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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIE D. RANDLE,
Plaintiff,

v.
L. V. FRANKLIN, ET AL.,
Defendant.

Case No. 1:08-cv-0845 JAT (PC)

ORDER

On April 17, 2009, this Court ordered that Plaintiff could require four Defendants to respond to the complaint: Franklin, Nicolas, Control Officer Philips and Sergeant Philips. Defendant Franklin has been served and has requested on extension of time to answer. Plaintiff completed one summons for “Correctional Officer ‘Sergeant Philips.’” On June 25, 2009, the Marshals returned the summons for this person unexecuted with the comment “facility has no Sergeant Philips.” Thus, Plaintiff has apparently misidentified Philips’ rank. The Court does not know the status of service on Nicolas or Control Officer Philips.

Based on the foregoing,

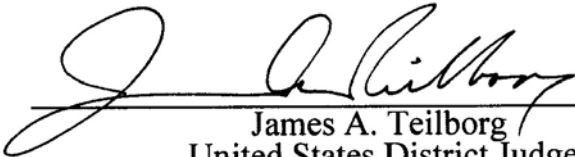
IT IS ORDERED that Defendant Franklin’s motion for extension of time to answer (Doc. #273) is granted to the extent that Defendant Franklin shall answer or otherwise respond to the complaint by October 5, 2009.

IT IS FURTHER ORDERED that, within 30 days of this Order, Plaintiff shall complete a new service packet for “Sergeant Philips” and shall correctly or more

1 specifically identify the defendant he is serving. With this Order, the Clerk of the Court
2 shall send Plaintiff another service packet for this purpose, including the Complaint (Doc.
3 #1), this Order, the Order of April 17, 2009 (Doc. #268) a Notice of Submission of
4 Documents form, an instruction sheet, and a copy of a summons and USM-285-form for
5 "Sergeant Philips." Plaintiff should not attempt to personally serve Philips and must not
6 request a waiver of service; once the Clerk has received the Notice of Submission of
7 Documents and the required documents, the Court will direct the Marshals to attempt
8 service by waiver or personal service. If Plaintiff fails to return a new service packet
9 within 30 days, "Sergeant Philips" will be dismissed, without prejudice, for failure to
10 prosecute and failure to timely serve under Federal Rules of Civil Procedure 41(b) and
11 4(m).

12 IT IS FURTHER ORDERED that the Clerk of the Court shall forward a copy of
13 this Order to the Marshals. Per the Order of May 8, 2009 (Doc. #270), if service by
14 waiver had not be accomplished in sixty days (July 8, 2009), the Marshals were required
15 to proceed to personal service. Within 10 days of the date of this Order, a representative
16 of the Marshals office shall file a status report of what efforts have been made to
17 personally serve Defendant Control Officer Philips and Defendant Nicolas.

18 Dated this 26th day of August, 2009.

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22 James A. Teilborg
23 United States District Judge
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