

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

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

8 In cases involving a plaintiff proceeding in forma pauperis, a United States Marshal, upon order
9 of the court, shall serve the summons and the complaint. Fed. R. Civ. P. 4(c)(2). “[A]n incarcerated
10 pro se plaintiff proceeding in forma pauperis is entitled to rely on the U.S. Marshal for service of the
11 summons and complaint and ... should not be penalized by having his action dismissed for failure to
12 effect service where the U.S. Marshal or the court clerk has failed to perform his duties.” Walker v.
13 Sumner, 14 F.3d 1415, 1422 (9th Cir. 1994) (quoting Puett v. Blandford, 912 F.2d 270, 275 (9th Cir.
14 1990)), *abrogated on other grounds by Sandin v. Connor*, 515 U.S. 472 (1995). “So long as the prisoner
15 has furnished the information necessary to identify the defendant, the marshal’s failure to effect service
16 is ‘automatically good cause’” Walker, 14 F.3d at 1422 (quoting Sellers v. United States, 902 F.2d
17 598, 603 (7th Cir.1990)). However, where a pro se plaintiff fails to provide the Marshal with accurate
18 and sufficient information to effect service of the summons and complaint, the court’s sua sponte
19 dismissal of the unserved defendants is appropriate. Walker, 14 F.3d at 1421-22.

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

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

25 These Findings and Recommendations will be submitted to the United States District Judge
26 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **thirty (30) days**
27 after being served with these Findings and Recommendations, the parties may file written objections
28 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).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO ORDERED.

Dated: February 1, 2008

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE