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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

ANTHONY E. MACK,  
Plaintiff,

No. CIV S-05-2134-MCE-CMK-P

vs.

ORDER

MARSHA ONA, et al.,  
Defendants.

\_\_\_\_\_ /

Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. The court has authorized service of this action on defendant Latteri. However, process of service direct to the defendant was returned unexecuted. Plaintiff was required to obtain additional information to effect service on this defendant. Plaintiff has now obtained that information and returned the necessary documents for the United States Marshal to attempt service.

Accordingly, IT IS HEREBY ORDERED that:

1. The Clerk of the Court is directed to forward the instructions for service of process, the completed summons form(s), copies of the complaint, and a copy of this order to the United States Marshal;

2. Within ten days from the date of this order, the United States Marshal is directed to notify defendant Latteri of the commencement of this action and to request a waiver

1 of service of summons in accordance with the provisions of Federal Rule of Civil Procedure 4(d)  
2 and 28 U.S.C. § 566(c);

3           3.     The United States Marshal is directed to retain the sealed summons and a  
4 copy of the complaint in their file for future use;

5           4.     The United States Marshal shall file returned waivers of service of  
6 summons, as well as any requests for waivers that are returned as undelivered, as soon as they are  
7 received;

8           5.     If a waiver of service of summons is not returned by the defendant within  
9 sixty days from the date of mailing the request for waiver, the United States Marshal shall:

10           a.     Personally serve process and a copy of this order upon the  
11 defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure and  
12 28 U.S.C. § 566(c), shall command all necessary assistance from the  
13 California Department of Corrections to execute this order, and shall  
14 maintain the confidentiality of all information provided by the California  
15 Department of Corrections pursuant to this order;

16           b.     Within ten days after personal service is effected, the  
17 United States Marshal shall file the return of service for the defendant,  
18 along with evidence of any attempts to secure a waiver of service of  
19 summons and of the costs subsequently incurred in effecting service on  
20 said defendant;

21           c.     Costs incurred in effecting service shall be enumerated on  
22 the USM-285 form and shall include the costs incurred by the Marshal's  
23 office for photocopying additional copies of the summons and amended  
24 complaint and for preparing new USM-285 forms, if required; and

25           d.     Costs of service will be taxed against the personally served  
26 defendant in accordance with the provisions of Federal Rule of Civil

1 Procedure 4(d)(2);

2 6. Defendant(s) shall reply to the complaint within the time provided by the  
3 applicable provisions of Federal Rule of Civil Procedure 12(a);

4 7. Unless otherwise ordered, all motions to dismiss, motions for summary  
5 judgment, motions concerning discovery, motions pursuant to Rules 7, 11, 12, 15, 41, 55, 56, 59  
6 and 60 of the Federal Rules of Civil Procedure, and motions shall be briefed pursuant to Local  
7 Rule 78-230(m), and failure to oppose such a motion timely may be deemed a waiver of  
8 opposition to the motion; opposition to all other motions need be filed only as directed by the  
9 court;

10 8. If plaintiff is released from prison at any time during the pendency of this  
11 case, any party may request application of other provisions of Local Rule 78-230 in lieu of Local  
12 Rule 78-230(m), which will continue to govern all motions described in no. 7, above, in the  
13 absence of a court order granting such a request;

14 9. Each party shall keep the court informed of a current address at all times  
15 while the action is pending, and any change of address must be reported promptly to the court in  
16 a separate document captioned for this case and entitled "Notice of Change of Address," which  
17 also must be properly served on all other parties; and

18 10. The failure of any party to comply with this or any other court order, the  
19 Federal Rules of Civil Procedure, or the local rules of this court may result in the imposition of  
20 appropriate sanctions, including dismissal of the action or entry of default.

21  
22 DATED: January 15, 2009

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24 **CRAIG M. KELLISON**  
25 UNITED STATES MAGISTRATE JUDGE  
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