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8	UNITED STATES DISTRICT COURT		
9	EASTERN DISTRICT OF CALIFORNIA		
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11	MICHAEL D. HARRISON,	CASE NO. 1:08-cv-1065-AWI-MJS (PC)	
12	Plaintiff,	FINDINGS AND RECOMMENDATIONS	
13	V.	TO GRANT IN PART AND DENY IN PART PLAINTIFF'S MOTION TO DISMISS	
14	D. ADAMS, et al.,	(ECF No. 285)	
15	Defendants.	FOURTEEN (14) DAY OBJECTION	
16		DEADLINE	
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18	Plaintiff is a state prisoner proceeding pro se in this civil rights action brought		
19 20	pursuant to 42 U.S.C. § 1983. (ECF No. 1.) On July 30, 2013, the Court screened		
20 21	Plaintiff's Eighth Amended Complaint and found that it stated a cognizable claim against		
21	Defendants Jones, Moore, Burns, Dava, Kim, Edmonds, Galvan, C. Gonzalez, M.		
22 22	Gonzalez, Johnson, O'Neal, Parsons, Raygoza, Roth, Tumayo, Urbano, Vicente, Zakari,		
23 24	Bastianon, Campos, Casio, Cisneros, and Coronado for violation of Plaintiff's rights		
24 25	under the Eighth Amendment. (ECF No. 160.) On August 26, 2015, summary judgment		
25 26	was granted in favor of Defendants Rabaino-Burns, Kim, and Dava. (ECF No. 266.)		
26 27	Further proceedings in this action have been hampered by difficulties in serving		
27 28	some of the named Defendants. Re	elevant to the instant motion, re-service on	
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1 Defendants Zakari, Edmonds, and Raygoza was returned unexecuted on more than one 2 occasion. (ECF Nos. 177, 179, 193, 194, 267, 279, 283.) Accordingly, they were 3 dismissed. (ECF No. 284.) Defendants Bastianon and Johnson recently appeared in the 4 action. (ECF Nos. 269, 275.) As a result of their recent appearance, a new scheduling 5 order issued, setting August 29, 2016 as the dispositive motion deadline. (ECF No. 272.) 6 Plaintiff does not wish to delay the instant litigation further and instead desires to 7 proceed to trial. Accordingly, he moves to dismiss Defendants Zakari, Raygoza, 8 Edmonds, Johnson and Bastianon. He asks that the case be set for settlement and/or 9 trial. (ECF No. 285.) Defendants filed a statement of non-opposition and agree that, 10 should these Defendants be dismissed, a new scheduling order is appropriate.

The Court will recommend that Plaintiff's motion be granted in part and denied in part. Because Defendants Zakari, Raygoza, and Edmonds already were dismissed, the motion is moot as to them. However, the Court will recommend that Defendants Johnson and Bastianon be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2).

15 Based on the foregoing, it is HEREBY RECOMMENDED that:

 Plaintiff's motion to dismiss (ECF No. 285) be granted in part and denied in part;

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2. Defendants Johnson and Bastianon be dismissed; and

 The matter be referred back to the undersigned for the issuance of orders scheduling a settlement conference, pretrial matters, and trial.

21 The findings and recommendation are submitted to the United States District 22 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 23 fourteen (14) days after being served with the findings and recommendation, any party 24 may file written objections with the Court and serve a copy on all parties. Such a document should be captioned "Objections to Magistrate Judge's Findings and 25 26 Recommendation." Any reply to the objections shall be served and filed within fourteen 27 (14) days after service of the objections. The parties are advised that failure to file 28 objections within the specified time may result in the waiver of rights on appeal. 2

1	Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923
2	F.2d 1391, 1394 (9th Cir. 1991)).
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4	IT IS SO ORDERED.
5	Dated: <u>February 22, 2016</u> Isl Michael J. Seng
6	UNITED STATES MAGISTRATE JUDGE
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