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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

VALENTINE E. UNDERWOOD,

1:08-cv-00986-GSA-PC

Plaintiff,

ORDER DENYING APPLICATION TO  
PROCEED IN FORMA PAUPERIS  
(Doc. 65.)

v.

M. KNOWLES, et al.,

ORDER VACATING IN PART COURT'S  
ORDER OF SEPTEMBER 16, 2010  
(Doc. 59.)

Defendants.

ORDER GRANTING PLAINTIFF'S REQUEST  
FOR ASSISTANCE BY THE UNITED  
STATES MARSHAL FOR SERVICE OF  
PROCESS

ORDER REQUIRING PLAINTIFF TO  
PROVIDE INFORMATION TO ENABLE  
SERVICE OF PROCESS UPON  
DEFENDANTS CAVINESS AND MARTIN

THIRTY DAY DEADLINE

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**I. BACKGROUND**

Valentine E. Underwood (“Plaintiff”) is a state prisoner proceeding pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on July 17, 2008. (Doc. 1.) Plaintiff paid the filing fee for this action on July 17, 2008, and as a result is not proceeding in forma pauperis. This case now proceeds on the original Complaint, against Defendants M. Northcutt, D. Caviness, A. Trujillo, P. Truitt, J. Fambrough, S. Lantz, and S. Martin.<sup>1</sup>

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<sup>1</sup>All other claims and defendants were dismissed from this action by the Court on October 21, 2009. (Doc. 31.)

1 On November 25, 2009, the Court issued an order directing the United States Marshal to  
2 serve process upon defendants. (Doc. 34.) All of the defendants were successfully served and  
3 have appeared in this action, except defendants Caviness and Martin. (Docs. 39, 40.) On  
4 February 1, 2010, the Marshal filed returns of service unexecuted as to defendants Caviness and  
5 Martin. (Docs. 35, 36.) On April 1, 2010, Plaintiff filed a motion for the Court to direct the  
6 Marshal to re-attempt service upon defendants Caviness and Martin. (Doc. 44.) On September  
7 16, 2010, in light of the fact that Plaintiff is not proceeding in forma pauperis, the Court issued  
8 an order for Plaintiff to attempt service of process upon defendants Caviness and Martin himself,  
9 within one-hundred twenty days. (Doc. 59.) The Court provided Plaintiff with instructions on  
10 serving defendants and the necessary forms. On October 18, 2010, Plaintiff submitted an  
11 application to proceed in forma pauperis, together with a request for assistance by the United  
12 States Marshal to serve process upon defendants Caviness and Martin. (Doc. 65.)

## 13 **II. INDIGENCE, IN FORMA PAUPERIS STATUS, AND SERVICE**

14 Under 28 U.S.C. § 1915, the court may authorize a party to proceed in forma pauperis, or  
15 without prepayment of fees, in an action or proceeding, if the party submits an affidavit showing  
16 the person is unable to pay such fees. 28 U.S.C. § 1915(a)(1). If such authorization is granted,  
17 the court may direct payment by the United States of certain expenses, and the United States  
18 Marshal is directed to serve all process in the case. 28 U.S.C. § 1915(c), (d). If such  
19 authorization is denied, the plaintiff is not automatically entitled to have the United States  
20 Marshal serve defendants. Fed. R. Civ. P. 4(c)(2). However, even if a plaintiff is not proceeding  
21 in forma pauperis, the court has discretion, at the plaintiff's request, to order that service be made  
22 by the United States Marshal. Fed. R. Civ. P. 4(c)(3).

23 Plaintiff argues he should be granted leave to proceed in forma pauperis, and the United  
24 States Marshal should assist him with service of process, because he is unable to afford the costs  
25 of personal service upon defendants Caviness and Martin. Plaintiff also asserts that he does not  
26 have the means to request waiver of service by the defendants. Plaintiff has provided the Court  
27 with information about his sources of income and the current balance available in his prison trust  
28 account.

1 **III. DISCUSSION**

2 **A. In Forma Pauperis Status**

3 Plaintiff requests leave to proceed in forma pauperis in this action. Plaintiff paid the  
4 filing fee for this action on July 17, 2008 and as a result is not proceeding in forma pauperis.  
5 Based on this payment, Plaintiff's application to proceed in forma pauperis is moot and shall be  
6 denied.

