



1           Accordingly, it is HEREBY ORDERED that:

2           1. In accordance with 28 U.S.C. § 1915A, the Court has screened and found service of the  
3 complaint appropriate. If a defendant either waives service or is personally served, the defendant  
4 is required to reply to the complaint. 42 U.S.C. § 1997e(g)(2).

5           2. As set forth in the screening order issued February 11, 2020, service is appropriate for  
6 defendant Martin on the claim of Eighth Amendment deliberate indifference to plaintiff's serious  
7 medical needs. (See ECF No. 10 at 4-5, 8-9).

8           3. Plaintiff's motion to proceed only on claims found to be cognizable, filed February 28,  
9 2020 (ECF No. 14), is GRANTED.

10           4. Defendants R. Brockenborough and J. Sacks and any related or potentially viable  
11 claims against them have been VOLUNTARILY DISMISSED as requested by plaintiff in ECF  
12 No. 14 and in accord with Federal Rule of Civil Procedure 41(a)(1)(A)(i).

13           5. Service shall be initiated on the following defendant:

14           **Defendant Martin, a psychologist** employed at Mule Creek State Prison in Ione,  
15 California in July 2017.

16           6. Service on the parties in this case shall proceed under the Court's E-Service pilot  
17 program for civil rights cases for the Eastern District of California. The purpose of the program  
18 is to get the complaint served on defendants faster so that they respond to the complaint sooner.  
19 "E-Service" means that instead of having plaintiffs fill out service paperwork for the United  
20 States Marshal to mail to the defendants or through personal service, the Court will provide  
21 paperwork regarding the defendants electronically to the California Department of Corrections  
22 and Rehabilitation (CDCR) and the California Attorney General's Office, each of which has  
23 agreed to participate in this program. If those entities are unable to effectuate service, then the  
24 matter will be referred to the United States Marshal for service. However, to the extent that these  
25 individuals are unable to effectuate service of process, the Court may make further orders  
26 requiring the plaintiff to assist in providing additional information in order to effectuate service.  
27 Plaintiff need not attempt service on the defendants and need not request waiver of service.

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1           7. In accordance with the pilot program, the Clerk of the Court is directed to serve this  
2 order via email on the CDCR, along with a summons, the operative complaint, and copies of the  
3 form Consent to Proceed Before a United States Magistrate Judge. No later than 40 days after  
4 service of this order, CDCR shall file with the Court the “CDCR Notice of E-Service Waiver”  
5 advising the Court which defendant(s) in this order will be waiving service of process without the  
6 need for personal service by the United States Marshal. CDCR shall also notify the Court  
7 whether any defendant(s) decline to waive service or could not be reached. The CDCR’s Notice  
8 of Waiver shall also be served on the California Attorney General’s Office and the United States  
9 Marshal.

10           8. Within 30 days after the filing of CDCR’s Notice of E-Service Waiver, the California  
11 Attorney General’s Office shall file a waiver of service of process for any defendant who is  
12 waiving service of process consistent with Fed. R. Civ. P. 4(d)(1). A defendant who timely  
13 waives service need not serve an answer to the complaint until 60 days after the waiver of service  
14 of process was sent – or until 90 days after it was filed to any defendant outside any judicial  
15 district of the United States. For any defendant that the CDCR advises will be waiving service,  
16 the date the CDCR files its Notice of E-Service Waiver will be considered the date the request for  
17 waiver was sent. If relief from this order is necessary, the Attorney General may seek relief by  
18 way of special appearance. Any special appearance shall not be construed as personal appearance  
19 on behalf of any defendant and does not waive service of any defects in service, unless and until a  
20 waiver of service or responsive pleading is filed.

21           9. Upon filing the Notice of Waiver, the Clerk of Court shall provide a copy to the United  
22 States Marshal of the operative complaint, the summons and this Order, for any defendant who  
23 has not waived service according to the CDCR Notice of E-Service Waiver. Upon receipt of  
24 those documents, the United States Marshal shall serve process of the complaint, summons, and  
25 this Order upon each defendant who has not waived service pursuant to Rule 4 of the Federal  
26 Rules of Civil Procedure and 28 U.S.C. § 566(c). The United States Marshal may command all  
27 necessary assistance from the Office of Legal Affairs for CDCR and may seek the assistance of a  
28 Special Investigator if the Litigation Officer at the institution is unable to assist in identifying

1 and/or locating defendants. If any confidential information is provided by a third party to  
2 effectuate service, including CDCR, the United States Marshal shall maintain the confidentiality  
3 of all information provided to them.

4 10. Within 10 days after personal service is effected, the United States Marshal shall file  
5 the return of service, along with evidence of any attempts to secure a waiver of service of process  
6 and of the costs subsequently incurred in effecting service. These costs shall be enumerated on  
7 the USM-285 form and shall include the costs incurred by the United States Marshal for  
8 photocopying additional copies of the summons and complaint and for preparing new USM-285  
9 forms, if required. Costs of service will be taxed against each personally served defendant in  
10 accordance with the provisions of Fed. R. Civ. P. 4(d)(2). The United States Marshal shall file  
11 the returned waivers of service, or the requests for waiver of service if returned as undelivered,  
12 once received.

13 11. If a defendant subsequently waives service, the defendant is required to return the  
14 signed waivers to the United States Marshal. The filing of an answer or a responsive motion does  
15 not relieve a defendant of this requirement, and the failure to return the signed waivers may  
16 subject the defendant to an order to pay the costs of service pursuant to Fed. R. Civ. P. 4(d)(2).

17 Dated: April 2, 2020

18 /s/ DEBORAH BARNES  
19 UNITED STATES MAGISTRATE JUDGE

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22 DLB:13  
23 DB/ORDERS/ORDERS.PRISONER.CIVIL RIGHTS/pato0628.1eService  
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