

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.

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

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

- 16 1. Plaintiff's motion to dismiss (ECF No. 285) be granted in part and denied in
17 part;
- 18 2. Defendants Johnson and Bastianon be dismissed; and
- 19 3. The matter be referred back to the undersigned for the issuance of orders
20 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
25 document should be captioned "Objections to Magistrate Judge's Findings and
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.

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: February 22, 2016

1st Michael J. Seng
6 UNITED STATES MAGISTRATE JUDGE

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