

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

HARVEY CURTIS BAKER,  
  
Plaintiff,  
  
v.  
  
JAMES A. YATES, et al.,  
  
Defendants.

Case No. 1:12-cv-00126-LJO-SAB

ORDER FINDING SERVICE OF  
COMPLAINT APPROPRIATE AND  
FORWARDING SERVICE DOCUMENTS  
TO PLAINTIFF FOR COMPLETION AND  
RETURN WITHIN THIRTY DAYS

On December 26, 2013, Plaintiff Harvey Curtis Baker (“Plaintiff”) filed the First Amended Complaint in this action. (ECF No. 68.) The First Amended Complaint appears to be largely identical to the “State Tort Complaint” filed by Plaintiff on March 14, 2013, with the exception that Defendant Officer Jane Doe #1 from the State Tort Complaint is replaced with Defendant S. Moore. Accordingly, the Court construes Plaintiff’s filing as a notice to substitute Defendant S. Moore in place of Officer Jane Doe #1 as the defendant in this action.<sup>1</sup>

Having identified Defendant S. Moore, the Court finds service of the complaint appropriate. Accordingly, it is **HEREBY ORDERED** that:

<sup>1</sup> The Court notes that Plaintiff’s First Amended Complaint restates the allegations in the original State Tort Complaint, including those pertaining to claims that were dismissed by the Court. (See ECF Nos. 54, 59, 61, 62.) Presumably, Plaintiff restated these allegations so that the First Amended Complaint conformed as closely as possible to the prior complaint, and not in an attempt to revive claims already dismissed from this action. To the extent that Plaintiff wishes to assert new or different claims beyond those that the Court found cognizable in its screening order, Plaintiff must file a motion to amend his complaint. Otherwise, this action shall only proceed on those claims found to be cognizable in the Court’s April 9, 2013 screening order.

1 1. Service shall be initiated on the following defendants:

2 **S. MOORE**

3 2. The Clerk of the Court shall send Plaintiff one (1) USM-285 form, one (1)  
4 summons, a Notice of Submission of Documents form, an instruction sheet and a  
5 copy of the First Amended Complaint filed December 26, 2013;

6 3. Within **thirty (30) days** from the date of this order, Plaintiff shall complete the  
7 attached Notice of Submission of Documents and submit the completed Notice to  
8 the Court with the following documents:

9 a. One completed summons for each defendant listed above;

10 b. One completed USM-285 form for each defendant listed above;

11 c. Two (2) copies of the endorsed First Amended Complaint filed December  
12 26, 2013; and

13 d. All CDCR Form 602 documentation submitted in relation to this case;

14 4. Plaintiff need not attempt service on the defendants and need not request waiver  
15 of service. Upon receipt of the above-described documents, the Court will direct  
16 the United States Marshal to serve the above-named defendants pursuant to  
17 Federal Rule of Civil Procedure 4 without payment of costs; and

18 5. The failure to comply with this order will result in dismissal of this action.

19 IT IS SO ORDERED.

20 Dated: January 7, 2014

21   
22 \_\_\_\_\_  
23 UNITED STATES MAGISTRATE JUDGE