

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

3  
4 JEROME L. GRIMES,

No. C 12-3111 CW

5                                    Plaintiff,

ORDER GRANTING  
MOTION TO QUASH  
(Docket No. 18)  
AND QUASHING

6                                    v.

SERVICE UPON  
DEFENDANTS  
OFFICERS BARBER,  
SMITH AND TANG

7 OFFICER BARBER; OFFICER SMITH;  
8 OFFICER TANG; and BOARD OF  
TRUSTEES OF CALIFORNIA STATE  
9 UNIVERSITY,

10                                    Defendants.

11 \_\_\_\_\_/

12                    Defendants Officers Barber, Smith and Tang move to dismiss  
13 the instant complaint for insufficient service of process or to  
14 quash service of summons pursuant to Federal Rule of Civil  
15 Procedure 12(b)(5). Plaintiff Jerome L. Grimes opposes the  
16 motion. The Court took the motion under submission on the papers.  
17 For the reasons set forth below, the Court GRANTS Defendants'  
18 motion and QUASHES service upon them.

19                                    BACKGROUND

20                    On June 15, 2012, Plaintiff filed a complaint alleging that  
21 he was injured by Officers Barber, Smith and Tang in connection  
22 with a jay-walking incident on the San Francisco State University  
23 campus. Officers Barber, Smith and Tang are peace officers  
24 employed by the San Francisco State University Police Department.  
25 Defendant Board of Trustees of California State University is  
26 authorized by statute to administer the universities in the  
27 California State University system. See Cal. Educ. Code § 66600.

28

1           On August 2, 2012, the Court dismissed Plaintiff's claims  
2 against the Board of Trustees for lack of subject matter  
3 jurisdiction, finding that the claims were barred by sovereign  
4 immunity. Docket No. 13. At that time, the Court noted that it  
5 did not appear from the docket that Officers Barber, Smith and  
6 Tang had been served. The Court warned Plaintiff that these  
7 Defendants were required to be served by October 15, 2012 pursuant  
8 to Federal Rule of Civil Procedure 4(m). The Court ordered that,  
9 by October 18, 2012, Plaintiff was required to file either proof  
10 of service upon each remaining Defendant or a motion for  
11 additional time in which to serve Defendants, in which he provided  
12 good cause for the failure to serve them within the allowed time  
13 period.

14           On August 7, 2012, Plaintiff returned an executed summons and  
15 a number of certificates of service. Docket Nos. 14-17.<sup>1</sup> On the  
16 face of the summons, after it was issued, Plaintiff crossed out  
17 the Board of Trustees and wrote in its place "San Francisco State  
18 Univ., Campus Police Department." Docket No. 14, 1. Plaintiff  
19 signed the proof of service attached to the summons identifying  
20 himself as the server, stated that, on August 7, 2012, he served  
21 the summons on "Mary Lee Assistant to University Counsel  
22 S.F.S.U./Police Department" and indicated that she was authorized  
23 to accept service on behalf of Officers Barber, Smith and Tang and  
24 \_\_\_\_\_

25           <sup>1</sup> The Court notes that, on these documents and Plaintiff's  
26 opposition to the instant motion, Plaintiff has identified himself  
27 as both "pro se" and as a "Real Estate Attorney." See, e.g.,  
28 Docket No. 14, 2; Docket No. 24, 2. Plaintiff is not admitted to  
the Bar of this Court or licensed by the State Bar of California  
and is cautioned that he must not represent that he is authorized  
to practice law, other than to represent himself.

1 the San Francisco State University Campus Police Department. Id.  
2 at 2.

3 The first certificate of service indicated that, on August 7,  
4 2012, he mailed copies of various documents, including the summons  
5 and complaint, to San Francisco State University Campus Police  
6 Department and Officers Barber, Smith and Tang at 1600 Holloway  
7 Avenue in San Francisco. Docket No. 15, 1. The second and third  
8 certificates of service indicated that, on August 7, 2012, he  
9 mailed a copy of the summons and multiple proofs of service to the  
10 Attorney General of California, to "Patricia Bartscher, Esq.,  
11 University Counsel," and "Michael Martin, Risk Management."  
12 Docket No. 15, 2; Docket No. 16, 1. The final proof of service  
13 stated that, on June 19, 2012, he served the summons for "[Board  
14 of Trustees Of: California State Universities] S.F.S.U. Campus  
15 Police Department" on "Sgt. Wilson." Docket No. 17, 1.

