

**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

GARY H. BRUSH,

CASE NO. 1:07-cv-01009-LJO-DLB PC

Plaintiff,

**ORDER REQUIRING PLAINTIFF TO SHOW  
CAUSE WITHIN THIRTY DAYS WHY  
DEFENDANT WATTS SHOULD NOT BE  
DISMISSED FOR FAILURE TO PROVIDE  
INFORMATION SUFFICIENT TO EFFECT  
SERVICE**

v.

J. HARPER, et al.,

Defendants.

(Doc. 57)

Plaintiff Gary H. Brush ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. On, September 19, 2008, the court directed the United States Marshal to initiate service of process on defendants J. Harper, Ortiz, Brummel, Lee, Freeland, Watts, Josso, Tucker, Soares, Rangel, Gonzales, Cano, N. Greene, J.L. Scott, J. Naftzger, King, and Cattallano. (Doc. 30.) However, the Marshal was unable to locate and serve Defendant Watts, and on December 18, 2008, the Marshal returned the USM-285 form to the Court. (Doc. 57.)

Pursuant to Rule 4(m),

[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).

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

14 In this instance, the address provided by Plaintiff for Defendant Watts is no longer accurate,  
15 as Defendant Watts is no longer employed at Pleasant Valley State Prison. The returned unexecuted  
16 summons also indicates that no forwarding information is available. (Doc. 57.) If Plaintiff is unable  
17 to provide the Marshal with current address at which Defendant Watts can be located, this defendant  
18 shall be dismissed from the action, without prejudice. Pursuant to Rule 4(m), the Court will provide  
19 Plaintiff with the opportunity to show cause why Defendant Watts should not be dismissed from the  
20 action at this time.

21 Accordingly, based on the foregoing, it is HEREBY ORDERED that:

- 22 1. Within **thirty (30) days** from the date of service of this order, Plaintiff shall show  
23 cause why Defendant Watts should not be dismissed from this action; and

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