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

MICHAEL CHAVEZ,  
Plaintiff,  
v.  
JAMES YATES, et al.,  
Defendants.

Case No. 1:09-cv-01080-AWI-SKO PC  
ORDER REQUIRING DEFENDANTS TO  
SHOW CAUSE WHY SECTIONS II AND III  
OF MOTION TO DISMISS SHOULD NOT  
BE STRICKEN FROM THE RECORD  
(Doc. 34)  
TEN-DAY DEADLINE

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Plaintiff Michael Chavez, a state prisoner proceeding pro se and in forma pauperis, filed this civil rights action pursuant to 42 U.S.C. § 1983 on June 19, 2009. Pursuant to the decision issued by the Court of Appeals for the Ninth Circuit, this action is proceeding on Plaintiff's Eighth Amendment claims against Defendants Ehrman, Igbinsosa, Kushner, Diep, Hayden, Ahlin, Pineda, and Yates. On August 6, 2013, Defendants Ahlin, Yates, Igbinsosa, and Pineda filed a motion to dismiss this action as barred by the statute of limitations (section I) and for failure to state a claim upon which relief may be granted (sections II and III). Fed. R. Civ. P. 12(b)(6).

The Ninth Circuit previously ruled that Plaintiff's allegations are sufficient to state a claim upon which relief may be granted against the named defendants for violation of the Eighth Amendment. 28 U.S.C. § 1915A; *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). Without acknowledging that binding decision, *Hall v. City of Los Angeles*, 697 F.3d 1059, 1067 (9th Cir. 2012); *United States v. Houser*, 804 F.2d 565, 567 (9th Cir. 1986), Defendants Ahlin,

1 Yates, Igbinsosa, and Pineda now seek dismissal of Plaintiff's Eighth Amendment claims against  
2 them, as well as the dismissal of a due process claim which is not at issue in this action.  
3 Defendants' counsel, as an officer of the court, has a duty of good faith and candor to the court,  
4 and sanctions may be imposed for filing frivolous motions which serve only to unnecessarily  
5 multiply the proceedings. *Pacific Harbor Capital, Inc. v. Carnival Air Lines, Inc.*, 210 F.3d 1112,  
6 1119 (9th Cir. 2000).

7 Accordingly, it is HEREBY ORDERED that within **ten (10) days** from the date of service  
8 of this order, Defendants shall show cause why sections II and III of the motion to dismiss should  
9 not be stricken. Depending upon the response to this order, the Court may issue an order to show  
10 cause why sanctions should not be imposed.

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IT IS SO ORDERED.

Dated: August 13, 2013

/s/ Sheila K. Oberto  
UNITED STATES MAGISTRATE JUDGE