1 2 3 4 5 6 UNITED STATES DISTRICT COURT 7 EASTERN DISTRICT OF CALIFORNIA 8 9 RODERICK WILLIAM LEAR, CASE No. 1: 17-cv-00071-DAD-MJS (PC) 10 Plaintiff, ORDER DIRECTING UNITED STATES MARSHALS SERVICE TO RE-ATTEMPT 11 ٧. SERVICE ON DEFENDANT CSP-COR <u>12</u> A. MANASRAH, et al., 13 Defendants. 14 15 Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil 16 rights action brought pursuant to 42 U.S.C. § 1983. On September 19, 2017, the Court 17 screened Plaintiff's Second Amended Complaint (ECF No. 25) and found that it states a 18 cognizable Eighth Amendment medical indifference claim against Dr. Mansour in his 19 individual capacity and an ADA damages claim against Corcoran State Prison, California 20 ("CSP-COR"), but no other cognizable claims. (ECF No. 30.) 21 On November 27, 2017, the United States Marshals Service ("USM") was directed 22 to initiate service of process on Defendants Mansour and CSP-COR. (ECF No. 34.) The 23 summons for CSP-COR was returned unexecuted. (ECF No. 37.) 24 The Court and USM have a statutory duty to serve process on Plaintiff's behalf. 25 28 U.S.C. 1915(d); Fed. R. Civ. P. 4(d)(2). Any state-created governmental organization 26 must be served by delivering a copy of the summons and complaint to the chief 27 executive officer or in the manner prescribed by state law. Rule 4(j)(2)(a),(b). California 28

state law provides that, "A summons may be served on a public entity by delivering a copy of the summons and of the complaint to the clerk, secretary, president, presiding officer, or other head of its governing body." Cal. Code Civ. Proc. § 416.50 (a). In California, service of process in an action against a public agency "may be made in conformity with the information contained in the statement in the Roster of Public Agencies pertaining to that public agency which is on file at the time of such service. Service in this manner, if otherwise made in compliance with law, constitutes personal service upon the public agency." Cal. Gov. Code § 960.8. The California Roster, maintained by the California Secretary of State, provides that the California Department of Corrections and Rehabilitation ("CDCR") the executive agency overseeing CSP-COR, is located at 1515 S Street, Suite 502, Sacramento, CA 95814. The CDCR Secretary is Scott Kernan.

Therefore, the Court will once again direct the Clerk of the Court to send the documents to the USM for service. In light of Defendant's failure to respond at the institutional address provided by Plaintiff, the USM is directed to attempt to serve process on CSP-COR through Scott Kernan at the address of record for CDCR.

Accordingly, pursuant to Federal Rule of Civil Procedure 4(c), it is HEREBY ORDERED that:

- The Clerk of the Court is directed to forward the following documents to the USM:
- a. One completed and issued summons for Defendant CSP-COR at 1515 S Street, Suite 502, Sacramento, CA 95814;
- b. One completed USM-285 form for Defendant CSP-COR at 1515 S
 Street, Suite 502, Sacramento, CA 95814;
 - c. One copy of the Second Amended Complaint filed on June 08,2017, plus an extra copy for the USM; and
 - d. One copy of this order, plus an extra copy for the USM;

1	2.	Within ten (10) days from the date of this order, the USM is directed to
2		notify the above named Defendant of the commencement of this action
3		and to request a waiver of service in accordance with the provisions of
4		Fed. R. Civ. P. 4(d) and 28 U.S.C. § 566(c);
5	3.	The USM shall file the returned waiver of service, or the request for waiver
6		of service if returned as undelivered, as soon as it is received;
7	4.	If Defendant waives service, it is required to return the signed waiver to
8		the Marshals Service. The filing of an answer or a responsive motion does
9		not relieve Defendant of this requirement, and the failure to return the
10		signed waivers may subject Defendant to an order to pay the costs of
11		service pursuant to Fed. R. Civ. P. 4(d)(2);
12	5.	In the event that Defendant either waives service or is personally served,
13		Defendant is required to respond to the complaint. 42 U.S.C.
14		§ 1997e(g)(2).
15	IT 10 00 0D	
16	IT IS SO OR	DERED.
17	Dated: _	January 17, 2018 Ist Michael J. Seng
18	_	UNITED STATES MAGISTRATE JUDGE
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		3
	i e	