

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

Plaintiff Lorenzo Fosselman, Jr. is appearing pro se in this civil rights action pursuant to 42 U.S.C. § 1983.

On August 1, 2012, Defendants Cate and Heberle removed this action from the Sacramento County Superior Court.

On January 16, 2015, the Court ruled that this action shall proceed on Plaintiff's Eighth Amendment claim against Defendant Johnson and First Amendment retaliation claim against Defendant Dimmer, and all other claims and defendants were dismissed from the action with prejudice. (ECF No. 23.) In the paragraphs that follow, the Court will provide Plaintiff with instructions to initiate service of process on Defendants Johnson and Dimmer, as they have not yet been served or made an appearance in this action.

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I.

DISCUSSION

A. Order Directing Plaintiff to Initiate Service of Process

Plaintiff is not proceeding in forma pauperis and is therefore responsible for serving Defendants in accordance with Rule 4 of the Federal Rules of Civil Procedure. Included with this order are the appropriate service forms and a copy of Rule 4. Unless good cause for an extension of time is shown, Plaintiff must complete service of process and file proof thereof with the Court within one-hundred twenty days. Fed. R. Civ. P. 4(m). The following two sections contain instructions on how to serve Defendants.

B. Instructions on Completing Service

1. Waiver of Service

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

2. Personal Service

If either (1) Plaintiff does not wish to request Defendants to waive service or (2) the Defendants fails to return the Waiver of Service of Summons form to Plaintiff, Plaintiff must have personal service effected on Defendants. Defendants must be personally served with a summons and a copy of the First Amended Complaint, along with a copy of this order. Plaintiff may not effect personal service himself. Fed. R. Civ. P. 4(c). Service may be effected by any person who is not a

1 party to this action and who is at least eighteen years old. Id. The Court will provide Plaintiff with a
2 copy of Rule 4 along with this order. Plaintiff should review Rule 4(e), which addresses how personal
3 service may be effected.

4 **II.**

5 **ORDER**

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

- 7 1. The Clerk of the Court is directed to issue and send Plaintiff two (2)
8 summonses;
- 9 2. The Clerk is further directed to send Plaintiff:
 - 10 a) One copy of the First Amended Complaint filed November 18, 2013;
 - 11 b) One copy of the form entitled "Notice of Lawsuit and Request for
12 Waiver of Service of Summons;"
 - 13 c) One copy of the form entitled "Waiver of Service;"
 - 14 d) One copy of Rule 4 of the Federal Rules of Civil Procedure;
- 15 3. Unless good cause is shown, Plaintiff shall complete service of process on Defendants
16 within **one-hundred twenty (120) days** from the date of service of this order; and
- 17 4. Plaintiff's failure to timely complete service of the First Amended Complaint on
18 Defendants will result in dismissal of this action.

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23 IT IS SO ORDERED.

24 Dated: January 20, 2015



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UNITED STATES MAGISTRATE JUDGE