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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

GREGORIO FUNTANILLA, JR.,

1:10-CV-01624-DLB PC

Plaintiff,

ORDER INSTRUCTING PLAINTIFF ON  
SERVICE OF PROCESS, AND REQUIRING  
PLAINTIFF TO SERVE DEFENDANTS  
WITHIN ONE-HUNDRED TWENTY DAYS

v.

ROMAN W. WILLIAMS, et al.,

Defendants.

I. Order Directing Plaintiff to Initiate Service of Process

Plaintiff Gregorio Funtanilla, Jr., (“Plaintiff”) is a California state prisoner proceeding pro se in a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff filed his second amended complaint on December 7, 2011. The Court has screened Plaintiff’s second amended complaint pursuant to 28 U.S.C. § 1915A and finds that Plaintiff’s complaint appears to state cognizable claims for relief against Defendants Roman W. Williams, Jesuit S. Manson, K. Turner, D. Ibarra, O. A. Ybarra, M. A. Baires, J. Lias, R. Gomez, Nola Grannis, Angela Romanello, Kelly Santoro, Derral G. Adams, and Ken Clark for violation of the Free Exercise Clause of the First Amendment and the Religious Land Use and Institutionalized Persons Act of 2000.

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. The Clerk of the Court will be directed to issue thirteen summonses 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 4 within one-hundred twenty (120) days from the date of service of this order. Plaintiff shall serve  
2 a copy of this order on each Defendant together with a summons and a copy of the complaint. If  
3 Plaintiff seeks a preliminary injunction against Defendants, Plaintiff must also serve his motion for  
4 preliminary injunction with the summons on each Defendant.<sup>1</sup> The following two sections contain  
5 instructions on how to serve Defendants.

6 A. Waiver of Service

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

18 B. Personal Service

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

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28 <sup>1</sup> Plaintiff filed a motion for preliminary injunction on August 30, 2011. Doc. 19. The Court has not ruled  
on the motion, as Plaintiff has yet to serve Defendants in this action.

1 C. 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 thirteen (13)  
4 summonses;
- 5 2. The Clerk is further directed to send Plaintiff:
- 6 a) One (1) copy of the form entitled “Notice of Lawsuit and Request for Waiver  
7 of Service of Summons;”
- 8 b) One (1) copy of the form entitled “Waiver of Service;”
- 9 c) One (1) copy of the form entitled “Consent to Proceed Before United States  
10 Magistrate Judge” with instructions; and
- 11 d) One (1) copy of Rule 4 of the Federal Rules of Civil Procedure;
- 12 3. Plaintiff shall serve a copy of this order and a copy of the form “Consent to Proceed  
13 Before United States Magistrate Judge” on Defendants at the time of service of the  
14 summons and complaint;
- 15 4. Plaintiff shall complete service of process on Defendants within **one-hundred**  
16 **twenty (120) days** from the date of service of this order; and
- 17 5. Plaintiff’s failure to timely complete service of the complaint on Defendants may  
18 result in dismissal of this action against them. Fed. R. Civ. P. 4(m).

19 IT IS SO ORDERED.

20 **Dated: March 20, 2012**

/s/ Dennis L. Beck  
UNITED STATES MAGISTRATE JUDGE