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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

JAMES L. THOMPSON,

1:04-cv-06755-LJO-SMS-PC

Plaintiff,

ORDER DISCHARGING COURT'S ORDER  
TO SHOW CAUSE  
(Doc. 45.)

v.

F. REYNOSO, et al.,

ORDER FINDING RE-SERVICE OF PROCESS  
UPON DEFENDANT SGT. REYNOSO  
APPROPRIATE

Defendants.

ORDER FOR CLERK TO FORWARD  
SERVICE DOCUMENTS TO PLAINTIFF FOR  
COMPLETION AND RETURN WITHIN  
THIRTY DAYS

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James L. Thompson ("plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action on December 27, 2004. (Doc. 1.) On July 24, 2006, plaintiff filed an amended complaint, upon which this action now proceeds. (Doc. 16.)

On December 1, 2008, the Court issued an order to show cause, requiring plaintiff to show cause within thirty days why defendant Sgt. Reynoso should not be dismissed from this action, in light of the fact that the United States Marshal was unable to execute service upon Sgt. Reynoso due to information from the California Department of Corrections ("CDC") that Sgt. Reynoso was not an employee and his name did not appear on the CDC's database. (Doc. 45.)

1 On December 30, 2008, plaintiff filed a written response to the Court's order to show cause.  
2 (Doc. 46.)

3 Plaintiff argues that defendant Reynoso should not be dismissed from this action because  
4 Reynoso is an employee of the CDC, and the CDC should be able to locate him for service.  
5 Plaintiff claims that Frank Reynoso, who is the same person as Sgt. Reynoso, was successfully  
6 served at Corcoran State Prison by the United States Marshal in plaintiff's prior action, case 1:04-  
7 cv-06554-SMS-P Thompson v. Morales. Plaintiff submits evidence that Frank Reynoso testified  
8 at trial in this court on April 22, 2008, as a defendant in plaintiff's prior case. (Pltf's Response,  
9 Doc. 46, Exh A.)

10 Plaintiff's argument has merit. A review of the Court's record shows that defendant Frank  
11 Reynoso was successfully served with process at Corcoran State Prison by the Marshal in  
12 plaintiff's prior case. On August 8, 2005, the Marshal filed a return of executed service and a  
13 waiver of service of summons for Sgt. F. Reynoso, and on August 17, 2005, Reynoso filed an  
14 answer to the complaint. (Court Record for case 1:04-cv-06554, Docs. 33 & 34.) In addition,  
15 the Court's record shows that Frank Reynoso testified at trial at this court on April 22, 2008. (Id.,  
16 Docs. 109 & 110.) In light of this evidence, the Court finds that re-service of process upon  
17 defendant Reynoso is appropriate.

18 Accordingly, IT IS HEREBY ORDERED that:

- 19 1. The court's order to show cause filed December 1, 2008, is DISCHARGED;
- 20 2. Re-service is appropriate for defendant Sgt. Frank Reynoso;
- 21 3. The Clerk of the Court shall send plaintiff one (1) USM-285 form, one (1)  
22 summons, a Notice of Submission of Documents form, an instruction sheet and a  
23 copy of the first amended complaint filed July 24, 2006 (Doc. 16.);
- 24 4. Within **thirty (30) days** from the date of service of this order, plaintiff shall  
25 complete the Notice of Submission of Documents form and submit the completed  
26 Notice to the court with the following documents:
  - 27 a. Completed summons;
  - 28 b. One completed USM-285 form for defendant Sgt. Frank Reynoso; and

1 c. Two (2) copies of the endorsed first amended complaint filed July 24,  
2 2006;

3 5. Plaintiff need not attempt service on defendant and need not request waiver of  
4 service. Upon receipt of the above-described documents, the court will direct the  
5 United States Marshal to serve the above-named defendant pursuant to Federal  
6 Rule of Civil Procedure 4 without payment of costs; and

7 6. The failure to comply with this order will result in a recommendation that this  
8 action be dismissed.

9 IT IS SO ORDERED.

10 Dated: April 8, 2009

/s/ Sandra M. Snyder

UNITED STATES MAGISTRATE JUDGE