

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

KEVIN DARNELL BRYANT,

Plaintiff,

v.

SELEAINA ANN THOMAS, Nurse
Practitioner; MARTIN LEVIN, CMO;
VROOMAN, MTA; SEPULVEDA, Nurse;
EDWARDS, Appeals Coordinator; and L.E.
SCRIBNER, Warden,

Defendants.

Civil No. 09cv1334-WQH-NLS

ORDER:

**(1) GRANTING DEFENDANTS'
MOTION TO DISMISS PLAINTIFF'S
COMPLAINT PURSUANT TO
FED.R.CIV.P. 12(b)(6)**

**(2) DIRECTING SERVICE ON
DEFENDANT THOMAS**

[Doc. No. 26]

I. INTRODUCTION

On June 9, 2009, Kevin Darnell Bryant ("Plaintiff"), a prisoner currently incarcerated at Kern Valley State Prison in Delano, California, proceeding *pro se* and *in forma pauperis* ("IFP"), filed a civil rights action pursuant to 42 U.S.C. § 1983, claiming Defendants violated his Eighth Amendment right to be free from cruel and unusual punishment while he was housed at Calipatria State Prison.

Pending before the Court is a Motion to Dismiss the Complaint for failure to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6), filed by Defendants Martin Levin, Vrooman, Sepulveda, Edwards and L.E. Scribner ("Defendants"). [Doc. No. 26.] Plaintiff filed his Opposition ("Opp.") on April 12, 2010 [doc. no. 31] to which Defendants have filed their Reply [doc. no. 29].

II. ALLEGATIONS OF THE COMPLAINT

On July 21, 2006, shortly after Plaintiff arrived at Calipatria State Prison, he saw a nurse practitioner,

1 Defendant Seleaina Thomas. [Compl. at 1.] Due to Plaintiff's "documented permanent disability, Plaintiff
2 had been issued permanent disability "chronos" requiring, among other things, that Plaintiff be assigned a
3 lower bunk in lower tier housing. [Id.] Thomas did not examine Plaintiff and "refused to honor any of
4 [Plaintiff's] permanent chronos," resulting in Plaintiff being moved to an upper bunk on the upper floor of
5 the prison. [Id.]

6 During the following weeks, Plaintiff fell and hurt himself several times attempting to climb down
7 from the upper bunk. [Id. at 2.] Defendants Sepulveda and Vrooman, both nurses, refused to fill out injury
8 incident reports for these accidents. [Id.]

9 On August 21, 2006, Plaintiff wrote a letter to the Chief Medical Examiner, Defendant Levin,
10 regarding Thomas' refusal to honor his chronos. [Id. at 3.] On August 23, 2006, Plaintiff also wrote an
11 "emergency request for help and intervention," to the Warden, Defendant Scribner. [Id.]

12 On August 26, 2006, Defendant Vrooman informed Plaintiff that Plaintiff's medical records were
13 locked in Defendant Levin's office over the weekend and were thus inaccessible for the time being. [Id.]
14 The next day, on August 27, 2006, Plaintiff was descending the stairs from the upper tier to attend breakfast
15 when his "legs just gave out on [him]" and he "fell head over heels tumbling down those iron, [s]errated
16 stairs landing on my head and back at the bottom." [Id. at 2.] Plaintiff was taken by ambulance to the prison
17 medical emergency room where the doctor on call examined him and admitted him into the infirmary. [Id.]
18 Plaintiff was put in a neck brace and prescribed pain medication. [Id. at 2-3.] Defendant Thomas "refused
19 to renew [Plaintiff's] pain med[ication] several times," told others Plaintiff was faking his injuries, and
20 forced Plaintiff to surrender his neck brace, all without examining him. [Id.]

21 Based on these factual allegations, Plaintiff claims Defendants were deliberately indifferent to his
22 medical needs and thus violated his Eight Amendment right to be free from cruel and unusual punishment.

23 **III. LEGAL STANDARDS**

24 **A. Fed. R. Civ. P. 12(b)(6) Standard of Review**

25 A Rule 12(b)(6) dismissal may be based on either a "'lack of a cognizable legal theory' or 'the
26 absence of sufficient facts alleged under a cognizable legal theory.'" *Johnson v. Riverside Healthcare Sys.,*
27 *LP*, 534 F.3d 1116, 1121-22 (9th Cir. 2008) (quoting *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699
28 (9th Cir. 1990)). The plaintiff's complaint must provide a "short and plain statement of the claim showing

1 that [he] is entitled to relief.” *Id.* (citing FED. R. CIV. P. 8(a)(2)). “Specific facts are not necessary; the
2 statement need only give the defendant[s] fair notice of what ... the claim is and the grounds upon which it
3 rests.” *Erickson v. Pardus*, 551 U.S. 89, 127 S. Ct. 2197, 2200 (2007) (quotation omitted).

4 A motion to dismiss should be granted if plaintiff fails to proffer “enough facts to state a claim to
5 relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has
6 facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable
7 inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. ----, 129 S.Ct.
8 1937, 1949 (2009).

9 In addition, factual allegations asserted by pro se petitioners, “however inartfully pleaded,” are held
10 “to less stringent standards than formal pleadings drafted by lawyers.” *Haines v. Kerner*, 404 U.S. 519, 520
11 (1972). Thus, where a plaintiff appears pro se in a civil rights case, the Court must construe the pleadings
12 liberally and afford plaintiff any benefit of the doubt. *See Karim-Panahi v. Los Angeles Police Dept.*, 839
13 F.2d 621, 623 (9th Cir. 1988).

14 B. Eighth Amendment Standard

15 Prison officials violate the Eighth Amendment if they act with deliberate indifference to a prisoner’s
16 serious medical needs. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). A plaintiff alleging such a violation
17 must satisfy a two-part test containing both an objective and a subjective component. *Hallett v. Morgan*,
18 296 F.3d 732, 744 (9th Cir. 2002) (citation omitted). A plaintiff must prove that the defendant prison
19 official (1) deprived him of the “minimal civilized measure of life’s necessities;” and (2) acted with
20 deliberate indifference by denying, delaying or intentionally interfering with medical treatment. *Id.* (citations
21 omitted). A prisoner’s civil rights will only be abridged if “the indifference to his medical needs [is]
22 substantial. Mere ‘indifference,’ ‘negligence,’ or ‘medical malpractice’ will not support this cause of
23 action.” *Broughton v. Cutter Labs.*, 622 F.2d 458, 460 (9th Cir. 1980) (citing *Estelle*, 429 U.S. at 105-06).

24 A prison official acts with deliberate indifference only if the official “knows of and disregards an
25 excessive risk to inmate health or safety.” *Farmer v. Brennan*, 511 U.S. 825, 834 (1994). “If a prison
26 official should have been aware of the risk, but was not, then the [official] has not violated the Eighth
27 Amendment, no matter how severe the risk.” *Toguchi v. Chung*, 391 F.3d 1051, 1057 (9th Cir. 2004)
28 (quotation omitted). “Deliberate indifference is a high legal standard.” *Id.* at 1060. Where a prisoner

1 alleges delay in receiving medical treatment, he must show that the delay led to further harm. *See Shapely*
2 *v. Nevada Bd. of State Prison Comm'rs*, 766 F.2d 404, 407 (9th Cir. 1985) (citing *Estelle*, 429 U.S. at 106).

3 **IV. APPLICABILITY OF STANDARDS TO DEFENDANTS' MOTION TO DISMISS**

4 A. Judicial Notice

5 As an initial matter, Plaintiff has asked the Court to take judicial notice of several items in
6 considering Defendants' motion. The first of these is Exhibit "A" which is a memorandum written by the
7 Warden of Kern Valley State Prison to the Custody Staff stating that medical chronos, no matter where
8 issued, must be honored by all staff. [Opp. at 1.] The exhibit is not attached to Plaintiff's Complaint, only
9 to his Opposition, and is thus not part of Plaintiff's pleadings. *See Schneider v. California Dep't of Corr.*,
10 151 F.3d 1194, 1197 n.1 (9th Cir. 1998) (opposition memoranda do not constitute pleadings under Federal
11 Rule of Civil Procedure 7(a)). As a general rule, when resolving a motion to dismiss for failure to state a
12 claim, the Court may not consider materials outside the pleadings. *Id.* "The focus of any Rule 12(b)(6)
13 dismissal ... is the complaint." *Id.* An exception may be made for documents that are "matters of public
14 record." *See* Fed. R. Evid. 201; *Mack v. South Bay Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir. 1986),
15 *overruled on other grounds*, *Astoria Federal Sav. And Loan Ass'n v. Solimino*, 501 U.S. 104 (1991).
16 However, Plaintiff's exhibit is an internal memorandum and does not fall within the parameter of a public
17 record. Therefore, the Court declines to take judicial notice of Plaintiff's Exhibit "A."

