1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF CALIFORNIA 10 11 PHILIP JAMES ROGERS. CASE NO. 1:18-cv-0846 NONE JLT (PC) 12 Plaintiff, ORDER VACATING ORDER TO SHOW **CAUSE** 13 v. (Doc. 28) 14 RODRIGUEZ, et al., SIXTY-DAY DEADLINE 15 Defendants. 16 Plaintiff is proceeding in this action against Kern Valley State Prison Sergeant Benecourt 17 and Correctional Officer Rodriguez on an Eighth Amendment claim stemming from an incident 18 that occurred in the KVSP kitchen on June 22, 2017. Sergeant Benecourt has now been served 19 and appeared in this action. Additionally, the Court recently issued the Discovery and Scheduling 20 Order. (Doc. 32.) As for defendant Rodriguez, the summons directed to this defendant was 21 returned unexecuted on April 17, 2020, because, per the KVSP Litigation Coordinator, "there was 22 no 'officer Rodriguez working that area on the day stated in his complaint.' They will not accept 23 service." (Doc. 23.) 24 Due to the failure to serve this defendant within the time prescribed by Federal Rule of 25 Civil Procedure 4(m), plaintiff was directed to show cause why defendant Rodriguez should not 26 be dismissed. (Doc. 28.) In his response to the order to show cause, plaintiff states that he 27 28

mistakenly misidentified the defendant Rodriguez as a correctional officer and seeks additional time to conduct discovery to properly identify this defendant. (Doc. 34.) If plaintiff establishes good cause for the failure to effectuate timely service, the Court is required to extend the time for service. Fed. R. Civ. P. 4(m). Therefore, good cause appearing, the Court **ORDERS** as follows: 1. The order to show cause (Doc. 28) is **VACATED**; 2. Plaintiff is granted an additional 60 days from the date of this Order to identify defendant Rodriguez using traditional discovery methods. Once he has ascertained the identify of this defendant, he may then move to amend his pleading. Once amended, the Court will direct the United States Marshal to re-serve this defendant. IT IS SO ORDERED. /s/ Jennifer L. Thurston Dated: October 14, 2020 UNITED STATES MAGISTRATE JUDGE