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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

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Martin Douglas Slover,
Plaintiff,

No. CV-16-02888-PHX-JAT (JZB)

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ORDER

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v.

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Gila County Board of Supervisors, et al.,
Defendants.

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Plaintiff has failed to timely serve Defendant Johnson, the only remaining Defendant in this matter after screening, and has failed to respond to the Court’s Order to Show Cause why his claims against Defendant Johnson should not be dismissed for failure to serve. Therefore, as detailed below, the Court will dismiss this action without prejudice pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

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I. Background

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On August 29, 2016, Plaintiff, who is confined in the Arizona State Prison Complex-Tucson, filed a *pro se* civil rights Complaint pursuant to 42 U.S.C. § 1983. (Doc. 1.) On September 21, 2016, the Court screened the Complaint, ordered Defendant Johnson to answer Count One, dismissed the remaining claims and Defendants, and ordered Plaintiff to complete and return a service packet for Defendant Johnson to the Clerk of Court within 21 days of the date of the Order. (Doc. 5 at 10.) On November 7, 2016, the Clerk received a completed service packet as to Defendant Johnson, and on

1 November 8, 2016, forwarded the service packet to the United States Marshal Service
2 (“USMS”) for service. On January 13, 2017, a Process Receipt and Return was filed with
3 the notation “Returned unexecuted. Does not work at Gila River Sheriff’s Office any
4 longer.” (Doc. 13.)

5 On January 25, 2017, the Court ordered Plaintiff, on or before February 8, 2017,
6 to either provide a current work address for Defendant Johnson or show cause why his
7 claims against Defendant Johnson should not be dismissed for failure to effect service.
8 (Doc. 16.) On February 1, 2017, Plaintiff filed an untitled document, which the Court
9 construed as a Response to the Court’s Order to Show Cause. (Doc. 18.) In his Response,
10 Plaintiff states his case should not be dismissed because “I am going to try and locate
11 [Defendant Johnson’s] address [through] my mother” and “I don[’]t know how to get
12 [Defendant Johnson’s] address from in prison.” (*Id.*)

13 On February 16, 2017, Plaintiff filed an untitled document, which the Court
14 construed as a Motion for assistance in locating Defendant Johnson. (Doc. 19.) In his
15 Motion, Plaintiff indicated that he is unable to locate Defendant Johnson’s address, and
16 he requested the Court assist him. On February 28, 2017, the Court granted Plaintiff’s
17 request and ordered the Gila County Sheriff, J. Adam Shepherd, to file with the Court a
18 current work address for Defendant Johnson, if still employed by the Gila County
19 Sheriff’s Office, or, if not, the last known home address for Defendant Johnson, under
20 seal and *ex parte*. (Doc. 20.)

21 On March 20, 2017, J. Adam Shepherd, the Gila County Sheriff, filed a Notice
22 with the Court indicating that Defendant Johnson is no longer employed by the Gila
23 County Sheriff’s Office, and provided, under seal, the last known home address for
24 Defendant Johnson. (Doc. 23.) Upon receipt of the address, the Clerk of Court completed
25 a service packet for Defendant Johnson and forwarded it to the USMS for service. On
26 May 18, 2017, a Process Receipt and Return was filed with the notation “Deputy went to
27 address provided, residence appeared vacant. Spoke to neighbors on both sides and they
28 stated they had no[t] seen any one there in 2 years.” (Doc. 25.)

1 On June 5, 2017, the Court ordered Plaintiff, on or before June 19, 2017, to either
2 provide a current address for Defendant Johnson, or otherwise show cause why his claims
3 against Defendant Johnson should not be dismissed for failure to effect service pursuant
4 to Rule 4(m) of the Federal Rules of Civil Procedure. (Doc. 26.) To date, Plaintiff has
5 not provided a current address for Defendant Johnson or otherwise responded to the
6 Court's Order to Show Cause.

7 **II. Discussion**

8 The Court's September 21, 2016 Screening Order states the following:

9 If Plaintiff fails to timely comply with every provision of this
10 Order, including these warnings, the Court may dismiss this
11 action without further notice. *See Ferdik v. Bonzelet*, 963 F.2d
12 1258, 1260-61 (9th Cir. 1992) (a district court may dismiss an
13 action for failure to comply with any order of the Court).

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15 (8) If Plaintiff does not either obtain a waiver of service of the
16 summons or complete service of the Summons and Complaint on
17 a Defendant within 90 days of the filing of the Complaint or
18 within 60 days of the filing of this Order, whichever is later, the
19 action may be dismissed as to each Defendant not served. Fed. R.
20 Civ. P. 4(m); LRCiv 16.2(b)(2)(B)(ii).

21 (Doc. 5 at 10-11.)

22 Rule 16.2(b)(2)(B)(ii) of the Local Rules of Civil Procedure, which governs
23 prisoner civil rights suits, provides that service shall be completed by the maximum date
24 to effect service under Rule 4(m) of the Federal Rules of Civil Procedure, "or sixty (60)
25 days from filing of the service order, whichever is later." Rule 4(m) of the Federal Rules
26 of Civil Procedure requires that service be completed within 90 days of the date the
27 complaint was filed.