7 **B. Assistance of Marshal for Service**

8 Plaintiff requests the assistance of the United States Marshal to re-attempt service upon  
9 defendants Caviness and Martin. The Court's order of September 16, 2010, instructed Plaintiff  
10 how to serve defendants Caviness and Martin himself. Plaintiff was given the option of  
11 requesting that the defendants waive service of the summons which, if waived, would make  
12 personal service and the accompanying costs unnecessary. (Doc. 59 at 2-3.) The costs to request  
13 waiver of service are minimal, and Plaintiff was provided the necessary forms and instructions by  
14 the Court. Plaintiff has not provided any evidence that he made a good faith attempt to request  
15 waiver of service. Nonetheless, in light of the fact that this action has been pending for more  
16 than two years and Plaintiff appears unable to effect service himself, Plaintiff's request for  
17 assistance by the Marshal to serve process shall be granted. Under these circumstances, the  
18 Court's order of September 16, 2010 shall be vacated in part, as to its requirement that Plaintiff  
19 serve process upon defendants Caviness and Martin himself within one-hundred-twenty days and  
20 file evidence of executed service. However, before the Court will direct the Marshal to re-  
21 attempt service, Plaintiff must provide further information to enable the Marshal to identify and  
22 locate the defendants.

23 **C. Information to Enable Service**

24 The Marshal's return of service as to defendant Martin noted that Kern Valley State  
25 Prison ("KVSP") found no record that C/O S. Martin was employed there, and the CDC  
26 Locator's database contained multiple entries for persons named S. Martin. (Doc. 35.) The  
27 Marshal's return of service as to defendant Caviness noted that KVSP found no record that C/O  
28 D. Caviness was employed there, and the CDC Locator had no record under that name. (Doc.

1 36.) At this juncture, the Court is prepared to issue an order directing the Marshal to make  
2 another attempt to serve process on defendants Caviness and Martin. However, for service to be  
3 successful, the Marshal and the CDCR must be able to identify and locate the defendants.  
4 Plaintiff has identified the defendants as Correctional Officers D. Caviness and S. Martin.  
5 Before the court will issue another service order, Plaintiff must provide the full names and  
6 current addresses of these two defendants. If Plaintiff is unable to provide full names, he must  
7 provide alternate information – such as a partial name, title, gender, work assignment, work  
8 schedule, etc. – sufficient for the Marshal or the CDCR to identify the defendants for service. If  
9 Plaintiff is unable to provide current addresses for these defendants, he must at least provide last-  
10 known addresses and any other available information to enable the Marshal to locate the  
11 defendants. Plaintiff is cautioned that service cannot go forward unless he provides enough  
12 information, and unsuccessful service may result in these defendants being dismissed from this  
13 action. It is Plaintiff's responsibility to identify the defendants named in his complaint. Plaintiff  
14 shall be granted thirty days in which to respond to this order with additional information about  
15 the unserved defendants.

### 16 **III. CONCLUSION**

17 Accordingly, IT IS HEREBY ORDERED that:

- 18 1. Plaintiff's application to proceed in forma pauperis is DENIED;
- 19 2. The Court's order of September 16, 2010, is VACATED IN PART, as to its  
20 requirement that Plaintiff serve process upon defendants Caviness and Martin  
21 himself within 120 days and file evidence of executed service;
- 22 3. Plaintiff's request for assistance by the United States Marshal to serve process  
23 upon defendants Caviness and Martin is GRANTED;
- 24 4. Within thirty days from the date of service of this order, Plaintiff shall send a  
25 written response to the Court, providing the full names and current addresses of  
26 defendants Caviness and Martin for purposes of service in this action;
- 27 5. If Plaintiff is unable to provide full names and current addresses, he must supply  
28 sufficient alternate information, such as partial names, titles, work assignments,

1 work schedules, last known addresses, or other similar information to enable the  
2 United States Marshal and the CDCR to identify and locate defendants Caviness  
3 and Martin for service of process in this action;

4 6. Plaintiff's failure to provide sufficient information to enable service upon  
5 defendants Caviness and/or Martin may result in the dismissal of one or both of  
6 these defendants from this action for failure to serve process;

7 7. Plaintiff's failure to comply with this order shall result in the dismissal of this  
8 action for failure to obey a court order.

9  
10 IT IS SO ORDERED.

11 Dated: October 21, 2010 /s/ Gary S. Austin  
12 UNITED STATES MAGISTRATE JUDGE