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

ALFRED BROWN,

1:04-cv-06539-AWI-SMS-PC

Plaintiff,

ORDER TO SHOW CAUSE WHY  
DEFENDANTS KLARICH AND RUFF  
SHOULD NOT BE DISMISSED FROM THIS  
ACTION

v.

KYLE, et al.,

RESPONSE FROM PLAINTIFF DUE IN  
THIRTY DAYS

Defendants.

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Alfred Brown (“plaintiff”) is a state prisoner proceeding pro se in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on November 15, 2004. (Doc. 1.) This case now proceeds on Plaintiff’s amended complaint filed October 23, 2006, against defendants Klarich, Kyle, Domingo, and Ruff ("Defendants"), for deliberate indifference to Plaintiff’s serious medical needs in violation of the Eighth Amendment. (Doc. 17.)

On March 19, 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. 25.) On May 20, 2009, plaintiff returned the completed documents, and on May 27, 2009, the court ordered the United States Marshal to initiate service of process upon Defendants. (Docs. 28, 29.)

On August 19, 2009, the United States Marshal filed a Waiver of Service by defendant T. Domingo, and on October 23, 2009, defendant T. Domingo filed an answer to the complaint. (Docs. 33, 37.) On December 8, 2009, the United States Marshal filed a Waiver of Service by

1 defendant Kyle, and on January 7, 2010, defendants Domingo and Kyle filed an answer to the  
2 complaint. (Docs. 40, 46.) Thus, defendants Domingo and Kyle were successfully served and  
3 have appeared in this action.

4 On December 8, 2009, the United States Marshal filed returns of service unexecuted as to  
5 defendants J. Klarich and R. Ruff, with notations that personal service was attempted but  
6 unsuccessful. (Doc. 41.) A notice from the Litigation Office at the California Substance Abuse  
7 Treatment Facility (“SATF”) states that R. Ruff (Registered Nurse) and J. Klarich (deceased) are  
8 not employed at SATF. Id. Thus, defendants Klarich and Ruff were not successfully served,  
9 and they have not appeared in this action. Therefore, plaintiff shall be ordered to show cause  
10 why defendants Klarich and Ruff should not be dismissed. Within thirty days, plaintiff shall file  
11 a written response with the court explaining why defendants Klarich and Ruff should not be  
12 dismissed from this action for failure to successfully complete service of process. In the  
13 alternative, plaintiff may file a non-opposition to the dismissal of defendants Klarich and Ruff.

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. Within thirty days from the date of service of this order, plaintiff shall file a  
16 written response showing cause why defendants Klarich and Ruff should not be  
17 dismissed from this action for failure to successfully complete service of process;
- 18 2. In the alternative, plaintiff may file a written non-opposition to the dismissal of  
19 defendants Klarich and Ruff; and
- 20 3. Plaintiff’s failure to comply with this order shall result in a recommendation that  
21 this action be dismissed.

22 IT IS SO ORDERED.

23 Dated: February 18, 2010

24 /s/ Sandra M. Snyder  
UNITED STATES MAGISTRATE JUDGE