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

KAJAUNA KENYATTA IRVIN,)	Case No.: 1:10-cv-01940-AWI-SAB (PC)
Plaintiff,)	
v.)	SECOND ORDER DIRECTING UNITED STATES MARSHAL TO SERVE DEFENDANT GUTHERY
JAMES A YATES, et al.,)	
Defendants.)	[ECF Nos. 122, 123]
)	
)	

Plaintiff Kajauna Kenyatta Irvin is appearing pro se in this civil rights action pursuant to 42 U.S.C. § 1983 and the Religious Land Use and Institutionalized Persons Act (“RLUIPA”). The case was removed from state court on October 14, 2010.

On July 22, 2015, the USM-285 form was returned unexecuted as to Defendant Ernest Guthery. (ECF No. 103.) On July 23, 2015, Plaintiff was granted thirty days to attempt service of process on Defendant Guthery. (ECF No. 104.)

On September 16, 2015, after the expiration of more than thirty days with no indication that Defendant Guthery has been served, the Court issued an order to show cause why Defendant Guthery should not be dismissed. (ECF No. 117.)

On November 5, 2015, Plaintiff filed a response to the order to show cause along with a complete copy of the USM-285 form, two copies of the fourth amended complaint, and one complete summons forms for re-service of Defendant Guthery. (ECF Nos. 122, 123.)

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Accordingly, pursuant to Federal Rule of Civil Procedure 4(c), it is **HEREBY ORDERED** that:

1. The Clerk of the Court is directed to forward to the United States Marshals Service the Notice of Submission of Documents, filed by Plaintiff on November 5, 2015 (ECF No. 122).

2. Within ten days from the date of this order, the Marshals Service is directed to notify the following defendant of the commencement of this action and to request a waiver of service in accordance with the provisions of Fed. R. Civ. P. 4(d) and 28 U.S.C. § 566(c):

E. GUTHERY

3. The Marshals Service shall file the returned waiver of service, or the request for waiver of service if it is returned as undelivered, as soon as it is received.

4. If the waiver of service is not returned by the defendant within sixty days of the date of mailing the request for waiver, the Marshals Service shall:

a. Personally serve process and a copy of this order upon the defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure and 28 U.S.C. § 566(c), and shall command all necessary assistance from the California Department of Corrections and Rehabilitation (CDCR) to execute this order. The Marshals Service shall maintain the confidentiality of all information provided by the CDCR pursuant to this order. In executing this order, the Marshals Service shall contact the Legal Affairs Division of CDCR and request the assistance of a Special Investigator if the Litigation Office at the institution is unable to assist in identifying and/or locating defendants.

b. Within ten days after personal service is effected, the Marshals Service shall file the return of service for the defendant, along with evidence of any attempts to secure a waiver of service of process and of the costs subsequently incurred in effecting service on said defendant. Said costs shall be enumerated on the USM-285 form and shall include the costs incurred by the Marshals Service for photocopying additional copies of the summons and complaint and for preparing new USM-285 forms, if required. Costs of service will be taxed against the personally served defendant in accordance with the provisions of Fed. R. Civ. P. 4(d)(2).

5. **If the defendant waives service, he is required to return the signed waiver to the Marshals Service. The filing of an answer or a responsive motion does not relieve the defendant**

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of this requirement, and the failure to return the signed waiver may subject the defendant to an order to pay the costs of service pursuant to Fed. R. Civ. P. 4(d)(2).

6. In the event that the defendant either waives service or is personally served, he is required to reply to the complaint. 42 U.S.C. § 1997e(g)(2).

IT IS SO ORDERED.

Dated: November 9, 2015



UNITED STATES MAGISTRATE JUDGE