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8	IN THE UNITE	D STATES DISTRICT COURT
9	FOR THE EASTERN DISTRICT OF CALIFORNIA	
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11	JEFFREY L. COX,	CASE NO. CV-F-01-5969 AWI DLB P
12	Plaintiff,	FINDINGS AND RECOMMENDATIONS RECOMMENDING DISMISSAL OF ACTION
13	VS.	
14	DR. ANDRADA, et al.,	
15	Defendants.	
16		
17	Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action	
18	pursuant to 42 U.S.C. § 1983. This action is proceeding on plaintiff's amended complaint, filed on	
19	September 12, 2002. On February 19, 2003, the court ordered plaintiff to provide information to	
20	facilitate service of process on defendants by filling out and submitting to the court a USM-285 form	
21	and a summons for each defendant to be served. Plaintiff submitted the required documents on March	
22	6, 2003, and on April 9, 2003, the court directed the United States Marshal to initiate service on	
23	defendants. On May 13, 2003 and May 19, 2003, the Marshal returned the documents to the Court as	
24	they were unable to locate and serve the defendants.	
25	On December 20, 2006, plaintiff responded to the Court's order to show cause why this case	
26	should not be dismissed pursuant to Rule 4(m). Plaintiff was unable to provide additional information	
27	to effect service of the summons and complaint.	
28	Pursuant to Rule 4(m),	
		Dockets Justia com

[i]f service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.

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

In cases involving a plaintiff proceeding in forma pauperis, a United States Marshal, upon order of the court, shall serve the summons and the complaint. Fed. R. Civ. P. 4(c)(2). "[A]n incarcerated pro se plaintiff proceeding in forma pauperis is entitled to rely on the U.S. Marshal for service of the summons and complaint and ... should not be penalized by having his action dismissed for failure to effect service where the U.S. Marshal or the court clerk has failed to perform his duties." Walker v. Sumner, 14 F.3d 1415, 1422 (9th Cir. 1994) (quoting Puett v. Blandford, 912 F.2d 270, 275 (9th Cir. 1990)), abrogated on other grounds by Sandin v. Connor, 515 U.S. 472 (1995). "So long as the prisoner has furnished the information necessary to identify the defendant, the marshal's failure to effect service is 'automatically good cause . . . ." Walker, 14 F.3d at 1422 (quoting Sellers v. United States, 902 F.2d 598, 603 (7th Cir.1990)). However, where a pro se plaintiff fails to provide the Marshal with accurate and sufficient information to effect service of the summons and complaint, the court's sua sponte dismissal of the unserved defendants is appropriate. Walker, 14 F.3d at 1421-22.

In this instance, the information provided by plaintiff for service was insufficient. Plaintiff was provided with the opportunity to provide additional information and to show cause why this action should not be dismissed.

Accordingly, pursuant to Federal Rule of Civil Procedure 4(m), it is HEREBY RECOMMENDED that this action be dismissed, without prejudice.

These Findings and Recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(l). Within **thirty (30) days** after being served with these Findings and Recommendations, the parties may file written objections with the court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." The parties are advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

## IT IS SO ORDERED. /s/ Dennis L. Beck UNITED STATES MAGISTRATE JUDGE Dated: February 1, 2008