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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JEAN-PIERRE K. THOMAS,

CASE NO. 1:08-cv-00689-OWW-DLB PC

Plaintiff,

ORDER INSTRUCTING PLAINTIFF ON
SERVICE OF PROCESS, AND REQUIRING
PLAINTIFF TO SERVE DEFENDANT M.
GARCIA WITHIN SIXTY DAYS

v.

M. GARCIA, et al.,

Defendants.

I. Order Directing Plaintiff to Initiate Service of Process

Plaintiff Jean-Pierre K. Thomas (“Plaintiff”) is a state prisoner proceeding pro se in a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed his complaint on May 16, 2008. The Court screened Plaintiff’s complaint pursuant to 28 U.S.C. § 1915A and found that Plaintiff’s complaint appears to state cognizable claims for relief against defendants M. Garcia and Bonilla for violation of the Eighth Amendment.¹

The filing fee is paid in full for initiating this action. Because Plaintiff is not proceeding in forma pauperis, it is Plaintiff’s responsibility to effect service of the summons and complaint on defendant M. Garcia. The Clerk of the Court will be directed to issue one summons to plaintiff for purposes of service of process. See Fed. R. Civ. P. 4.

Plaintiff shall complete service of process in accordance with Federal Rule of Civil Procedure

¹ Plaintiff had erroneously been considered to have in forma pauperis status. The United States Marshal served Defendant Bonilla as a result, but was unable to serve Defendant M. Garcia. Because Plaintiff is not proceeding in forma pauperis, any further service is the responsibility of Plaintiff.

1 4. Because service was already attempted on Defendant M. Garcia and was unsuccessful, Plaintiff
2 shall have **sixty (60)** days from the date of service of this order to complete service of process.
3 Plaintiff shall serve a copy of this order on Defendant M. Garcia together with a summons and a
4 copy of the complaint. The following two sections contain instructions on how to serve defendants.

5 A. Waiver of Service

6 Pursuant to Rule 4(d)(2), Plaintiff may (but is not required to) notify Defendant M. Garcia
7 of the commencement of this action and request that they waive service of the summons. Fed. R.
8 Civ. P. 4(d)(2). If Plaintiff wishes to do this, Plaintiff must mail each defendant (1) the form entitled
9 “Notice of Lawsuit and Request for Waiver of Service for Summons,” (2) the form entitled “Waiver
10 of Service of Summons,” and (3) a copy of the first amended complaint. The documents must be
11 addressed directly to the Defendant (not the Attorney General’s Office) and must be dispatched
12 (mailed) through first-class mail. The Waiver of Service of Summons form must set forth the date
13 on which the request is sent and must allow each defendant at least thirty (30) days in which to return
14 the waiver to Plaintiff. If Defendant signs and returns the waiver forms to Plaintiff, Plaintiff must
15 then file the forms with the court. After filing the forms with the court, Plaintiff need not take any
16 further steps to serve Defendant. Fed. R. Civ. P. 4(d)(4).

17 B. Personal Service

18 If either (1) Plaintiff does not wish to request Defendant to waive service or (2) one or more
19 of the Defendants fail to return the Waiver of Service of Summons form to Plaintiff, Plaintiff must
20 have personal service effected on Defendants. Each Defendant must be personally served with a
21 summons and a copy of the complaint, along with a copy of this order. Plaintiff may not personally
22 effect personal service. Fed. R. Civ. P. 4(c). Service may be effected by any person who is not a
23 party to this action and who is at least eighteen years old. Id. The court will provide Plaintiff with
24 a copy of Rule 4 along with this order. Plaintiff should review Rule 4(e)(2), which addresses how
25 personal service may be effected.

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1 II. Conclusion

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

- 3 1. The Clerk of the Court is directed to issue and send Plaintiff one (1) summons;
- 4 2. The Clerk is further directed to send Plaintiff:
- 5 a) One (1) copy of the form entitled “Notice of Lawsuit and Request for Waiver
- 6 of Service of Summons;”
- 7 b) One (1) copy of the form entitled “Waiver of Service;”
- 8 c) One (1) copy of the form entitled “Consent to Proceed Before United States
- 9 Magistrate Judge” with instructions; and
- 10 d) One (1) copy of Rule 4 of the Federal Rules of Civil Procedure;
- 11 3. Plaintiff shall serve a copy of this order and a copy of the form “Consent to Proceed
- 12 Before United States Magistrate Judge” on defendant at the time of service of the
- 13 summons and complaint;
- 14 4. Plaintiff shall complete service of process on Defendant M. Garcia within **sixty (60)**
- 15 **days** from the date of service of this order; and
- 16 5. Plaintiff’s failure to timely complete service of the complaint on Defendant M.
- 17 Garcia may result in dismissal of this action against that defendant. Fed. R. Civ. P.
- 18 4(m).

19

20 IT IS SO ORDERED.

21 **Dated: October 20, 2009**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE