1 2 3 4 5 6 7 8 9 10 11 12 13 14 15		ED STATES DISTRICT COURT RN DISTRICT OF CALIFORNIA) Case No.: 1:14-cv-00937-DAD-BAM)) ORDER TO SHOW CAUSE WHY DEFENDANTS) ALBONETTI AND KING SHOULD NOT BE) DISMISSED FROM THIS ACTION FOR FAILURE) TO PROVIDE SUFFICIENT INFORMATION TO) EFFECTUATE SERVICE) (Doc. 32)
14	QUIROZ, et al.,	· · · · · · · · · · · · · · · · · · ·
15	Defendants.	
16 17) THIRTY-DAY DEADLINE

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I. Introduction

Plaintiff Javier Solis ("Plaintiff"), proceeding pro se and in forma pauperis, initiated this civil rights action pursuant to 42 U.S.C. § 1983 on June 19, 2014. This action proceeds on Plaintiff's fourth amended complaint, filed on November 23, 2015, against the City of Ceres and against Defendants Griebel and Quiroz for excessive force in violation of the Fourth Amendment and Defendants Niewenhuis, King and Albonetti for failure to intercede.

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II. Service by the United States Marshal

On January 8, 2016, the Court issued an order directing the United States Marshal to initiate
service of process in this action upon Defendants Griebel, Quiroz, Niewenhuis, King, Albonetti and
the City of Ceres. (Doc. 20). Defendants City of Ceres, Griebel, Niewenhuis and Quiroz answered

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the complaint on March 23, 2016. (Docs. 27-30). On March 31, 2016, the United States Marshal filed a return of service unexecuted as to Defendants Albonetti and King. (Doc. 32).

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

If a defendant is not served within 90 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 court, shall serve the summons and the complaint. Fed. R. Civ. P. 4(c)(3). A pro se litigant proceeding in forma pauperis is entitled to rely on the U.S. Marshal for service of the summons and complaint. *See, e.g., Puett v. Blandford*, 912 F.2d 270, 275 (9th Cir. 1990). Accordingly, delays or failures to effectuate service attributable to the Marshal are "automatically good cause within the meaning of Rule 4[m]." *Walker v. Sumner*, 14 F.3d 1415, 1422 (9th Cir. 1994), *abrogated on other grounds by Sandin v. Connor*, 515 U.S. 472, 115 S.Ct. 2293, 132 L.Ed.2d 418 (1995) (citation omitted). However, where a pro se plaintiff fails to provide the Marshal with accurate and sufficient information to effect service of the summons and complaint, the Court's sua sponte dismissal of the unserved defendant is appropriate. *Walker*, 14 F.3d at 1421-22.

Here, the Marshal attempted to serve Defendants Albonetti and King at an address provided by Plaintiff for the City of Ceres Police Department. However, the Marshal was informed that Defendants Albonetti and King were no longer employed at the address provided. (Doc. 23). To date, Plaintiff has not provided sufficient information to locate Defendants Albonetti and King for service of process. If Plaintiff is unable to provide the Marshal with additional information, Defendants Albonetti and King shall be dismissed from this action without prejudice. Pursuant to Rule 4(m), the court will provide Plaintiff with the opportunity to show cause why Defendants Albonetti and King should not be dismissed from the action at this time. Plaintiff may do so by submitting additional information to effectuate service of the summons and complaint by the Marshal.

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1	III. Conclusion and Order		
2	Based on the foregoing, it is HEREBY ORDERED that:		
3	1. Within thirty (30) days from the date of service of this order, Plaintiff shall show cause	•	
4	why Defendants Albonetti and King should not be dismissed from this action; and		
5	2. <u>The failure to respond to this order or the failure to show cause will result in the</u>		
6	dismissal of Defendants Albonetti and King from this action.		
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8	IT IS SO ORDERED.		
9	Dated: April 22, 2016 /s/ Barbara A. McAuliffe		
10	UNITED STATES MAGISTRATE JUDGE		
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