18 Plaintiff asks the Court to further take judicial notice that he was unable to serve his Complaint on
19 Defendant Thomas due to a change in her employment address and difficulty in obtaining a forwarding
20 address. The Court's docket reflects that the summons for Thomas was returned unexecuted. [Doc. No. 21.]
21 The Court addresses this issue at the conclusion of this Order, separately from the motion to dismiss, as
22 Defendant Thomas is not a party to the motion.

23 Plaintiff also asks the Court to take judicial notice of the "numerous civil cases that have been filed
24 against defendant Thomas by searching your database" as proof that "defendants Scribner, Edwards and
25 Levin were aware [of her pattern of abuse and] of the serious risk of harm to inmates long before my injuries
26 there and refused to stop her." [Opp. at 6.] Even if the Court were to take judicial notice of lawsuits against
27 Thomas, this information is insufficient for the purpose Plaintiff intends. Filed, but unresolved, lawsuits
28 are mere allegations, not proof, of wrongdoing. Further, each case must be decided on its own facts. As

1 such, there is no probative value in searching for other cases against Thomas and the Court declines to
2 undertake the task.

3 B. Claim Against Levin

4 Plaintiff alleges Defendant Martin Levin, Calipatria's chief medical officer, acted with deliberate
5 indifference when he failed to respond to Plaintiff's letter for immediate medical assistance. [Compl. at 3.]
6 Plaintiff wrote to Levin on August 21, 2006, and now claims that because of Levin's lack of response or
7 action regarding the letter, six days later, on August 27, 2006, Plaintiff fell down the second tier stairs of
8 his housing unit and injured himself. [*Id.*] Plaintiff claims he suffered a spinal cord injury. [*Id.*]

9 A delay in treatment does not constitute a violation of the Eighth Amendment, unless the delay or
10 denial was harmful. *See Shapley*, 766 F.2d at 407; *Hunt v. Dental Dep't*, 865 F.2d 198, 200 (9th Cir. 1989)
11 ("[D]elay in providing a prisoner with dental treatment, standing alone, does not constitute an Eighth
12 Amendment violation."). Furthermore, the delay must have "occurred to patients with problems so severe"
13 that prison officials should have known the delay would cause significant harm to the prisoner. *Hallett*, 296
14 F.3d at 746.

15 An interim of six days passed between the time of Plaintiff's submission of his letter to Levin and
16 Plaintiff's fall. At the time of his fall from the stairs, Plaintiff's medical records were locked in Levin's
17 office for the weekend, which indicates Levin was investigating Plaintiff's medical needs. Although
18 Plaintiff walked with the support of a cane, he was capable of using the stairs. A copy of Plaintiff's medical
19 record attached to the Complaint reflects that although there was a chrono stating he required lower
20 tier/lower bunk accommodation, the same physician who issued that chrono also noted that Plaintiff was able
21 to walk up a flight of stairs without aids such as crutches. [Compl. Exs., Doc. No. 1-1 at 2-3.] Moreover,
22 although Plaintiff states that he had suffered falls while descending from the upper bunk, he does not say
23 he had difficulty climbing down the stairs. In fact, it is unclear from Plaintiff's Complaint whether his letter
24 to Levin went beyond a request for the facility to honor his medical chrono; he does not state that he
25 informed Levin about the falls from the upper bunk or that he had difficulties descending the stairs. Thus,
26 the Court cannot infer that Plaintiff's problems were known to Levin or that they were so severe that Levin
27 should have known that failing to act within six days of receiving Plaintiff's letter would lead to significant
28 harm. Bearing in mind that "only the unnecessary and wanton infliction of pain implicates the Eighth

1 Amendment,” the Court finds the record and pleadings insufficient to draw the reasonable inference that
2 Levin displayed deliberate indifference to Plaintiff’s serious medical needs. *Farmer*, 511 U.S. at 834.

