

1 November or December 2015, the Marshal was informed by the Litigation Coordinator at CSP-
2 Corcoran that the Chaplin at the time of the events alleged in the complaint was Matthew
3 Vannissery, who resigned on April 24, 2016, and is no longer employed at CSP-Corcoran. The
4 Community Resource Manager at CSP-Corcoran indicated that the last she heard, Mr. Vannissery
5 was returning to his country. CSP-Corcoran therefore would not accept service and had no
6 forwarding address to provide. (Id.)

7 On April 29, 2020, the Court issued an order requiring Plaintiff to show cause why
8 Defendant Chapoleun should not be dismissed from this action, within thirty days of service.
9 (ECF No. 40.) Plaintiff filed a response on May 27, 2020. (ECF No. 44.) Plaintiff argued that
10 the only information provided by CSP-Corcoran pertained to Matthew Vannissery, while Plaintiff
11 was attempting to serve Defendant Chapoleun. (Id.)

12 On June 8, 2020, summons was returned unexecuted as to S.M.V. Chapoleun. (ECF No.
13 47.) The response states: “Per the Corcoran Community Records the Chaplin at the time was
14 Matthew Vannissery. He is no longer employed at COR, he resigned on 4/24/16. Records
15 indicate that he returned to his country, but he did not leave a physical address. CSP Corcoran
16 has no records of employing S.M.V. Chapoleun. CSP-Corcoran will not accept service for
17 S.M.V. Chapoleun.” (Id.)

18 **II. Legal Standard**

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

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

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

26 In cases involving a plaintiff proceeding *in forma pauperis*, the Marshal, upon order of the
27 court, shall serve the summons and the complaint. Fed. R. Civ. P. 4(c)(3). “[A]n incarcerated pro
28 se plaintiff proceeding in forma pauperis is entitled to rely on the U.S. Marshal for service of the
summons and complaint, and . . . should not be penalized by having his or her action dismissed

1 for failure to effect service where the U.S. Marshal or the court clerk has failed to perform the
2 duties required of each of them” Puett v. Blandford, 912 F.2d 270, 275 (9th Cir. 1990). “So
3 long as the prisoner has furnished the information necessary to identify the defendant, the
4 marshal’s failure to effect service is ‘automatically good cause’” Walker v. Sumner, 14 F.3d
5 1415, 1422 (9th Cir. 1994), abrogated on other grounds by Sandin v. Connor, 515 U.S. 472, 115
6 (1995). However, where a pro se plaintiff fails to provide the Marshal with accurate and
7 sufficient information to effect service of the summons and complaint, the Court’s sua sponte
8 dismissal of the unserved defendant is appropriate. Walker, 14 F.3d at 1421–22.

9 **III. Discussion**

10 The U.S. Marshal twice attempted to serve Defendant Chapoleun with the information
11 that Plaintiff provided. However, the Marshal was informed that CSP-Corcoran has no records of
12 any employees by the name of S.M.V. Chapoleun. Further, as Plaintiff indicated that S.M.V.
13 Chapoleun was working as the facility Chaplin at the time of the events in the complaint, CSP-
14 Corcoran instead provided information regarding Matthew Vannissery, who was the facility
15 Chaplin at that time. However, Mr. Vannissery is no longer employed at CSP-Corcoran, and the
16 institution does not have any forwarding information that would enable the Marshal to locate him
17 for service of process.

18 Plaintiff was afforded an opportunity to provide further information to locate Defendant
19 Chapoleun, but indicated that the only information provided—Defendant Chapoleun’s work
20 address—should be sufficient to effectuate service. (ECF No. 44, p. 2.) Further, Plaintiff argued
21 that as a *pro se* prisoner litigant, he has no other avenues to seek any information relating to the
22 whereabouts of Defendant Chapoleun, such as a home or employer address, or any other
23 information that would help the Marshal to effectuate service. (Id. at 4.) As such, it appears that
24 Plaintiff can provide no further information to assist the Marshal in effectuating service on
25 Defendant Chapoleun. As the Marshal has already twice attempted and failed to serve Defendant
26 Chapoleun with the information provided, the Court finds that Plaintiff has not provided
27 sufficient information to identify and locate Defendant Chapoleun for service of process.

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV. Conclusion and Recommendation

Based on the foregoing, it is HEREBY RECOMMENDED that Defendant S.M.V. Chapoleun be dismissed from this action, without prejudice, for failure to serve process pursuant to Federal Rule of Civil Procedure 4(m).

These Findings and Recommendation will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within **fourteen (14) days** after being served with these Findings and Recommendation, Plaintiff may file written 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 specified time may result in the waiver of the “right to challenge the magistrate’s factual findings” on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)).

IT IS SO ORDERED.

Dated: June 8, 2020

/s/ Barbara A. McAuliffe
UNITED STATES MAGISTRATE JUDGE