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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CHAD ANTHONY GALVAN,

Plaintiff,

v.

S. PURVIANCE, et al.,

Defendants.

} NO. CV-08-0883-LRS

} **ORDER DIRECTING**
} **SERVICE BY THE UNITED**
} **STATES MARSHAL WITHOUT**
} **PREPAYMENT OF COSTS**

Plaintiff is proceeding *in forma pauperis* pursuant to 28 U.S.C. Section 1915. By order filed March 2, 2009, the court determined that Plaintiff's complaint states a cognizable claim for relief against the named Defendants and ordered Plaintiff to provide information for service of process on forms USM-285, a completed summons, sufficient copies of the complaint for service, and notice of compliance. Plaintiff requested a 30-day extension for filing a response, although it was unclear to the Court precisely what Plaintiff was requesting. The Court granted Plaintiff's extension on June 11, 2009. The Court hearing nothing further from Plaintiff, and it appearing Plaintiff has filed the required papers, **IT IS HEREBY ORDERED** that:

1. The Clerk of the Court is directed to forward the instructions for service of process, the completed summons, copies of the complaint, and copies of this order to the United States Marshal.

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1 2. Within ten (10) days from the date of this order, the United States
2 Marshal is directed to notify Defendants S. Purviance, C.R. Sharps, W.W. Knipp,
3 H. Lackner, and R.J. Subia of the commencement of this action and to request a
4 waiver of service of summons in accordance with the provisions of Fed. R. Civ. P.
5 4(d) and 28 U.S.C. Section 566(c).

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

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

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

14 a. Personally serve process and a copy of this order upon the
15 defendant pursuant to Rule 4 of the Federal Rules of Civil
16 Procedure and 28 U.S.C. § 566(c) and shall command all
17 necessary assistance from the California Department of
18 Corrections (CDC) to execute this order. The United States
19 Marshal shall maintain the confidentiality of all information
20 provided by the CDC pursuant to this order.

21 b. Within ten (10) days after personal service is effected, the
22 United States Marshal shall file the return of service for the
23 defendant, along with evidence of any attempts to secure a
24 waiver of service of summons and of the costs subsequently
25 incurred in effecting service on said defendant. Said costs shall
26 be enumerated on the USM-285 form and shall include the
27 costs incurred by the Marshal's office for photocopying
28 additional copies of the summons and amended complaint and

1 for preparing new USM-285 forms, if required. Costs of
2 service will be taxed against the personally served defendant in
3 accordance with the provisions of Fed. R. Civ. P. 4(d)(2).

4 6. Defendants shall reply to the complaint within the time provided
5 by the applicable provisions of Fed. R. Civ. P. 12(a).

6 7. Unless otherwise ordered, all motions to dismiss, motions for
7 summary judgment, motions concerning discovery, motions pursuant to Rules 7,
8 11, 12, 15, 41, 55, 56, 59 and 60 of the Federal Rules of Civil Procedure, and
9 motions pursuant to Local Rule 11-110 shall be briefed pursuant to Local Rule 78-
10 230(m). Failure to oppose such a motion timely may be deemed a waiver of
11 opposition to the motion. Opposition to all other motions need be filed only as
12 directed by the court.

13 8. If Plaintiff is released from prison at any time during the pendency
14 of this case, any party may request application of other provisions of Local Rule
15 78-230 in lieu of Local Rule 78-230(m). In the absence of a court order granting
16 such a request, the provisions of Local Rule 78-230(m) will govern all motions
17 described in #7 above regardless of plaintiff's custodial status. See Local Rule 1-
18 102(d).

19 9. Pursuant to Wyatt v. Terhune, 315 F.3d 1108, 1120 n.14 (9th Cir.
20 2003), cert. denied sub nom. Alameda v. Wyatt, 124 S. Ct. 50, __ U.S. __ (2003),
21 Plaintiff is advised of the following requirements for opposing a motion to dismiss
22 for failure to exhaust administrative remedies made by Defendants pursuant to
23 non-enumerated Rule 12(b) of the Federal Rules of Civil Procedure. Such a
24 motion is a request for dismissal of unexhausted claims without prejudice. The
25 Defendants may submit affidavits or declarations under penalty of perjury and
26 admissible documentation to support the motion to dismiss. To oppose the motion,
27 Plaintiff may likewise file declarations under penalty of perjury and admissible
28 documentation. Plaintiff may rely upon statements made under the penalty of