3 Plaintiff contends that Levin should be liable because “[i]t was his job to correct any and all of the
4 wrong [] decisions defendant Thomas made.” [Opp. at 2.] Supervisory personnel are generally not liable
5 under 42 U.S.C. § 1983. *See Monell v. Dep’t of Soc. Servs. of City of New York*, 436 U.S. 658, 691-92
6 (1978) (Congress did not intend to impose liability vicariously on employers or supervisors solely based on
7 the existence of employer-employee relationship); *see also Palmer v. Sanderson*, 9 F.3d 1433, 1437-38 (9th
8 Cir. 1993) (there is no respondeat superior liability under section 1983). Supervisory prison officials may
9 only be held liable for the allegedly unconstitutional violations of a subordinate if Plaintiff sets forth
10 allegations which show: (1) how or to what extent they personally participated in or directed a subordinate’s
11 actions, and (2) in either acting or failing to act, they were an actual and proximate cause of the deprivation
12 of Plaintiff’s constitutional rights. *See Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978). Plaintiff does
13 not allege that Levin directed Thomas to disregard Plaintiff’s lower tier/lower bunk chrono. Nor does
14 Plaintiff allege facts that show Levin knew about his falls or that his condition could lead to falling down
15 a flight of stairs and wantonly disregarded such danger by failing to act immediately.

16 Even liberally construed, Plaintiff’s Complaint fails to set forth facts which state an individualized
17 constitutional claim against Defendant Levin. Thus, the Court **GRANTS** the Motion to Dismiss with regard
18 to the claim against Levin.

19 C. Claim Against Scribner

20 Plaintiff alleges that the Warden at Calipatria, Defendant Scribner, refused to respond to requests
21 for help and intervention. [Compl. at 3.] Plaintiff alleges he first wrote to Scribner on April 23, 2006 and
22 alleges that due to Scribner’s failure to respond to this letter, Plaintiff fell down the stairs four days later.
23 [Id.]

24 As discussed above with respect to the claim against Defendant Levin, there is nothing to suggest
25 Scribner knew he had to act immediately to prevent Plaintiff from incurring serious injury. At most,
26 Scribner would have known that Plaintiff had a chrono that he wanted honored because he was having falls
27 from climbing down from the upper tier of his bunk bed but that he was capable of using the stairs without
28 the use of aids. There is nothing in the record that suggests Scribner would know that Plaintiff’s arthritis

1 was so debilitating that he needed to intervene immediately to prevent substantial harm. Plaintiff has not
2 shown that Scribner knew of and disregarded an excessive risk to his health or safety. *See Farmer*, 511 U.S.
3 at 834.

4 Following the fall, Plaintiff alleges he received immediate medical care and was admitted to the
5 infirmary. [Compl. at 2.] Plaintiff alleges he wrote to Scribner again on September 12, 2006 and received
6 no response. Plaintiff has failed to articulate how Scribner's delay in personally responding to this letter
7 caused harm to him at this point. *See Shapely*, 766 F.2d at 407 (a claim of deliberate indifference must show
8 delay was harmful). On the contrary, Plaintiff alleges that his complaints were being investigated by
9 Defendant Edwards and as a result of the investigation, Defendant Thomas performed her first physical
10 examination of him. [Compl. at 2.] Moreover, a failure to investigate by a prison official in itself does not
11 violate Plaintiff's constitutional rights because a prison grievance procedure is a procedural right only and
12 does not confer substantive right to inmates. *See Ramirez v. Galaza*, 334 F.3d 850, 860 (9th Cir. 2003) (no
13 liberty interest in processing of appeals because no entitlement to a specific grievance procedure).

14 The Court finds that Plaintiff has not presented facts that would support a claim of deliberate
15 indifference to Plaintiff's medical needs on the part of Defendant Scribner. Thus, the Court **GRANTS**
16 Defendant Scribners' Motion to Dismiss.

17 D. Claims Against Vrooman and Sepulveda

18 Plaintiff alleges medical staff, Vrooman and Sepulveda, were "deliberately indifferent" to his
19 medical needs because they "refused to fill out the injury incident reports" regarding Plaintiff's falls.
20 [Compl. at 2] Plaintiff also alleges Vrooman stated he was unable to retrieve Plaintiff's medical records on
21 August 26, 2006 because they were locked up in Defendant Levin's office for the weekend.¹ [*Id.* at 3.]

22 The Court cannot reasonably infer that Vrooman's and/or Sepulveda's alleged actions constituted
23 a denial, delay or intentional interference with medical treatment sufficient to constitute a violation of

24
25 ¹ In his Opposition, Plaintiff newly alleges that Vrooman and Sepulveda directly assisted Thomas
26 in cutting off his medication for weeks at a time, lying to him about the medications and taking him off a
27 list of patients to be seen by the doctor. [Opp. at 3 & 5.] The Court will not consider these allegations
28 because "[t]he focus of any Rule 12(b)(6) dismissal ... is the complaint." *Schneider*, 151 F.3d at 1197
n.1. This precludes consideration of "new" allegations that may be raised in a plaintiff's opposition to a
motion to dismiss brought pursuant to FED. R. CIV. P. 12(b)(6). *Id.* (citations omitted). Liberal
construction does not require the Court to consider facts alleged in the Opposition that are not contained
in the body of the pleading itself. *See Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of*
Carpenters, 459 U.S. 519, 526 (1983).

1 Plaintiff's constitutional rights. Plaintiff does not allege that Vrooman and/or Sepulveda refused to
2 medically treat him or that the alleged failure to fill out incident reports had any impact on his medical
3 circumstances.

4 To the extent that Plaintiff's claim rests on Defendants' failure to follow institutional rules,
5 Plaintiff's claim is more akin to a due process violation. Plaintiff states "MTA Mr. Vrooman and Nurse Ms.
6 Sepulveda were the ones who refused to fill out the injury incident reports" and that the medical staff's "set
7 procedures 'require[d] them to [fill out the injury incident reports].'" [*Id.* at 2.] Even assuming Defendants
8 did violate prison procedures, this cannot be the basis for a civil rights claim because Plaintiff does not have
9 a constitutional right to implementation of prison procedures. *See Ramirez*, 334 F.3d at 860.

10 Plaintiff's alleged facts do not support an inference of deliberate indifference on the part of Vrooman
11 and/or Sepulveda. Therefore, the Court **GRANTS** Vrooman and Sepulveda's Motion to Dismiss.

12 E. Claims Against Edwards

13 Plaintiff alleges Defendant Edwards was deliberately indifferent because she was the appeals
14 coordinator at Calipatria and failed to respond to his emergency appeals. However, the Complaint alleges
15 that "Ms. Edwards went to question the clinic staff and Ms. Thomas in response to my emergency medical
16 appeals [] I submitted on her [Thomas'] refusal to see me." [Compl. at 2] Plaintiff alleges that the reason
17 he was seen by Defendant Thomas on September 22, 2006 was because of Edwards' questioning of the
18 clinic staff.

19 The Court finds that Plaintiff has failed to plead facts sufficient to draw the reasonable inference that
20 Defendant Edwards was deliberately indifferent to Plaintiff's medical needs. Therefore, the Court **GRANTS**
21 Edward's Motion to Dismiss.

22 V. SERVICE ON DEFENDANT THOMAS

23 On November 9, 2009, the Court ordered the Clerk of Court to issue a summons upon all Defendants,
24 including Thomas. [Doc. No. 16.] On February 1, 2010, the summons was returned unexecuted as to
25 Thomas. [Doc. No. 21.] In his Opposition, Plaintiff states Thomas no longer works at Calipatria and the
26 litigation coordinator has refused to provide Plaintiff with a forwarding address. Plaintiff asks the Court to
27 order that Defendants release Thomas' forwarding address in order to effectuate service.

28 Plaintiff's request is inappropriately made in his Opposition to Defendants' Motion to Dismiss.

1 However, because this Court must construe Plaintiff's pleadings liberally and acknowledges that Plaintiff
2 has made an effort to serve Defendant Thomas, the Court will treat Plaintiff's request as a motion for an
3 order compelling Defendants to provide the U.S. Marshals Service with the location of Defendant Thomas.

