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6	UNITED STA	TES DISTRICT COUDT
7	UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA	
8	EASTERNI	DISTRICT OF CALIFORNIA
9		Case No. 1:10-cv-00069-LJO-SKO (PC)
10	PUNAOFO TSUGITO TILEI,	ORDER REQUIRING DEFENDANTS TO SHOW
11	Plaintiff,	CAUSE WHY THEIR MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM SHOULD NOT
12	v.	BE STRICKEN FROM THE RECORD
13	McGUINNESS, et al.,	(Doc. 66)
14	Defendants.	SEVEN (7) DAY DEADLINE
15		
16	Plaintiff, Punaofo Tsugito Tilei, is a state prison inmate proceeding <i>in forma pauperis</i> in	
17	this civil action pursuant to 42 U.S.C. § 1983. Plaintiff filed this action on January 13, 2010.	
18	(Doc. 1.)	
19	Following the proceedings in this Court, Plaintiff filed an appeal with the Ninth Circuit.	
20	On appeal, the Ninth Circuit found that the Complaint states a cognizable claim for relief under	
21	section 1983 against Defendants C.M.O. William J. McGuinness M.D., Jeremy Wang M.D., H.	
22	Hasrdsri M.D., Joseph Obriza M.D., Julian Kim M.D., Jeffrey Neubarth M.D., N. Loadholt, FNP,	
23	and P. Rouch, FNP for deliberate indifference to Plaintiff's serious medical needs in violation of	
24	the Eighth Amendment. <sup>1</sup> (Docs. 43, 44.)	
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27	<sup>1</sup> Though the Ninth Circuit found that Plaintiff stated a cognizable claim against Dr. Hasrdsri, Plaintiff voluntarily dismissed Dr. Hasrdsri from the action. (Docs. 64, 65.) The Ninth Circuit found that Plaintiff	
28	ulu noi siale a claim against Lisa Salinas (D	oc. 43, p. 3) and she was dismissed from the action (Doc. 46).
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1	The Ninth Circuit previously ruled (Doc. 43) that Plaintiff's allegations are sufficient to
2	state a claim upon which relief may be granted against the named defendants for violation of the
3	Eighth Amendment. 28 U.S.C. § 1915A; Watison v. Carter, 668 F.3d 1108, 1112 (9th Cir. 2012).
4	Without acknowledging that binding decision, Defendants now seek dismissal of Plaintiff's
5	Eighth Amendment claims against Defendants Obaiza and Wang, asserting that Plaintiff has not
6	stated a cognizable claim against them. (Doc. 66.)

7 The rule of mandate prohibits this Court from varying or examining the mandate from the Ninth Circuit as to whether Plaintiff's claims are cognizable. United States v. Cote, 51 F.3d 178, 8 181 (9th Cir.1995); Hall v. City of Los Angeles, 697 F.3d 1059, 1067 (9th Cir. 2012). "Violation 9 of the rule of mandate is a jurisdictional error." Hall, 697 F.3d at 1067 (citing United States v. 10 Thrasher, 483 F.3d 977, 982 (9th Cir. 2007). Defendants' counsel, as an officer of the court, has 11 a duty of good faith and candor to the court, and sanctions may be imposed for filing frivolous 12 motions which serve only to unnecessarily multiply the proceedings. Pacific Harbor Capital, 13 Inc. v. Carnival Air Lines, Inc., 210 F.3d 1112, 1119 (9th Cir. 2000). 14

Accordingly, it is HEREBY ORDERED that within **seven** (7) **days** from the date of service of this order, Defendants shall show cause<sup>2</sup> why their motion to dismiss should not be summarily stricken; alternatively Defendants may withdraw their motion to dismiss.

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IT IS SO ORDERED.

20 Dated: April 24, 2017

1st Sheila K Ober

UNITED STATES MAGISTRATE JUDGE

 $\frac{27}{28} = \frac{1}{28}$   $\frac{1}{28}$ Depending upon the response to this order, the Court may issue an order to show cause why sanctions should not be imposed.