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

ORLANDO PAYNE,	1:09-cv-00127-GSA-PC	
Plaintiff,		ORDER TO SHOW CAUSE WHY
v.		DEFENDANT TAFOYA SHOULD NOT BE
		DISMISSED FROM THIS ACTION
A. HEDGPETH, et al.,		RESPONSE FROM PLAINTIFF DUE IN
Defendants.		THIRTY DAYS

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Orlando Payne (“plaintiff”) is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff initiated this action on January 21, 2009. (Doc. 1.) On March 27, 2009, plaintiff filed a first amended complaint.<sup>1</sup> (Doc. 7.) The court screened plaintiff’s first amended complaint and found that it states cognizable claims against defendants B. Gonzales, M. Tafoya, K. Harrington, and T. Billings. (Doc. 11.)

On May 27, 2009, the court forwarded documents to plaintiff with instructions to complete and return them to the court for service of process on defendants Gonzales, Tafoya, Harrington, and Billings. (Doc. 14.) On June 16, 2009, the court ordered the U.S. Marshal to initiate service of process upon defendants Gonzales, Tafoya, Harrington, and Billings. (Doc. 17.)

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<sup>1</sup>Defendant A. Hedgpeth was named in plaintiff’s original complaint but omitted as a defendant in the first amended complaint.

1 On October 13, 2009, defendants Gonzales, Harrington, and Billings filed an answer to  
2 the first amended complaint. (Doc. 20.) On October 8, 2009, the U.S. Marshal filed a return of  
3 service unexecuted as to M. Tafoya, stating that the Marshal was unable to locate the defendant.  
4 (Doc. 19.) The Marshal noted: "mailed 7/14/9; 9/18/09- per facility letter, not employed;  
5 10/6/09- per CDC locator, several-unable to identify." Id.

6 Plaintiff shall be ordered to show cause why defendant M. Tafoya should not be  
7 dismissed from this action for failure to serve process. Within thirty days, plaintiff shall file a  
8 written response with the court explaining why defendant M. Tafoya should not be dismissed. In  
9 the alternative, plaintiff may file a non-opposition to the dismissal of defendant M. Tafoya.

10 Accordingly, IT IS HEREBY ORDERED that:

- 11 1. Within thirty days from the date of service of this order, plaintiff shall file a  
12 written response showing cause why defendant M. Tafoya should not be  
13 dismissed from this action for failure to serve process;
- 14 2. In the alternative, plaintiff may file a written non-opposition to the dismissal of  
15 defendant M. Tafoya; and
- 16 3. Plaintiff's failure to comply with this order shall result in a recommendation that  
17 this action be dismissed.

18  
19 IT IS SO ORDERED.

20 Dated: October 16, 2009

/s/ Gary S. Austin  
UNITED STATES MAGISTRATE JUDGE