4 In cases involving a plaintiff proceeding IFP, a United States Marshal, upon order of the court, shall
5 serve the summons and the complaint. FED. R. CIV. P. 4(c)(3); 28 U.S.C. § 1915(d). "[A]n incarcerated
6 pro se plaintiff proceeding in forma pauperis is entitled to rely on the U.S. Marshal for service of the
7 summons and complaint and ... should not be penalized by having his action dismissed for failure to effect
8 service where the U.S. Marshal or the court clerk has failed to perform his duties." *Walker v. Sumner*, 14
9 F.3d 1415, 1422 (9th Cir. 1994) (quoting *Puett*, 912 F.2d at 275), *abrogated on other grounds by Sandin*
10 *v. Conner*, 515 U.S. 472 (1995). "So long as the prisoner has furnished the information necessary to identify
11 the defendant, the marshal's failure to effect service is automatically good cause." *Walker*, 14 F.3d at 1422
12 (quotation omitted). Here, because Plaintiff has not yet been able to ascertain the proper location where
13 Defendant Thomas may now be served, Plaintiff must remedy the situation or face dismissal of his claims
14 against Thomas. *See Walker*, 14 F.3d at 1421-22 (holding prisoner failed to show cause why prison official
15 should not be dismissed under Rule 4(m) where prisoner failed to show he had provided Marshal with
16 sufficient information to effectuate service).

17 Accordingly, as long as Defendant Thomas is currently employed by the CDCR and/or her
18 forwarding address can be easily ascertained by reference to the CDCR's personnel records, Plaintiff is
19 entitled to rely on the U.S. Marshal to effect service upon Defendant Thomas on his behalf. *See Puett*, 912
20 F.2d at 275. The Court therefore **GRANTS** Plaintiff's motion to direct service and hereby directs the
21 Deputy Attorney General assigned to this case to contact either the Litigation Coordinator at Calipatria State
22 Prison or the CDCR's Legal Affairs Division, if necessary, and obtain a current address within the CDCR's
23 records or possession, and to forward that address to the U.S. Marshals Service in a confidential
24 memorandum.

25 **VI. CONCLUSION AND ORDER**

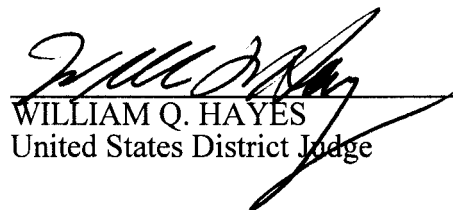
26 **IT IS HEREBY ORDERED** that the Court **GRANTS** the Motion to Dismiss by Defendants Levin,
27 Vrooman, Sepulveda, Scribner and Edwards. [Doc. No. 26.] Plaintiff's Complaint as to those Defendants
28 is **DISMISSED** without prejudice.

1 As to Defendant Thomas, the Court **ORDERS** the Attorney General's office to obtain Thomas' last
2 known contact information from the CDCR, and provide this information to the U.S. Marshal in a
3 *confidential memorandum* indicating that the summons and Complaint are to be delivered to the specified
4 address. The Deputy Attorney General assigned to this case shall provide the U.S. Marshal with any such
5 information on or before **October 20, 2010**. Within forty-five (45) days of receipt of any available addresses
6 from the Deputy Attorney General, the Court **ORDERS** the U.S. Marshal to serve a copy of Plaintiff's
7 Complaint and summons upon Thomas. All costs of service shall be advanced by the United States pursuant
8 to the Court's November 9, 2009 Order directing service pursuant to 28 U.S.C. § 1915(d) and Fed. R. Civ.
9 P. 4(c)(3). [Doc. No. 16.]

10 **IT IS FURTHER ORDERED** that the Clerk of the Court provide a copy of: (1) the Court's
11 November 9, 2009 Service Order [doc. no. 16]; (2) this Order; and (3) the Complaint, summons and a blank
12 U.S. Marshal Form 285 to the Deputy Attorney General for purposes of re-attempting service as to
13 Defendant Thomas. Both the Deputy Attorney General and the Office of the U.S. Marshal are **ORDERED**
14 to keep any address provided for Thomas strictly confidential. Thus, any such address *shall not* appear on
15 any U.S. Marshal Form 285, *shall not* be provided to Plaintiff, and *shall not* be made part of the Court's
16 record.

17 In the event that the CDCR does not have an updated address for Thomas, the Deputy Attorney
18 General shall file a Declaration with the Court to that effect by no later than **October 20, 2010**.

19 Dated: 9/3/10

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21 WILLIAM Q. HAYES
22 United States District Judge
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