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**UNITED STATES DISTRICT COURT**

EASTERN DISTRICT OF CALIFORNIA

THORNELL BROWN,

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

Plaintiff,

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

v.

FAMBROUGH, et al.,

Defendants.

(Doc. 26)

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Plaintiff Thornell Brown (“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 complaint, filed March 30, 2009. (Doc. 1.) On November 13, 2009, the Court issued an order directing the United States Marshal to initiate service of process on ten defendants. (Doc. 13.) The litigation coordinator of Kern Valley State prison responded to the United States Marshal service on January 27, 2010. (Doc. 26.) The litigation coordinator indicated that there are at least 3 Joe Garcias working in Kern Valley State Prison, and thus was unable to accept service.

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

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

13 In this instance, the information provided by Plaintiff is incomplete, as there are three  
14 different Joe Garcias employed at Kern Valley State Prison. (Doc. 26.) If Plaintiff is unable to  
15 provide the Marshal with further information so that Defendant Joe Garcia can be located, the  
16 defendant shall be dismissed from the action, without prejudice. Pursuant to Rule 4(m), the Court  
17 will provide Plaintiff with the opportunity to show cause why Defendant Joe Garcia should not be  
18 dismissed from the action at this time.

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

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

24 IT IS SO ORDERED.

25 **Dated: April 21, 2010**

26 **/s/ Dennis L. Beck**  
27 **UNITED STATES MAGISTRATE JUDGE**