

1 In cases involving a plaintiff proceeding in forma pauperis, a United States Marshal, upon order
2 of the court, shall serve the summons and the complaint. Fed. R. Civ. P. 4(c)(2). “[A]n incarcerated
3 pro 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 to
5 effect service where the U.S. Marshal or the court clerk has failed to perform his duties.” Walker v.
6 Sumner, 14 F.3d 1415, 1422 (9th Cir. 1994) (quoting Puett v. Blandford, 912 F.2d 270, 275 (9th Cir.
7 1990)), *abrogated on other grounds by Sandin v. Connor*, 515 U.S. 472 (1995). “So long as the prisoner
8 has furnished the information necessary to identify the defendant, the marshal’s failure to effect service
9 is ‘automatically good cause’” Walker, 14 F.3d at 1422 (quoting Sellers v. United States, 902 F.2d
10 598, 603 (7th Cir.1990)). However, where a pro se plaintiff fails to provide the Marshal with accurate
11 and sufficient information to effect service of the summons and complaint, the court’s sua sponte
12 dismissal of the unserved defendants is appropriate. Walker, 14 F.3d at 1421-22.

13 In this instance, the address provided by plaintiff for defendant Smith is no longer accurate, as
14 it appears Defendant Smith is no longer employed at Kern Valley State Prison. (Doc. 27.) Plaintiff was
15 provided with the opportunity to show cause why defendant Smith should not be dismissed from the
16 action at this time, but failed to do so.

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

19 These Findings and Recommendations will be submitted to the United States District Judge
20 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **thirty (30) days**
21 after being served with these Findings and Recommendations, the parties may file written objections
22 with the court. The document should be captioned “Objections to Magistrate Judge’s Findings and
23 Recommendations.” The parties are advised that failure to file objections within the specified time may
24 waive the right to appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

25 IT IS SO ORDERED.

26 **Dated: April 22, 2009**

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE