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

FRED WAYNE GILBERT,

No. CIV S-09-0209-CMK-P

Plaintiff,

vs.

ORDER

SUSAN HERBERT, et al.,

Defendants.

_____ /

Plaintiff, a state prisoner proceeding pro se, brings this civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff’s filing (Doc. 27) entitled “Notice to the Courts of Plaintiff Not Receiving Notice that Summons was Unexecuted on Defendants.”

In his document, plaintiff states that he was notified by the United States Marshall that summons was returned unexecuted as to the California Department of Corrections and Rehabilitation. He asks the court to provide him with notice as to any defendants for whom service is returned unexecuted. This request is granted. The court hereby informs plaintiff that, to date, summons has not been returned unexecuted as to any defendant listed in the court’s March 6, 2009, order directing service by the United States Marshall. Further, to date, defendants Fox and Simmons have waived service.

1 As to the California Department of Corrections and Rehabilitation, the court
2 presumes that plaintiff is referring to docket entry 16 which indicates that summons was returned
3 unexecuted as to this entity. The actual document, however, reflects that summons was returned
4 unexecuted as to Susan Hubbard because such individual was “not named as defendant or named
5 on court order to be served.” This is correct. Plaintiff names Susan Herbert, not Susan Hubbard.
6 It appears that plaintiff incorrectly named Herbert in the complaint, instead intending to name
7 Susan Hubbard, who is the former director of the California Department of Corrections and
8 Rehabilitation. The Clerk of the Court will be directed to update the docket to reflect this
9 correction and the court hereby modifies its prior orders (i.e., Docs. 10 and 13) to reflect that
10 service is appropriate for defendant Hubbard. Plaintiff will be required to submit new forms and
11 other documents for re-service on Hubbard by the United States Marshall. As before, plaintiff is
12 cautioned that failure to submit the required documents may result in the imposition of
13 appropriate sanctions. See Local Rule 11-110.

14 As to other defendants listed in the court’s service orders who have not yet been
15 served, plaintiff will be informed by court order if summons is returned unexecuted.

16 Accordingly, IT IS HEREBY ORDERED that:

- 17 1. Plaintiff’s request for notification (Doc. 27) is granted, as outlined above;
- 18 2. The Clerk of the Court is directed to update the docket to reflect that
19 Susan Hubbard is a defendant to this action and to terminate Susan Herbert as a party;
- 20 3. The court’s prior orders are amended to reflect that service is appropriate
21 for defendant Hubbard, who was erroneously named as Herbert;
- 22 4. The Clerk of the Court shall send plaintiff one USM-285 form, one
23 summons, an instruction sheet, and a copy of the complaint; and

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No. CIV S-09-0209-CMK-P

Plaintiff,

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SUSAN HERBERT, et al.,

Defendants.

_____ /

NOTICE OF SUBMISSION OF DOCUMENTS

Plaintiff hereby submits the following documents in compliance with the court's
order:

- 1 completed summons form;
- _____ completed USM-285 form(s); and
- _____ copies of the complaint.

DATED: _____

Plaintiff