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

ROBERT E. STEPHENSON,

Plaintiff,

No. CIV S-10-238 GGH P

vs.

M. MARTEL, et al.,

Defendants.

ORDER

_____ /

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983. Plaintiff has paid the filing fee. On March 2, 2010, the court ordered plaintiff to file within fourteen days either a short declaration stating his intention to serve the complaint or, in the alternative, an application to proceed in forma pauperis in which case the U.S. Marshal would serve defendants.

On March 9, 2010, plaintiff filed a pleading with the court requesting that he be allowed to pay the U.S. Marshal to serve the complaint. In the alternative, plaintiff requests that the court send him a list of process servers in the Sacramento area.

The U.S. Marshal is not authorized to act as a private process server. For that reason, plaintiff may not pay the U.S. Marshal to serve his complaint. In addition, the court does not provide the names of process servers to litigants.

1 Accordingly, plaintiff shall complete service of process in accordance with
2 Federal Rule of Civil Procedure 4 within sixty days from the date of this order.¹ Plaintiff shall
3 serve a copy of this order on each defendant together with a summons and a copy of the
4 complaint. Within 120 days from the date of this order, plaintiff and defendants shall each
5 submit to the court and serve by mail on all other parties the following status report:

- 6 1. Whether this matter is ready for trial and, if not, why not;
- 7 2. Whether additional discovery is deemed necessary. If further discovery is
8 deemed necessary, the party desiring it shall state the nature and scope of the discovery and
9 provide an estimate of the time needed in which to complete it;
- 10 3. Whether a pretrial motion is contemplated. If any such motion is
11 contemplated, the party intending to file it shall describe the type of motion and shall state the
12 time needed to file the motion and to complete the time schedule set forth in Local Rule 230(1);
- 13 4. A narrative statement of the facts that will be offered by oral or documentary
14 evidence at trial;
- 15 5. A list of all exhibits to be offered into evidence at the trial of the case;
- 16 6. A list of the names and addresses of all witnesses the party intends to call;
- 17 7. A summary of the anticipated testimony of any witnesses who are presently
18 incarcerated;
- 19 8. The time estimated for trial;
- 20 9. Whether either party still requests trial by jury; and
- 21 10. Any other matter, not covered above, which the party desires to call to the
22 attention of the court.

23 In addition, plaintiff shall inform the court in his status report of the date and
24 manner of service of process.

25
26 ¹ Plaintiff is cautioned that this action may be dismissed if service of process is not
accomplished within 120 days from the date the complaint was filed. See Fed. R. Civ. P. 4(m).

1 The parties are informed that they may, if all consent, have this case tried by a
2 United States Magistrate Judge while preserving their right to appeal to the Circuit Court of
3 Appeals. An appropriate form for consent to trial by a magistrate judge is attached. Any party
4 choosing to consent may complete the form and return it to the clerk of this court. Neither the
5 magistrate judge nor the district judge handling the case will be notified of the filing of a consent
6 form unless all parties to the action have consented.

7 In accordance with the above, IT IS HEREBY ORDERED that:

8 1. The Clerk of the Court is directed to issue and send plaintiff 9 summonses, for
9 defendants Martel, Cate, Grannis, Long, Olivas, Machado, Palubicki, Wilson and Whitehead.
10 The Clerk shall also send plaintiff 10 copies of the form “Consent to Proceed Before United
11 States Magistrate Judge” with this order.

12 2. Plaintiff shall complete service of process on the defendants within sixty days
13 from the date of this order. Plaintiff shall serve a copy of this order and a copy of the form
14 “Consent to Proceed Before United States Magistrate Judge” on each defendant at the time the
15 summons and complaint are served.

16 3. Defendants shall reply to the complaint within the time provided by the
17 applicable provisions of Fed. R. Civ. P. 12(a).

18 4. Plaintiff’s status report shall be filed within ninety days from the date of this
19 order. Defendants’ status report shall be filed within thirty days thereafter. The parties are
20 advised that failure to file a status report in accordance with this order may result in the
21 imposition of sanctions, including dismissal of the action and preclusion of issues or witnesses.

22 5. Unless otherwise ordered, all motions to dismiss, motions for summary
23 judgment, motions concerning discovery, motions pursuant to Rules 7, 11, 12, 15, 41, 55, 56, 59
24 and 60 of the Federal Rules of Civil Procedure, and motions pursuant to Local Rule 110 shall be
25 briefed pursuant to Local Rule 230(l). Failure to oppose such a motion timely may be deemed a
26 waiver of opposition to the motion. Opposition to all other motions need be filed only as

1 directed by the court.

