

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

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

LIONELL THOLMER,

Plaintiff,

No. CIV S-04-1368 GEB CMK P

vs.

CHERYL K. PLILER, et al.,

Defendants

ORDER

\_\_\_\_\_/

Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. The court has authorized service of this action on defendants Pliler, Stratton, Stiles, Morrow and Wilson, and directed plaintiff to provide documentation for service of process by the United States Marshal. Plaintiff has submitted the required papers.

Accordingly, IT IS HEREBY ORDERED that:

1. The Clerk of the Court is directed to forward the instructions for service of process, the completed summons form(s), copies of the third amended complaint, and a copy of this order and the court’s Order re: Consent or Request for Reassignment to the United States Marshal;
2. Within ten days from the date of this order, the United States Marshal is

1 directed to notify defendant(s) of the commencement of this action and to request a waiver of  
2 service of summons in accordance with the provisions of Federal Rule of Civil Procedure 4(d) and  
3 28 U.S.C. § 566(c);

4           3.     The United States Marshal is directed to retain the sealed summons and a  
5 copy of the complaint in their file for future use;

6           4.     The United States Marshal shall file returned waivers of service of  
7 summons, as well as any requests for waivers that are returned as undelivered, as soon as they are  
8 received;

9           5.     If a waiver of service of summons is not returned by a defendant within  
10 sixty days from the date of mailing the request for waiver, the United States Marshal shall:

11               a.     Personally serve process and a copy of this order upon the  
12 defendant pursuant to Rule 4 of the Federal Rules of Civil Procedure and  
13 28 U.S.C. § 566(c), shall command all necessary assistance to execute this  
14 order, and shall maintain the confidentiality of all information provided  
15 pursuant to this order;

16               b.     Within ten days after personal service is effected, the United  
17 States Marshal shall file the return of service for the defendant, along with  
18 evidence of any attempts to secure a waiver of service of summons and of  
19 the costs subsequently incurred in effecting service on said defendant;

20               c.     Costs incurred in effecting service shall be enumerated on  
21 the USM-285 form and shall include the costs incurred by the Marshal's  
22 office for photocopying additional copies of the summons and amended  
23 complaint and for preparing new USM-285 forms, if required; and

24               d.     Costs of service will be taxed against the personally served  
25 defendant in accordance with the provisions of Federal Rule of Civil  
26 Procedure 4(d)(2);

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

6. Defendant(s) shall reply to the complaint within the time provided by the applicable provisions of Federal Rule of Civil Procedure 12(a);

7. Unless otherwise ordered, all motions to dismiss, motions for summary judgment, motions concerning discovery, motions pursuant to Rules 7, 11, 12, 15, 41, 55, 56, 59 and 60 of the Federal Rules of Civil Procedure, and motions shall be briefed pursuant to Local Rule 78-230(m), and failure to oppose such a motion timely may be deemed a waiver of opposition to the motion; opposition to all other motions need be filed only as directed by the court;

8. If plaintiff is released from custody at any time during the pendency of this case, any party may request application of other provisions of Local Rule 78-230 in lieu of Local Rule 78-230(m), which will continue to govern all motions described in no. 7, above, in the absence of a court order granting such a request;

9. Each party shall keep the court informed of a current address at all times while the action is pending, and any change of address must be reported promptly to the court in a separate document captioned for this case and entitled "Notice of Change of Address," which also must be properly served on all other parties; and

10. The failure of any party to comply with this or any other court order, the Federal Rules of Civil Procedure, or the local rules of this court may result in the imposition of appropriate sanctions, including dismissal of the action or entry of default.

DATED: February 6, 2009

  
\_\_\_\_\_  
**CRAIG M. KELLISON**  
UNITED STATES MAGISTRATE JUDGE