

1 Court issued an order for Plaintiff to provide information to enable service of process upon Defendant
2 Cleinlin. Plaintiff was ordered to respond within thirty days. (ECF No. 30.) More than thirty days
3 have passed and Plaintiff has failed to respond to the Court's order and has failed to provide sufficient
4 information for service of Defendant Cleinlin. On February 1, 2013, a copy of the summons for
5 Defendant Williams was returned unexecuted. (ECF No. 31.) Defendants Cleinlin and Williams
6 remain unserved in this action.

7 Federal Rule of Civil Procedure 4(m) provides as follows:

8 If a defendant is not served within 120 days after the complaint is filed, the court—on
9 motion or on its own after notice to the plaintiff—must dismiss the action without
10 prejudice against that defendant or order that service be made within a specified time.
11 But if the plaintiff shows good cause for the failure, the court must extend the time for
12 service for an appropriate period.

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

14 In cases involving a plaintiff proceeding in forma pauperis, the Marshal, upon order of the
15 court, shall serve the summons and the complaint. Fed. R. Civ. P. 4(c)(3). “[A]n incarcerated pro se
16 plaintiff proceeding in forma pauperis is entitled to rely on the U.S. Marshal for service of the
17 summons and complaint, and ... should not be penalized by having his action dismissed for failure to
18 effect service where the U.S. Marshal or the court clerk has failed to perform the duties required of
19 each of them” Puett v. Blandford, 912 F.2d 270, 275 (9th Cir. 1990). “So long as the prisoner has
20 furnished the information necessary to identify the defendant, the marshal’s failure to effect service is
21 ‘automatically good cause’” Walker v. Sumner, 14 F.3d 1415, 1422 (9th Cir. 1994), abrogated on
22 other grounds by Sandin v. Connor, 515 U.S. 472, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995). However,
23 where a pro se plaintiff fails to provide the Marshal with accurate and sufficient information to effect
24 service of the summons and complaint, the Court’s sua sponte dismissal of the unserved defendant is
25 appropriate. Walker, 14 F.3d at 1421-22.

26 In this case, Plaintiff failed to provide sufficient information to identify Defendants Cleinlin
27 and Williams and to locate these defendants for service of process. If Plaintiff is unable to provide the
28 Marshal with additional information, Defendants Cleinlin and Williams shall be dismissed from this

1 action without prejudice. Pursuant to Rule 4(m), the Court will provide Plaintiff with the opportunity
2 to show cause why Defendants Cleinlin and Williams should be dismissed from the action at this time.

3 Accordingly, it is HEREBY ORDERED as follows:

- 4 1. Within thirty (30) days from the date of service of this order, Plaintiff shall show cause
5 why Defendants Cleinlin and Williams should not be dismissed from this action; and
- 6 2. The failure to respond to this order or the failure to show cause will result in the dismissal
7 of Defendants Cleinlin and Williams from this action.

8
9 IT IS SO ORDERED.

10 Dated: August 27, 2013

/s/ Barbara A. McAuliffe
11 UNITED STATES MAGISTRATE JUDGE