

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3
4 KARLOS L. FRYE,

No. C 08-05288 CW (PR)

5 Plaintiff,

ORDER DISMISSING WITHOUT

6 v.

PREJUDICE CLAIMS AGAINST

DEFENDANTS LAPURGA AND CORONA

7 OFFICER OLESHEA, et al.,

8 Defendants.
9 _____/

10 Plaintiff, a state prisoner, filed the present pro se prisoner
11 complaint under 42 U.S.C. § 1983. In an Order dated September 28,
12 2010, the Court found that, in addition to stating other cognizable
13 claims, Plaintiff stated a cognizable Eighth Amendment deliberate
14 indifference claim against Defendants Showalter, Nilssen, Muniz,
15 Oleachea, Quitevis, Mora, Corona, White, Nolte, Lapurga and
16 Milenewicz. (Sept. 28, 2010 Order at 18.)

17 Defendants Lapurga and Corona have not been served in this
18 action. The Court has been informed that the litigation
19 coordinators at Salinas Valley State Prison and Kern Valley State
20 Prison could not accept service on behalf of Defendants Lapurga and
21 Corona because they were not employed at either prison.

22 As Plaintiff is proceeding in forma pauperis (IFP), he is
23 responsible for providing the Court with current addresses for all
24 Defendants so that service can be accomplished. See Walker v.
25 Sumner, 14 F.3d 1415, 1422 (9th Cir. 1994); Sellers v. United
26 States, 902 F.2d 598, 603 (7th Cir. 1990).
27
28

1 Pursuant to Federal Rule of Civil Procedure 4(m), if a
2 complaint is not served within 120 days from the filing of the
3 complaint, it may be dismissed without prejudice for failure of
4 service. When advised of a problem accomplishing service, a pro se
5 litigant proceeding IFP must "attempt to remedy any apparent
6 defects of which [he] has knowledge." Rochon v. Dawson, 828 F.2d
7 1107, 1110 (5th Cir. 1987). If the marshal is unable to effectuate
8 service through no fault of his own, e.g., because the plaintiff
9 failed to provide sufficient information, the plaintiff must seek
10 to remedy the situation or face dismissal. See Walker, 14 F.3d at
11 1421-22 (prisoner failed to show cause why complaint against prison
12 official should not be dismissed under Rule 4(m) because prisoner
13 did not prove that he provided marshal with sufficient information
14 to serve official or that he requested that official be served).

15 In an Order dated December 9, 2010, the Court informed
16 Plaintiff that service had been ineffective on Defendants Lapurga
17 and Corona and directed Plaintiff to provide the Court with current
18 addresses for Defendants Lapurga and Corona within thirty days of
19 the Order. Thirty days have passed, and Plaintiff has failed to
20 provide the Court with the aforementioned required information.

21 Accordingly, all claims against Defendants Lapurga and Corona
22 are DISMISSED without prejudice under Rule 4(m).

23 IT IS SO ORDERED.

24 Dated: 2/18/2011



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

25
26
27
28

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 KARLOS L FRYE,
5 Plaintiff,

Case Number: CV08-05288 CW

CERTIFICATE OF SERVICE

6 v.

7 OLESHEA et al,
8 Defendant.

9 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
10 Court, Northern District of California.

11 That on February 18, 2011, I SERVED a true and correct copy(ies) of the attached, by placing
12 said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by
13 depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office
14 delivery receptacle located in the Clerk's office.

15 Karlos L. Frye T05458
16 D7-129
17 Salinas Valley State Prison
18 P.O. Box 1050
19 Soledad, CA 93960-1050

20 Dated: February 18, 2011

Richard W. Wiekling, Clerk
By: Nikki Riley, Deputy Clerk