

1 Regarding Officer M. Pomoa: “KVSP does not have an employee named ‘Pomoa.’ They do
2 have an Officer Pompoa, but the dates in the complaint don’t match his working schedule. We request
3 additional info.”

4 Rule 4(m) of the Federal Rules of Civil Procedure provides:

5 If a defendant is not served within 90 days after the complaint is filed, the court - on
6 motion or on its own after notice to the plaintiff - must dismiss the action without
7 prejudice against that defendant or order that service be made within a specified time.
8 But if the plaintiff shows good cause for the failure, the court must extend the time for
9 service for an appropriate period.

10 In cases involving a plaintiff proceeding in forma pauperis, the Marshal, upon order of the
11 Court, shall serve the summons and the complaint. 28 U.S.C. § 1915(d); Fed. R. Civ. P. 4(c)(3). “[A]n
12 incarcerated pro se plaintiff proceeding in forma pauperis is entitled to rely on the U.S. Marshal for
13 service of the summons and complaint and [he] should not be penalized by having his action dismissed
14 for failure to effect service where the U.S. Marshal or the court clerk has failed to perform his duties.”
15 Walker v. Sumner, 14 F.3d 1415, 1422 (9th Cir. 1994) (internal quotations and citation omitted),
16 abrogated on other grounds by Sandin v. Connor, 515 U.S. 472 (1995). “So long as the prisoner has
17 furnished the information necessary to identify the defendant, the marshal’s failure to effect service is
18 automatically good cause. . . .” Walker, 14 F.3d at 1422 (internal quotations and citation omitted).
19 However, where a pro se plaintiff fails to provide the Marshal with accurate and sufficient information
20 to effect service of the summons and complaint, the Court’s sua sponte dismissal of the unserved
21 defendants is appropriate. Walker, 14 F.3d at 1421-22.

22 At this juncture, the United States Marshal’s office has exhausted the avenues available to it in
23 attempting to locate and serve Defendants Swanson, Romero and M. Pomoa. Plaintiff shall be
24 provided with an opportunity to show cause why these Defendants should not be dismissed. Fed. R.
25 Civ. P. 4(m). Plaintiff may comply with this order by providing further information sufficient to
26 identify these Defendants for service of process. If Plaintiff either fails to respond to this order or
27 responds but fails to show cause, these Defendants shall be dismissed from this action, without
28 prejudice.

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Accordingly, based on the foregoing, it is HEREBY ORDERED that:

1. Within thirty (30) days from the date of service of this order, Plaintiff shall show cause why Defendants Swanson, Romero and M. Pomoa should not be dismissed from this action; and

2. The failure to respond to this order or the failure to show cause will result in the dismissal of Defendants Swanson, Romero and M. Pomoa from this action.

IT IS SO ORDERED.

Dated: May 7, 2018


UNITED STATES MAGISTRATE JUDGE