

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA

3  
4 Lemar Gant,  
5 Plaintiff

6 v.

7 Brian Williams, et al.,  
8 Defendants

2:16-cv-00011-JAD-VCF

**Order Sustaining Plaintiff's Objections to  
Magistrate Judge's Order and Directing  
Service**

[ECF No. 48, 51]

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10 Plaintiff Lemar Gant objects to Magistrate Judge Ferenbach's August 4, 2017, order<sup>1</sup>  
11 denying his "Motion to Produce Court Order Ordering Marshal to Serve Complaint and  
12 Summons."<sup>2</sup> Because the failure to serve Defendants Brcic<sup>3</sup> and Johnson appears to have  
13 stemmed from clerical errors and some confusion between the court and the U.S. Marshal, I am  
14 effectively ordering a "do over." I sustain Gant's objection and direct the U.S. Marshal to  
15 effectuate service on these defendants using the special directions contained in this order.

16 **Discussion**

17 Gant sues multiple prison officials, alleging violations of his constitutional rights.<sup>4</sup> In  
18 December 2016, the State of Nevada Office of the Attorney General accepted service for most of  
19 the defendants, but refused service for Defendants Johnson and Brcic.<sup>5</sup> The Attorney General's  
20 Office provided the court with the last known addresses of these defendants, but asked that those

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23 <sup>1</sup> ECF No. 48.

24 <sup>2</sup> ECF No. 43.

25 <sup>3</sup> Erroneously spelled "Brck" in Gant's amended complaint. *See* ECF No. 12 at 1.

26 <sup>4</sup> ECF No. 5.

27 <sup>5</sup> ECF No. 12.

1 addresses remain under seal and not be provided to Gant.<sup>6</sup> Magistrate Judge Ferenbach ordered  
2 that the Clerk of Court issue summonses for Defendants Johnson and Brcic, and send the  
3 summonses and the amended complaint to the U.S. Marshal for service.<sup>7</sup> He further ordered  
4 Gant to complete and send completed USM 285 forms to the U.S. Marshal so it could effectuate  
5 service.<sup>8</sup>

6 Gant completed the USM 285 forms with the information he was given, but the Marshal  
7 returned the forms in May 2017, stating that it was unable to serve the complaint because: (1) the  
8 USM 285 forms needed to include the “name and addresses” of the persons to be served, (2) the  
9 summonses he attached were not signed and dated by the Clerk of Court, and (3) the court order  
10 directing the Marshal to serve the summons and complaint was “missing.”<sup>9</sup>

11 In June 2017, Gant filed a motion asking the court to send the U.S. Marshal the court  
12 order, summons, and complaint that Judge Ferenbach previously ordered the Clerk of Court to  
13 send.<sup>10</sup> Judge Ferenbach denied the motion because the court had already ordered the U.S.  
14 Marshal to serve the summons and complaint on Brcic and Johnson at their last known addresses  
15 and no new addresses had been provided.<sup>11</sup>

16 While Judge Ferenbach did order the Clerk of Court to send the U.S. Marshal the  
17 summonses and complaint for these defendants, some error must have occurred in the process,  
18 and the error was not Gant’s. Gant did send a USM 285 form to the Marshal, but was unable to  
19 fully complete it because he was not given the defendants’ addresses or copies of the sealed  
20 summons. It appears that either the U.S. Marshal did not receive the summons and complaint  
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22 <sup>6</sup> See ECF Nos. 13, 33, 36, 38, 39.

23 <sup>7</sup> ECF Nos. 35, 37.

24 <sup>8</sup> *Id.*

25 <sup>9</sup> ECF No. 51 at 12.

26 <sup>10</sup> ECF No. 43.

27 <sup>11</sup> ECF No. 48.

1 from the Clerk of Court, or it was not notified that Gant could not have provided the information  
2 needed to complete the USM 285 form because the addresses and summons were filed under  
3 seal. In order to clear up this confusion and move this case forward, I set aside Judge  
4 Ferenbach's decision, start this service process over again, and order the U.S. Marshal to  
5 effectuate service on Defendants Brcic and Johnson.

#### 6 **Conclusion**

7 Accordingly, IT IS HEREBY ORDERED that Gant's objection [ECF No. 51] to  
8 Magistrate Judge Ferenbach's order is **SUSTAINED**, and Magistrate Judge Ferenbach's order  
9 [ECF No. 48] is **REVERSED** and set aside.


10 The Clerk of Court is directed to **send the U.S. Marshal copies of the summonses for**  
11 **Defendants Johnson and Brcic (ECF Nos. 5, 36, 38) and two copies (one for each**  
12 **defendant) of the amended complaint and this order.** The Clerk of Court is also directed to  
13 **send Gant two USM 285 forms and three copies of this order.**

14 IT IS FURTHER ORDERED that **Gant must complete the USM 285 forms and send**  
15 **them to the U.S. Marshal within 20 days** of receiving this order. Gant may leave the address  
16 line of the form blank. In the "special instructions" section of each form, Gant must write "the  
17 addresses were filed under seal and the summons was sent to the U.S. Marshal directly from the  
18 Clerk of Court per order dated 2/7/18." **Gant is further ordered to send a copy of this order**  
19 **with each of the USM 285 forms.** When the U.S. Marshal sends back a completed USM 285  
20 form, Gant will have **20 days to file a notice regarding service on both defendants** with the  
21 Clerk of Court. If the U.S. Marshal notifies Gant that it was unable to effectuate service because  
22 of deficiencies with the USM 285 form or the summonses sent by the Clerk, Gant must so notify  
23 the court.

24 IT IS FURTHER ORDERED that **the U.S. Marshal is directed to effectuate service on**  
25 **Defendants Brcic and Johnson in accordance with this order.** The U.S. Marshal must copy  
26 the addresses contained on the summons received from the Clerk of Court onto the USM 285  
27 forms that Gant supplies. **Before filing the completed USM 285 forms or sending them to**  
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1 **Gant, the U.S. Marshal MUST REDACT the addresses from the forms.**

2 DATED: February 7, 2018.

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4 U.S. District Judge Jennifer A. Dorsey

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