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5 **UNITED STATES DISTRICT COURT**
6 **EASTERN DISTRICT OF CALIFORNIA**
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8 RICHARD ALAN LAWSON,
9 Plaintiff,

10 v.

11 DONALD YOUNGBLOOD, et al.,
12 Defendants.
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Case No. 1:09-cv-00992-LJO-MJS (PC)

**ORDER REQUIRING PLAINTIFF TO
SHOW CAUSE WHY DEFENDANT
CLEMENTE SHOULD NOT BE
DISMISSED FOR FAILURE TO PROVIDE
SUFFICIENT INFORMATION TO
EFFECTUATE SERVICE OF PROCESS**

(ECF No. 86)

THIRTY DAY DEADLINE
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16 Plaintiff is a former state prisoner proceeding pro se and in forma pauperis in this
17 civil rights action filed pursuant to 42 U.S.C. § 1983. The matter proceeds on the
18 Second Amended Complaint claims of inadequate medical care by Defendants Laird,
19 Chang, Sawaske, Embrey, and Clemente, and excessive force by Defendant Laird.
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21 The United States Marshal was ordered to initiate service of process on January
22 11, 2012. (ECF No. 26.) The Marshal could not locate Defendant Clemente for service
23 and on September 17, 2012 returned summons unexecuted. (ECF No. 38.) On October
24 29, 2012, the Court ordered the Marshal to again attempt service on Defendant
25 Clemente. (ECF No. 53.) The Marshal, despite numerous attempts, was unable to
26 locate Clemente. The summons on re-service was returned unexecuted on May 12,
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1 2014. (ECF No. 86.)

2 Rule 4(m) provides that:

3 [i]f a defendant is not served within 120 days after the complaint is filed, the
4 court - on motion or on its own after notice to the plaintiff - must dismiss the
5 action without prejudice against that defendant or order that service be made
6 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.

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

8 In cases involving a plaintiff proceeding in forma pauperis, the Marshal, upon
9 order of the Court, shall serve the summons and the complaint. 28 U.S.C. § 1915(d);
10 Fed. R. Civ. P. 4(c)(3). “[A]n incarcerated pro se plaintiff proceeding in forma pauperis is
11 entitled to rely on the U.S. Marshal for service of the summons and complaint and . . .
12 should not be penalized by having his action dismissed for failure to effect service
13 where the U.S. Marshal or the court clerk has failed to perform his duties.” *Walker v.*
14 *Sumner*, 14 F.3d 1415, 1422 (9th Cir. 1994), quoting *Puett v. Blandford*, 912 F.2d 270,
15 275 (9th Cir. 1990), abrogated on other grounds by *Sandin v. Connor*, 515 U.S. 472
16 (1995). “So long as the prisoner has furnished the information necessary to identify the
17 defendant, the [M]arshal’s failure to effect service is automatically good cause”
18 *Walker*, 14 F.3d at 1422, quoting *Sellers v. United States*, 902 F.2d 598, 603 (7th Cir.
19 1990). However, where a pro se plaintiff fails to provide the Marshal with accurate and
20 sufficient information to effect service of the summons and complaint, the Court’s sua
21 sponte dismissal of the unserved defendant(s) is appropriate. *Walker*, 14 F.3d at 1421-
22 22.

25 After Defendant Clemente’s waiver of service was returned unexecuted, the
26 Marshal attempted personal service. (ECF No. 86.) . The Marshal’s Office advises it has
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