

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL JOHN McGLOTHIN,	CASE NO. 1:10-cv-00247-GBC (PC)	
v.	Plaintiff,	ORDER INSTRUCTING PLAINTIFF OF
K. HARRINGTON, et al.,	Defendants.	SERVICE OF PROCESS, AND REQUIRING
		PLAINTIFF TO SERVE DEFENDANTS
		STEEN, TORRES, CASTRO, AND JOSE
		WITHIN ONE-HUNDRED TWENTY DAYS
		/ ONE-HUNDRED TWENTY DAY DEADLINE

ORDER

Plaintiff Michael John McGlothlin (“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 February 16, 2010 and consented to Magistrate Judge jurisdiction on March 4, 2010. (ECF Nos. 1 & 5.) This case is proceeding on Plaintiff’s Second Amended Complaint. (ECF No. 13.) The Court found that Plaintiff’s complaint appears to state cognizable claims for relief against Defendants Steen, Torres, Castro, and Jose for violation of the Eighth Amendment. (ECF No. 14.)

Plaintiff paid the filing fee 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 Defendants Steen, Torres, Castro, and Jose. See Fed. R. Civ. P. 4.

Plaintiff shall complete service of process in accordance with Federal Rule of Civil Procedure 4 within one-hundred twenty (120) days from the date of service of this Order. Plaintiff shall serve a copy of this Order on each Defendant together with a summons and

1 a copy of the Second Amended Complaint. The following two sections contain instructions
2 on how to serve Defendants.

3 **A. Waiver of Service**

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

16 **B. Personal Service**

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

26 **C. Conclusion**

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

28 1. The Clerk of the Court is directed to issue and send Plaintiff four (4)

1 summonses;

2 2. The Clerk is further directed to send Plaintiff:

3 a) One (1) copy of the form entitled "Notice of Lawsuit and Request for
4 Waiver of Service of Summons;"

5 b) One (1) copy of the form entitled "Waiver of Service;"

6 c) One (1) copy of the form entitled "Consent to Proceed Before United
7 States Magistrate Judge" with instructions; and

8 d) One (1) copy of Rule 4 of the Federal Rules of Civil Procedure;

9 3. Plaintiff shall serve a copy of this Order and a copy of the form "Consent to
10 Proceed Before United States Magistrate Judge on Defendants at the time
11 of service of the summons and Second Amended Complaint;

12 4. Plaintiff shall complete service of process on Defendants Steen, Torres,
13 Castro, and Jose within one-hundred twenty (120) days from the date of
14 service of this Order; and

15 5. Plaintiff's failure to timely complete service of the complaint on Defendants
16 Steen, Torres, Castro, and Jose may result in dismissal of this action against
17 them. Fed. R. Civ. P. 4(m).

18 IT IS SO ORDERED.

19 Dated: June 20, 2011

20 
21 _____
22 UNITED STATES MAGISTRATE JUDGE
23
24
25
26
27
28