

1 Campos, Casio, Cisneros, and Coronado for violation of Plaintiff's rights under the
2 Eighth Amendment. (ECF No. 160.)

3 Defendants Jones, Moore, Burns, Dava, Kim, Galvan, C. Gonzalez, M. Gonzalez,
4 Johnson, O'Neal, Parsons, Roth, Tumayo, Urbano, Vicente, Casio, Cisneros, and
5 Coronado have appeared and answered Plaintiff's complaint. (ECF No. 93.)

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7 Before the Court are Plaintiff's December 26, 2013 Motion for Service of 6 More
8 Defendants (ECF No. 178), seeking to serve Defendants Johnson, Campos, Zakari,
9 Bastianon, Edmonds, and Raygoza; and his Motion to Report Service Has Not Been
10 Completed on 5 Defendants (ECF No. 180) which seeks service on Defendants
11 Campos, Zakari, Bastianon, Edmonds, and Raygoza.

12 **II. DEFENDANT JOHNSON**

13 Defendant Johnson has already executed a waiver of service. (ECF No. 175.)
14 Accordingly, Plaintiff's request to serve Defendant Johnson will be denied.

15 **III. DEFENDANT CAMPOS**

16 Defendant Campos was served on February 4, 2014. (ECF No. 181.) Thereafter,
17 the California Department of Corrections and Rehabilitation (CDCR) moved to dismiss
18 Defendant Campos due to insufficient service of process. (ECF No. 183.) Specifically,
19 CDCR alleged that the Litigation Coordinator at California State Prison Corcoran
20 mistakenly accepted service on behalf of the wrong "F. Campos" and was not authorized
21 to accept service on behalf of the intended Defendant Campos in this case. The Court
22 denied CDCR's motion without prejudice, and ordered the U.S. Marshals Service to
23 serve the correct "F. Campos." (ECF No. 190.) The Marshals Service is currently
24 attempting to serve the correct Defendant Campos. Accordingly, Plaintiff's request to
25 serve Defendant Campos will be denied.
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1 **IV. DEFENDANT BASTIANON**

2 Defendant Bastianon's summons was returned unexecuted by the U.S. Marshals
3 Service on February 3, 2014, with a notation that even though the CDCR special
4 investigator provided the Marshal with Defendant Bastianon's last known address, the
5 summons was returned to sender. (ECF No. 179.)

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7 In cases involving a plaintiff proceeding in forma pauperis, the Marshal, upon
8 order of the Court, shall serve the summons and the complaint. 28 U.S.C. § 1915(d);
9 Fed. R. Civ. P. 4(c)(3). "[A]n incarcerated pro se plaintiff proceeding in forma pauperis is
10 entitled to rely on the U.S. Marshals for service of the summons and complaint and [he]
11 should not be penalized by having his action dismissed for failure to effect service where
12 the U.S. Marshal or the court clerk has failed to perform his duties." Walker v. Sumner,
13 14 F.3d 1415, 1422 (9th Cir. 1994) (internal quotations and citation omitted), overruled
14 on other grounds by Sandin v. Connor, 515 U.S. 472 (1995). "So long as the prisoner
15 has furnished the information necessary to identify the defendant, the marshal's failure
16 to effect service is automatically good cause. . . ." Walker, 14 F.3d at 1422 (internal
17 quotations and citation omitted).

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19 However, where a pro se plaintiff fails to provide the Marshal with accurate and
20 sufficient information to effect service of the summons and complaint, the Court's sua
21 sponte dismissal of the unserved defendants is appropriate. Walker, 14 F.3d at 1421-22.

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23 At this time, the Marshals Service has exhausted the avenues available to it to
24 locate and serve Defendant Bastianon. Walker, 14 F.3d at 1421-22. Accordingly,
25 Plaintiff's motion to serve Defendant Bastianon will be denied. Additionally, Plaintiff shall
26 show cause why Defendant Bastianon should not be dismissed because of the apparent
27 inability to obtain service on him. Fed. R. Civ. P. 4(m). If Plaintiff either fails to respond to
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1 this order or responds but fails to show cause, the Court will recommend that Defendant
2 Bastianon be dismissed from the action.

3 **V. DEFENDANTS ZAKARI, EDMONDS, AND RAYGOZA**

4 Defendants Zakari's summons was initially returned unexecuted by the U.S.
5 Marshals Service. (ECF No. 164, 177.) Although the Marshals Service was ordered to
6 serve Edmonds and Raygoza, no service documents were returned for either of these
7 defendants. (ECF No. 164, 177.) On June 17, 2014, the Court directed the Marshals
8 Service to re-attempt service on Defendants Zakari, Edmonds, and Raygoza by
9 contacting the Legal Affairs Division of CDCR and requesting the assistance of a special
10 investigator. (ECF No. 191.) Service was again returned unexecuted on June 25, 2014,
11 with the notation that the CDCR special investigator was unable to locate or identify the
12 defendants. (ECF No. 193, 194.)

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15 At this time, the Marshals Service has exhausted the avenues available to it to
16 locate and serve Defendants Zakari, Edmonds, and Raygoza. Walker, 14 F.3d at 1421-
17 22. Accordingly, Plaintiff's motion to serve these Defendants will be denied. Additionally,
18 Plaintiff shall show cause why Defendants Zakari, Edmonds, and Raygoza should not be
19 dismissed. Fed. R. Civ. P. 4(m). If Plaintiff either fails to respond to this order or
20 responds but fails to show cause, the Court will recommend that Defendants Zakari,
21 Edmonds, and Raygoza be dismissed from the action.

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23 **VI. CONCLUSION AND ORDER**

24 Based on the foregoing, it is HEREBY ORDERED that:

- 25 1. Plaintiff's Motion for Service of 6 More Defendants (ECF No. 178) is DENIED;
26 2. Plaintiff's Motion to Report Service Has Not Been Completed on 5 Defendants
27 (ECF No. 180) is DENIED;

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3. Within **thirty (30) days** from the date of service of this order, Plaintiff shall show cause why Defendants Zakari, Bastianon, Edmonds, and Raygoza should not be dismissed from this action; and

4. If Plaintiff fails to respond to this order or fails to show cause, the Court will recommend that Defendants Zakari, Bastianon, Edmonds, and Raygoza be dismissed from this action.

IT IS SO ORDERED.

Dated: July 21, 2014

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE