

1                                    IN THE UNITED STATES DISTRICT COURT  
 2                                    FOR THE NORTHERN DISTRICT OF CALIFORNIA

3  
 4 LYNN MCINTYRE,

No. C 12-3023 CW

5                                    Plaintiff,

ORDER REGARDING  
 PLAINTIFF'S  
 RESPONSE TO

6                                    v.

MOTIONS TO  
 DISMISS, VACATING  
 HEARING AND CASE  
 MANAGEMENT

7 RICHARD WILSON; LAKE COUNTY  
 SHERIFF'S DEPARTMENT; CHUCK  
 8 WILSON; FRANCES WILSON; and DOES  
 1-5,

CONFERENCE,  
 ADDRESSING SERVICE  
 OF PROCESS AND  
 ORDERING PLAINTIFF  
 TO SHOW CAUSE WHY  
 HIS CLAIMS AGAINST  
 DEFENDANT CHUCK  
 WILSON SHOULD NOT  
 BE DISMISSED UNDER  
 28 U.S.C.  
 § 1915(e)(2)(B)

9                                    Defendants.  
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United States District Court  
 For the Northern District of California

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 14                                    On June 12, 2012, Pro se Plaintiff Lynn McIntyre filed the  
 15 instant case against Defendants Lake County Sheriff's Department,  
 16 Richard Wilson, Frances Wilson and Chuck Wilson. Compl., Docket  
 17 No. 1.

18                                    On August 14, 2012, Lake County Sheriff's Department filed a  
 19 motion to dismiss the claims asserted against it. Docket No. 21.<sup>1</sup>  
 20 On August 15, 2012, Richard and Frances Wilson also filed a motion  
 21 to dismiss the claims asserted against them. Docket No. 22. Both  
 22 motions were served upon Plaintiff by mailing.

23                                    Civil Local Rule 7-3(a) provides that any opposition to a  
 24 motion must be filed within fourteen days after the motion was  
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26 \_\_\_\_\_  
 27                                    <sup>1</sup> This motion was originally filed on behalf of Lake County  
 28 Sheriff's Department and Richard Wilson. It was later withdrawn  
 as to Richard Wilson only. Docket No. 26.

1 filed if the motion was filed and served through the Court's  
2 Electronic Case Filing (ECF) system, or within seventeen days  
3 after the motion was filed if the motion was served through other  
4 means, including by mailing it to the person's last known address.  
5 Because the motions to dismiss were served by mailing, Plaintiff's  
6 responses to the motions were due by August 31, 2012 and September  
7 1, 2012, respectively. However, because September 1, 2012 was a  
8 Saturday and the following Monday was a court holiday, the time  
9 for Plaintiff to file his opposition to the second motion to  
10 dismiss was extended to Tuesday, September 4, 2012, pursuant to  
11 Federal Rule of Civil Procedure 6(a)(1)(C).

12 Plaintiff has not yet filed a response to either motion to  
13 dismiss. The Court grants Plaintiff until one week from the date  
14 of this Order to do so. Plaintiff's failure to file responses in  
15 compliance with this Order will result in the dismissal of his  
16 claims against Lake County Sheriff's Department and Richard and  
17 Frances Wilson for failure to prosecute. The motions to dismiss  
18 will be decided on the papers. The hearing and case management  
19 conference currently set for October 4, 2012 at 2:00 p.m. are  
20 hereby vacated.

21 The Court notes that the remaining Defendant, Chuck Wilson,  
22 has not yet been served. After the Court granted Plaintiff's  
23 motion for leave to proceed in forma pauperis (IFP), the Clerk  
24 requested that Plaintiff provide Defendants' addresses so that a  
25 United States marshal could effectuate service. Docket No. 8. On  
26 July 17, 2012, Plaintiff responded, stating that Chuck Wilson's  
27 mailing address was P.O. Box 1124, Lower Lake, CA 95457 and that  
28 his business address was 16180 Jessie Street, Lower Lake, CA

1 95457. Docket No. 14. Plaintiff provided the same two addresses  
2 for Frances Wilson. Id. On July 27, 2012, a United States  
3 marshal served Richard and Frances Wilson at Wilson Storage at the  
4 Jessie Street address. Docket Nos. 19 and 20. At that time,  
5 Richard Wilson, whom Plaintiff alleges is the owner of Wilson  
6 Storage, see Compl. 2, 9, 11, informed the marshal that he did not  
7 know who Chuck Wilson is but accepted service on behalf of himself  
8 and his wife, Frances Wilson, Docket Nos. 19 and 20. The Court  
9 also notes that, although Plaintiff has included Chuck Wilson's  
10 name in the caption of the complaint, he has not made any  
11 allegations directed toward this Defendant in the complaint or  
12 identified his connection to the events alleged therein. Further,  
13 it appears that Plaintiff may have intended to identify Chuck  
14 Wilson as a pseudonym for Richard or Frances Wilson.

15 Pursuant to Federal Rule of Civil Procedure 4(m), Chuck  
16 Wilson must be served by October 10, 2012, which is 120 days after  
17 the complaint was filed. Within fourteen days of the date of this  
18 Order, Plaintiff shall notify the Court whether he intended to  
19 identify Chuck Wilson as a separate Defendant or as an alternative  
20 name for either Richard or Frances Wilson, and if Plaintiff  
21 intended to name Chuck Wilson as a separate Defendant, Plaintiff  
22 must provide an alternative address for service upon this  
23 Defendant. Failure to file a notice in response to this Order  
24 will result in dismissal of Plaintiff's claims against this  
25 Defendant for failure to prosecute.

26 Finally, under the IFP statute, a court is under a continuing  
27 duty to dismiss a case filed without the payment of the filing fee  
28 whenever it determines that the action "(i) is frivolous or

1 malicious; (ii) fails to state a claim on which relief may be  
2 granted; or (iii) seeks monetary relief against a defendant who is  
3 immune from such relief." 28 U.S.C. § 1915(e)(2)(B)(i)-(iii).  
4 Because Plaintiff has not included in his complaint any  
5 allegations directed toward Chuck Wilson, it appears that  
6 Plaintiff has failed to state a claim upon which relief may be  
7 granted against him. Accordingly, Plaintiff is ordered within  
8 fourteen days to show cause why his claims against Chuck Wilson  
9 should not be dismissed for this reason.

10 IT IS SO ORDERED.

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12 Dated: 9/11/2012

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12 CLAUDIA WILKEN  
13 United States District Judge  
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