2 6. If plaintiff is released from prison at any time during the pendency of this case,
3 any party may request application of other provisions of Local Rule 230 in lieu of Local Rule
4 230(l). In the absence of a court order granting such a request, the provisions of Local Rule
5 230(l) will govern all motions described in #5 above regardless of plaintiff's custodial status.
6 See Local Rule 102(d).

7 7. Pursuant to Wyatt v. Terhune, 315 F.3d 1108, 1120 n.14 (9th Cir. 2003),
8 plaintiff is advised of the following requirements for opposing a motion to dismiss for failure to
9 exhaust administrative remedies made by defendant pursuant to non-enumerated Rule 12(b) of
10 the Federal Rules of Civil Procedure. Such a motion is a request for dismissal of unexhausted
11 claims without prejudice. The defendant may submit affidavits or declarations under penalty of
12 perjury and admissible documentation to support the motion to dismiss. To oppose the motion,
13 plaintiff may likewise file declarations under penalty of perjury and admissible documentation.
14 Plaintiff may rely upon statements made under the penalty of perjury in the complaint if the
15 complaint shows that plaintiff has personal knowledge of the matters stated and plaintiff calls to
16 the court's attention those parts of the complaint upon which plaintiff relies. Plaintiff may serve
17 and file one or more affidavits or declarations by other persons who have personal knowledge of
18 relevant matters. Plaintiff may also rely upon written records, but plaintiff must prove that the
19 records are what plaintiff claims they are. If plaintiff fails to contradict defendant's evidence
20 with admissible evidence, the court may rely on the defendant's evidence. In the event both sides
21 submit matters outside the pleadings, the court may look beyond the pleadings and decide
22 disputed issues of fact. If plaintiff does not serve and file a written opposition to the motion, the
23 court may consider the failure to act as a waiver of opposition to the defendant's motion. If the
24 defendant's motion to dismiss, whether opposed or unopposed, is granted, plaintiff's
25 unexhausted claims will be dismissed without prejudice.

26 8. Pursuant to Rand v. Rowland, 154 F.3d 952, 957 (9th Cir. 1998) (en banc),

1 cert. denied, 527 U.S. 1035 (1999), and Klinge v. Eikenberry, 849 F.2d 409 (9th Cir. 1988),
2 plaintiff is advised of the following requirements for opposing a motion for summary judgment
3 made by defendants pursuant to Rule 56 of the Federal Rules of Civil Procedure. Such a motion
4 is a request for an order for judgment in favor of defendants without trial. A defendant's motion
5 for summary judgment will set forth the facts that the defendants contend are not reasonably
6 subject to dispute and that entitle the defendants to judgment. To oppose a motion for summary
7 judgment, plaintiff must show proof of his or her claims. Plaintiff may do this in one or more of
8 the following ways. Plaintiff may rely upon statements made under the penalty of perjury in the
9 complaint if the complaint shows that plaintiff has personal knowledge of the matters stated and
10 plaintiff calls to the court's attention those parts of the complaint upon which plaintiff relies.
11 Plaintiff may serve and file one or more affidavits or declarations setting forth the facts that
12 plaintiff believes prove plaintiff's claims; the person who signs an affidavit or declaration must
13 have personal knowledge of the facts stated. Plaintiff may rely upon written records, but plaintiff
14 must prove that the records are what plaintiff claims they are. Plaintiff may rely upon all or any
15 part of the transcript of one or more depositions, answers to interrogatories, or admissions
16 obtained in this proceeding. If plaintiff fails to contradict the defendants' evidence with
17 counteraffidavits or other admissible evidence, the defendants' evidence may be taken as the
18 truth and the defendants' motion for summary judgment granted. If there is some good reason
19 why such facts are not available to plaintiff when required to oppose a motion for summary
20 judgment, the court will consider a request to postpone considering the defendants' motion. If
21 plaintiff does not serve and file a written opposition to the motion or a request to postpone
22 consideration of the motion, the court may consider the failure to act as a waiver of opposition to
23 the defendants' motion. If the defendants' motion for summary judgment, whether opposed or
24 unopposed, is granted, judgment will be entered for the defendants without a trial and the case
25 will be closed.

26 9. A motion or opposition supported by unsigned affidavits or declarations will

