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

HORACE BELL, Plaintiff, v. S HEBERLING, et al., Defendants.) Case No.: 1:12-cv-01248-AWI-SAB (PC))) ORDER VACATING OCTOBER 1, 2014,) SERVICE ORDER, DIRECTING DEFENDANTS) HEBERLING AND SCHEER TO FILE RESPONSE) TO FIRST AMENDED COMPLAINT WITHIN) THIRTY DAYS, DENYING PLAINTIFF’S) REQUEST TO PROCEED IN FORMA PAUPERIS) IN THIS ACTION, AND GRANTING) PLAINTIFF’S MOTION FOR APPOINTMENT OF) U.S.MARSHAL TO SERVE COMPLAINT)) [ECF Nos. 43, 47, 48]
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Plaintiff Horace Bell is appearing pro se in this civil rights action pursuant to 42 U.S.C. § 1983.

On October 1, 2014, the Court issued an order directing Plaintiff to serve the first amended complaint on Defendants Heberling, Scheer, and Nesmith. (ECF No. 43.) However, Defendants Heberling and Scheer have already made an appearance in the action by way of removal from the Kings County Superior Court on July 27, 2012. Accordingly, the Court will vacate the service order as to Defendants Heberling and Scheer. Because Defendant Nesmith has not been served, the service order as to him remains in full force and effect.

On October 20, 2014, Plaintiff filed a motion to rescind the order directing him to serve Defendants and instead grant him in forma pauperis status allowing the U.S. Marshal to serve

1 Defendants. (ECF No. 47.) On December 1, 2014, Plaintiff filed a motion to proceed in forma
2 pauperis. (ECF No. 48.)

3 As Plaintiff was advised in the Court's September 25, 2013, order, he is not entitled to proceed
4 in forma pauperis in this action as he has suffered three or more strikes under 28 U.S.C. § 1915(g).
5 (ECF No. 30, at 2, citing 1:10-cv-01762-SKO, Bell v. Lopez, et. al. (E.D. Cal.) (dismissed August 26,
6 2011, for failure to state a claim); 2:10-cv-00421-UA-RC, Bell v. Harrington, et. al. (C.D. Cal)
7 (dismissed February 4, 2010, as frivolous, malicious, or failure to state a claim); 2:09-cv-08808-UA-
8 RC, Bell v. K. Harrington, et. al., (C.D. Cal.) (dismissed December 30, 2009, as frivolous/malicious).
9 Accordingly, Plaintiff is not authorized to proceed in forma pauperis and his motion for such status
10 must be denied.

11 However, the Court will construe Plaintiff's motion as a request pursuant to Rule 4(c) of the
12 Federal Rules of Civil Procedure to appoint the United States Marshal to serve the complaint on
13 Defendant Nesmith. See Fed. R. Civ. P. 4(c)(3) ("At the plaintiff's request, the court may order that
14 service be made by a United States marshal or deputy marshal) In the interest of justice and
15 efficient administration of this case, the Court will grant Plaintiff's request to appoint and order the
16 United States Marshal to serve the complaint on Defendant Nesmith.

17 Based on the foregoing, IT IS HEREBY ORDERED that:

- 18 1. The Court's October 1, 2014, is VACATED as to service of process upon Defendants
19 Heberling and Scheer;
- 20 2. Within thirty (30) days from the date of service of this order, Defendants Heberling and
21 Scheer shall file a response to Plaintiff's first amended complaint, filed November 20,
22 2013;
- 23 3. Plaintiff's motion to proceed in forma pauperis is DENIED;
- 24 4. Plaintiff's request for the Court to order service on Defendant Nesmith by the United
25 States Marshal is GRANTED;
- 26 5. The Clerk of the Court shall send Plaintiff one (1) USM-285 form, one (1) summons, a
27 Notice of Submission of Documents form, an instruction sheet and a copy of the First
28 Amended Complaint filed November 20, 2013;

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6. Within thirty (30) days from the date of this order, Plaintiff shall complete the attached Notice of Submission of Documents and submit the completed Notice to the Court with the following documents:
- a. One completed summons for Defendant Nesmsith;
 - b. One completed USM-285 form for Defendant Nesmith;
 - c. Two (2) copies of the endorsed First Amended Complaint filed November 20, 2013; and
7. Plaintiff need not attempt service on the defendants and need not request waiver of service. Upon receipt of the above-described documents, the Court will direct the United States Marshal to serve Defendant Nesmith pursuant to Federal Rule of Civil Procedure 4 without payment of costs.

IT IS SO ORDERED.

Dated: December 16, 2014



SENIOR DISTRICT JUDGE