

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Talavera v. Ravijot

No. 1:23-cv-00595-JLT-CDB (PC), United States District Court for the Eastern District of California (June 2, 2025)

SUMMARY

The United States District Court for the Eastern District of California discharged its order to show cause concerning the failure to timely file service waivers and a responsive pleading for Defendant Ravijot Gill. The court found counsel’s conduct constituted excusable neglect and directed the Clerk to provide service documents to the United States Marshals Service for service upon Gill.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	June 2, 2025
DOCKET	1:23-cv-00595-JLT-CDB (PC)
DISPOSITION	other
PROCEDURAL POSTURE	Post-screening prisoner civil-rights action in which the court considered counsel's response to an order to show cause regarding missed service-waiver and responsive-pleading deadlines.
PRECEDENTIAL VALUE	unpublished and nonprecedential district-court order

TOPICS

service of process sanctions prisoners rights section 1983 civil procedure

PRACTICE AREAS

civil procedure prisoner civil rights service of process

QUESTIONS PRESENTED

- Whether counsel's failure to meet the extended deadlines for filing a service waiver and responsive pleading constituted excusable neglect warranting discharge of the order to show cause.
- Whether the Clerk should provide the service documents to the United States Marshals Service for service upon Defendant Gill.

HOLDINGS

1. Counsel's conduct was the result of excusable neglect, so the May 28, 2025 order to show cause should be discharged.
2. The Clerk must provide the specified pleadings, orders, and summons to the United States Marshals Service for service upon Defendant Ravijot Gill pursuant to the prior service order.

KEY QUOTATIONS

“Although counsel offers no explanation for why he allowed the May 16 and May 19 filing deadlines to pass without making any filings (such as a request for additional time or a report about his inability to timely file a service waiver), the Court concludes that counsel’s conduct cited in the show cause order is the result of excusable neglect.” (2)

FACTUAL BACKGROUND

Plaintiff is a state prisoner pursuing Eighth Amendment claims against several defendants under § 1983. The court had extended the deadlines for service waivers and a responsive pleading for Defendant Gill, but the deadlines passed without filings. Counsel explained that Gill was involved in separate litigation against the California Department of Corrections and Rehabilitation, creating a waivable conflict, and that Gill had not provided informed written consent to representation.

PROCEDURAL HISTORY

Plaintiff, a state prisoner proceeding pro se and in forma pauperis, filed a 42 U.S.C. § 1983 action. After screening, the action proceeded on Eighth Amendment deliberate-indifference and excessive-force claims, and the court found service appropriate. The California Office of the Attorney General missed extended deadlines concerning service waivers and a responsive pleading for Defendant Gill, prompting a show-cause order. After considering counsel's explanation that a conflict prevented representation of Gill, the court discharged the show-cause order and directed the Clerk to provide service documents to the United States Marshals Service.

DISPOSITION

other

CASES CITED

- In re Veritas Software Corp. Sec. Litig., 496 F.3d 962, 973 (9th Cir. 2007)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 JOSE ALFREDO TALAVERA, Case No.: 1:23-cv-00595-JLT-CDB (PC) 12
Plaintiff, ORDER DISCHARGING MAY 28, 2025, ORDER TO SHOW CAUSE 13 v. (Docs. 32,
35) 14 DR. GILL RAVIJOT, et al., Clerk of the Court to Provide Service Documents 15
Defendants. to the United States Marshals Service 16 17 Plaintiff Jose Alfredo Talavera

(“Plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.

Following screening, this action proceeds as to the following claims asserted in Plaintiff’s second amended complaint (Doc. 20 15): (1) Eighth Amendment deliberate indifference to serious medical needs claims against 21 Defendants Ravijot Gill, Matthew Kairis, and Lorena Rodriguez; and (2) Eighth Amendment 22 excessive force claims against Defendants Jose Ramirez, Mark Geston, and Cruz Navarro.

See 23 (Doc. 20). 24 On February 25, 2025, the Court entered an order finding service appropriate. (Doc. 21). 25 The Court issued summonses that same day. (Doc. 22). On March 5, 2025, the California 26 Department of Corrections and Rehabilitation (“CDCR”) filed a notice of intent to waive service 27 for all Defendants. (Doc. 23).

On April 3, 2025, the Office of the Attorney General of California (“OAG”) filed a request for extension of time to file waivers of service. (Doc. 24). On April 7, 1 2025, the Court granted the request. (Doc. 26). On the last day of the extended deadline, the OAG 2 filed a second request for extension of time to file waivers of service, representing that it needed 3 more time to determine whether it would be representing Defendant Gill.

(Doc. 29). The Court 4 granted the motion nunc pro tunc, extending both the time within which to file a waiver of service 5 (to May 16, 2025) and a responsive pleading for Defendant Gill (to May 19, 2025). (Doc. 31). 6 After both the extended deadlines for filing of the waiver of service and the responsive 7 pleading for Defendant Gill passed without either document being filed, on May 28, 2025, the Court 8 ordered counsel for Defendants to show cause why sanctions should not be imposed for failure to 9 obey the Court’s orders.

(Doc. 32). 10 On May 29, 2025, the OAG filed an updated notice of intent to waive service, representing 11 intent to waive service for all Defendants except for Defendant Gill. (Docs. 33, 34). On May 30, 12 2025, the OAG filed a response to the show cause order. (Doc. 35). Counsel for the OAG Colin 13 A. Shaff represents that, although he received a request for representation from Defendant Gill, he 14 determined that Defendant Gill is the sole plaintiff in an employment action in state court in which 15 the CDCR is a defendant.

Mr. Shaff represents that Defendant Gill’s active litigation against the 16 CDCR constitutes a waivable conflict with informed written consent. Id. at 5 ¶¶ 3-5. 17 Mr. Shaff further represents that he contacted Defendant Gill’s counsel numerous times in 18 April and May 2025 by email and telephone, advising counsel of the waiver of service deadline in 19 this action and providing a letter describing the nature of his proposed representation and requesting 20 it be conveyed to Defendant Gill.

Id. at 5-6 ¶¶ 6-7. Mr. Shaff attests that he did not receive an answer from either Defendant Gill or his counsel regarding the proposed request for representation. 22 Mr. Shaff states that, pursuant to California Rule of Professional Responsibility 4.2, he was unable 23 to directly contact Defendant Gill. Id. at 6 ¶¶ 8-10. He represents that, as there is a conflict of 24 interest between the CDCR and Defendant Gill, and because Defendant Gill has not provided 25 informed written consent to representation in this matter, he cannot represent Defendant Gill.

Id. 26 ¶¶ 11-12. Counsel states that he did not feel he was able to withdraw from representation as he did 27 not represent Defendant Gill nor did he make a general appearance on his behalf and, as he was not 1 | possible appearance of separate counsel. Id. 4 12. 2 The Court has considered the representations by counsel in responding to the Court's order 3 | to show cause (Docs.

32, 35). Although counsel offers no explanation for why he allowed the May 4 | 16 and May 19 filing deadlines to pass without making any filings (such as a request for additional 5 | time or a report about his inability to timely file a service waiver), the Court concludes that 6 | counsel's conduct cited in the show cause order is the result of excusable neglect.

See *In re Veritas 7 | Software Corp. Sec. Litig.*, 496 F.3d 962, 973 (9th Cir. 2007). 8 Accordingly, the Court will discharge the order to show cause and direct the Clerk of the 9 | Court to provide service documents to the United States Marshals Service for service upon 10 || Defendant Gill. 11 Conclusion and Order 12 Accordingly, IT IS HEREBY ORDERED that: 13 1.

The May 28, 2025, show cause order (Doc. 32) is DISCHARGED; and 14 2. The Clerk of the Court is DIRECTED to provide the United States Marshal with a copy 15 of the second amended complaint (Doc. 15), the findings and recommendations (Doc. 16 18) and order adopting (Doc. 20), the Court's order finding service appropriate (Doc. 17 21), and the summons (Doc. 22) for service upon Defendant Ravijot Gill pursuant to the 18 provisions set forth in the order finding service appropriate.

19 | IT IS SO ORDERED. | Dated: _ June 2, 2025 | hr 21 UNITED STATES MAGISTRATE JUDGE 22 23 24 25 26 27 28