

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
14 court—on motion or on its own after notice to the plaintiff—must dismiss the
15 action without prejudice against that defendant or order that service be made
16 within a specified time. But if the plaintiff shows good cause for the failure, the
17 court must extend the time for service for an appropriate period.

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

19 In cases involving a plaintiff proceeding in forma pauperis, the Marshal, upon order of the
20 court, shall serve the summons and the complaint. Fed. R. Civ. P. 4(c)(3). “[A]n incarcerated pro
21 se plaintiff proceeding in forma pauperis is entitled to rely on the U.S. Marshal for service of the
22 summons and complaint, and . . . should not be penalized by having his or her action dismissed
23 for failure to effect service where the U.S. Marshal or the court clerk has failed to perform the
24 duties required of each of them” Puett v. Blandford, 912 F.2d 270, 275 (9th Cir. 1990). “So
25 long as the prisoner has furnished the information necessary to identify the defendant, the
26 marshal’s failure to effect service is ‘automatically good cause’” Walker v. Sumner, 14 F.3d
27 1415, 1422 (9th Cir. 1994), abrogated on other grounds by Sandin v. Connor, 515 U.S. 472, 115
28 (1995). 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

1 dismissal of the unserved defendant is appropriate. Walker, 14 F.3d at 1421–22.

2 **III. Discussion**

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 Jerri
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
18 Findings and Recommendation.” Plaintiff is advised that failure to file objections within the
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
23 IT IS SO ORDERED.

24 Dated: January 8, 2019

25 /s/ Barbara A. McAuliffe
26 UNITED STATES MAGISTRATE JUDGE
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