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8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 MIGUEL G. SIFUENTES,

12 Plaintiff,

13 v.

14 DR. OLA, et al.,

15 Defendants.
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1:16-cv-00241-DAD-GSA-PC

**ORDER FOR PLAINTIFF TO SHOW
CAUSE WHY THIS CASE SHOULD NOT
BE DISMISSED FOR HIS FAILURE TO
EFFECT SERVICE UPON DEFENDANT
DR. OLA
(ECF No. 39.)**

THIRTY DAY DEADLINE

18 **I. BACKGROUND**

19 Plaintiff Miguel G. Sifuentes is a state prisoner proceeding *pro se* with this civil rights
20 action pursuant to 42 U.S.C. § 1983. Plaintiff paid the \$400.00 filing fee for this action on
21 February 25, 2016, and therefore is not proceeding *in forma pauperis*.

22 This case now proceeds with Plaintiff's First Amended Complaint, filed on April 26,
23 2017, against defendant Dr. Ola ("Defendant") for failure to provide adequate medical care in
24 violation of the Eighth Amendment.¹ (ECF No. 21.)

25 On May 15, 2019, the court issued an order directing Plaintiff to serve defendant Dr.
26 Ola with a summons and copy of the First Amended Complaint. (ECF No. 39.) Plaintiff is not
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28 ¹ All other claims and defendants were dismissed from this action by the court on May 13, 2019,
based on Plaintiff's failure to state a claim. (ECF No. 38.)

1 proceeding *in forma pauperis* in this case and is therefore responsible for serving process
2 himself. Plaintiff was provided with the documents and instructions needed to serve process
3 and was ordered to complete service of process within ninety days. (Id.) Plaintiff was advised
4 that after service of process is completed, he is required to file with the court a proof of service
5 or waiver of service form demonstrating that service is completed. The ninety-day time period
6 has passed and Plaintiff has not filed a proof of service, waiver of service form, or any other
7 response to the court's order.

8 **II. SERVICE OF PROCESS -- RULE 4**

9 Rule 4 of the Federal Rule of Civil Procedure governs service of process. If a plaintiff
10 is proceeding *in forma pauperis*, the court is required to direct the United States marshal to
11 serve process on behalf of the plaintiff. Fed. R. Civ. P. 4(c)(3). Otherwise, “[t]he plaintiff
12 [himself or herself] is responsible for having the summons and complaint served within the
13 time allowed by Rule 4(m).” Fed. R. Civ. P. 4(c)(1). “Any person who is at least 18 years old
14 and not a party may serve a summons and complaint.” Fed. R. Civ. P. 4(c)(2).

15 Pursuant to Rule 4(m), “[i]f a defendant is not served within 90 days after the complaint
16 is filed, the court--on motion or on its own after notice to the plaintiff--must dismiss the action
17 without prejudice against that defendant or order that service be made within a specified time.
18 But if the plaintiff shows good cause for the failure, the court must extend the time for service
19 for an appropriate period.” Fed. R. Civ. P. 4(m). Moreover, “[a]t the plaintiff's request, the
20 court may order that service be made by a United States marshal or deputy marshal or by a
21 person specially appointed by the court.” Fed. R. Civ. P. (c)(3).

22 Here, Plaintiff failed to comply with the ninety-day deadline to serve process upon
23 defendant Dr. Ola. Therefore, the court now issues an order for Plaintiff to show cause why
24 this case should not be dismissed for his failure to timely effect service upon defendant Dr. Ola.

25 **III. ORDER TO SHOW CAUSE**

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

- 27 1. Within thirty (30) days from the date of service of this order, Plaintiff shall file a
28 written response to this order, showing cause why the court should not dismiss

1 this case in its entirety based on Plaintiff's failure to timely serve process upon
2 defendant Dr. Ola; and

3 2. The failure to respond to this order or the failure to show cause may result in a
4 recommendation that this action be dismissed in its entirety.

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6 IT IS SO ORDERED.

7 Dated: September 6, 2019

/s/ Gary S. Austin
8 UNITED STATES MAGISTRATE JUDGE

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