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7 **UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF CALIFORNIA**
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10 GREGORIO FUNTANILLA, JR.,

11 Plaintiff,

12 v.

13 ROMAN W. WILLIAMS, et al.,

14 Defendants.

Case No.1:10-cv-01624-DLB PC

**ORDER DISCHARGING ORDER TO
SHOW CAUSE (ECF No. 40)**

**ORDER DENYING REQUEST FOR
SERVICE OF PROCESS BY UNITED
STATES MARSHAL WITHOUT
PREJUDICE (ECF No. 41)**

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16 Plaintiff Gregorio Funtanilla, Jr. ("Plaintiff") is a California state prisoner proceeding pro se
17 in this civil action pursuant to 42 U.S.C. § 1983. This action is proceeding on Plaintiff's first
18 amended complaint against Defendants Roman W. Williams, Jesuit S. Manson, K. Turner, D. Ibarra,
19 O. A. Ybarra, M.A. Baires, J. Lias, R. Gomez, Nola Grannis, Angela Romanello, Kelly Santoro,
20 Derral G. Adams, and Ken Clark for violation of the Free Exercise Clause of the First Amendment
21 and the Religious Land Use and Institutionalized Persons Act of 2000. On March 22, 2012, Plaintiff
22 was instructed of the requirements for service of process and directed to effect service on these
23 thirteen Defendants within 120 days. ECF No. 24. On September 14, 2012, the Court issued an
24 order to show cause regarding service of process on Defendants and prosecution of this action. ECF
25 No. 40. On October 9, 2012, Plaintiff filed his response. ECF No. 41. Accordingly, the order to
26 show cause is hereby DISCHARGED.

27 One Defendant, Williams, was personally served by a fellow inmate on behalf of Plaintiff.¹

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¹ Plaintiff is required to prosecute this action against Defendant Williams. *See* Fed. R. Civ. P. 41(b) (failure to prosecute may result in dismissal of action).

1 Plaintiff attests that on May 31, 2012, he mailed the waiver of service, summons, complaint, and
2 self-addressed stamped envelope to the other twelve Defendants and received no response. Plaintiff
3 now requests service by the United States Marshal pursuant to Rule 4(c)(3) of the Federal Rules of
4 Civil Procedure.

5 “At the plaintiff’s request, the court may order that service be made by a United States
6 marshal or deputy marshal or by a person specially appointed by the court.” Fed. R. Civ. P. 4(c)(3).
7 Here, the Court does not find that service be made by the United States Marshals Service at this
8 time. Based on Plaintiff’s filings with the Court, it does not appear that Plaintiff sufficiently
9 completed the Waiver of Service of Summons form. Plaintiff left several portions blank which may
10 have affected service. Additionally, the United States Marshals Service is not the only means by
11 which service of process may be accomplished. *See* Fed. R. Civ. P. 4(c)(2) (“Any person who is at
12 least 18 years old and not a party may serve a summons and complaint.”). The Court will thus deny
13 Plaintiff’s request for service by the United States Marshals Service, without prejudice. Plaintiff will
14 be granted additional time to complete service of process.

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

- 16 1. The order to show cause, issued September 14, 2012, is discharged;
- 17 2. Plaintiff’s request for service of process by the United States Marshals Service, filed
18 October 9, 2012, is denied without prejudice;
- 19 3. Plaintiff is granted **sixty (60) days** from the date of service of this order in which to
20 complete service of process. Failure to complete service may result in dismissal of
21 the action against that Defendant without prejudice.

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24 IT IS SO ORDERED.

25 Dated: November 9, 2012

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE