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

ROBERT HAYNES,

No. CIV S-08-2177-SPG (PC)

Plaintiff,

vs.

D.K. SISTO, T. SEQUIRA,
V. SINGH, J. TILTON,

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

Defendants.

_____ / _____

Plaintiff is proceeding in forma pauperis pursuant to 28 U.S.C. § 1915. By orders filed on February 25, 2009, and March 15, 2009, the court determined that plaintiff's amended complaint states a cognizable claim for relief against defendants D.K. Sisto, T. Sequira, V. Singh, and J. Tilton and ordered plaintiff to provide information for service of process on form USM-285, a completed summons, sufficient copies of the amended complaint for service, and a notice of compliance. Plaintiff has filed the required papers. Accordingly, IT IS HEREBY ORDERED that:

1. Due to a clerical error, Plaintiff was instructed to file only three copies of the amended complaint, rather than four copies. The Clerk of the Court is ordered to make one copy of the amended complaint in lieu of Plaintiff's submission of an additional copy.

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

4 3. Within ten days from the date of this order, the United States Marshal is
5 directed to notify defendants D.K. Sisto, T. Sequira, V. Singh, and J. Tilton of the
6 commencement of this action and to request a waiver of service of summons in accordance with
7 the provisions of Federal Rule of Civil Procedure 4(d) and 28 U.S.C. § 566(c).

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

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

12 6. If a waiver of service of summons is not returned by a defendant within sixty
13 days from the date of mailing the request for waiver, the United States 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 Procedure and
16 28 U.S.C. § 566(c) and shall command all necessary assistance from the
17 California Department of Corrections ("CDC") to execute this order. The
18 United States Marshal shall maintain the confidentiality of all information
19 provided by the CDC pursuant to this order.

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

1 if required. Costs of service will be taxed against the personally served
2 defendant in accordance with the provisions of Federal Rule of Civil
3 Procedure 4(d)(2).

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

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

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

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

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

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

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

