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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

TYRONE JOHNSON,

CASE NO. 1:08-cv-00382-OWW-SKO PC

Plaintiff,

ORDER DENYING MOTION

v.

(Doc. 17)

KEN CLARK, et al.,

Defendants.

Plaintiff Tyrone Johnson (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. On December 13, 2010, Plaintiff filed a motion requesting the Court to order a U.S. Marshal to serve Defendant Ken Clark with a summons and a copy of Plaintiff’s complaint. (Doc. #17.)

Plaintiff states that he cannot effect service of process because he is currently on parole and resides in Los Angeles County, and “is unable to travel to Kings County to seek assistance in this matter.” (Mot. to Request Order for Service by United States Marshall[sic] 2, ECF No. 17.) As Plaintiff has failed to explain why he is unable to travel to Kings County, his motion will be denied.

Plaintiff is advised that since he is a party to the action, he cannot serve Defendant Ken Clark. See Federal Rule of Civil Procedure 4(c)(2) (“Any person who is at least 18 years old and not a party may serve a summons and complaint.”) (emphasis added). Plaintiff must hire a process server or find another person who is at least 18 years old and not a party to this case to serve the summons and complaint. Plaintiff has also failed to state that he made any efforts to request a waiver of service pursuant to Federal Rule of Civil Procedure 4(d). If Plaintiff mails a request for

1 waiver of service pursuant to Rule 4(d) and Defendant waives service, it may obviate the need to  
2 travel to Kings County.

3 The Court will deny Plaintiff's motion and order Plaintiff to either effect service of process  
4 or obtain a waiver of service within 45 days of the date of service of this order. If Plaintiff does not  
5 make reasonable efforts to effect service of process or obtain a waiver of service within 45 days, the  
6 Court will dismiss this action pursuant to Federal Rule of Civil Procedure 4(m) due to Plaintiff's  
7 failure to serve Defendant Ken Clark.

8 Based on the foregoing, it is HEREBY ORDERED that:

- 9 1. Plaintiff's motion requesting service by a U.S. Marshal is DENIED; and
- 10 2. Plaintiff shall request a waiver of service or effect service of process within 45 days  
11 of the date of service of this order.

12  
13 IT IS SO ORDERED.

14 **Dated:** January 4, 2011

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE