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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

PETER GERARD WAHL,  
Plaintiff,  
v.  
SUTTON,  
Defendant.

Case No. 1:16-cv-01576-LJO-BAM (PC)  
**ORDER REQUIRING DEFENDANT TO RE-SERVE MOTION TO DISMISS ON PLAINTIFF AT CORRECT ADDRESS OF RECORD**  
(ECF No. 41)  
**THREE (3) DAY DEADLINE**

Plaintiff Peter Gerard Wahl (“Plaintiff”) is a former state prisoner proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds against Defendant Sutton for deliberate indifference resulting from excessive custody, in violation of the Eighth Amendment.

On November 14, 2018, Defendant Sutton filed a motion to dismiss in response to the third amended complaint. (ECF No. 41.) However, it appears that Defendant Sutton has failed to serve Plaintiff at his correct address of record, which is listed as P.O. Box. 1993, Laguna Beach, CA 92652. Instead, Defendant Sutton has served the motion to dismiss at a residential address, which has never been listed as Plaintiff’s address of record in this action. As such, it appears service of the motion was defective, and re-service is required.

The Court notes that the deadline for Defendant Sutton to file an answer or response to the third amended complaint expired on November 26, 2018. (See ECF No. 42.) As the motion to

1 dismiss was originally filed with the Court on November 14, 2018, the Court will permit  
2 Defendant Sutton a brief extension of time to properly serve the motion on Plaintiff and to file  
3 proof of such re-service. Absent a showing of good cause, the Court will grant no further  
4 extensions of this deadline.

5 **Defendant Sutton is admonished that all future filings must be timely served at**  
6 **Plaintiff's correct address of record, as listed on the docket.**

7 Accordingly, IT IS HEREBY ORDERED that:

- 8 1. Defendant Sutton must re-serve the motion to dismiss, filed on November 14, 2018, (ECF  
9 No. 41), upon Plaintiff at his current address of record, and must file proof of the re-  
10 service within **three (3) days** of the date of service of this order; and
- 11 2. In light of the defective initial service of the motion to dismiss, the deadline for Plaintiff to  
12 file his opposition to the motion shall be due within **twenty-one (21) days** from the date  
13 of re-service of the motion.

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15 IT IS SO ORDERED.

16 Dated: December 27, 2018

17 /s/ Barbara A. McAuliffe  
18 UNITED STATES MAGISTRATE JUDGE  
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