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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

MARCUS LEWIS GARRETT,  
Plaintiff,  
v.  
D. DAVEY and GONZALEZ,  
Defendants.

Case No. 1:16-cv-00636 -EPG (PC)  
ORDER FOR PLAINTIFF TO SHOW  
CAUSE WHY DEFENDANT GONZALEZ  
SHOULD NOT BE DISMISSED FROM  
THIS ACTION WITHOUT PREJUDICE  
BECAUSE OF PLAINTIFF’S FAILURE TO  
PROVIDE THE MARSHAL WITH  
ACCURATE AND SUFFICIENT  
INFORMATION TO EFFECT SERVICE OF  
THE SUMMONS AND COMPLAINT ON  
DEFENDANT GONZALEZ  
(ECF NO. 14)  
THIRTY DAY DEADLINE

**I. RELEVANT PROCEDURAL HISTORY**

Marcus Lewis Garrett (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. This case now proceeds on Plaintiff’s First Amended Complaint against defendants Davey and Gonzalez for failure to protect in violation of the Eighth Amendment. (ECF Nos. 10 & 11).

After Plaintiff completed and returned the appropriate service documents (ECF No. 12), the Court ordered the United States Marshal Service (“the Marshal”) to serve the defendants (ECF No. 13). However, the summons for defendant Gonzalez was returned unexecuted. (ECF No. 14). According to the Marshal, the “L/O at Corcoran State Prison” informed the Marshal that “no Lt. E. Gonzalez has ever worked at that facility.” (*Id.*).

1 **II. SERVICE BY UNITED STATES MARSHAL**

2 Pursuant to Federal Rule of Civil Procedure 4(m),

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

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

9 In cases involving a plaintiff proceeding *in forma pauperis*, the Marshal, upon order of  
10 the Court, shall serve the summons and the complaint. Fed. R. Civ. P. 4(c)(3). “[A]n  
11 incarcerated pro se plaintiff proceeding in forma pauperis is entitled to rely on the U.S. Marshal  
12 for service of the summons and complaint and ... should not be penalized by having his action  
13 dismissed for failure to effect service where the U.S. Marshal or the court clerk has failed to  
14 perform his duties....” Walker v. Sumner, 14 F.3d 1415, 1422 (9th Cir. 1994) (quoting Puett  
15 v. Blandford, 912 F.2d 270, 275 (9th Cir. 1990) (alterations in original)), overruled on other  
16 grounds by Sandin v. Connor, 515 U.S. 472 (1995). “So long as the prisoner has furnished the  
17 information necessary to identify the defendant, the marshal’s failure to effect service is  
18 ‘automatically good cause....’” Walker, 14 F.3d at 1422 (quoting Sellers v. United States, 902  
19 F.2d 598, 603 (7th Cir.1990)). However, where a *pro se* plaintiff fails to provide the Marshal  
20 with accurate and sufficient information to effect service of the summons and complaint,  
21 dismissal of the unserved defendant is appropriate. Walker, 14 F.3d at 1421-22.

22 The return of service filed by the Marshal on March 7, 2017, indicates that, according to  
23 the “L/O at Corcoran State Prison, no Lt. E. Gonzalez has ever worked at” Corcoran State  
24 prison. (ECF No. 14). There is no indication on the return of service that the Marshal received  
25 a response from defendant Gonzalez. (Id.). The Marshal certified that the Marshal was unable  
26 to locate defendant Gonzalez. (Id.).

27 Pursuant to Rule 4(m), the Court will provide Plaintiff with an opportunity to show  
28 cause why defendant Gonzalez should not be dismissed from the case because of Plaintiff’s  
failure to provide the Marshal with accurate and sufficient information to effect service of the  
summons and complaint on defendant Gonzalez. If Plaintiff is unable to provide the Marshal

1 with additional information, the Court will dismiss defendant Gonzalez from the case, without  
2 prejudice.

3 **III. CONCLUSION**

4 Accordingly, based on the foregoing, it is HEREBY ORDERED that:

- 5 1. Within **thirty (30) days** from the date of service of this order, Plaintiff shall show  
6 cause why the Court should not dismiss defendant Gonzalez from this action,  
7 without prejudice, pursuant to Federal Rule of Civil Procedure 4(m); and  
8 2. Failure to respond to this order may result in defendant Gonzalez being dismissed  
9 from this action, without prejudice.

10 IT IS SO ORDERED.  
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12 Dated: April 24, 2017

13 /s/ Eric P. Gray  
14 UNITED STATES MAGISTRATE JUDGE  
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