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**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

ETUATE SEKONA,  
  
                    Plaintiff,  
  
                    v.  
  
R. PEREZ, et al.,  
  
                    Defendants.

**1:19-cv-00400-JLT-GSA-PC**

**ORDER FOR PLAINTIFF TO SHOW CAUSE  
WHY DEFENDANTS MALDONADO AND R.  
PEREZ SHOULD NOT BE DISMISSED  
FROM THIS CASE FOR PLAINTIFF’S  
FAILURE TO EFFECT SERVICE  
(ECF No. 59.)**

**THIRTY DAY DEADLINE**

**I. BACKGROUND**

Etuate Sekona (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. On March 28, 2019, Plaintiff filed the Complaint commencing this action. (ECF No. 1.) This case now proceeds with Plaintiff’s Third Amended Complaint filed by Plaintiff on December 13, 2021, against defendants Correctional Officer (C/O) R. Perez, C/O L. Munoz, C/O C. Sims, and C/O Maldonado for failure to protect Plaintiff in violation of the Eighth Amendment. (ECF No. 39.)

1 On February 17, 2022, the court issued an order directing service upon Defendants in this  
2 case. (ECF No. 44.) On September 8, 2022, the United States Marshal returned the summonses  
3 unexecuted for defendants Maldonado and R. Perez. (ECF No. 59.) The Marshal indicated that  
4 on March 22, 2022, the Litigation Coordinator at Kern Valley State Prison reported that there are  
5 no correctional officers named R. Perez or Maldonado at that facility.

6 **II. SERVICE OF PROCESS -- RULE 4**

7 Pursuant to Rule 4(m) of the Federal Rules for Civil Procedure,

8 If a defendant is not served within 90 days after the complaint is filed, the court -  
9 - on motion or on its own after notice to the plaintiff -- must dismiss the action  
10 without prejudice against that defendant or order that service be made 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.

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

12 In cases involving a plaintiff proceeding *in forma pauperis*, the Marshal, upon order of  
13 the Court, shall serve the summons and the complaint. Fed. R. Civ. P. 4(c)(3). “An incarcerated  
14 *pro se* plaintiff proceeding *in forma pauperis* is entitled to rely on the U.S. Marshal for service  
15 of the summons and complaint and . . . should not be penalized by having his action dismissed  
16 for failure to effect service where the U.S. Marshal or the court clerk has failed to perform his  
17 [or her] duties.” Walker v. Sumner, 14 F.3d 1415, 1422 (9th Cir. 1994) (quoting Puett v.  
18 Blandford, 912 F.2d 270, 275 (9th Cir. 1990)), abrogated on other grounds by Sandin v. Connor,  
19 515 U.S. 472 (1995). “So long as the prisoner has furnished the information necessary to identify  
20 the defendant, the marshal’s failure to effect service is ‘automatically good cause . . . .’” Walker,  
21 14 F.3d at 1422 (quoting Sellers v. United States, 902 F.2d 598, 603 (7th Cir. 1990)). However,  
22 where a *pro se* plaintiff fails to provide the Marshal with accurate and sufficient information to  
23 effect service of the summons and complaint, the Court’s *sua sponte* dismissal of the unserved  
24 defendants is appropriate. Walker, 14 F.3d at 1421-22.

25 Here, Plaintiff failed to provide sufficient information for the Marshal to locate and serve  
26 Defendants L. Perez and Maldonado with process. Therefore, the Court now issues an order for  
27 Plaintiff to show cause why this case should not be dismissed for his failure to timely effect  
28 service upon Defendants L. Perez and Maldonado.

1 **III. ORDER TO SHOW CAUSE**

2 Based on the foregoing, it is HEREBY ORDERED that:

- 3 1. Within **thirty (30) days** from the date of service of this order, Plaintiff shall file  
4 a written response to this order, showing cause why the court should not dismiss  
5 defendants R. Perez and Maldonado from this case based on Plaintiff's failure to  
6 timely serve process upon them; and
- 7 2. The failure to respond to this order or the failure to show cause will result in the  
8 dismissal of this action in its entirety.

9  
10 IT IS SO ORDERED.

11 Dated: September 14, 2022

/s/ Gary S. Austin  
12 UNITED STATES MAGISTRATE JUDGE