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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ERIC STRATFORD,

Plaintiff,

v.

ARNOLD SCHWARZENEGGER,

Defendant.

Case No. 1:17-cv-00766-JDP

ORDER TO SHOW CAUSE WHY THIS
CASE SHOULD NOT BE DISMISSED FOR
FAILURE TO EFFECT SERVICE

THIRTY-DAY DEADLINE

Plaintiff Eric Stratford is a former state prisoner proceeding without counsel and *in forma pauperis* in this civil rights action brought under 42 U.S.C. § 1983. After screening, this case is proceeding only on plaintiff’s Eighth Amendment claim against defendant Arnold Schwarzenegger. ECF No. 28. The court directed service on May 18, 2020. ECF No. 26.

Defendant Schwarzenegger has not been served. The United States Marshals Service was unable to locate defendant, and the summons was returned unexecuted. ECF No. 30.

Federal Rule of Civil Procedure 4(m) provides: “If a defendant is not served within 90 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.” In cases involving a plaintiff proceeding *in forma pauperis*, the Marshals Service, upon order of the court, shall serve the summons and the complaint. Fed. R. Civ. P. 4(c)(3). However, where a plaintiff proceeding *in forma pauperis* fails to provide the Marshals Service with accurate and sufficient information to effect service of the

1 summons and complaint, dismissal of the unserved defendant is appropriate. *See Walker v.*
2 *Sumner*, 14 F.3d 1415, 1421-22 (9th Cir. 1994).

3 Accordingly, pursuant to Rule 4(m), the court will provide plaintiff with an opportunity
4 to show cause why this case should not be dismissed for failure to provide the marshals with
5 sufficient information to effect service of the summons and complaint. If plaintiff is unable to
6 do so, the court will issue findings and recommendations to an assigned district judge,
7 recommending that the case be dismissed without prejudice.

8 Accordingly, it is hereby ordered that within thirty days from the date of this order,
9 plaintiff must show cause why the court should not issue findings and recommendations
10 recommending that this case be dismissed pursuant to Federal Rule of Civil Procedure 4(m).

11 IT IS SO ORDERED.

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13 Dated: September 11, 2020

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15 UNITED STATES MAGISTRATE JUDGE

16 No. 205.
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