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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 JARMAAL LARONDE SMITH,

11 Plaintiff,

Case No. 2:07-cv-00964 ALA (P)

12 vs.

13 LEANN CRONES, et al.,

14 Defendants.

ORDER

15 _____/
16 Plaintiff Jarmaal Smith ("Plaintiff") is a state prisoner who proceeds *pro se* in this civil
17 rights actions pursuant to 42 U.S.C. § 1983. He also proceeds *in forma pauperis* pursuant to 28
18 U.S.C. § 1915.

19 On October 14, 2008, Plaintiff filed the requisite service documents with this Court.
20 (Doc. 16). On October 28, 2008, this Court ordered the United States Marshal to notify
21 Defendants Scott Norton and Edward Simmerson ("Defendants") of this action. (Doc. 16).
22 Specifically, the Court ordered, in relevant part, as follows:

- 23 1. The Clerk of the Court is directed to forward the following
24 documents to the United States Marshal:
25 (1) One completed and issued summons for each
defendant to be served;
26 (2) One completed USM-285 form for each
defendant to be served;
(3) One copy of the complaint filed on May 23,

2007 for each defendant to be served, plus an extra copy for the Marshal;

(4) One copy of this order for each defendant to be served, plus an extra copy for the Marshal; and,

(5) One copy of the court's consent form for each defendant to be served.

2. Within ten days from the date of this order, the United States Marshal is directed to notify the following defendants of the commencement of this action and to request a waiver of service in accordance with the provisions of Fed. R. Civ. P. 4(d) and 28 U.S.C. § 566(c): Defendants Edward Simmerson and Scott Norton pursuant to Rule 4 of the Federal Rules of Civil Procedure, without pre-payment of costs.

3. The U.S. Marshal is directed to retain the summons and a copy of the complaint in their file for future use.

4. The United States Marshal shall file returned waivers of service as well as any requests for waivers of service that are returned as undelivered as soon as they are received.

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

a. Personally serve process and a copy of this order upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure and 28 U.S.C. § 566(c) and shall command all necessary assistance from the California Department of Corrections (CDC) to execute this order. The United States Marshal shall maintain the confidentiality of all information provided by the CDC pursuant to this order.

b. Within ten days after personal service is effected, the United States Marshal shall file the return of service for the defendant, along with evidence of any attempts to secure a waiver of service of process and of the costs subsequently incurred in effecting service on said defendant. Said costs shall be enumerated on the USM-285 form and shall include the costs incurred by the Marshal's office for photocopying additional copies of the summons and complaint and for preparing new USM-285 forms, if required. Costs of service will be taxed against the personally served defendant in accordance with the provisions of Fed. R. Civ. P.4(d)(2).

6. In the event that defendants make an appearance in this action by filing an answer, dispositive motion, or other pleading, the U.S. Marshals Service need not personally serve those defendants.

(*Id.*).

1 On November 10, 2008, the United States Marshal Office mailed the service documents
2 to Defendants. Defendants, however, did not return their waivers of service within the
3 prescribed sixty-day period as set forth by this Court's order, dated October 27, 2008, which
4 required the waivers to be executed by January 8, 2009. This Court then issued a supplemental
5 order that directed the United States Marshal to personally serve process on Defendants on or
6 before January 14, 2009. (Doc. 17). Further, the United States Marshal was directed to file the
7 return of service for Defendants, along with evidence of any attempts to secure a waiver of
8 service of process and of the costs subsequently incurred in effecting service on Defendants
9 within ten (10) days after personal service was effected. (*Id.*). To date, the United States
10 Marshal has failed to provide this Court with the ordered information.¹

11 Accordingly, IT IS HEREBY ORDERED that the United States Marshal shall personally
12 serve Defendants on or before February 11, 2009, or show cause why Defendants have not been
13 personally served in accordance with this Court's orders. Failure to comply with this order may
14 result in sanctions.

15 DATED: February 4, 2009

16 /s/ Arthur Alarcón
17 UNITED STATES CIRCUIT JUDGE
18 Sitting by Designation
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24 ¹ The Notice of Electronic Filing for Doc. 17 indicates that the Clerk's Office served this
25 order on the United States Marshal's Office via email to ecf.cae@usdoj.gov on January 8, 2009,
26 at 10:19 a.m. This email address is designated by the United States Marshal's Office to receive
priority orders from judges of this Court.