28 If a defendant is not served within 90 days after the complaint is
 filed, the court—on motion or on its own after notice to the
 plaintiff—must dismiss the action without prejudice against that
 defendant or 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.

Fed. R. Civ. P. 4(m).

1 Good cause to avoid dismissal may be demonstrated by
2 establishing, at minimum, excusable neglect. *See Boudette v.*
3 *Barnette*, 923 F.2d 754, 756 (9th Cir. 1991). In addition to
4 excusable neglect, a plaintiff may be required to show the
5 following factors to bring the excuse to the level of good cause:
6 “(a) the party to be served personally received actual notice of
7 the lawsuit; (b) the defendant would suffer no prejudice; and (c)
8 plaintiff would be severely prejudiced if his complaint were
9 dismissed.” *Id.*

10 *Lemoge v. United States*, 587 F.3d 1188, 1198 n.3 (9th Cir. 2009).

11 “[A]n incarcerated *pro se* plaintiff proceeding *in forma pauperis* is entitled to rely
12 on the U.S. Marshal for service of the summons and complaint.” *Puett v. Blandford*, 912
13 F.2d 270, 275 (9th Cir. 1990). “So long as the [plaintiff] has furnished the information
14 necessary to identify the defendant, the marshal’s failure to effect service ‘is
15 automatically good cause within the meaning of Rule 4[(m)].” *Walker v. Sumner*, 14
16 F.3d 1415, 1422 (9th Cir. 1994) (quoting *Sellers v. United States*, 902 F.2d 598, 603 (7th
17 Cir. 1990)).

18 However, it remains Plaintiff’s responsibility to provide the United States Marshal
19 with accurate and sufficient information to effect service. *See id.* The Court is not
20 required to act as an investigative body in ascertaining a correct address for Defendant.
21 *Id.*; *DeRoche v. Funkhouser*, No. CV 06-1428-PHX-MHM (MEA), 2008 U.S. Dist.
22 LEXIS 70422, at *2-5 (D. Ariz. Sept. 16, 2008) (“neither the Marshal Service nor the
23 Court may engage in investigatory efforts on behalf of the parties to a lawsuit as this
24 would improperly place the Court in the role of an advocate”) (citing *Hall v. Bellmon*,
25 935 F.2d 1106, 1110 (10th Cir. 1991)); *see also Pember v. Ryan*, No. CV-11-2332 PHX-
26 SMM, 2014 U.S. Dist. LEXIS 94407, at *6-9 (D. Ariz. July 11, 2014) (“As an impartial
27 decision maker, it is not a federal judges’ role or responsibility to track down a
28 defendant’s address so a plaintiff may serve process.”); *Pliler v. Ford*, 542 U.S. 225, 231
(2004) (Federal “judges have no obligation to act as counsel or paralegal to *pro se*
litigants.”).

Even if a plaintiff fails to show good cause, the district court may also, in its
discretion, “extend time for service upon a showing of excusable neglect.” *Lemoge*, 587

1 F.3d at 1198. To determine whether there is “excusable neglect,” the Court considers: (1)
2 the danger of prejudice to the opposing party; (2) the length of the delay and its potential
3 impact on the proceedings; (3) the reason for the delay; and (4) whether the movant acted
4 in good faith. *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd.*, 507 U.S. 380, 394
5 (1993); *Briones v. Riviera Hotel & Casino*, 116 F.3d 379, 382 (9th Cir. 1997).

6 Here, the deadline for serving Defendant Johnson expired on November 27, 2016.
7 To date, the Court’s docket reflects that Defendant Johnson has not been served. The
8 Court has already ordered the Gila County Sheriff to provide the last known address for
9 Defendant Johnson, and the USMS was unable to effect serve at that address. (Doc. 25.)
10 Further, Plaintiff has failed to respond to the Court’s Order to Show Cause for the delay
11 in service.

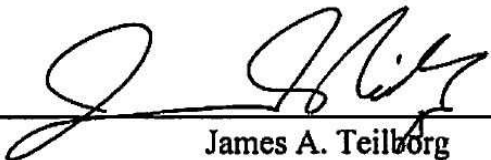
12 Plaintiff has likewise failed to show excusable neglect. Plaintiff has failed to
13 identify any additional steps that he has, or will, take to effect service on Defendant
14 Johnson, or any additional assistance the Court can provide him in obtaining the
15 information necessary to effect service. Based on the record, the Court has no reason to
16 believe that Plaintiff will be able to serve Defendant Johnson. Defendant Johnson is the
17 only remaining Defendant in this action. For these reasons, the Court finds that dismissal
18 of this action without prejudice pursuant to Rule 4(m) is appropriate.

19 Accordingly,

20 **IT IS ORDERED** that the reference to the Magistrate Judge is withdrawn as to
21 dismissal this action.

22 **IT IS FURTHER ORDERED** that this action is dismissed without prejudice
23 pursuant to Rule 4(m) of the Federal Rules of Civil Procedure and the Clerk of the Court
24 shall enter judgment accordingly.

25 Dated this 19th day of July, 2017.

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James A. Teilborg
Senior United States District Judge