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**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

GREGORY ELL SHEHEE,  
Plaintiff,  
v.  
PEREZ, et al.,  
Defendants.

Case No. 1:16-cv-01346-AWI-BAM (PC)  
**ORDER TO SHOW CAUSE WHY  
DEFENDANT LAIN SHOULD NOT BE  
DISMISSED FROM THIS ACTION FOR  
FAILURE TO PROVIDE SUFFICIENT  
INFORMATION TO EFFECTUATE  
SERVICE**  
(ECF Nos. 50, 52)  
**THIRTY (30) DAY DEADLINE**

**I. Introduction**

Plaintiff Gregory Ell Shehee (“Plaintiff”) is a former county jail inmate proceeding *pro se* in this civil rights action under 42 U.S.C. § 1983. Plaintiff was a civil detainee at the time of the events at issue. This action proceeds on Plaintiff’s first amended complaint against Defendant Perez for excessive force in violation of the Fourteenth Amendment and against Defendant Lain for failure to protect in violation of the Fourteenth Amendment.

**II. Service by the United States Marshal**

On July 18, 2018, the Court issued an order directing the United States Marshal to initiate service of process in this action upon Defendants Perez and Lain. (ECF No. 49.) On August 15, 2018, the United States Marshal filed a return of service unexecuted as to Defendant Lain. (ECF No. 50.) Upon review of the subpoena, the Court ordered the Marshal to attempt re-service using

1 a different spelling of Defendant Lain’s name, and providing further information regarding  
2 Defendant Lain’s job title and assignment during the events in question. (ECF No. 51.) On  
3 August 21, 2018, the Marshal again filed a return of service unexecuted as to Defendant Lain.  
4 (ECF No. 52.)

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

6 If a defendant is not served within 120 days after the complaint is filed, the  
7 court—on motion or on its own after notice to the plaintiff—must dismiss the  
8 action without prejudice against that defendant or order that service be made  
9 within a specified time. But if the plaintiff shows good cause for the failure, the  
10 court must extend the time for service for an appropriate period.

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

12 In cases involving a plaintiff proceeding in forma pauperis, the Marshal, upon order of the  
13 court, shall serve the summons and the complaint. Fed. R. Civ. P. 4(c)(3). “[A]n incarcerated pro  
14 se plaintiff proceeding in forma pauperis is entitled to rely on the U.S. Marshal for service of the  
15 summons and complaint, and . . . should not be penalized by having his or her action dismissed  
16 for failure to effect service where the U.S. Marshal or the court clerk has failed to perform the  
17 duties required of each of them . . . .” Puett v. Blandford, 912 F.2d 270, 275 (9th Cir. 1990). “So  
18 long as the prisoner has furnished the information necessary to identify the defendant, the  
19 marshal’s failure to effect service is ‘automatically good cause . . . .’” Walker v. Sumner, 14 F.3d  
20 1415, 1422 (9th Cir. 1994), abrogated on other grounds by Sandin v. Connor, 515 U.S. 472, 115  
21 (1995). However, where a pro se plaintiff fails to provide the Marshal with accurate and  
22 sufficient information to effect service of the summons and complaint, the Court’s sua sponte  
23 dismissal of the unserved defendant is appropriate. Walker, 14 F.3d at 1421–22.

24 Here, the U.S. Marshal attempted to serve Defendant Lain with the information that  
25 Plaintiff provided. However, the Marshal was twice informed that the Department of State  
26 Hospitals – Coalinga does not and has never had an employee by the name of Jerri Lady, Jerri  
27 Lain, or Jirri Lan. (ECF Nos. 50, 52.) Plaintiff therefore has not provided sufficient information  
28 to identify and locate Defendant Lain for service of process. If Plaintiff is unable to provide the  
Marshal with the necessary information to identify and locate this defendant, Defendant Lain

1 shall be dismissed from this action, without prejudice. Pursuant to Rule 4(m), the Court will  
2 provide Plaintiff with the opportunity to show cause why Defendant Lain should not be dismissed  
3 from the action at this time.

4 **III. Conclusion and Order**

5 Based on the foregoing, it is HEREBY ORDERED that:

6 1. Within **thirty (30) days** from the date of service of this order, Plaintiff shall show  
7 cause why Defendant Lain should not be dismissed from this action; and

8 2. The failure to respond to this order or the failure to show cause will result in the  
9 dismissal of Defendant Lain from this action.

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11 IT IS SO ORDERED.

12 Dated: August 27, 2018

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

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