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CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY BM DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOHN PAUL THOMAS,

Plaintiff,

vs.

ROBERT HERNANDEZ *et al.*,

Defendants.

Case No. 07cv1142 BEN (PCL)

ORDER DENYING MOTION FOR
WAIVER OF SERVICE OF
PROCESS

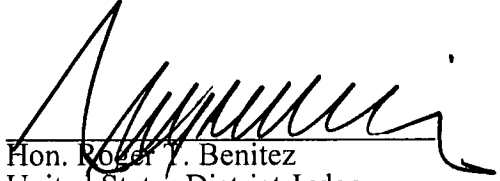
Plaintiff John Paul Thomas, a former inmate at the Richard J. Donovan Correctional Facility located in San Diego, California, filed a *pro se* Complaint under 42 U.S.C. § 1983, alleging that three correctional officers used excessive force against him. By Order dated August 7, 2007, the Court permitted Thomas to proceed *in forma pauperis* and instructed him to complete the United States Marshal Form 285 in order to effect service of process. Dkt. No. 3 at 5. Because he failed to comply with the Court's instructions, no service of process was effected. On April 16, 2008, the Court ordered him to show cause why he failed to effect service of process. Dkt. No. 5. After receiving no response, the Court dismissed the action without prejudice under Federal Rule of Civil Procedure 4(m) on June 2, 2008. Dkt. No. 7.

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1 Thomas now moves to waive service of process on the basis that he is currently incarcerated
2 in a detention facility in New Mexico. Dkt. No. 10. The fact that he is incarcerated, however, does
3 not serve as a legitimate basis to waive service of process. See FED. R. CIV. P. 4. Nor does he explain
4 why he failed to complete the Form 285 as instructed by the Court. As a result, his motion must be
5 denied.

6 IT IS SO ORDERED.

7 Dated: January 12, 2009

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11 Hon. Roger Y. Benitez
12 United States District Judge
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