

1 October 6, 2010. (ECF No. 1, pg. 2). All six unserved defendants are named in Plaintiff's
2 complaint. (ECF No. 1, Exh. B).

3 The District Court Judge referred the instant motion to Judge McCurine on January 9,
4 2012. (ECF No. 23).

5 **II. Request for Marshal Service**

6 FED.R.CIV.P. 4(c)(2) provides that “[a]t the request of the plaintiff . . . the court may direct
7 that service be effected by a United States marshal, deputy United States marshal, or other person
8 or officer specially appointed by the court for that purpose.” FED.R.CIV.P. 4(c)(2). In addition,
9 when plaintiffs are granted leave to proceed IFP, the USMS, upon order of the court, is authorized
10 to serve the summons and complaint on the pauper’s behalf. *See* 28 U.S.C. § 1915(d); *Boudette*,
11 923 F.2d at 757; *Walker v. Sumner*, 14 F.3d 1415, 1422 (9th Cir. 1993).

12 Although Plaintiff did not move for IFP status at removal, he may still be eligible to
13 proceed IFP. A request to proceed IFP need not be filed at any particular time, but may be
14 initiated at any stage of a proceeding, since a person who is not an indigent at the commencement
15 of a suit may become one during or prior to its prosecution. *See Stehouwer v. Hennessey*, 841 F.
16 Supp. 316, 321 (N.D. Cal. 1994) (“IFP status may be acquired or lost throughout the course of the
17 litigation”), *aff’d in pertinent part sub. nom, Olivares v. Marshall*, 59 F.3d 109 (9th Cir. 1995).

18 The Court finds Plaintiff’s allegation of indigence, coupled with the Defendant’s
19 confirmation of service by the Monterey County Sheriff, sufficient to show that Plaintiff is unable
20 to execute the service of his own summons and complaint. Accordingly, and in order to aid in the
21 timely administration of justice in this matter, Plaintiff will now be permitted to proceed IFP
22 pursuant to FED.R.CIV.P. 4(c)(3) for purposes of service only.

23 Furthermore, for good cause, the Court *sua sponte* grants Plaintiff an extension of time in
24 which to effect service upon Defendants pursuant to FED.R.CIV.P. 4(m).¹ The Court will grant
25 Plaintiff an additional sixty days from the date this Order is filed to complete service. Plaintiff
26 shall complete, as accurately and clearly as possible, the USMS Form 285s provided to him, and

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28 ¹ *See Mann v. American Airlines*, 324 F.3d 1088, 1090 (9th Cir. 2003) (holding that district court may, under the broad discretion granted by FED.R.CIV.P. 4(m), extend time for service retroactively after the 120-day service period has expired).

1 shall return them to the USMS within thirty days of the date of this Order.

2 **III. Conclusion**

3 For all the reasons set forth above, **IT IS HEREBY ORDERED** that:

4 (1) Plaintiff's Request for Marshal Service is **GRANTED**. The Clerk of Court is
5 Directed to provide Plaintiff with an "IFP Package" consisting of: (1) this Order; (2) six certified
6 copies of his complaint (ECF. No. 1, Exh. B); (3) a summons; (4) blank USMS Form 285s for
7 purposes of attempting service upon Defendants;

8 (2) Plaintiff must submit the completed USMS Form 285s to the U.S. Marshal within
9 thirty days of this Order.

10 (3) Pursuant to FED.R.CIV.P. 4(c)(3) and 28 U.S.C. § 1915(d), the U.S. Marshal shall,
11 *within thirty days of receiving Plaintiff's USMS Form 285s*, effect service of Plaintiff's complaint
12 and summons upon Defendants as directed by Plaintiff. All costs of service shall be advanced by
13 the United States pursuant to this Order.

14 IT IS SO ORDERED.

15 DATED: March 6, 2012

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17 Hon. William McCurine, Jr.
18 U.S. Magistrate Judge
19 United States District Court

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