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

10 ANTHONY CEASAR HERNANDEZ,

11 Plaintiff,

12 v.

13 BALLAM, et al.,

14 Defendants.

Case No.: 1:17-cv-00468-BAM (PC)

SECOND ORDER DIRECTING SERVICE
OF DEFENDANT DURAN BY THE
UNITED STATES MARSHALS SERVICE
WITHOUT PREPAYMENT OF COSTS

[ECF No. 19]

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17 Plaintiff Anthony Ceasar Hernandez is a state prisoner proceeding *pro se* and *in forma*
18 *pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983.

19 On January 22, 2018, service was returned un-executed as to Defendant Duran. (ECF No.
20 19.) The United States Marshal filed a return of service unexecuted as to Defendant Duran with
21 remarks stating that the institution was unable to identify Officer Duran, and that they need the
22 date of the incident to assist them. (*Id.*)

23 Plaintiff indicated in a prior complaint that the incident occurred on **May 18, 2016** at
24 Valley State Prison. (ECF No. 9, at p. 3.) Plaintiff also identified Officer Duran as a second
25 watch A-yard officer in his most current pleading. (ECF No. 15, at p.4.)

26 Based on the foregoing, the Court will provide this information to the United States
27 Marshal and direct the Marshal to re-attempt service.

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

2 ORDERED that:

3 1. The Clerk of the Court is directed to forward the following documents to the
4 United States Marshals Service:

5 (1) One completed and issued summons;

6 (2) One completed USM-285 form for Officer Duran, second watch A-yard officer on
7 May 18, 2016, to be served at Valley State Prison;

8 (3) One copy of the Second Amended Complaint, filed December 4, 2017, plus an
9 extra copy for the Marshals Service; and

10 (4) One copy of this order, plus an extra copy for the Marshals Service;

11 2. Within ten (10) days from the date of this order, the Marshals Service is directed
12 to notify Defendant Duran of the commencement of this action and to request a waiver of service
13 in accordance with the provisions of Fed. R. Civ. P. 4(d) and 28 U.S.C. § 566(c);

14 3. The Marshals Service is directed to retain the summons and a copy of the
15 complaint in its file for future use;

16 4. The Marshals Service shall file any returned waiver of service, or the request for
17 waiver of service if returned as undelivered, as soon as it is received;

18 5. If a waiver of service is not returned by Defendant Duran within sixty (60) days
19 of the date of mailing the request for waiver, the Marshals Service shall personally serve process
20 and a copy of this order upon that defendant pursuant to Rule 4 of the Federal Rules of Civil
21 Procedure and 28 U.S.C. § 566(c).

22 b. Within ten (10) days after personal service is effected, the Marshals Service shall
23 file the return of service for the defendant, along with evidence of any attempts to secure a
24 waiver of service of process and of the costs subsequently incurred in effecting service on said
25 defendant. Said costs shall be enumerated on the USM-285 form and shall include the costs
26 incurred by the Marshals Service for photocopying additional copies of the summons and
27 complaint and for preparing new USM-285 forms, if required.

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1 Costs of service will be taxed against the personally served defendant in accordance with
2 the provisions of Fed. R. Civ. P. 4(d)(2).

3 6. In the event that a defendant either waives service or is personally served, the
4 defendant is required to reply to the complaint. 42 U.S.C. § 1997e(g)(2).

5
6 IT IS SO ORDERED.

7 Dated: January 24, 2018

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE