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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA

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9 VINCENT C. BRUCE, CASE NO. 1:07-cv-00269-AWI DLB PC
10 Plaintiff, ORDER FINDING SERVICE OF THIRD
11 v. AMENDED COMPLAINT APPROPRIATE,
12 JEANNE WOODFORD, et al., AND REQUIRING PLAINTIFF TO
COMPLETE SERVICE WITHIN ONE-
HUNDRED TWENTY DAYS
13 Defendants. (Doc. 19)14
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16 **Order Directing Plaintiff to Initiate Service of Process**17 Plaintiff Vincent C. Bruce (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights
18 action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on February 20, 2007. The Court has
19 screened Plaintiff’s third amended complaint pursuant to 28 U.S.C. § 1915A and finds that it states
20 cognizable claims for relief under section 1983 against Defendants Adams, Sanchez, Hense, Ward,
21 Clark, Fulks, Wan, Frauenheim, Lloren, Fields and Tripp for retaliation in violation of the First
22 Amendment of the United States Constitution and against Defendants Adams, Sanchez, Hense,
23 Ward, Clark, Fulks, Wan, Lloren, Fields and Tripp for failing to provide fair notice of prohibited
24 conduct before taking/enforcing disciplinary action, in violation of the Due Process Clause of the
25 Fourteenth Amendment. Plaintiff also states cognizable claims against defendants Adams,
26 Schottegen, and Fields for violation of the Eighth Amendment with regards to Plaintiff’s allegations
27 of inadequate clothing. Finally, the Court cannot find at this time that Plaintiff does not state a
28 cognizable claim against defendant Fields for failing to act as an impartial fact finder during the

1 disciplinary process, in violation of the Due Process Clause. Fed. R. Civ. P. 8(a); Erickson v.
2 Pardus, 127 S.Ct. 2197, 2200 (2007); Alvarez v. Hill, 518 F.3d 1152, 1157-58 (9th Cir. 2008).

3 Plaintiff paid the filing fee in full for initiating this action. Because Plaintiff is not
4 proceeding in forma pauperis, it is Plaintiff's responsibility to effect service of the summons and
5 third amended complaint on Defendants Adams, Sanchez, Hense, Ward, Clark, Fulks, Wan,
6 Frauenheim, Lloren, Fields, Tripp and Schottegen. The Clerk of the Court will be directed to issue
7 twelve summonses to Plaintiff for the purpose of service of process. Fed. R. Civ. P. 4.

8 Plaintiff shall complete service of process in accordance with Federal Rule of Civil Procedure
9 4 within one-hundred twenty (120) days from the date of service of this order. Plaintiff shall serve
10 a copy of this order on each defendant together with a copy of the summons and third amended
11 complaint. The following two sections contain instructions on how to serve Defendants.

12 **I. Waiver of Service**

13 Pursuant to Rule 4(d)(2), Plaintiff may (but is not required to) notify Defendants Adams,
14 Sanchez, Hense, Ward, Clark, Fulks, Wan, Frauenheim, Lloren, Fields, Tripp and Schottegen of the
15 commencement of this action and request that they waive service of the summons. Fed. R. Civ. P.
16 4(d)(2). If Plaintiff wishes to do this, he must mail each defendant (1) the form entitled "Notice of
17 Lawsuit and Request for Waiver of Service for Summons," (2) the form entitled "Waiver of Service
18 of Summons," and (3) a copy of the third amended complaint. The documents must be addressed
19 directly to each defendant (not the Attorney General's Office) and must be dispatched (mailed)
20 through first-class mail. The Waiver of Service of Summons form must set forth the date on which
21 the request is sent and must allow each defendant at least thirty (30) days in which to return the
22 waiver to Plaintiff. If Defendants sign and return the waiver forms to Plaintiff, Plaintiff must then
23 file the forms with the Court. After filing the forms with the Court, Plaintiff need not take any
24 further steps to serve Defendants. Fed. R. Civ. P. 4(d)(4).

25 **II. Personal Service**

26 If either (1) Plaintiff does not wish to request Defendants to waive service or (2) one or more
27 of the defendants fail to return the Waiver of Service of Summons form to Plaintiff, Plaintiff must
28 have personal service effected on Defendants. Each defendant must be personally served with a

1 summons and copy of the third amended complaint, along with a copy of this order. Plaintiff may
2 not effect personal service himself. Fed. R. Civ. P. 4(c). Service may be effected by any person who
3 is not a party to this action and who is at least eighteen years old. Id. The Court will provide
4 Plaintiff with a copy of Rule 4 along with this order. Plaintiff should review Rule 4(e)(2), which
5 addresses how personal service may be effected.

6 **III. Conclusion and Order**

7 In accordance with the above, IT IS HEREBY ORDERED that:

- 8 1. The Clerk of the Court is directed to issue and send Plaintiff twelve (12) summonses.
- 9 2. The Clerk is further directed to send Plaintiff:
 - 10 a) One (1) copy of the third amended complaint filed March 16, 2009;
 - 11 b) One (1) copy of the form entitled "Notice of Lawsuit and Request for Waiver
12 of Service of Summons;"
 - 13 c) One (1) copy of the form entitled "Waiver of Service;"
 - 14 d) One (1) copy of the form entitled "Consent to Proceed Before United States
15 Magistrate Judge" with instructions; and
 - 16 e) One (1) copy of Rule 4 of the Federal Rules of Civil Procedure
- 17 3. Plaintiff shall complete service of process on Defendants Adams, Sanchez, Hense,
18 Ward, Clark, Fulks, Wan, Frauenheim, Lloren, Fields, Tripp and Schottogen within
19 **one-hundred twenty (120) days** from the date of service of this order. Plaintiff
20 shall serve a copy of this order and a copy of the form "Consent to Proceed Before
21 United States Magistrate Judge" on Defendants at the time of service of the summons
22 and third amended complaint; and

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4. Plaintiff's failure to timely complete service of the third amended complaint on Defendants Adams, Sanchez, Hense, Ward, Clark, Fulks, Wan, Frauenheim, Lloren, Fields, Tripp and Schottegen may result in dismissal of this action. Fed. R. Civ. P. 4(m).

IT IS SO ORDERED.

Dated: April 22, 2009

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE