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3 UNITED STATES DISTRICT COURT
4 EASTERN DISTRICT OF CALIFORNIA

5 DINO DE LUCA,

6 Plaintiff,

7 v.

8 FRANCISCO MORENO,

9 Defendant.

1:16-cv-01887-DAD-EPG (PC)

ORDER VACATING FINDINGS AND
RECOMMENDATIONS
(ECF NO. 9)

ORDER DIRECTING CLERK TO RE-
SERVE THE SCREENING ORDER (ECF
NO. 5) ON PLAINTIFF AND FORWARD
SERVICE DOCUMENTS TO PLAINTIFF
FOR COMPLETION AND RETURN
WITHIN THIRTY DAYS

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14 Dino De Luca (“Plaintiff”) was a person detained by the State of California under civil
15 process. He is proceeding *pro se* and *in forma pauperis* in this civil rights action pursuant to 42
16 U.S.C. § 1983.

17 On December 19, 2016, Plaintiff filed his complaint. (ECF No. 1). On January 12,
18 2017, the Court screened Plaintiff’s complaint and found that Plaintiff stated a cognizable claim
19 against defendant Francisco Moreno for excessive force in violation of the Fourteenth
20 Amendment. (ECF No. 5). The Court also found service of the complaint appropriate, and
21 sent Plaintiff service documents that Plaintiff was to complete and return within thirty days
22 from the date of service of the screening order. (*Id.*). However, Plaintiff did not return the
23 service documents within the required time period, and failed to keep the Court informed of his
24 current address, so the Court issued findings and recommendations, recommending that this
25 case be dismissed, without prejudice, for Plaintiff’s failure to comply with a court order and
26 failure to prosecute.

27 While Plaintiff still has not submitted the service documents, it appears that Plaintiff is
28 now in Fresno County Jail (ECF No. 11). As Plaintiff did not receive the findings and

1 recommendations, and as Plaintiff may not have received the screening order or the service
2 documents, the Court will vacate its findings and recommendations and order that the screening
3 order and service documents be resent to Plaintiff. However, if Plaintiff fails to timely
4 complete and return the service documents again, the Court will issue findings and
5 recommendations to the assigned district judge, recommending that the case be dismissed
6 without prejudice for failure to prosecute and failure to comply with a court order.

7 Accordingly, based on the foregoing, IT IS HEREBY ORDERED that:

- 8 1. The findings and recommendations the Court issued on May 12, 2017 (ECF No.
9 9) are VACATED;
- 10 2. Plaintiff has thirty days from the date of service of this order to complete and
11 return the service documents;
- 12 3. The Clerk of Court is directed to send Plaintiff a copy of the screening order
13 entered on January 12, 2017 (ECF No. 5); and
- 14 4. The Clerk of Court is directed to send Plaintiff one (1) USM-285 form, one (1)
15 summons, a Notice of Submission of Documents form, an instruction sheet, and
16 a copy of the complaint dated December 19, 2016 (ECF No. 1).

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18 IT IS SO ORDERED.

19 Dated: June 23, 2017

20 /s/ Eric P. Gray
21 UNITED STATES MAGISTRATE JUDGE
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