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

DAVID W. WILSON,
Plaintiff,

No. CIV S-06-1139-FCD-CMK-P

vs.

ORDER

W.C. NESBETH, et al.,
Defendants.

_____ /

Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s third amended complaint (Doc. 14). In findings and recommendations issued on January 11, 2008, the court outlined plaintiff’s allegations, which will not be repeated here. In separate findings and recommendations issued herewith, the court has outlined the relevant procedural history and has recommended dismissal of all defendants other than defendant Nesbeth. The court concludes that the third amended complaint appears to state a cognizable claim for relief pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b) against defendant Nesbeth. If the allegations are proven, plaintiff has a reasonable opportunity to prevail on the merits of this action. The court, therefore, finds that service is appropriate and will direct service by the U.S. Marshal without pre-payment of costs.

1 Plaintiff is informed, however, that this action cannot proceed further until plaintiff complies
2 with this order. Plaintiff is warned that failure to comply with this order may result in dismissal
3 of the action. See Local Rule 11-110.

4 Accordingly, IT IS HEREBY ORDERED that:

5 1. The court authorizes service on the following defendant(s):

6 NESBETH;

7 2. The Clerk of the Court shall send plaintiff one USM-285 form for each
8 defendant identified above, one summons, an instruction sheet, and a copy of the third amended
9 complaint; and

10 3. Within 30 days of the date of service of this order, plaintiff shall complete
11 the attached Notice of Submission of Documents and submit the following documents to the
12 court:

13 a. The completed Notice of Submission of Documents;

14 b. One completed summons;

15 c. One completed USM-285 form(s); and

16 d. Two copies of the endorsed third amended complaint.

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18 DATED: August 5, 2009

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20 **CRAIG M. KELLISON**
21 UNITED STATES MAGISTRATE JUDGE
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