1		
2		
3		
4		
5		
6		
7		
8	UNITED STATES DISTRICT COURT	
9	EASTERN DISTRICT OF CALIFORNIA	
10		
11	GREGORY ELL SHEHEE,	Case No. 1:16-cv-01346-AWI-BAM (PC)
12	Plaintiff,	FINDINGS AND RECOMMENDATIONS RECOMMENDING DISMISSAL OF
13	v.	DEFENDANT LAIN WITHOUT PREJUDICE FOR FAILURE TO SERVE
14	PEREZ, et al.,	(ECF No. 54)
15	Defendants.	FOURTEEN (14) DAY DEADLINE
16		
17	Plaintiff Gregory Ell Shehee ("Plaintiff") is a former county jail inmate proceeding pro se	
18	in this civil rights action under 42 U.S.C. § 1983. Plaintiff was a civil detainee at the time of the	
19	events at issue. This action proceeds on Plaintiff's first amended complaint against Defendant	
20	Perez for excessive force in violation of the Fourteenth Amendment and against Defendant Lain	
21	for failure to protect in violation of the Fourteenth Amendment.	
22	I. Service by the United States	Marshal
23	On July 18, 2018, the Court issued an order directing the United States Marshal to initiate	
24	service of process in this action upon Defendants Perez and Lain. (ECF No. 49.) On August 15,	
25	2018, the United States Marshal filed a return of service unexecuted as to Defendant Lain. (ECF	
26	No. 50.) Upon review of the subpoena, the Court ordered the Marshal to attempt re-service using	
27	a different spelling of Defendant Lain's name, and providing further information regarding	
28	Defendant Lain's job title and assignment during the events in question. (ECF No. 51.) On 1	
		1

1	August 21, 2018, the Marshal again filed a return of service unexecuted as to Defendant Lain.	
2	(ECF No. 52.)	
3	On August 28, 2018, the Court issued an order requiring Plaintiff to show cause why	
4	Defendant Lain should not be dismissed from this action, within thirty days of service. Plaintiff	
5	was warned that his failure to respond would result in the dismissal of Defendant Lain from this	
6	action. (ECF No. 54.) On September 7, 2018, the order to show cause was returned as	
7	undeliverable, and Plaintiff provided an updated address on November 8, 2018. (ECF No. 57.)	
8	The order to show cause was re-served on Plaintiff the same date. More than sixty days have	
9	passed since the order was re-served, and Plaintiff has neither complied with the order nor	
10	otherwise communicated with the Court.	
11	II. Legal Standard	
12	Federal Rule of Civil Procedure 4(m) provides as follows:	
13	If a defendant is not served within 120 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.	
14		
15 16		
17	Fed.R.Civ.P. 4(m).	
18	In cases involving a plaintiff proceeding in forma pauperis, the Marshal, upon order of the	
19	court, shall serve the summons and the complaint. Fed. R. Civ. P. 4(c)(3). "[A]n incarcerated pro	
20	se plaintiff proceeding in forma pauperis is entitled to rely on the U.S. Marshal for service of the	
21	summons and complaint, and should not be penalized by having his or her action dismissed	
22	for failure to effect service where the U.S. Marshal or the court clerk has failed to perform the	
23	duties required of each of them" Puett v. Blandford, 912 F.2d 270, 275 (9th Cir. 1990). "So	
24	long as the prisoner has furnished the information necessary to identify the defendant, the	
25	marshal's failure to effect service is 'automatically good cause " <u>Walker v. Sumner</u> , 14 F.3d	
26	1415, 1422 (9th Cir. 1994), abrogated on other grounds by Sandin v. Connor, 515 U.S. 472, 115	
27	(1995). However, where a pro se plaintiff fails to provide the Marshal with accurate and	
28	sufficient information to effect service of the summons and complaint, the Court's sua sponte	
	2	

1 2

III.

Discussion

dismissal of the unserved defendant is appropriate. <u>Walker</u>, 14 F.3d at 1421–22.

3 The U.S. Marshal attempted to serve Defendant Lain with the information that Plaintiff 4 provided. However, the Marshal was twice informed that the Department of State Hospitals – 5 Coalinga does not and has never had an employee by the name of Jerri Lady, Jerri Lain, or Jirri 6 Lan. (ECF Nos. 50, 52.) Plaintiff was then afforded a further opportunity to show cause why 7 Defendant Lain should not be dismissed from this action, and warned about the consequences of 8 not complying. Plaintiff has failed to respond. Plaintiff therefore has not provided sufficient 9 information to identify and locate Defendant Lain for service of process. 10 IV. **Conclusion and Recommendation** 11 Based on the foregoing, it is HEREBY RECOMMENDED that Defendant Jerri Lain be 12 dismissed from this action, without prejudice, for failure to serve process pursuant to Federal 13 Rule of Civil Procedure 4(m). 14 These Findings and Recommendation will be submitted to the United States District Judge 15 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen 16 (14) days after being served with these Findings and Recommendation, Plaintiff may file written 17 objections with the Court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendation." Plaintiff is advised that failure to file objections within the 18 19 specified time may result in the waiver of the "right to challenge the magistrate's factual 20 findings" on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. 21 Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)). 22 IT IS SO ORDERED. 23 Is/ Barbara A. McAulille 24 Dated: **January 8, 2019** UNITED STATES MAGISTRATE JUDGE 25 26 27 28 3