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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**  
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11 BERNIE MERKLEY, ) CASE NO: 1:14-cv-01867 --- JLT  
12 Plaintiff, )  
13 v. ) ORDER TO PLAINTIFF TO SHOW CAUSE  
14 CONTINENTAL LABOR RESOURECES, INC., ) WHY DEFENDANT CONTINENTAL LABOR  
et al., ) RESOURCES, INC., SHOULD NOT BE  
15 Defendants. ) DISMISSED FROM THIS CASE  
16 )

17 Plaintiff filed this action on November 24, 2014 and in the complaint, raises causes of action  
18 related to claims surrounding the termination of his employment. (Doc. 1 at 4) The Court issued a  
19 summons to defendants on the same date the matter was filed. (Doc. 2) Noting that Plaintiff had failed to  
20 file proof of service as to any Defendant, on February 26, 2015, the Court continued the mandatory  
21 scheduling conference and reminded Plaintiff of his obligation to effect timely service. (Doc. 4)

22 Soon thereafter, Plaintiff filed proof of service as to Advanced Industrial Services, Inc. (Doc. 5)  
23 and this defendant answered. (Doc. 6) Plaintiff has not filed a proof of service as to defendant,  
24 Continental Labor Resources, Inc. However, in its answer, Advanced Industrial Services made a  
25 counterclaim against Continental Labor Resources, Inc. to which Continental has answered. (Doc. 9)  
26 However, given there has been no service, Continental has not responded to Plaintiff's complaint.

27 As Plaintiff was warned in the Court's February 2015 order, he was obligated to serve his

1 complaint within 120 days of its filing. (Doc. 4 at 2) The Court advised, "Plaintiff is reminded of its  
2 obligation of timely service under Rule 4 and that the Court may order the dismissal of this matter sua  
3 sponte for failure to comply with Fed. R. Civ. P. 4." Id. The Court further admonished, "**Plaintiff is**  
4 **advised that his failure to comply with this order and with Fed. R. Civ. P. 4, will result in a**  
5 **recommendation that the matter be dismissed.**" Id., emphasis in the original. Despite this and despite  
6 the passage of five-and-a-half months since the filing of the complaint, Plaintiff has failed to file proof  
7 of service on Defendant Continental.

8 Thus, Plaintiff **SHALL** show cause in writing **within 14 days** why Defendant Continental Labor  
9 Resources, Inc., should not be dismissed due to Plaintiff's failure to comply with Fed. R. Civ. P. 4 (m)  
10 ["If a defendant is not served within 120 days after the complaint is filed, the court--on motion or on its  
11 own after notice to the plaintiff--must dismiss the action without prejudice against that defendant or  
12 order that service be made within a specified time. But if the plaintiff shows good cause for the failure,  
13 the court must extend the time for service for an appropriate period."]

14  
15 IT IS SO ORDERED.

16 Dated: **May 11, 2015**

**/s/ Jennifer L. Thurston**  
UNITED STATES MAGISTRATE JUDGE