

1 undeliverable. More than 30 days have passed, and Plaintiff has not responded to the order or
2 otherwise sought an extension of time to respond to the order.

3 II. APPLICABLE LAW AND ANALYSIS

4 Rule 4 governs service of process and requires a district court to dismiss a plaintiff's case
5 after notice if the defendant is not timely served, absent good cause. More specifically,

6 If a defendant is not served within 90 days after the complaint is
7 filed, the court – on motion or on its own after notice to the
8 plaintiff-- *must* dismiss the action without prejudice or other that
9 service be made within a specified time. But if the plaintiff shows
10 good cause for the failure, the court must extend the time for
11 service for an appropriate period.

12 Fed. R. Civ. P. 4(m) (emphasis added). The court must extend the time period to effectuate
13 service upon a plaintiff showing good cause for defective service; but; if the plaintiff fails to show
14 good cause, the court then has the discretion to dismiss the case without prejudice or to extend the
15 time to effectuate service. *See Hopson v. Nove Plaza, LLC*, 2019 WL 1078351 *3 (E.D. Ca.
16 March 7, 2019) (internal citations omitted). A plaintiff can show good cause by showing that the
17 party to be served personally received actual notice of the lawsuit, that the defendant would not
18 suffer prejudice, and that plaintiff would be severally prejudiced if his or her complaint were
19 dismissed. *Id.* (citations omitted). If a plaintiff does not show good cause, then the district court
20 may extend the time for service upon a showing of excusable neglect. *Id.* (citations omitted).

21 Here, like *Hopson*, Plaintiff did not respond to the Court's Show Cause Order. I cannot
22 independently discern any reason based upon the record to find either good cause or excusable
23 neglect to warrant extending time to effectuate service. Given that Plaintiff is no longer
24 confined,¹ his prior notice to voluntarily dismiss this action, his failure to respond to the Court's
25 September 11, 2020 Show Cause Order, I recommend dismissing this action without prejudice as
26 to Defendant Schwarzenegger under Fed. R. Civ. P. 4(m).

27 **FINDINGS AND RECOMMENDATIONS:**

28 I recommend that:

1. This case be dismissed, without prejudice, as to Defendant Schwarzenegger under Fed.

¹ See Notices of Change of Address filed on February 19, 2019 and August 20, 2019. Doc. Nos. 18-19.

1 R. Civ. P. 4(m); and


2 2. The Clerk of Court be directed to terminate any pending motions/deadlines and close
3 this case.

4 **NOTICE TO PARTIES**

5 A party has fourteen days from this date to file written objections to the Findings and
6 Recommendation's factual findings and legal conclusions. *See* 28 U.S.C. § 636(b)(1)(B) and Rule
7 304 of the Local Rules of Practice for the United States District Court, Eastern District of
8 California. That document should be captioned "Objections to Magistrate Judge's Findings and
9 Recommendations." The district judge will review the findings and recommendations under 28
10 U.S.C. § 636(b)(1)(C). A party's failure to file written objections waives that party's right to
11 challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts
12 from the Findings and Recommendation. *See Wilkerson v. Wheeler*, 772 F.3d 834, 838-39 (9th Cir.
13 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

14
15
16 IT IS SO ORDERED.

17
18 Dated: March 1, 2021


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE