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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

1:04-cv-05123-AWI-GSA-PC

Plaintiff,

ORDER TO SHOW CAUSE WHY THIS ACTION SHOULD NOT BE DISMISSED FOR FAILURE TO SERVE DEFENDANTS

MOEROYK, et al.,

v.

LOUIS RICHARD FRESQUEZ,

RESPONSE FROM PLAINTIFF DUE IN THIRTY DAYS

Defendants.

Louis Richard Fresquez ("plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action alleging prison officials violated the Americans with Disabilities Act and the Rehabilitation Act. Plaintiff filed this action on March 11, 2003 in the Northern District of California. On March 18, 2003, plaintiff filed an amended complaint. The case was subsequently transferred to this court and received on January 20, 2004.

This action now proceeds on plaintiff's amended complaint filed on March 18, 2003, against defendants Maka and Moeroyk only ("Defendants"), on plaintiff's ADA and RA claims concerning conditions of confinement.

On June 24, 2009, the court forwarded documents to plaintiff with instructions to complete and return them to the court for service of process on the Defendants. (Doc. 40.) On July 6, 2009, plaintiff returned the completed documents, and on July 8, 2009, the court directed the United States Marshal to initiate service of process upon Defendants. (Docs. 41, 42.)

On September 21, 2009, the United States Marshal filed returns of service unexecuted as to Defendants Mata and Moeryk, with a notation that service was mailed to Defendants on August 12, 2009, and on September 15, 2009, the CDC Locator responded that Defendants' names were not found on their list. (Doc. 44.) Therefore, plaintiff shall be ordered to show cause why this action should not be dismissed.. Within thirty days, plaintiff shall file a written response with the court explaining why this action should not be dismissed for failure to successfully complete service of process on Defendants. In the alternative, plaintiff may file a non-opposition to the dismissal of this action.

## Accordingly, IT IS HEREBY ORDERED that:

- 1. Within thirty days from the date of service of this order, plaintiff shall file a written response showing cause why this action should not be dismissed for failure to successfully complete service of process on Defendants;
- 2. In the alternative, plaintiff may file a written non-opposition to the dismissal of this action; and
- 3. Plaintiff's failure to comply with this order shall result in the dismissal of this action for failure to complete service of process and for plaintiff's failure to comply with the court's order.

IT IS SO ORDERED.

Dated: February 18, 2010 /s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE