

1 service of process. (ECF No. 15.) Plaintiff failed to provide written notice to the Court
2 identifying Doe Defendants within the specified time limit.

3 On April 5, 2017, the Court issued an order to show cause why the remaining Doe
4 Defendants should not be dismissed and this action closed. (ECF No. 48.) Plaintiff filed a
5 response to the Court’s order to show cause on April 24, 2017. (ECF No. 49.)

6 Plaintiff asserts that he has made every effort to name the Doe Defendants, but he has
7 been unable to do so because his property will come up missing, his mail will be lost, or he is
8 taken to administrative segregation in order to discourage him from litigating or to cause him to
9 miss deadlines. Plaintiff states that he has been able to obtain the names of some of the Doe
10 Defendants employed by the California Department of Corrections and Rehabilitation and
11 working at Corcoran State Prison, and that he includes exhibits demonstrating the barriers he has
12 faced preventing the identification of the Doe Defendants. Plaintiff requests that the Court
13 provide the proper forms to serve Doe Defendants, and facilitate service of process by the United
14 States Marshal. (ECF No. 49.)

15 II. Legal Standard

16 Pursuant to Federal Rule of Civil Procedure 4(m):

17 If a defendant is not served within 90 days after the complaint is filed, the court—
18 on motion or on its own after notice to the plaintiff—must dismiss the action
19 without prejudice against that defendant or order that service be made within a
20 specified time. But if the plaintiff shows good cause for the failure, the court
must extend the time for service for an appropriate period.

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

22 In cases involving a plaintiff proceeding in forma pauperis, a United States Marshal, upon
23 order of the court, shall serve the summons and the complaint. Fed. R. Civ. P. 4(c)(3). “[A]
24 prisoner ‘is entitled to rely on the U.S. Marshal for service’ . . . as long as he or she ‘provide[s]
25 the necessary information to help effectuate service.’” Schrubb v. Lopez, 617 Fed. Appx. 832,
26 832 (9th Cir. 2015) (quoting Puett v. Blandford, 912 F.2d 270, 275 (9th Cir. 1990), abrogated on
27 other grounds by Sandin v. Connor, 515 U.S. 472 (1995)). “So long as the prisoner has furnished
28 the information necessary to identify the defendant, the marshal’s failure to effect service is

1 ‘automatically good cause’” Walker v. Sumner, 14 F.3d 1415, 1422 (9th Cir. 1994) (quoting
2 Sellers v. United States, 902 F.2d 598, 603 (7th Cir. 1990)), overruled on other grounds by
3 Sandin, 515 U.S. at 483–84. However, where a pro se plaintiff fails to provide the Marshal with
4 accurate and sufficient information to effect service of the summons and complaint, the Court’s
5 sua sponte dismissal of the unserved defendants is appropriate. Walker, 14 F.3d at 1421–22.

6 **III. Discussion**

7 Exhibit A to Plaintiff’s response to the Court’s order to show cause is a list entitled “Doe
8 Defendants,” including eight (8) individuals: Correctional Officer R. Meraz, Correctional Officer
9 D. Uribe, Correctional officer R. L. McMurrey, Lieutenant B. J. Weaver, Lieutenant R. Juarez,
10 Captain R. Whitfield, Correctional Officer J. Vargas, and Lieutenant J. Prudhel. (ECF No. 49,
11 pp. 5–6.) Of these individuals, four—Officer McMurrey, Lieutenant Weaver, Lieutenant Juarez,
12 and Lieutenant Prudhel—are named defendants who were dismissed from this action. (ECF Nos.
13 11, 18.) The remaining four—Officer Meraz, Officer Uribe, Captain Whitfield, and Officer
14 Vargas—are individuals who were named and identified in the second amended complaint. (ECF
15 No. 11.)

16 Exhibit B is a partial copy of the Court’s June 2, 2015 screening order, (ECF No. 12), with
17 handwritten annotations. (ECF No. 49, pp. 8–18.) Plaintiff has circled the names of defendants
18 and other individuals named in the complaint. However, Plaintiff does not provide any
19 explanation detailing the efforts he has taken to obtain the identities of the Doe Defendants, or
20 what barriers he faced that prevented him from obtaining their identities.

21 Plaintiff has already had the opportunity to assert claims against all individuals originally
22 named as defendants or identified in his complaint, and has failed to state cognizable claims
23 against them. Plaintiff may not now name the same individuals as Doe Defendants in order to
24 sustain this action.

25 **IV. Conclusion and Recommendation**

26 Plaintiff has failed to provide sufficient information to identify the Doe Defendants so the
27 United States Marshal may serve the summons and complaint. In addition, Plaintiff has failed to
28 set forth good cause for his failure to identify the Doe Defendants. Accordingly, the Court

1 HEREBY RECOMMENDS that all Doe Defendants be dismissed and this action closed, without
2 prejudice, pursuant to Federal Rule of Civil Procedure 4(m).

3 These Findings and Recommendations will be submitted to the United States District
4 Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within
5 **fourteen (14) days** after being served with these Findings and Recommendations, the parties may
6 file written objections with the Court. The document should be captioned “Objections to
7 Magistrate Judge’s Findings and Recommendations.” The parties are advised that failure to file
8 objections within the specified time may result in the waiver of the “right to challenge the
9 magistrate’s factual findings” on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir.
10 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

11 IT IS SO ORDERED.

12 Dated: May 1, 2017

13 */s/ Barbara A. McAuliffe*
14 UNITED STATES MAGISTRATE JUDGE

15
16
17
18
19
20
21
22
23
24
25
26
27
28