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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

TONY PHELPS, Sr.)	Case No. 1:14-cv-251-AWI-BAM
)	
Plaintiffs,)	
)	
v.)	<u>ORDER DIRECTING SERVICE OF THE</u>
)	<u>UNITED STATES MARSHAL WITHOUT</u>
OFFICER R. BYRD,)	<u>PAYMENT OF COSTS</u>
)	
Defendant.)	
)	
)	
)	

The Court previously found service of the complaint appropriate. Accordingly, pursuant to Federal Rule of Civil Procedure 4(c), it is HEREBY ORDERED that:

1. For each defendant to be served, the Clerk of the Court is directed to forward the following documents to the United States Marshals Service:

- (a) One completed and issued summons;
- (b) One completed USM-285 form;
- (c) A consent to Magistrate Judge jurisdiction form;
- (d) One copy of the Second Amended Complaint filed on August 25, 2014 (Doc. 16), plus an extra copy for the Marshals Service;
- (e) One copy of this Court’s order issued on October 2, 2014 (Doc. 21), plus and extra copy of for the Marshal’s Service;

1 (f) One copy of this Court's order issued on November 18, 2014 (Doc. 28),
2 plus an extra copy for the Marshals Service;

3 (g) One copy of this order, plus an extra copy for the Marshals Service.

4 2. Within ten days from the date of this order, the Marshals Service is directed to
5 notify the following defendants of the commencement of this action and to request a
6 waiver of service in accordance with the provisions of Fed. R. Civ. P. 4(d) and 28 U.S.C.
7 § 566(c):

8 Officer R. Byrd

9 3. The Marshals Service shall file returned waivers of service as well as any requests
10 for waivers of service that are returned as undelivered as soon as they are received.

11 4. If a waiver of service is not returned by a defendant within sixty days of the date
12 of mailing the request for waiver, the Marshals Service shall:

13 a. Personally serve process and a copy of this order upon the defendant
14 pursuant to Rule 4 of the Federal Rules of Civil Procedure and 28 U.S.C. §
15 566(c), and shall command all necessary assistance from the Fresno Police
16 Department to execute this order. The Marshals Service shall maintain the
17 confidentiality of all information provided by the Fresno Police Department
18 pursuant to this order. In executing this order, the Marshals Service shall contact
19 the Legal Affairs Division of Fresno Police Department and to assist in
20 identifying and/or locating the defendant.

21 b. Within ten days after personal service is effected, the Marshals Service
22 shall file the return of service for the defendant, along with evidence of any
23 attempts to secure a waiver of service of process and of the costs subsequently
24 incurred in effecting service on said defendant. Said costs shall be enumerated on
25 the USM-285 form and shall include the costs incurred by the Marshals Service
26 for photocopying additional copies of the summons and complaint and for
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1 preparing new USM-285 forms, if required. Costs of service will be taxed against
2 the personally served defendant in accordance with the provisions of Fed. R. Civ.
3 P. 4(d)(2).

4 5. If defendants waive service, they are required to return the signed waivers to the
5 Marshals Service. The filing of an answer or a responsive motion does not relieve
6 defendants of this requirement, and the failure to return the signed waivers may subject
7 defendants to an order to pay the costs of service pursuant to Fed. R. Civ. P. 4(d)(2).

8 6. In the event that defendants either waive service or are personally served,
9 defendants are required to reply to the complaint. 42 U.S.C. § 1997e(g)(2).

10
11 IT IS SO ORDERED.

12 Dated: December 12, 2014

13 /s/ Barbara A. McAuliffe
14 UNITED STATES MAGISTRATE JUDGE
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