



1 motion or on its own after notice to the plaintiff - must dismiss the action without  
2 prejudice against that defendant or order that service be made within a specified time.  
3 But if the plaintiff shows good cause for the failure, the court must extend the time for  
service for an appropriate period.

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

16 Here, the Court previously determined in its order to show cause that the Marshal had  
17 exhausted avenues available to him to locate and serve Defendant B. Sunday. Walker, 14 F.3d at  
18 1421-1422. Plaintiff has failed to respond to the order to show cause and/or provide the Court with  
19 good cause to extend the time for serving Defendant Sunday. Accordingly, the action should be  
20 dismissed.

## 21 II.

### 22 RECOMMENDATION

23 Based on the foregoing,

24 IT IS HEREBY RECOMMENDED that the instant action be DISMISSED pursuant to Rule  
25 4(m) of the Federal Rules of Civil Procedure.

26 This Findings and Recommendation will be submitted to the United States District Judge  
27 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **twenty (20)**  
28 **days** after being served with the Findings and Recommendation, Plaintiff may file written objections

1 with the Court. The document should be captioned "Objections to Magistrate Judge's Findings and  
2 Recommendation." Plaintiff is advised that failure to file objections within the specified time may  
3 waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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6 IT IS SO ORDERED.

7 Dated: May 21, 2014

  
8 UNITED STATES MAGISTRATE JUDGE