16 Officers Barber, Smith and Tang now move to quash service or  
17 dismiss for insufficient service of process. Docket No. 18. With  
18 their motion, they have submitted the declaration of Jason Porth.  
19 Porth Decl., Docket No. 20. Mr. Porth is the Deputy Chief of  
20 Staff to the President of San Francisco State University. Porth  
21 Decl. ¶ 1. His office is located in the Administration Building  
22 on the University's campus and is directly next door to the office  
23 of Ms. Bartscher, who is the University's counsel. Id. at ¶¶ 1,  
24 5. The Administration Building is on the opposite side of the  
25 campus from the police department. Id. ¶ 5 & Ex. A.

26 Mr. Porth attests that, on August 7, 2012, Mary Lee, Ms.  
27 Bartscher's assistant, came into his office and asked for  
28 assistance in communicating with Mr. Grimes, who was there

1 apparently trying to serve papers on the Defendant Officers. Id.  
2 at ¶ 7. Mr. Porth and Ms. Lee both told Mr. Grimes that they were  
3 not authorized to accept service on behalf of San Francisco State  
4 University or its employees and that leaving papers with them  
5 would not constitute proper service. Id. Mr. Grimes acknowledged  
6 their statements but insisted on leaving several sets of papers  
7 with Ms. Lee. Id. at ¶ 3.

8 Plaintiff opposes Defendants' motion. Docket No. 24. With  
9 his opposition, he has filed a declaration stating, among other  
10 things, that, on August 7, 2012, he went to the San Francisco  
11 State University Campus Police Department, that "Sgt. Wilson,  
12 S.F.S.U. Campus Police Personnel" and "Mrs. Shearer, S.F.S.U.  
13 Campus Police Department Office Personnel" refused to accept the  
14 summons and complaint from him and told him to mail or take the  
15 document to the University's counsel or the Attorney General.  
16 Grimes Decl., Docket No. 25, ¶¶ 3, 4, 6. Plaintiff represents  
17 that these individuals were "authorized by law to accept service."  
18 Id. Defendants dispute that Sergeant Wilson or Mrs. Shearer are  
19 authorized by law or appointment to receive service of process.  
20 Reply at 3 n.1.

21 LEGAL STANDARD

22 A federal court lacks personal jurisdiction over a defendant  
23 if service of process is insufficient. Omni Capital Int'l v.  
24 Rudolf Wolff & Co., 484 U.S. 97, 104 (1987). A court may dismiss  
25 the action without prejudice pursuant to Rule 12(b)(5). "Once  
26 service is challenged, plaintiffs bear the burden of establishing  
27 that service was valid under Rule 4." Brockmeyer v. May, 383 F.3d  
28 798, 801 (9th Cir. 2004) (citing 4A Charles A. Wright & Arthur R.

1 Miller, Federal Practice and Procedure § 1083 (3d ed. 2002 & Supp.  
2 2003)).

3 "So long as a party receives sufficient notice of the  
4 complaint, Rule 4 is to be 'liberally construed' to uphold  
5 service." Travelers Cas. & Sur. Co. of Am. v. Brenneke, 551 F.3d  
6 1132, 1135 (9th Cir. 2009) (quoting Chan v. Soc'y Expeditions,  
7 Inc., 39 F.3d 1398, 1404 (9th Cir. 1994)). However, "neither  
8 actual notice nor simply naming the defendant in the complaint  
9 will provide personal jurisdiction absent 'substantial compliance  
10 with Rule 4.'" Benny v. Pipes, 799 F.2d 489, 492 (9th Cir. 1986).

