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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOEL TOLBERT,  
Plaintiff,

v.

ANTIOCH POLICE DEPARTMENT, et al.,  
Defendants.

Case No. [22-cv-02026-JSC](#)

**ORDER INSTRUCTING CLERK TO  
MAIL WAIVER OF SUMMONS  
FORMS FOR DEFENDANTS  
CANTANDO AND PERKINSON;  
DISMISSING DEFENDANT CONTRA  
COSTA COUNTY DETENTION  
HEALTH SERVICE; SCHEDULING  
MOTION FOR SUMMARY  
JUDGMENT**

Plaintiff, a California prisoner proceeding without being represented by an attorney, filed this civil rights complaint under 42 U.S.C. § 1983 against the Antioch Police Department (“APD”), APD Chief Allen Cantando, APD Officer James Colley, APD Officer James Perkinson, and the Contra Cost County Detention Health Service (CCCDHS). Summonses issued to Defendants Cantando, Perkinson, and CCCDHS were returned by the Marshal unexecuted. (ECF Nos. 13, 15, 16.) The motion to dismiss by the served Defendants was denied on November 11, 2023. (ECF No. 56.)

With respect to Defendants Perkinson and Cantando, counsel for the served Defendants (APD and Colley) have advised the Court it has been authorized to execute and return a waiver of summons under Rule 4(d) of the Federal Rules of Civil Procedure on behalf of Defendants Perkinson and Cantando. (ECF No. 57.) Accordingly, the Clerk is instructed to mail waiver of summons forms for Defendants Perkinson and Cantando to counsel for Defendants APD and Colley. The executed waiver of summons forms shall be filed on or before **March 5, 2024**, and Perkinson and Cantando shall file an answer to the second amended complaint in accordance with

1 the Federal Rules of Civil Procedure.<sup>1</sup>

2 As for Defendant CCCDHS, on November 11, 2023, because well more than 120 days had  
3 passed since the complaint was filed and Plaintiff had not served this Defendant as required by  
4 Rule 4(m) of the Federal Rules of Civil Procedure or provided the Court with an address where the  
5 Marshal could effectuate service, the Court instructed Plaintiff as follows: “On or before  
6 December 29, 2023, Plaintiff shall provide the Court with a current address for Defendant  
7 CCCDHS to allow for service. Failure to do so will result in dismissal of the claims against  
8 CCCDHS without prejudice.” (ECF No. 56 at 14:25-27). Plaintiff has not provided the Court  
9 with a current address for CCCDHS. Accordingly, the claims against Defendant CCCDHS are  
10 DISMISSED under Rule 4(m) without prejudice.

11 Plaintiff filed a copy of his Request for Production of Documents. (ECF No. 60.) Plaintiff  
12 is advised that discovery requests are only served on parties, they are not filed with the court. *See,*  
13 *e.g.*, Fed. R. Civ. P. 34(a) (“A party may serve on any other *party*” a request for production of  
14 documents) (emphasis added). Plaintiff shall not file any further discovery requests with the  
15 court.

16 To facilitate the resolution of this case, the Court orders as follows:

17 1. No later than **May 6, 2024**, Defendants shall file a motion for summary judgment. The  
18 motion shall be supported by adequate factual documentation and shall conform in all respects to  
19 Federal Rule of Civil Procedure 56 and shall include as exhibits all records and incident reports  
20 stemming from the events at issue. If Defendants are of the opinion that this case cannot be  
21 resolved by summary judgment, they shall so inform the Court prior to the date the summary  
22 judgment motion is due. All papers filed with the Court shall be promptly served on Plaintiff.

23 2. At the time the summary judgment motion is served, Defendants shall also serve, on a  
24 separate paper, the appropriate notice required by *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th  
25 Cir. 1998) (en banc). *See Woods v. Carey*, 684 F.3d 934, 940-941 (9th Cir. 2012).

26 3. Plaintiff’s opposition to the summary judgment motion, if any, shall be filed with the  
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28 <sup>1</sup> Defendants APD and Colley have already filed an answer to the second amended complaint.  
(ECF No. 59.)

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Court and served upon Defendants no later than **June 10, 2024**. Plaintiff must read the attached page headed “NOTICE -- WARNING,” which is provided to him pursuant to *Rand v. Rowland*, 154 F.3d 952, 953-954 (9th Cir. 1998) (en banc).

4. Defendants shall file a reply brief no later than **14** days after the opposition is filed.

5. The motion shall be deemed submitted as of the date the reply brief is due. No hearing will be held on the motion unless the Court so orders at a later date.

**IT IS SO ORDERED.**

Dated: February 6, 2024

  
JACQUELINE SCOTT CORLEY  
United States District Judge