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1 perjury in the complaint if the complaint shows that Plaintiff has personal
2 knowledge of the matters stated and Plaintiff calls to the court's attention those
3 parts of the complaint upon which Plaintiff relies. Plaintiff may serve and file one
4 or more affidavits or declarations by other persons who have personal knowledge
5 of relevant matters. Plaintiff may also rely upon written records, but Plaintiff must
6 prove that the records are what Plaintiff claims they are. If plaintiff fails to
7 contradict Defendant's evidence with admissible evidence, the court may rely on
8 the Defendant's evidence. In the event both sides submit matters outside the
9 pleadings, the court may look beyond the pleadings and decide disputed issues of
10 fact. If Plaintiff does not serve and file a written opposition to the motion, the
11 court may consider the failure to act as a waiver of opposition to the Defendants'
12 motion. If the Defendants' motion to dismiss, whether opposed or unopposed, is
13 granted, Plaintiff's unexhausted claims will be dismissed without prejudice.

14 10. Pursuant to Rand v. Rowland, 154 F.3d 952, 957 (9th Cir. 1998)
15 (en banc), cert. denied, 527 U.S. 1035 (1999), and Klinge v. Eikenberry, 849
16 F.2d 409 (9th Cir. 1988), Plaintiff is advised of the following requirements for
17 opposing a motion for summary judgment made by Defendants pursuant to Rule 56
18 of the Federal Rules of Civil Procedure. Such a motion is a request for an order for
19 judgment in favor of Defendants without trial. A Defendants' motion for summary
20 judgment will set forth the facts that the Defendants contend are not reasonably
21 subject to dispute and that entitle the Defendants to judgment. To oppose a motion
22 for summary judgment, Plaintiff must show proof of his or her claims. Plaintiff
23 may do this in one or more of the following ways. Plaintiff may rely upon
24 statements made under the penalty of perjury in the complaint if the complaint
25 shows that Plaintiff has personal knowledge of the matters stated and Plaintiff calls
26 to the court's attention those parts of the complaint upon which Plaintiff relies.
27 Plaintiff may serve and file one or more affidavits or declarations setting forth the
28 facts that Plaintiff believes prove Plaintiff's claims; the person who signs an

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1 affidavit or declaration must have personal knowledge of the facts stated. Plaintiff
2 may rely upon written records, but Plaintiff must prove that the records are what
3 Plaintiff claims they are. Plaintiff may rely upon all or any part of the transcript of
4 one or more depositions, answers to interrogatories, or admissions obtained in this
5 proceeding. If Plaintiff fails to contradict the Defendants' evidence with
6 counteraffidavits or other admissible evidence, the Defendants' evidence may be
7 taken as the truth and the Defendants' motion for summary judgment granted. If
8 there is some good reason why such facts are not available to Plaintiff when
9 required to oppose a motion for summary judgment, the court will consider a
10 request to postpone considering the Defendants' motion. If Plaintiff does not serve
11 and file a written opposition to the motion or a request to postpone consideration of
12 the motion, the court may consider the failure to act as a waiver of opposition to
13 the Defendants' motion. If the Defendants' motion for summary judgment,
14 whether opposed or unopposed, is granted, judgment will be entered for the
15 Defendants without a trial and the case will be closed.

16 11. A motion or opposition supported by unsigned affidavits or
17 declarations will be stricken.

18 12. Each party shall keep the court informed of a current address at
19 all times while the action is pending. Any change of address must be reported
20 promptly to the court in a separate document captioned for this case and entitled
21 "Notice of Change of Address." A notice of change of address must be properly
22 served on other parties. Pursuant to Local Rule 83-182(f), service of documents at
23 the record address of a party is fully effective. Failure to inform the court of a
24 change of address may result in the imposition of sanctions including dismissal of
25 the action.

26 13. The Clerk of the Court shall serve upon plaintiff a copy of the
27 Local Rules of Court.

28 14. The failure of any party to comply with this order, the Federal

1 Rules of Civil Procedure, or the Local Rules of Court may result in the imposition
2 of sanctions including, but not limited to, dismissal of the action or entry of
3 default. Fed. R. Civ. P. 11; Local Rule 11-110.

4 **DATED** this 2nd day of March, 2010.

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6 *s/Lonny R. Suko*

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LONNY R. SUKO
8 Chief United States District Judge
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