

1 documents to Plaintiff for completion and return. (ECF No. 116.) Plaintiff returned the service
2 documents for Defendant Lopez on January 7, 2013. (ECF No. 117.) On the same date, the court
3 again issued an order directing the United States Marshal to initiate service of process in this action
4 upon Defendant Lopez. (ECF No. 118.) On May 16, 2013, the Marshal filed a return of service
5 unexecuted as to Defendant Lopez. (ECF No. 119.)

6 Federal Rule of Civil Procedure 4(m) provides as follows:

7 If a defendant is not served within 120 days after the complaint is filed, the court—on
8 motion or on its own after notice to the plaintiff—must dismiss the action without
9 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.

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

11 In cases involving a plaintiff proceeding in forma pauperis, the Marshal, upon order of the
12 court, shall serve the summons and the complaint. Fed. R. Civ. P. 4(c)(3). “[A]n incarcerated pro se
13 plaintiff proceeding in forma pauperis is entitled to rely on the U.S. Marshal for service of the
14 summons and complaint, and ... should not be penalized by having his action dismissed for failure to
15 effect service where the U.S. Marshal or the court clerk has failed to perform the duties required of
16 each of them” Puett v. Blandford, 912 F.2d 270, 275 (9th Cir. 1990). “So long as the prisoner
17 has furnished the information necessary to identify the defendant, the marshal’s failure to effect
18 service is ‘automatically good cause’” Walker v. Sumner, 14 F.3d 1415, 1422 (9th Cir. 1994),
19 abrogated on other grounds by Sandin v. Connor, 515 U.S. 472, 115 S.Ct. 2293, 132 L.Ed.2d 418
20 (1995). However, where a pro se plaintiff fails to provide the Marshal with accurate and sufficient
21 information to effect service of the summons and complaint, the Court’s sua sponte dismissal of the
22 unserved defendant is appropriate. Walker, 14 F.3d at 1421-22.

23 In this case, Plaintiff has not provided sufficient information to identify Defendant Lopez and
24 to locate this defendant for service of process. (ECF No. 119.) If Plaintiff is unable to provide the
25 Marshal with additional information, Defendant Lopez shall be dismissed from this action, without
26 prejudice. Pursuant to Rule 4(m), the court will provide Plaintiff with the opportunity to show cause
27 why Defendant Lopez should not be dismissed from the action at this time.
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III. CONCLUSION

Based on the foregoing, it is HEREBY ORDERED that:

1. Within thirty (30) days from the date of service of this order, Plaintiff shall show cause why Defendant Lopez should not be dismissed from this action; and
2. The failure to respond to this order or the failure to show cause will result in the dismissal of Defendant Lopez from this action.

IT IS SO ORDERED.

Dated: May 20, 2013

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE