

1 Corcoran has never employed a Sgt. Berry. This was confirmed by personnel. They also
2 checked all logs Nov. 2015. They will not accept service.” (ECF No. 20.) Thus, on May
3 16, 2017, Plaintiff was directed to provide, within thirty days, further information to help
4 the USM locate and serve Defendant Berry. (ECF No. 22.) The thirty days have elapsed
5 and Plaintiff has provided no further information.

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

20 At this time, the Marshals Service has exhausted the avenues available to it to
21 locate and serve Defendant Berry. See Walker, 14 F.3d at 1421-22. Accordingly, Plaintiff
22 shall be required to show cause why Defendant Berry should not be dismissed based on
23 inability to effect service on them. Fed. R. Civ. P. 4(m). If Plaintiff either fails to respond
24 to this order or responds but fails to show cause, the Court will dismiss Defendant Berry
25 from the action.

26 Based on the foregoing, it is HEREBY ORDERED that:
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1. Within **fourteen (14) days** from the date of service of this order, Plaintiff shall show cause why Defendant Berry should not be dismissed from this action; and
2. If Plaintiff fails to respond to this order or fails to show cause, the Court will dismiss Defendant Berry from this action.

IT IS SO ORDERED.

Dated: June 27, 2017

1st Michael J. Seng
UNITED STATES MAGISTRATE JUDGE