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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA – FRESNO DIVISION

BILLY PHELPS,

Plaintiff,

v.

CHRISTIAN RAMOS,

Defendant.

CASE NO. 1:09-cv-1925-AWI-SKO

**ORDER DIRECTING SERVICE
BY THE UNITED STATES
MARSHAL WITHOUT
PREPAYMENT OF COSTS**

On June 11, 2010, the Court found service of the Second Amended Complaint (Doc. No. 15) appropriate as to Defendant Christian Ramos. Plaintiff is proceeding in forma pauperis pursuant to 28 U.S.C. § 1915. On June 11, 2010, the court ordered Plaintiff to provide information for service of process on form USM-285, sufficient copies of the complaint for service, and a notice of compliance. Plaintiff has filed the required papers.

Accordingly, IT IS HEREBY ORDERED that:

1. The Clerk of the Court is directed to forward the following documents to the United States Marshal:

- (a) One completed and issued summons for Defendant Ramos;
- (b) One completed USM-285 form for the Defendant Ramos;
- (c) One copy of the Second Amended Complaint (Doc. No. 15) filed for Defendant Ramos, plus an extra copy for the U.S. Marshal;

1 (d) One copy of this order for Defendant Ramos, plus an extra copy for the U.S.
2 Marshal; and

3 (e) One copy of the court's Order Re Consent or Request for Reassignment for
4 Defendant Ramos.

5 2. Within ten (10) days from the date of this order, the United States Marshal is directed
6 to notify Defendant Ramos of the commencement of this action and to request a waiver of service
7 in accordance with the provisions of Fed. R. Civ. P. 4(d).

8 3. The United States Marshal is directed to retain the summons and a copy of the Second
9 Amended Complaint (Doc. No. 15) in their file for future use.

10 4. The United States Marshal shall file returned waivers of service as well as any
11 requests for waivers of service that are returned as undelivered as soon as they are received.

12 5. If a waiver of service is not returned by a defendant within sixty (60) days of the date
13 of mailing the request for waiver, the United States Marshal shall:

14 (a) Personally serve process and a copy of this order upon Defendant Ramos
15 pursuant to Rule 4 of the Federal Rules of Civil Procedure.

16 (b) Within ten (10) days after personal service is effected, the United States
17 Marshal shall file the return of service for Defendant Ramos, along with
18 evidence of any attempts to secure a waiver of service of process and of the
19 costs subsequently incurred in effecting service on said defendant. Said costs
20 shall be enumerated on the USM-285 form and shall include the costs
21 incurred by the Marshal's office for photocopying additional copies of the
22 summons and complaint and for preparing new USM-285 forms, if required.
23 Costs of service will be taxed against the personally served defendant in
24 accordance with the provisions of Fed. R. Civ. P. 4(d)(2).

25 6. In the event that Defendant Ramos makes an appearance in this action by filing an
26 answer, dispositive motion, or other pleading, the United States Marshal Service need not personally
27 serve said defendant.

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1 7. In the event that Defendant Ramos either waived service or is personally served,
2 defendant is required to respond to the Second Amended Complaint (Doc. No. 15). 42 U.S.C.
3 §1997e(g)(2).

4
5 IT IS SO ORDERED.

6 **Dated: July 13, 2010**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE

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