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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

GREGORIO C. FUNTANILLA, JR.,

1:02-cv-06001-OWW-GSA-PC

Plaintiff,

ORDER TO SHOW CAUSE WHY  
DEFENDANT SALINAS SHOULD NOT BE  
DISMISSED FROM THIS ACTION

v.

DAVID TRISTAN, et al.,

RESPONSE FROM PLAINTIFF DUE IN  
THIRTY DAYS

Defendants.

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**I. BACKGROUND**

Gregorio C. Funtanilla, Jr. (“plaintiff”) is a state prisoner proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action on August 16, 2002. (Doc. 1.) Plaintiff paid the filing fee in full for this action on August 1, 2005.

On May 22, 2009, the Court granted Plaintiff an extension of time until June 30, 2009, in which to complete service of process upon defendant Lisa Salinas, pursuant to the court's order of October 23, 2008.<sup>1</sup> (Docs. 194, 216.) To date, plaintiff has not submitted any evidence to the Court demonstrating that he successfully effected service of process on defendant Salinas pursuant to Rule 4, and defendant Salinas has not made an appearance in this action. Fed. R. Civ. P. 4. Plaintiff must submit evidence of successful service by filing either a Waiver of

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<sup>1</sup>Plaintiff is not proceeding in forma pauperis. Therefore, he must effect service of the summons and complaint himself.

1 Service signed by the defendant, or proof that personal service has been properly effected upon  
2 the defendant. Plaintiff has not submitted a Waiver of Service or proof of personal service for  
3 defendant Salinas.

4 **II. ORDER TO SHOW CAUSE**

5 Within thirty days from the date of service of this order, pursuant to Federal Rule of Civil  
6 Procedure 4(m), plaintiff shall show cause why defendant Lisa Salinas should not be dismissed  
7 based on plaintiff's failure to effect timely service of the summons and complaint upon her.

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

- 9 1. Within thirty days from the date of service of this order, plaintiff shall file a  
10 written response to the court, showing cause why defendant Lisa Salinas should  
11 not be dismissed from this action based on plaintiff's failure to effect timely  
12 service of the summons and complaint upon defendant Lisa Salinas;
- 13 2. In the alternative, plaintiff may file a written non-opposition to the dismissal of  
14 defendant Lisa Salinas; and
- 15 3. Plaintiff's failure to comply with this order shall result in a recommendation that  
16 this action be dismissed.

17  
18 IT IS SO ORDERED.

19 **Dated: July 10, 2009**

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE