiff sought an extension of time  
24 within which to serve Defendants, which the Court granted on  
25 August 26, 2011. The Court gave Plaintiff 60 additional days to  
26 serve Defendants but warned that he must comply with Federal Rule  
27 of Civil Procedure 4 in serving them.

28 On October 3, 2011, Plaintiff filed what he purported to be

1 proofs of service as to each Defendant as well as a motion for  
2 default judgment for each. On October 11, the Court denied the  
3 motions, explaining to Plaintiff that "none of the Defendants  
4 against whom default judgment is sought were properly served  
5 within the meaning of Federal Rule of Civil Procedure 4(e) or  
6 California Code of Civil Procedure sections 415.10, 415.20, or  
7 415.30." The Court reminded Plaintiff that he continued to have  
8 until October 26 to properly effect service. The Court also noted  
9 as follows:

10 Plaintiff has received numerous extensions of time since  
11 April 2011 in which to properly serve the Defendants.

12 Because Plaintiff had more than \$35,000 in his trust account  
13 as of November 2010, service by the U.S. Marshals is not  
14 appropriate. Plaintiff is hereby advised that his continuing  
15 failure to comply with the Court's directive that proper  
16 service be effected may result in a recommendation of  
17 dismissal of this lawsuit.

18 Plaintiff's October 26 submissions purport to show service on  
19 each Defendant through process server William Hackney, who alleges  
20 in a sworn affidavit that he placed "a copy of the Summons and  
21 Complaint" in an "envelope with first class postage thereon fully  
22 paid in the United States mail at California Medical Facility on  
23 September 2, 2011."<sup>1</sup>

24 Federal Rule of Civil Procedure 4(e)(1) allows service of  
25 summonses in accordance with state law (Rule 4 does not itself  
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27 <sup>1</sup>Confusingly, Plaintiff's October 26 lodgings relating to service  
28 were apparently signed on the same day - September 2 - as the October  
3 filings.

1 permit service by mail). California Rule of Civil Procedure  
2 415.30 allows service by mail, but subsection (c) specifically  
3 states that service is not complete until "a written  
4 acknowledgment of receipt of summons is executed, if such  
5 acknowledgment thereafter is returned to sender." Plaintiff has  
6 not submitted to the court any proof that any of the Defendants  
7 ever received or acknowledged the First Amended Complaint or  
8 Summons. Thus, proper service has not been effected. See Barlow  
9 v. Ground, 39 F.3d 231, 234 (9th Cir. 1994) (affirming dismissal  
10 of action because plaintiff had no proof service was ever  
11 completed under Rule 415.30).

12 "If a defendant is not served within 120 days after the  
13 complaint is filed, the court - on motion or on its own after  
14 notice to the plaintiff - must dismiss the action without  
15 prejudice against that defendant or order that service be made  
16 within a specified time." Fed. R. Civ. P. 4(m); see Boudette v.  
17 Barnette, 923 F.2d 754, 757 (9th Cir. 1991) (affirming dismissal  
18 of complaint for failure to timely serve summons and complaint).

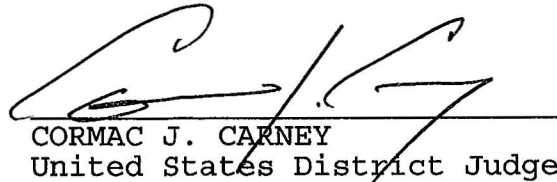
19 Here, Plaintiff has not effected service on any of the named  
20 Defendants. While the Court is mindful that Plaintiff is  
21 proceeding pro se, he nonetheless has a responsibility to follow  
22 the Rules of Civil Procedure and this Court's orders regarding  
23 service. Moreover, as Plaintiff appears to be far from indigent,<sup>2</sup>  
24 he presumably had access to various resources to properly effect  
25 service.

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27 <sup>2</sup>For this reason and others, Plaintiff's request for the  
28 appointment of counsel is inappropriate, and the Court denies it as  
moot in light of its Order dismissing this action.

1 Accordingly, it is ORDERED that this action be dismissed  
2 without prejudice for failure to effect service on any of the  
3 named Defendants.

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5 Dated: November 4, 2011

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9 CORMAC J. CARNEY  
United States District Judge

10 Presented By:

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12  
13 Jean Rosenbluth  
14 U.S. Magistrate Judge