1 2 3 <u>4</u> 5 6 7 UNITED STATES DISTRICT COURT 8 9 EASTERN DISTRICT OF CALIFORNIA 10 11 MICHAEL D. HARRISON, 12 Plaintiff, 13 ٧. DISMISSED 14 D. ADAMS, et al., 15 Defendants. 16 17 18 19 20 21 22 23 Eighth Amendment. (ECF No. 160.) 24 25 26 27

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CASE NO. 1:08-cv-1065-AWI-MJS (PC)

ORDER REQUIRING PLAINTIFF TO **SHOW CAUSE WHY CERTAIN DEFENDANTS SHOULD NOT BE**

THIRTY (30) DAY DEADLINE

Plaintiff is a state prisoner proceeding pro se in this civil rights action brought pursuant to 42 U.S.C. § 1983. (ECF No. 1.) The Court screened Plaintiff's Eighth Amended Complaint and found that it stated a cognizable claim against Defendants Jones, Moore, Burns, Dava, Kim, Edmonds, Galvan, C. Gonzalez, M. Gonzalez, Johnson, O'Neal, Parsons, Raygoza, Roth, Tumayo, Urbano, Vicente, Zakari, Bastianon, Campos, Casio, Cisneros, and Coronado for violation of Plaintiff's rights under the

Defendants Jones, Moore, Burns, Dava, Kim, Galvan, C. Gonzalez, M. Gonzalez, Johnson, O'Neal, Parsons, Roth, Tumayo, Urbano, Vicente, Casio, Cisneros, and Coronado have been served and have answered the complaint. (ECF No. 93, 147, 167.) Defendant Campos ostensibly was served but filed a motion to dismiss based on

insufficiency of service of process. (ECF No. 183.) That motion was denied. (ECF No. 190). Defendants Campos and Johnson have moved to quash service. (ECF No. 201.) Their motion remains pending.

Service on Defendants Zakari, Bastianon, Edmonds, and Raygoza has been returned unexecuted. (ECF Nos. 177, 179, 193, 194.) On July 22, 2014, Plaintiff was ordered to show cause why these Defendants should not be dismissed for failure to provide sufficient information to effect service of the summons and complaint. (ECF No. 195.) Plaintiff responded that he had a pending motion to compel discovery of the full names of these Defendants. (ECF Nos. 197 & 198.) Thereafter, on August 19, 2014, the Court granted in part Plaintiff's motion to compel and discharged the order to show cause. (ECF No. 199.) Plaintiff has not taken any further steps to effect service on Defendants Zakari, Bastianon, Edmonds, and Raygoza in the nearly seven months since his motion to compel was granted.

In cases involving a plaintiff proceeding in forma pauperis, the Marshal, upon order of the Court, shall serve the summons and the complaint. 28 U.S.C. § 1915(d); Fed. R. Civ. P. 4(c)(3). "[A]n incarcerated pro se plaintiff proceeding in forma pauperis is entitled to rely on the U.S. Marshals for service of the summons and complaint and [he] should not be penalized by having his action dismissed for failure to effect service where the U.S. Marshal or the court clerk has failed to perform his duties." Walker v. Sumner, 14 F.3d 1415, 1422 (9th Cir. 1994) (internal quotations and citation omitted), overruled on other grounds by Sandin v. Connor, 515 U.S. 472 (1995). "So long as the prisoner has furnished the information necessary to identify the defendant, the marshal's failure to effect service is automatically good cause. . . ." Walker, 14 F.3d at 1422 (internal quotations and citation omitted). However, where a pro se plaintiff fails to provide the Marshal with accurate and sufficient information to effect service of the summons and complaint, the Court's sua sponte dismissal of the unserved defendants is appropriate. Walker, 14 F.3d at 1421-22.

At this time, the Marshals Service has exhausted the avenues available to it to locate and serve Defendants Zakari, Bastianon, Edmonds, and Raygoza. See Walker, 14 F.3d at 1421-22. Accordingly, Plaintiff shall be required to show cause why these Defendants should not be dismissed based on inability to effect service on them. Fed. R. Civ. P. 4(m). If Plaintiff either fails to respond to this order or responds but fails to show cause, the Court will recommend that Defendants Zakari, Bastianon, Edmonds, and Raygoza be dismissed from the action without prejudice.

Based on the foregoing, it is HEREBY ORDERED that:

- 1. 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
- 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 without prejudice.

IT IS SO ORDERED.

Dated: March 16, 2015 Isl Michael J. Seng
UNITED STATES MAGISTRATE JUDGE