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6 **UNITED STATES DISTRICT COURT**

7 EASTERN DISTRICT OF CALIFORNIA

8
9 THORNELL BROWN,

CASE NO. 1:09-cv-00573-DLB PC

10 Plaintiff,

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

11 v.

12 FAMBROUGH, et al.,

13 Defendants.

14 (Doc. 14)

15 /

16 Plaintiff Thornell Brown (“Plaintiff”) is a state prisoner proceeding pro se and in forma
17 pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action is proceeding on
18 Plaintiff’s complaint, filed March 30, 2009. (Doc. 1.) On November 13, 2009, the Court issued an
19 order directing the United States Marshal to initiate service of process on ten defendants. (Doc. 13.)
20 The Marshal was unable to locate and serve Defendant Felix Vasquez and on February 1, 2010, the
21 Marshal returned the USM-285 form to the Court. (Doc. 14.)

22 Pursuant to Rule 4(m),

23 If a defendant is not served within 120 days after the complaint is filed, the court -
24 on motion or on its own after notice to the plaintiff - must dismiss the action without
25 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.

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

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

12 In this instance, the address provided by Plaintiff for Defendant Felix Vasquez is no longer
13 accurate, as Defendant Felix Vasquez is no longer employed at the facility, Kern Valley State
14 Prison. (Doc. 14.) If Plaintiff is unable to provide the Marshal with a current address at which
15 Defendant Felix Vasquez can be located, the defendant shall be dismissed from the action, without
16 prejudice. Pursuant to Rule 4(m), the Court will provide Plaintiff with the opportunity to show cause
17 why Defendant Felix Vasquez should not be dismissed from the action at this time.

18 | Accordingly, 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 Defendants Felix Vasquez 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 dismissal of Defendant Felix Vasquez from this action.

IT IS SO ORDERED.

Dated: April 3, 2010

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE