

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

THURMAN GAINES,

Plaintiff,

vs.

CALIFORNIA DEPARTMENT OF
CORRECTIONS, *et al.*,

Defendants.

Case No. 1:15-cv-00587-RRB

SERVICE ORDER

On April 14, 2016, the Court gave Plaintiff thirty (30) days to complete and return to the Clerk of the Court a Notice of Submission of Documents and submit with the Notice a copy of the Complaint, a copy of the Court's Screening Order, a completed summons for each Defendant, and a completed USM-285 for each Defendant. Plaintiff has returned the required papers. Accordingly,

- (1) The Clerk of Court must send to the United States Marshal a:
 - (a) Copy of the Complaint for each Defendant to be served;
 - (b) Copy of the Court's Screening Order for each Defendant to be served;
 - (c) Completed and issued summons for each Defendant to be served;
 - (d) Completed USM-285 for each Defendant to be served; and
 - (e) Copy of this Order.

(2) If Plaintiff does not either obtain a waiver of service of the summons or complete service of the Summons and Complaint on a Defendant within 120 days of the filing of this Order, the action may be dismissed as to each Defendant not served.¹

(3) The United States Marshal must retain the Summonses, USM-285 forms, a copy of the Complaint, the Court's Screening Order, and this Order for future use.

(4) Within ten (10) days of the date this Order is filed, the United States Marshal must notify Defendants of the commencement of this action and request waiver of service of the summons pursuant to Rule 4(d) of the Federal Rules of Civil Procedure. The notice to Defendants must include a copy of this Order and the Court's Screening Order.

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

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

(a) Personally serve copies of the Summons, the Complaint, the Court's April 14, 2016, Screening Order, and this Order upon Defendant pursuant to Rule 4(e)(2) of the Federal Rules of Civil Procedure, and shall command all necessary assistance from the California Department of Corrections and Rehabilitation (CDCR) to execute this Order. The United States Marshal must maintain the confidentiality of all information provided by the CDCR pursuant to this Order.

(b) Within ten (10) days after personal service is effected, file the return of service for Defendant, along with evidence of the attempt to secure a waiver of

¹ Fed. R. Civ. P. 4(m).

service of the summons and of the costs subsequently incurred in effecting service upon Defendant. The costs of service must be enumerated on the return of service form (USM-285) and must include the costs incurred by the Marshal for photocopying additional copies of the Summons, Complaint, the Screening Order, or this Order and for preparing new process receipt and return forms (USM-285), if required. Costs of service will be taxed against the personally served Defendant under Rule 4(d)(2) of the Federal Rules of Civil Procedure, unless otherwise ordered by the Court.

(7) A Defendant who agrees to waive service of the Summons and Complaint must return the signed waiver forms to the United States Marshal, not the Plaintiff.

(8) Defendants must answer the Complaint or otherwise respond by appropriate motion within the time provided by the applicable provisions of Rule 12(a) of the Federal Rules of Civil Procedure.

(9) A motion to dismiss for failure to exhaust administrative remedies under Rule 12(b)(6) of the Federal Rules of Civil Procedure should be served and filed not later than thirty (30) days after the answer is served and filed.

(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.

IT IS SO ORDERED this 1st day of July, 2016

S/ RALPH R. BEISTLINE
UNITED STATES DISTRICT JUDGE