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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

JOHN ROBERT SILVIS,

CASE NO. 1:07-cv-00332-LJO-GSA PC

Plaintiff,

ORDER REQUIRING DEFENDANTS' COUNSEL TO FILE A RESPONSE TO PLAINTIFF'S AMENDED COMPLAINT ON BEHALF OF DEFENDANTS SMITH AND DAVIS, OR OTHERWISE FILE A REPORT ON THE STATUS OF REPRESENTATION

v.

CALIFORNIA DEPARTMENT OF CORRECTIONS, et al.,

Defendants.

(Doc. 69)

THIRTY-DAY DEADLINE

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This is a civil rights action filed pursuant to 42 U.S.C. § 1983 by Plaintiff John Robert Silvis, a civil detainee proceeding pro se and in forma pauperis. This action is proceeding on Plaintiff's amended complaint, filed June 25, 2007, against Defendants Davis, Smith, Perry, Rees, Weed, and Pappenfus for violation of the Eighth Amendment arising out of Plaintiff's medical care while he was incarcerated at Avenal State Prison.

On June 29, 2009, counsel for Defendants Smith, Perry, Rees, Weed, and Pappenfus filed a request for an extension of time to file a motion on behalf of Smith and potential client Davis. In the request, counsel stated that she had been contacted by the California Department of Corrections and Rehabilitation regarding representation of Smith and Davis. Counsel had been in contact with Smith and was at that time still trying to contact Davis.

Although counsel noted that it appeared neither defendant had been served with the summons and complaint, waivers of service were sent to both defendants in accordance with Rule 4(d). Fed.

1 R. Civ. P. 4(d). It appears the waivers were received by CDCR, which triggered the inquiry into  
2 representation. Under the circumstances, personal service should not be necessary and if personal  
3 service is ordered by the Court, costs will be taxed against Smith and Davis. Fed. R. Civ. P. 4(d)(2).  
4 Such a situation may prove to be particularly costly for Defendant Davis, given that it appears he  
5 resides out of state.<sup>1</sup>

6 More than four months have passed, and neither Smith nor Davis has made an appearance  
7 in this action. Accordingly, it is HEREBY ORDERED that within **thirty (30) days** from the date  
8 of service of this order, counsel for Defendants shall either file a response to the amended complaint  
9 on behalf of Defendants Smith and Davis, or file a status report providing an update as to the status  
10 of her representation of Defendants.<sup>2,3</sup>

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13 IT IS SO ORDERED.

14 **Dated: November 12, 2009**

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE

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26 <sup>1</sup> The Court takes judicial notice of Dr. Davis's declaration in case number 1:06-cv-00092-AWI-SMS PC.  
(Doc. 59-3.)

27 <sup>2</sup> The issuance of this order operates as an extension of time to respond in the event that Smith and/or Davis  
28 are represented by counsel but neglected to file an answer or a motion.

<sup>3</sup> Dependent upon the response to this order, the Court may need to issue an amended scheduling order.