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

Jaime L. Zepeda,)	No. CV 1-07-0982-SMM
Plaintiff,)	ORDER
vs.)	
Harold Tate, et al.,)	
Defendants.)	

In a June 7, 2010 Order (Doc. #11), the Court gave Plaintiff 30 days to complete and return to the Clerk of Court a Notice of Submission of Documents and submit with the Notice a copy of the First Amended Complaint, a copy of the Court’s June 7, 2010 Order, a completed summons for Defendant O’Brien, and a completed U.S.M.-285 for Defendant O’Brien. Plaintiff has returned the required papers.

Accordingly,

IT IS ORDERED:

- (1) The Clerk of Court must send to the United States Marshal:
 - (a) a copy of the First Amended Complaint,
 - (b) a copy of the Court’s June 7, 2010 Order,
 - (c) a completed and issued summons for Defendant O’Brien,
 - (d) a completed USM-285 for Defendant O’Brien, and
 - (e) a copy of this Order.

1 (2) If Plaintiff does not either obtain a waiver of service of the summons or
2 complete service of the Summons and First Amended Complaint on Defendant O'Brien
3 within 120 days of the filing of this Order, the action may be dismissed. Fed. R. Civ. P.
4 4(m).

5 (3) The United States Marshal must retain the Summonses, USM-285 forms, a
6 copy of the First Amended Complaint, a copy of the Court's June 7, 2010 Order, and a copy
7 of this Order for future use.

8 (4) Within 10 days of the date this Order is filed, the United States Marshal must
9 notify Defendant O'Brien of the commencement of this action and request waiver of service
10 of the summons pursuant to Rule 4(d) of the Federal Rules of Civil Procedure. The notice
11 to Defendant O'Brien must include a copy of this Order and the Court's June 7, 2010 Order.

12 (5) The United States Marshal must immediately file the waiver of service of the
13 summons or the request for waiver if it is returned as undeliverable.

14 (6) If a waiver of service of summons is not returned by Defendant O'Brien within
15 60 days from the date the request for waiver was sent by the United States Marshal, the
16 Marshal must:

17 (a) personally serve copies of the Summons, the First Amended Complaint,
18 the Court's June 7, 2010 Order, and this Order upon Defendant O'Brien pursuant to
19 Rule 4(e)(2) of the Federal Rules of Civil Procedure, and shall command all necessary
20 assistance from the California Department of Corrections and Rehabilitation (CDCR)
21 to execute this Order. The United States Marshal must maintain the confidentiality
22 of all information provided by the CDCR pursuant to this Order.

23 (b) within 10 days after personal service is effected, file the return of service
24 for Defendant O'Brien, along with evidence of the attempt to secure a waiver of
25 service of the summons and of the costs subsequently incurred in effecting service
26 upon Defendant O'Brien. The costs of service must be enumerated on the return of
27 service form (USM-285) and must include the costs incurred by the Marshal for
28 photocopying additional copies of the Summons, First Amended Complaint, the June

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7, 2010 Order, or this Order and for preparing new process receipt and return forms (U.S.M.-285), if required. Costs of service will be taxed against the personally served Defendant pursuant to Rule 4(d)(2) of the Federal Rules of Civil Procedure, unless otherwise ordered by the Court.

(7) If Defendant O'Brien agrees to waive service of the Summons and First Amended Complaint, he must return the signed waiver forms to the United States Marshal, not the Plaintiff.

(8) Defendant O'Brien must answer the First Amended Complaint or otherwise respond by appropriate motion within the time provided by the applicable provisions of Rule 12(a) of the Federal Rules of Civil Procedure.

DATED this 28th day of June, 2010.



Stephen M. McNamee
United States District Judge