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

TIMOTHY W. PAIGE,  
Plaintiff,

No. CIV S-08-2164-SPG (PC)

vs.

SACRAMENTO COUNTY MAIN  
JAIL,  
Defendant.

ORDER DIRECTING SERVICE  
BY THE UNITED STATES MARSHAL  
WITHOUT PREPAYMENT OF COSTS AND  
PROVIDING INFORMATION REGARDING  
LAWSUIT

Plaintiff is proceeding in forma pauperis pursuant to 28 U.S.C. § 1915. By order filed February 27, 2009, the court determined that plaintiff's complaint states a cognizable claim for relief against defendants Wall, Polete, Kacelek, and Fitzgerald and ordered plaintiff to provide information for service of process on form USM-285, a completed summons, sufficient copies of the complaint for service, and a notice of compliance. Plaintiff has filed 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, a completed summons, copies of the complaint, and copies of this order to the United

1 States Marshal.

2           2. Within ten days from the date of this order, the United States Marshal is  
3 directed to notify defendants Wall, Polete, Kacelek, and Fitzgerald of the commencement of this  
4 action and to request a waiver of service of summons in accordance with the provisions of Federal  
5 Rule of Civil Procedure 4(d) and 28 U.S.C. § 566(c).

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

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

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

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

19                   b. Within ten days after personal service is effected, the United  
20 States Marshal shall file the return of service for the defendant, along with  
21 evidence of any attempts to secure a waiver of service of summons and of  
22 the costs subsequently incurred in effecting service on said defendant. Said  
23 costs shall be enumerated on the USM-285 form and shall include the costs  
24 incurred by the Marshal's office for photocopying additional copies of the  
25 summons and complaint and for preparing new USM-285 forms, if  
26 required. Costs of service will be taxed against the personally served

1 defendant in accordance with the provisions of Federal Rule of Civil  
2 Procedure 4(d)(2).

3 6. Defendants shall reply to the complaint within the time provided by the  
4 applicable provisions of Federal Rule of Civil Procedure 12(a).

5 7. Discovery shall not proceed until the court issues a discovery order. Generally,  
6 a discovery order will issue after defendants file their answer.

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

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

18 10. Pursuant to Wyatt v. Terhune, 315 F.3d 1108, 1120 n.14 (9th Cir. 2003),  
19 plaintiff is advised of the following requirements for opposing a motion to dismiss for failure to  
20 exhaust administrative remedies made by defendant pursuant to non-enumerated Rule 12(b) of the  
21 Federal Rules of Civil Procedure. Such a motion is a request for dismissal of unexhausted claims  
22 without prejudice. Defendant may submit affidavits or declarations under penalty of perjury and  
23 admissible documentation to support the motion to dismiss. To oppose the motion, plaintiff may  
24 likewise file declarations under penalty of perjury and admissible documentation. Plaintiff may  
25 rely upon statements made under the penalty of perjury in the complaint if the complaint shows  
26 that plaintiff has personal knowledge of the matters stated and plaintiff calls to the court's

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

11           11. Pursuant to Rand v. Rowland, 154 F.3d 952, 957 (9th Cir. 1998) (en banc),  
12 and Klinge v. Eikenberry, 849 F.2d 409, 411-12 (9th Cir. 1988), plaintiff is advised of the  
13 following requirements for opposing a motion for summary judgment made by defendants  
14 pursuant to Rule 56 of the Federal Rules of Civil Procedure. Such a motion is a request for an  
15 order for judgment in favor of defendants without trial. A defendant's motion for summary  
16 judgment will set forth the facts that defendants contend are not reasonably subject to dispute and  
17 that entitle the defendants to judgment. To oppose a motion for summary judgment, plaintiff  
18 must show proof of his or her claims. Plaintiff may do this in one or more of the following ways.  
19 Plaintiff may rely upon statements made under the penalty of perjury in the complaint if the  
20 complaint shows that plaintiff has personal knowledge of the matters stated and plaintiff calls to  
21 the court's attention those parts of the complaint upon which plaintiff relies. Plaintiff may serve  
22 and file one or more affidavits or declarations setting forth the facts that plaintiff believes prove  
23 plaintiff's claims; the person who signs an affidavit or declaration must have personal knowledge  
24 of the facts stated. Plaintiff may rely upon written records, but plaintiff must prove that the  
25 records are what plaintiff claims they are. Plaintiff may rely upon all or any part of the transcript  
26 of one or more depositions, answers to interrogatories, or admissions obtained in this proceeding.

1 If plaintiff fails to contradict defendants' evidence with counteraffidavits or other admissible  
2 evidence, defendants' evidence may be taken as the truth and defendants' motion for summary  
3 judgment granted. If there is some good reason why such facts are not available to plaintiff when  
4 required to oppose a motion for summary judgment, the court will consider a request to postpone  
5 considering defendants' motion. If plaintiff does not serve and file a written opposition to the  
6 motion or a request to postpone consideration of the motion, the court may consider the failure to  
7 act as a waiver of opposition to defendants' motion. If defendants' motion for summary  
8 judgment, whether opposed or unopposed, is granted, judgment will be entered for defendants  
9 without a trial and the case will be closed.

10           12. A motion or opposition supported by unsigned affidavits or declarations will  
11 be stricken.

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

18           14. The Clerk of the Court shall serve upon plaintiff a copy of the Local Rules of  
19 Court.

20           15. The failure of any party to comply with this order, the Federal Rules of Civil  
21 Procedure, or the Local Rules of Court may result in the imposition of sanctions including, but  
22  
23 not limited to, dismissal of the action or entry of default. Fed. R. Civ. P. 11; Local Rule 11-110.

24 DATED: April 17, 2009

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/s/ Susan P. Graber

UNITED STATES CIRCUIT JUDGE