11 Federal Rule of Civil Procedure 4(c)(2) provides, "Any person  
12 who is at least 18 years old and not a party may serve a summons  
13 and complaint." It may be carried out by "(A) delivering a copy  
14 of the summons and of the complaint to the individual personally;  
15 (B) leaving a copy of each at the individual's dwelling or usual  
16 place of abode with someone of suitable age and discretion who  
17 resides there; or (C) delivering a copy of each to an agent  
18 authorized by appointment or by law to receive service of  
19 process." Fed. R. Civ. P. 4(e)(2). Rule 4(e)(2) does not  
20 authorize service by mail. Service may also be carried out in any  
21 manner allowed by state law. Fed. R. Civ. P. 4(e)(1).

#### 22 DISCUSSION

23 Plaintiff appears to contend that he carried out service  
24 properly pursuant to each subsection of Rule 4(e)(2) and to state  
25 law. However, Plaintiff has not offered evidence that he has  
26 substantially complied with any of these. All attempts at service  
27 here have been carried out by Plaintiff himself. Because  
28 Plaintiff is a party to this action, his attempts at service were

1 ineffective and were not in substantial compliance with Rule 4.  
2 See Fed. R. Civ. P. 4(c)(2); see also Cal. Civ. Proc. § 414.10 ("A  
3 summons may be served by any person who is at least 18 years of  
4 age and not a party to the action."). In addition, insofar as he  
5 claims to have perfected service pursuant to Rule 4(e)(2)(A) and  
6 (B), Plaintiff has not offered any evidence that he served  
7 Officers Barber, Smith and Tang personally or that he left a copy  
8 of the summons and complaint at their dwellings or usual places of  
9 abode with individuals of suitable age and discretion who reside  
10 there. To the extent that Plaintiff contends that he delivered a  
11 copy of the summons and complaint to an agent of theirs authorized  
12 by appointment or by law to receive service of process, Defendants  
13 have offered proof that neither Mr. Porth nor Ms. Lee was so  
14 authorized and Plaintiff has offered no proof to the contrary.  
15 Although he did not successfully deliver the summons and complaint  
16 to Sergeant Wilson and Mrs. Shearer, Plaintiff has also not  
17 offered proof that these individuals were authorized by law or  
18 appointment to accept service of process, beyond his own  
19 conclusory assertion. Finally, to the extent that Plaintiff  
20 argues that he properly served the San Francisco State University  
21 Campus Police Department, this entity has not been named as a  
22 Defendant in this case.

23 "Where service of process is insufficient, the court has the  
24 option of dismissing the action or quashing the service and  
25 retaining the case." O'Haire v. Napa State Hosp., 2010 U.S. Dist.  
26 LEXIS 37881, at \*7 (N.D. Cal. 2010) (citation omitted).

27 "Generally service will be quashed in those cases in which there  
28 is a reasonable prospect that the plaintiff will be able to serve

1 the defendant properly." Id. (internal quotation marks and  
2 citations omitted). Although Plaintiff did not complete service  
3 in compliance with federal or state law, there is a reasonable  
4 prospect that he will serve Defendants properly. Thus, the Court  
5 QUASHES service of process on Officers Barber, Smith and Tang and  
6 grants Plaintiff one more opportunity to serve them properly.  
7 Because the 120-day deadline for service has passed while this  
8 motion was under submission, the Court finds good cause to extend  
9 that deadline until thirty days from the date of this Order.

10 CONCLUSION

11 Accordingly, the Court GRANTS Defendants' motion to quash  
12 service (Docket No. 18) and QUASHES service upon Officers Barber,  
13 Smith and Tang. The Court also EXTENDS the deadline for service  
14 of process upon these Defendants until thirty days from the date  
15 of this Order. By that date, Plaintiff must file either proof of  
16 service upon each of these Defendants or a motion for additional  
17 time in which to serve them, in which he provides good cause for  
18 the failure to serve them within the allowed time period.  
19 Plaintiff's failure to comply with the terms of this Order will  
20 result in dismissal of his claims for failure to prosecute.

21 Plaintiff shall not attempt to serve the summons and  
22 complaint upon any individual or entity that is not named in his  
23 complaint.

24 IT IS SO ORDERED.

25  
26 Dated: 2/27/2013

27   
28 CLAUDIA WILKEN  
United States District Judge