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8 UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA
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11 DARRELL DIETLE,

12 Plaintiff,

13 v.

14 RAFAEL MIRANDA, et al.,

15 Defendants.
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No. 2:14-cv-1728 WBS AC P

ORDER TO SHOW CAUSE

17 Plaintiff is a state prisoner proceeding through counsel with a civil rights action pursuant
18 to 42 U.S.C. § 1983. Plaintiff has paid the filing fee.

19 On August 17, 2015, plaintiff was ordered to complete service of process on defendant
20 Miranda within sixty days. ECF No. 17 at 2. Plaintiff was to also file a status report with the
21 court within ninety days of the date of the order. Id. Both the sixty and ninety day time periods
22 have passed and plaintiff has not filed proof of service or a waiver of service for defendant
23 Miranda or the required status report.

24 Rule 4(m) of the Federal Rules of Civil Procedure provides that:

25 If a defendant is not served within 120 days after the complaint is
26 filed, the court—on motion or its own after notice to the plaintiff—
27 must dismiss the action without prejudice against that defendant or
28 order that service be made within a specified time. But if the
plaintiff shows good cause for the failure, the court must extend the
time for service for an appropriate period.


1 “The purpose of Rule 4(m) is to assure that defendant will be promptly notified of the lawsuit,
2 thereby preventing possible prejudice resulting from delay: e.g., loss of evidence, dimming of
3 witnesses’ memories, financial commitments based on *not* being sued, etc.” A. Wallace Tashima
4 & James M. Wagstaffe, Rutter Group Practice Guide: Federal Civil Procedure Before Trial, Calif.
5 & 9th Cir. Editions § 5:261 (2015 rev.) (citation omitted, emphasis in original). Plaintiff is
6 required to file proof of service of process or waiver of service with the court. Fed. R. Civ. P.
7 4(l); L.R. 210 (b), (c).

8 It has been more than 120 days since the complaint was screened and this action permitted
9 to go forward as to defendant Miranda. See ECF No. 14. Plaintiff is represented by counsel and
10 has paid the filing fee and the Federal and Local Rules provide that counsel for plaintiff will
11 obtain the appropriate summonses from the Clerk of the Court. Fed. R. Civ. P. 4(b); L.R. 210(a).
12 The court directed the Clerk to issue and send plaintiff a summons for defendant Miranda (ECF
13 No. 17) as a courtesy and to prevent further delay after two months had passed since plaintiff
14 notified the court that he was electing to proceed against defendant Miranda only (ECF No. 16)
15 and there was no evidence of a summons being obtained.

16 Plaintiff has failed to both effect timely service and comply with the court’s August 17,
17 2015 order to file a status report. Plaintiff will be required to show cause why this case should
18 not be dismissed for failure to timely serve and failure to comply with a court order.

19 Accordingly, IT IS HEREBY ORDERED that within ten days of the date of this order,
20 plaintiff must show cause why this case should not be dismissed for failure to effect timely
21 service and to comply with the court’s August 17, 2015 order. Fed. R. Civ. P. 4(m); L.R. 110.

22 DATED: November 19, 2015

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24 ALLISON CLAIRE
25 UNITED STATES MAGISTRATE JUDGE
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