

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHAULTON J. MITCHELL,

No. C 08-00577 WHA (PR)

Plaintiff,

v.

R. VALDIVIA, J. GARCIA, R. MCCOY, E.  
SALINAS, JOHN DOE,

**SECOND NOTICE REGARDING  
INABILITY TO SERVE DEFENDANT J.  
GARCIA; AND ORDER DIRECTING  
PLAINTIFF TO PROVIDE CURRENT  
ADDRESS OF DEFENDANT GARCIA**

Defendants.

On September 13, 2010, the court received a letter from defendants' counsel, Jonathan B. Paul, stating that defendant J. Garcia has not been served in this action. The Wasco State Prison Litigation Coordinator has informed Mr. Paul that defendant Garcia is no longer employed at the prison; therefore, service has been ineffective on defendant Garcia.

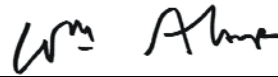
While plaintiff may rely on service by the United States Marshal, "a plaintiff may not remain silent and do nothing to effectuate such service. At a minimum, a plaintiff should request service upon the appropriate defendant and attempt to remedy any apparent defects of which [he] has knowledge." *Rochon v. Dawson*, 828 F.2d 1107, 1110 (5th Cir. 1987). If the marshal is unable to effectuate service and the plaintiff is informed, the plaintiff must seek to remedy the situation or face dismissal of the claims regarding that defendant under Federal Rule of Civil Procedure 4(m). *See* Fed. R. Civ. P. 4(m) (If service of the summons and complaint is not made upon a defendant in 120 days after the filing of the complaint, the action must be dismissed without prejudice as to that defendant absent a showing of "good cause."); *see also Walker v. Sumner*, 14 F.3d 1415, 1421-22 (9th Cir. 1994) (prisoner failed to show cause why prison official should not be dismissed under Rule 4(m) because prisoner did not prove that he provided marshal with sufficient information to serve official).

1 No later than thirty days from the date of this order, plaintiff must provide the court with a  
2 current address for defendant Garcia. plaintiff should review the federal discovery rules, Rules 26-  
3 37 of the Federal Rules of Civil Procedure, for guidance about how to determine the current address  
4 of this defendant.

5 If plaintiff fails to provide the court with the current address of defendant Garcia within the  
6 thirty-day deadline, all claims against this defendant will be dismissed without prejudice under Rule  
7 4(m).

8 **IT IS SO ORDERED.**

9 Dated: November 9, 2010



10 WILLIAM ALSUP  
11 UNITED STATES DISTRICT JUDGE  
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