



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

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

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

7 In cases involving a plaintiff proceeding *in forma pauperis*, the Marshal, upon order of the  
8 court, shall serve the summons and the complaint. Fed. R. Civ. P. 4(c)(3). “[A]n incarcerated pro  
9 se plaintiff proceeding in forma pauperis is entitled to rely on the U.S. Marshal for service of the  
10 summons and complaint, and . . . should not be penalized by having his or her action dismissed  
11 for failure to effect service where the U.S. Marshal or the court clerk has failed to perform the  
12 duties required of each of them . . . .” Puett v. Blandford, 912 F.2d 270, 275 (9th Cir. 1990). “So  
13 long as the prisoner has furnished the information necessary to identify the defendant, the  
14 marshal’s failure to effect service is ‘automatically good cause . . . .’” Walker v. Sumner, 14 F.3d  
15 1415, 1422 (9th Cir. 1994), abrogated on other grounds by Sandin v. Connor, 515 U.S. 472, 115  
16 (1995). However, where a *pro se* plaintiff fails to provide the Marshal with accurate and  
17 sufficient information to effect service of the summons and complaint, the Court’s *sua sponte*  
18 dismissal of the unserved defendant is appropriate. Walker, 14 F.3d at 1421–22.

19 Here, the U.S. Marshal attempted to electronically serve Defendant Perez with the  
20 information that Plaintiff provided. However, the Marshal was informed by the Litigation  
21 Coordinator at Kern Valley State Prison that there was not enough information to identify and  
22 locate Defendant Perez for service of process. If Plaintiff is unable to provide the Marshal with  
23 the necessary information to identify and locate this defendant, Defendant Perez shall be  
24 dismissed from this action, without prejudice.

25 Pursuant to Rule 4(m), the Court will provide Plaintiff with the opportunity to show cause  
26 why Defendant Perez should not be dismissed from the action at this time. Plaintiff may respond  
27 to this order by providing additional information that will assist the Marshal in identifying  
28 Defendant Perez for service of process.

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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 Defendant J. Perez 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 Defendant Perez from this action due to Plaintiff's failure to serve process pursuant to Federal Rule of Civil Procedure 4(m).**

IT IS SO ORDERED.

Dated: December 28, 2020

/s/ Barbara A. McAuliffe  
UNITED STATES MAGISTRATE JUDGE