## 1 2 3 4 5 6 7 UNITED STATES DISTRICT COURT 8 9 EASTERN DISTRICT OF CALIFORNIA 10 11 RASHAD KING, Case No. 1:15-cv-01885-BAM (PC) 12 ORDER TO SHOW CAUSE WHY Plaintiff. DEFENDANT SOLIS SHOULD NOT BE 13 v. DISMISSED FROM THIS ACTION FOR FAILURE TO PROVIDE SUFFICIENT 14 S. HOLLAND, et al., INFORMATION TO EFFECTUATE **SERVICE** 15 Defendants. (ECF No. 18) 16 THIRTY (30) DAY DEADLINE 17 I. Introduction 18 Plaintiff Rashad King ("Plaintiff") is a state prisoner proceeding pro se and in forma 19 20 pauperis in this civil rights action under 42 U.S.C. § 1983. This action proceeds on Plaintiff's 21 complaint, filed on December 18, 2015, for violations of the Eighth Amendment against 22 Defendants Holland and Duncan for excessive force during the first escort; against Defendants, 23 Holland, Duncan and Solis for excessive force in the second cell; against Defendant Tingley for 24 failing to intervene in the attack by Defendants Holland, Solis and Duncan in the second cell; and an Eighth Amendment sexual assault against Defendant Holland. 25 26 II. **Service by the United States Marshal** On December 22, 2016, following the screening of Plaintiff's complaint, the Court issued 27

an order directing the United States Marshal to initiate service of process in this action upon

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Defendants Holland, Duncan, Solis and Tingley. (ECF No. 18.) On January 26, 2017, the United States Marshal filed a return of service unexecuted as to Defendant Solis. (ECF No. 21.)

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 (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 U.S. Marshal attempted to serve Defendant Solis with the information that Plaintiff provided. However, the Marshal was informed that Defendant Solis was dismissed on January 7, 2015, and does not have a current address or phone number. (ECF No. 21.) Plaintiff therefore has not provided accurate and sufficient information to identify and locate Defendant Solis for service of process. (ECF No. 21.) If Plaintiff is unable to provide the Marshal with the necessary information to identify and locate this defendant, Defendant Solis shall be dismissed from this action, without prejudice. Under Rule 4(m), the Court will provide Plaintiff with the opportunity to show cause why Defendant Solis should not be dismissed from this action at this time.

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III. **Conclusion and Order** Accordingly, the Court HEREBY ORDERS that: 1. Within **thirty** (30) days from the date of service of this order, Plaintiff shall show cause why Defendant Solis should not be dismissed from this action. Plaintiff may comply with this order by providing accurate and sufficient information for the Marshal to identify and locate Defendant Solis for service of process; and 2. The failure to respond to this order will result in the dismissal of Defendant Solis from this action. IT IS SO ORDERED. 1s/Barbara A. McAuliffe Dated: **January 27, 2017**