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CENTRAL DISTRICT OF CALIFORNIA

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S.A. THOMAS and E.L. GIPSON, ) Case No. CV 04-08448 DDP (SHx)  
)  
Plaintiffs, ) ORDER DENYING WITHOUT PREJUDICE  
) PLAINTIFFS' MOTION FOR CLASS  
v. ) CERTIFICATION AND AMENDED MOTION  
) FOR CLASS CERTIFICATION  
)  
LEROY BACA, MICHAEL )  
ANTONOVICH, YVONNE BURKE, ) [Motions filed on 12/17/04 and  
DEANE DANA, DON KNABE, ) 3/21/05]  
GLORIA MOLINA, ZEV )  
YAROSLAVSKY, )  
)  
Defendants. )

This matter is before the Court on the plaintiffs' motion for class certification and their amended motion for class certification. It appears from the proof of service sheets attached to these motions, as well as the comments made therein, that the plaintiffs' counsel failed to serve both of the defendants' law firms. The plaintiffs' counsel contends that he is not required to serve both firms because Fed. R. Civ. P. 5(A) only requires that "every paper . . . shall be served upon each of the parties." (Reply at 8, n. \*\*. ) However, the Court notes that when a defendant is sued in both his individual and official capacity,

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1 two different types of liability are implicated; therefore, in  
2 effect, two different parties are sued. One is the private person  
3 who may be personally liable and whose own funds may be at risk.  
4 The other is the public official who is actually a proxy for the  
5 public body for whom he works. Accordingly, because the  
6 plaintiffs' counsel failed to properly effect service, the Court  
7 denies the plaintiffs' motions without prejudice.

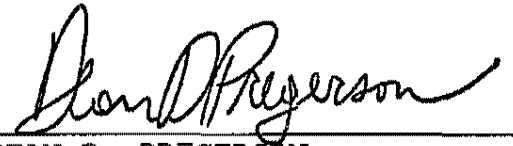
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9 IT IS SO ORDERED.

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12 Dated: 4-7-05



DEAN D. PREGERSON  
United States District Judge

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