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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

JAMES MILLNER,

Plaintiff,

v.

DR. DILEO, et al.,

Defendants.

Case No. 1:17-cv-00507-SAB (PC)

ORDER DISMISSING CERTAIN CLAIMS
AND DEFENDANTS, FINDING SERVICE
OF COMPLAINT APPROPRIATE, AND
DIRECTING PLAINTIFF TO COMPLETE
SERVICE WITHIN NINETY (90) DAYS

(ECF Nos. 1, 11)

NINETY (90) DAY DEADLINE

Plaintiff James Millner is a state prisoner appearing pro se in this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has consented to magistrate judge jurisdiction pursuant to 28 U.S.C. § 636(c). (ECF No. 6.)

On September 12, 2017, the Court screened Plaintiff’s complaint found it stated a claim against Defendants Dileo, Ulit, Spaeth, and the Chief Medical Officer for deliberate indifference in violation of the Eighth Amendment based on his wrist injury, but stated no other cognizable claims. (ECF No. 8.) Plaintiff was ordered to either file an amended complaint or notify the Court that he is willing to proceed on the claims found to be cognizable within thirty days.

On September 28, 2017, Plaintiff filed a notice stating that he wishes to proceed on the claims found cognizable, and to dismiss the other claims and defendants. (ECF No. 11.) Therefore, the other claims and defendants shall be dismissed.

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 ninety (90) days. Fed. R. Civ. P. 4(m).

1 The following two sections contain instructions on how to serve Defendants.¹

2 **Instructions on Completing Service of Process**

3 **I. Waiver of Service**

4 Plaintiff has the option of notifying Defendants of the commencement of this action and
5 requesting that they waive service of the summons. Fed. R. Civ. P. 4(d)(1). If Plaintiff wishes to
6 do this, he must mail each Defendant (1) the form entitled “Notice of Lawsuit and Request to
7 Waive Service for Summons,” (2) two copies of the form entitled “Waiver of Service of
8 Summons,” (3) a copy of the complaint; (4) a copy of this order; and (5) a stamped, self-
9 addressed envelope for returning one copy of the signed waiver form to Plaintiff. The documents
10 must be addressed directly to each Defendant (*not the Attorney General’s Office or any other*
11 *governmental entity*), and the documents must be sent by first-class mail or other reliable means.
12 Id. The Waiver of Service of Summons form must set forth the date on which the request is sent
13 and must allow each Defendant at least thirty (30) days to return the waiver to Plaintiff. If
14 Defendants sign and return the waiver forms to Plaintiff, Plaintiff must then file the forms with
15 the Court. After filing the forms with the Court, Plaintiff does not need to do anything further to
16 serve Defendants. Fed. R. Civ. P. 4(d)(4).

17 **II. Personal Service**

18 If either (1) Plaintiff does not wish to request Defendants to waive service or (2) one or
19 more of the Defendants fail to return the Waiver of Service of Summons form to Plaintiff,
20 Plaintiff must have personal service effected on Defendants. In either situation, the summons, a
21 copy of the complaint, and a copy of this order must be personally served on each Defendant (*not*
22 *the Attorney General’s Office or any other governmental entity*). *Plaintiff may not effect personal*
23 *service himself*. Fed. R. Civ. P. 4(c)(2). *Service may be effected by any person who is not a party*
24 *to this action and who is at least eighteen years old.* Id. The Court will provide Plaintiff with a
25 copy of Rule 4 along with this order. Plaintiff should review Rule 4(e), which addresses how
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28 ¹ In Plaintiff’s notice, he makes a motion for the United States Marshal to be directed to serve Defendant Dileo. The Court will issue a separate order addressing that request.

1 personal service is effected. After personal service is effected on Defendants, Plaintiff must file
2 proof of service with the Court. Fed. R. Civ. P. 4(l).

3 Accordingly, it is HEREBY ORDERED as follows:

4 1. This action shall proceed on Plaintiff's complaint, filed on April 11, 2017, against
5 Defendants Dileo, Ulit, Spaeth, and the Chief Medical Officer, in their individual capacities, for
6 deliberate indifference in violation of the Eighth Amendment based on his wrist injury;

7 2. All other claims, and Defendant Relevante, are dismissed based on Plaintiff's
8 failure to state any claims upon which relief may be granted;

9 3. The Clerk of the Court is directed to issue and send Plaintiff three (3) summonses,
10 and one copy of each of the following documents:

11 a) Complaint filed April 11, 2017 (ECF No. 1);

12 b) "Notice of Lawsuit and Request to Waive Service for Summons" form;

13 c) "Waiver of Service" form; and

14 d) Rule 4 of the Federal Rules of Civil Procedure;

15 4. Plaintiff shall complete service of process on Defendants Ulit, Spaeth, and the
16 Chief Medical Officer within **ninety (90) days** from the date of service of this order; and

17 5. **Unless good cause is shown, Plaintiff's failure to timely complete service of**
18 **the process on Defendants and to file proof thereof with the Court will result in dismissal of**
19 **this action. Fed. R. Civ. P. 4(m).**

20 IT IS SO ORDERED.

21 Dated: October 3, 2017

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24 UNITED STATES MAGISTRATE JUDGE
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