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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

SHAULTON J. MITCHELL,

Plaintiff,

v.

HERNANDEZ, et al.,

Defendants.

CASE NO. 1:07-cv-01322-AWI-DLB PC

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

(Doc. 22)

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Plaintiff Shaulton Mitchell ("Plaintiff") is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on Plaintiff's second amended complaint, filed on July 21, 2008. On June 1, 2009, the Court issued an order directing the United States Marshal to initiate service of process on nine defendants. The Marshal was unable to locate and serve Defendant Aguayo and on August 26, 2009, the Marshal returned the USM-285 form to the Court. (Doc. 22.)

Pursuant to Rule 4(m),

If a defendant is not served within 120 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).

In cases involving a plaintiff proceeding in forma pauperis, the Marshal, upon order of the Court, shall serve the summons and the complaint. Fed. R. Civ. P. 4(c)(2). "[A]n incarcerated pro

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

12 In this instance, the information provided by Plaintiff was not sufficient to initiate service  
13 on Defendant Aguayo, as Defendant Aguayo does not appear to be currently employed at the prison.  
14 If Plaintiff is unable to provide the Marshal with a current address at which Defendant Aguayo can  
15 be located, the defendant shall be dismissed from the action, without prejudice. Pursuant to Rule  
16 4(m), the Court will provide Plaintiff with the opportunity to show cause why Defendant Aguayo  
17 should not be dismissed from the action at this time.

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

- 19 1. Within **thirty (30) days** from the date of service of this order, Plaintiff shall show  
20 cause why Defendants Aguayo should not be dismissed from this action; and
- 21 2. The failure to respond to this order or the failure to show cause will result in a  
22 recommendation that Defendant Aguayo be dismissed from this action.

23 IT IS SO ORDERED.

24 **Dated: December 29, 2009**

25 /s/ Dennis L. Beck  
26 UNITED STATES MAGISTRATE JUDGE  
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