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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JUAN MATIAS TORRES,  
Plaintiff,  
v.  
CONNIE GIPSON, et al.,  
Defendants.

**CASE No. 1:16-cv-01525-LJO-MJS**  
**ORDER DIRECTING UNITED STATES MARSHALS SERVICE TO RE-ATTEMPT SERVICE ON DEFENDANT L. WILLIAMS WITHOUT PREPAYMENT OF COSTS AND TO CONTACT CDCR FOR ASSISTANCE IN ATTEMPTING TO EXECUTE SERVICE**

Plaintiff is a prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983. The action proceeds on Plaintiff's first amended complaint against fourteen Defendants: Gipson, Clausell, Case, Mayo, Galaviz, Matta, L. Williams, Smith, Babineux-Prince, Henderson, Briggs, Villarial, Chavez, and Weaver. Service on Defendant Williams was returned unexecuted. (ECF No. 21.) In the remarks section of the USM-285, the Marshal wrote: "unable to locate subject L. Williams."

1 The Court and the United States Marshal (“USM”) have a statutory duty to serve  
2 process on Plaintiff’s behalf. The response given by the Marshals Service is insufficient  
3 to allow the Court to discharge this duty on the ground that the defendant cannot be  
4 located. 28 U.S.C. 1915(d); Fed. R. Civ. P. 4(c)(3).

5 **The USM is directed to re-attempt service on Defendant L. Williams by**  
6 **contacting the CDCR and requesting their assistance in locating Defendant. If the**  
7 **Defendant is located and he fails to waive service, the cost of personal service will**  
8 **be taxed against him.**

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

11 1. The Clerk of the Court is directed to forward the following documents to  
12 the USM:

- 13 a. One completed and issued summons for Defendant Williams;
- 14 b. One completed USM-285 form for Defendant Williams;
- 15 c. One copy of the First Amended Complaint filed on June 14, 2017,  
16 plus an extra copy for the USM; and
- 17 d. One copy of this order, plus an extra copy for the USM.

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

22 **L. Williams – Classification Staff Representative at the California**  
23 **Department of Corrections and Rehabilitation Office, 1515 S. S**  
24 **Street, Sacramento, CA 95811**

25 3. **Because the previous attempt at service was unsuccessful, the**  
26 **USM shall, upon receipt of this order and in execution of this order,**  
27 **contact a representative at the CDCR and request his or her**  
28 **assistance in effectuating service.**

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4. The USM shall file the returned waiver of service, or the request for waiver of service if returned as undelivered, as soon as it is received.
5. If a waiver of service is not returned by the defendant within sixty days of the date of mailing the request for waiver, the USM 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 CSP to execute this order. The USM shall maintain the confidentiality of all information provided by CSP pursuant to this order.
  - b. Within ten days after personal service is effected, the USM 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 USM 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).
6. If 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 defendant of this requirement, and the failure to return the signed waivers may subject defendant to an order to pay the costs of service pursuant to Fed. R. Civ. P. 4(d)(2).
7. In the event that defendant either waives service or is personally served,

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defendant is required to respond to the complaint. 42 U.S.C.  
§ 1997e(g)(2).

IT IS SO ORDERED.

Dated: September 5, 2017

*1st Michael J. Seng*  
UNITED STATES MAGISTRATE JUDGE