

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

4
5 MELVIN D. PRICE,

No. C 09-06050 SBA (PR)

6 Plaintiff,

**NOTICE REGARDING INABILITY TO
SERVE DEFENDANT DR. HENRY**

7 v.

8 DR. HENRY, et al.,

9 Defendants.

10 Service has been ineffective on Defendant Dr. Henry. The United States Marshal's Office
11 has informed the Court that service could not be completed on this Defendant. The Court has been
12 informed by Litigation Coordinator P. Nickerson that Defendant Henry is "no longer employed at
13 Salinas Valley State Prison." (Jan. 18, 2011 Letter from Litigation Coordinator P. Nickerson at 1.)
14 Mr. Nickerson added: "An attempt was made to contact Dr. Henry at his last home address via U.S.
15 mail, to this day Dr. Henry has not replied." (Id.)

16 While Plaintiff may rely on service by the United States Marshal, "a plaintiff may not remain
17 silent and do nothing to effectuate such service. At a minimum, a plaintiff should request service
18 upon the appropriate defendant and attempt to remedy any apparent defects of which [he] has
19 knowledge." Rochon v. Dawson, 828 F.2d 1107, 1110 (5th Cir. 1987). If the marshal is unable to
20 effectuate service and the plaintiff is so informed, the plaintiff must seek to remedy the situation or
21 face dismissal of the claims regarding that defendant under Federal Rule of Civil Procedure 4(m).
22 See Fed. R. Civ. P. 4(m) (If service of the summons and complaint is not made upon a defendant in
23 120 days after the filing of the complaint, the action must be dismissed without prejudice as to that
24 defendant absent a showing of "good cause."); see also Walker v. Sumner, 14 F.3d 1415, 1421-22
25 (9th Cir. 1994) (prisoner failed to show cause why prison official should not be dismissed under
26 Rule 4(m) because prisoner did not prove that he provided marshal with sufficient information to
27 serve official).
28

1 No later than **thirty (30) days** from the date of this Order, Plaintiff must provide the Court
2 with a current address for Defendant Henry. Plaintiff should review the federal discovery rules,
3 Rules 26-37 of the Federal Rules of Civil Procedure, for guidance about how to determine the
4 current address of this Defendant.

5 **If Plaintiff fails to provide the Court with the current address of Defendant Henry**
6 **within the thirty-day deadline, all claims against this Defendant will be dismissed without**
7 **prejudice under Rule 4(m).**

8 IT IS SO ORDERED.

9 DATED: 3/2/11


SAUNDRA BROWN ARMSTRONG
United States District Judge

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

4 MELVIN D. PRICE,

5 Plaintiff,

6 v.

7 DR. HENRY et al,

8 Defendant.

Case Number: CV09-06050 SBA

CERTIFICATE OF SERVICE

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 March 3, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
13 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
14 located in the Clerk's office.

15 Melvin D. Price F-37541
16 Salinas Valley State Prison
17 31625 Highway 101 North
18 P.O. Box 1050
19 Soledad, CA 93960-1050

20 Dated: March 3, 2011

Richard W. Wiekling, Clerk
By: LISA R CLARK, Deputy Clerk