1		
2		
3		
4		
5		
6		
7		
8	UNITED STATES	S DISTRICT COURT
9	EASTERN DISTR	RICT OF CALIFORNIA
10		
11	KRISTOPHER KIRCHNER,	Case No. 1:18-cv-00516-AWI-BAM (PC)
12	Plaintiff,	ORDER TO SHOW CAUSE WHY
13	V.	DEFENDANT PEREZ SHOULD NOT BE DISMISSED FROM THIS ACTION FOR
14	BITER, et al.,	FAILURE TO PROVIDE SUFFICIENT INFORMATION TO EFFECTUATE SERVICE
15	Defendants.	
16		(ECF No. 23) THIRTY (30) DAY DEADLINE
17		I HIKI I (50) DA I DEADLINE
18	Plaintiff Kristopher Kirchner ("Plaintiff") is a state prisoner proceeding pro se and in	
19	forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on	
20	Plaintiff's first amended complaint for Fourtee	enth Amendment due process claims against
21	Defendants Henderson, Harden, Diaz, and Per	ez arising from Plaintiff's disciplinary proceedings.
22	On December 16, 2020, the Court issue	ed an order directing service on Defendants
23	Henderson, Harden, Diaz, and Perez in this ca	se under the Court's E-Service pilot program for
24	civil rights cases for the Eastern District of California. (ECF No. 23.) The order included the	
25	following information regarding Defendant Pe	erez: "Investigative Employee J. Perez; KVSP;
26	approximately March to June 2014." (Id. at 2.) The same date, the Court received information	
27	that there was not enough information to ident	ify Defendant J. Perez.
28	///	
		1

1	
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 court—on motion or on its own after notice to the plaintiff—must dismiss the
3	action without prejudice against that defendant or order that service be made
4	within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.
5	
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 " <u>Walker v. Sumner</u> , 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. <u>Walker</u> , 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.

1	Based on the foregoing, it is HEREBY ORDERED that:
2	1. Within thirty (30) days from the date of service of this order, Plaintiff shall show cause
3	why Defendant J. Perez should not be dismissed from this action; and
4	2. The failure to respond to this order or the failure to show cause will result in the
5	dismissal of Defendant Perez from this action due to Plaintiff's failure to serve
6	process pursuant to Federal Rule of Civil Procedure 4(m).
7	
8	IT IS SO ORDERED.
9	Dated: December 28, 2020 /s/ Barbara A. McAuliffe
10	UNITED STATES MAGISTRATE JUDGE
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	3