

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

15 Accordingly, it is HEREBY ORDERED that within **seven (7) days** from the date of
16 service of this order, Defendants shall show cause² why their motion to dismiss should not be
17 summarily stricken; alternatively Defendants may withdraw their motion to dismiss.

18 IT IS SO ORDERED.

19 Dated: April 24, 2017

20 /s/ Sheila K. Oberto
21 UNITED STATES MAGISTRATE JUDGE

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28 ² Depending upon the response to this order, the Court may issue an order to show cause why sanctions should not be imposed.