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

George Reed, III,	)	No. CV 1-1:08-00910-MHM
Plaintiff,	)	<b>ORDER</b>
vs.	)	
Captain Williams, et al.,	)	
Defendants.	)	

In a November 6, 2009 Order (doc.# 13), the Court gave Plaintiff 30 days to complete and return to the Clerk of Court a Notice of Submission of Documents and submit with the Notice a copy of the First Amended Complaint, a copy of the Court's November 6, 2009 Order, a completed summons for each Defendant, and a completed USM-285 for each Defendant. Plaintiff was informed that the failure to timely submit those documents would result in the dismissal of this case. On January 5, 2010, this case was dismissed because Plaintiff had not submitted the documents. (Doc.# 15.) The next day, a notice of submission of documents was received from Plaintiff and filed. (Doc.# 16.) On January 26, 2010, Plaintiff filed a motion to re-open the case.<sup>1</sup> (Doc.# 17.) The Court will grant Plaintiff's motion to reopen and order service documents forwarded to the U.S. Marshal for service.

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<sup>1</sup> In his motion, Plaintiff explains that he was hospitalized during part of December and legal mail was not forwarded to him by prison authorities. He further states that he lacked supplies with which to prepare a notice of submission.

TERMPSPREF

1 Accordingly,

2 **IT IS ORDERED:**

3 (1) Plaintiff's motion to reopen is **granted**, doc.# 17. and entry of Judgment on  
4 January 5, 2010, doc.# 15, is **vacated**.

5 (2) The Clerk of Court must send to the United States Marshal:

6 (a) a copy of the First Amended Complaint for each Defendant to  
7 be served,

8 (b) a copy of the Court's November 6, 2009 Order for each  
9 Defendant to be served,

10 (c) a completed and issued summons for each Defendant to be  
11 served,

12 (d) a completed USM-285 for each Defendant to be served, and

13 (e) a copy of this Order.

14 (3) If Plaintiff does not either obtain a waiver of service of the summons or  
15 complete service of the Summons and First Amended Complaint on a Defendant within 120  
16 days of the filing of this Order, the action may be dismissed as to each Defendant not served.  
17 Fed. R. Civ. P. 4(m).

18 (4) The United States Marshal must retain the Summonses, USM-285 forms, a  
19 copy of the First Amended Complaint, a copy of the Court's December 3, 2009 Order, and  
20 a copy of this Order for future use.

21 (5) Within 10 days of the date this Order is filed, the United States Marshal must  
22 notify Defendants of the commencement of this action and request waiver of service of the  
23 summons pursuant to Rule 4(d) of the Federal Rules of Civil Procedure. The notice to  
24 Defendants must include a copy of this Order and the Court's November 6, 2009 Order  
25 (doc.# 13).

26 (6) The United States Marshal must immediately file requests for waivers that were  
27 returned as undeliverable and waivers of service of the summons.

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1 (7) If a waiver of service of summons is not returned by a Defendant within 60  
2 days from the date the request for waiver was sent by the United States Marshal, the Marshal  
3 must:

4 (a) personally serve copies of the Summons, the First Amended Complaint,  
5 the Court's November 6, 2009 Order, and this Order upon Defendant pursuant to Rule  
6 4(e)(2) of the Federal Rules of Civil Procedure, and shall command all necessary  
7 assistance from the California Department of Corrections and Rehabilitation (CDCR)  
8 to execute this Order. The United States Marshal must maintain the confidentiality  
9 of all information provided by the CDCR pursuant to this Order.

10 (b) within 10 days after personal service is effected, file the return of service  
11 for Defendant, along with evidence of the attempt to secure a waiver of service of the  
12 summons and of the costs subsequently incurred in effecting service upon Defendant.  
13 The costs of service must be enumerated on the return of service form (USM-285) and  
14 must include the costs incurred by the Marshal for photocopying additional copies of  
15 the Summons, First Amended Complaint, the November 6, 2009 Order, or this Order  
16 and for preparing new process receipt and return forms (USM-285), if required. Costs  
17 of service will be taxed against the personally served Defendant pursuant to Rule  
18 4(d)(2) of the Federal Rules of Civil Procedure, unless otherwise ordered by the  
19 Court.

20 (8) **A Defendant who agrees to waive service of the Summons and First**  
21 **Amended Complaint must return the signed waiver forms to the United States Marshal,**  
22 **not the Plaintiff.**

23 (9) Defendants must answer the First Amended Complaint or otherwise respond  
24 by appropriate motion within the time provided by the applicable provisions of Rule 12(a)  
25 of the Federal Rules of Civil Procedure.

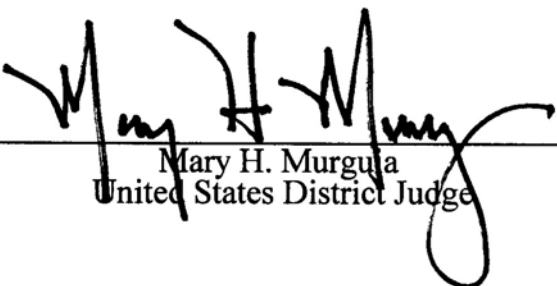
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(10) Any answer or response must state the specific Defendant by name on whose behalf it is filed. The Court may strike any answer, response, or other motion or paper that does not identify the specific Defendant by name on whose behalf it is filed.

DATED this 21<sup>st</sup> day of February, 2010.



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Mary H. Murgula  
United States District Judge