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

DANIEL HARPER,

Plaintiff,

No. CIV S-07-2131 MCE EFB P

vs.

HUMPHREYS, et al.,

ORDER

Defendants.

_____ /

Plaintiff is a prisoner without counsel in an action brought under 42 U.S.C. § 1983. He proceeds *in forma pauperis*. See 28 U.S.C. § 1915. The United States Marshal returned process directed to defendant Humphreys unserved because defendant is “no longer at facility.” On January 23, 2009, the court directed plaintiff to provide new information about where this defendant may be served with process. The court also directed plaintiff to submit a completed form USM-285 providing instructions for service of process upon defendant Humphreys along with two copies of his October 19, 2007 pleading. On January 29, 2009, plaintiff submitted the requested documents. However, plaintiff has provided the same address for defendant Humphreys that he provided in his first attempt to serve defendant Humphreys. He has also filed a letter with the court explaining that he is attempting locate the address for service, but that “if [defendant Humphreys] is not found it really does not matter,” and “if he cannot be found it is

1 really no big deal.”

2 As no defendant has made an appearance in this action, plaintiff may voluntarily dismiss
3 defendant Humphreys if that is what he wishes to do. However, if plaintiff wishes for the United
4 States Marshal to attempt again to serve defendant Humphreys, he must provide new information
5 about where this defendant may be served with process. Plaintiff may seek such information
6 through discovery, the California Public Records Act, California Government Code §§ 6250, *et*
7 *seq.*, or any other means available but must proceed with haste because Fed. R. Civ. P. 4(m)
8 requires an action be dismissed as to a defendant not served within 120 days after filing the
9 complaint unless the time is enlarged based upon a demonstration of good cause. If plaintiff’s
10 access to the required information is denied or unreasonably delayed, plaintiff may seek judicial
11 intervention.

12 Accordingly, it is ORDERED that:

13 1. The Clerk of the Court shall mail plaintiff one form USM-285 and a copy of the
14 pleading filed October 19, 2007.

15 2. Within 60 days from the date this order is served, plaintiff may submit the attached
16 Notice of Submission of Documents with a completed form USM-285 providing instructions for
17 service of process upon defendant Humphreys and two copies of the pleading provided to
18 plaintiff or a request for voluntary dismissal of defendant Humphreys.

19 3. Failure to provide new instructions for service of process upon defendant Humphreys
20 within the time allowed or show good cause for such failure will result in a recommendation that
21 defendant Humphreys be dismissed.

22 Dated: February 5, 2009.

23 
24 EDMUND F. BRENNAN
25 UNITED STATES MAGISTRATE JUDGE
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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DANIEL HARPER,

Plaintiff,

No. CIV S-07-2131 MCE EFB P

vs.

HUMPHREYS, et al.,

Defendants.

NOTICE OF SUBMISSION
OF DOCUMENTS

Plaintiff hereby submits the following documents in compliance with the court's
order filed _____.

- One completed summons
- _____ completed USM-285 forms
- _____ copies of the _____
Complaint/Amended Complaint

DATED:

Plaintiff