

1 On December 28, 2020, the Court issued an order requiring Plaintiff to show cause, within
2 thirty days of service of that order, why Defendant Perez should not be dismissed from this
3 action. (ECF No. 27.) In that order, Plaintiff was warned that the failure to respond or failure to
4 show cause would result in the dismissal of Defendant Perez from this action due to Plaintiff's
5 failure to serve process pursuant to Federal Rule of Civil Procedure 4(m). (Id. at 3.) Plaintiff has
6 not filed a response, and the deadline to do so has expired.

7 **II. Legal Standard**

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

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

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

15 In cases involving a plaintiff proceeding *in forma pauperis*, the Marshal, upon order of the
16 court, shall serve the summons and the complaint. Fed. R. Civ. P. 4(c)(3). “[A]n incarcerated pro
17 se plaintiff proceeding in forma pauperis is entitled to rely on the U.S. Marshal for service of the
18 summons and complaint, and . . . should not be penalized by having his or her action dismissed
19 for failure to effect service where the U.S. Marshal or the court clerk has failed to perform the
20 duties required of each of them” Puett v. Blandford, 912 F.2d 270, 275 (9th Cir. 1990). “So
21 long as the prisoner has furnished the information necessary to identify the defendant, the
22 marshal’s failure to effect service is ‘automatically good cause’” Walker v. Sumner, 14 F.3d
23 1415, 1422 (9th Cir. 1994), abrogated on other grounds by Sandin v. Connor, 515 U.S. 472, 115
24 (1995). However, where a pro se plaintiff fails to provide the Marshal with accurate and
25 sufficient information to effect service of the summons and complaint, the Court’s sua sponte
26 dismissal of the unserved defendant is appropriate. Walker, 14 F.3d at 1421–22.

27 **III. Discussion**

28 The Marshal attempted to serve Defendant J. Perez pursuant to the E-Service pilot
program with the information that Plaintiff provided. However, the Court was informed that the

1 information provided was not sufficient to identify Defendant J. Perez for service of process.

2 Plaintiff was afforded an opportunity to provide further information to locate Defendant
3 Perez, and did not respond. As the Marshal has already attempted to serve Defendant Perez with
4 the information provided, the Court finds that Plaintiff has not provided sufficient information to
5 identify and locate Defendant Perez for service of process.

6 **IV. Conclusion and Recommendation**

7 Based on the foregoing, it is HEREBY RECOMMENDED that Defendant J. Perez be
8 dismissed from this action, without prejudice, for failure to serve process pursuant to Federal
9 Rule of Civil Procedure 4(m).

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

18 IT IS SO ORDERED.

19 Dated: February 17, 2021

20 /s/ Barbara A. McAuliffe
21 UNITED STATES MAGISTRATE JUDGE