

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

3 MELVIN D. PRICE,

No. C 09-06050 SBA (PR)

4 Plaintiff,

**ORDER DISMISSING WITHOUT
PREJUDICE CLAIMS AGAINST
DEFENDANT DR. HENRY**

5 v.

6 DR. HENRY, et al.,

7 Defendants.
8 _____/

9 Plaintiff, a state prisoner, filed the present pro se prisoner action under 42 U.S.C. § 1983.
10 The Court issued an Order of Service. Defendant Dr. Henry has not been served in this action.

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

15 Pursuant to Federal Rule of Civil Procedure 4(m), if a complaint is not served within 120
16 days from the filing of the complaint, it may be dismissed without prejudice for failure of service.
17 When advised of a problem accomplishing service, a pro se litigant proceeding IFP must "attempt to
18 remedy any apparent defects of which [he] has knowledge." Rochon v. Dawson, 828 F.2d 1107,
19 1110 (5th Cir. 1987). If the marshal is unable to effectuate service through no fault of his own, e.g.,
20 because the plaintiff failed to provide sufficient information, the plaintiff must seek to remedy the
21 situation or face dismissal. See Walker, 14 F.3d at 1421-22 (prisoner failed to show cause why
22 complaint against prison official should not be dismissed under Rule 4(m) because prisoner did not
23 prove that he provided marshal with sufficient information to serve official or that he requested that
24 official be served).

25 In an Order dated March 2, 2011, Plaintiff was directed to provide the Court with the
26 required information necessary to locate Defendant Henry. He was also informed that the failure to
27 do so shall result in the dismissal of all claims against Defendant Henry. In a motion dated March
28 11, 2011, Plaintiff requested a ninety-day extension of time to provide the Court with the required

1 information necessary to locate this Defendant. In an Order dated April 22, 2011, Plaintiff's request
2 for an extension of time was granted, and the Court directed Plaintiff to provide the current address
3 for Defendant Henry within ninety days from the date of that Order. Ninety days have passed, and
4 Plaintiff has failed to provide the Court with the aforementioned required information.

5 This action has been pending for over 120 days, and service upon Defendant Henry has not
6 been effectuated. Plaintiff has failed to show cause why the claims against Defendant Henry should
7 not be dismissed without prejudice pursuant to Rule 4(m). Accordingly, all claims against
8 Defendant Henry are DISMISSED without prejudice under Rule 4(m).

9 IT IS SO ORDERED.

10 DATED: 8/17/11


11 SAUNDRA BROWN ARMSTRONG
12 UNITED STATES DISTRICT JUDGE
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1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

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5 MELVIN D. PRICE,
6 Plaintiff,

Case Number: CV09-06050 SBA

CERTIFICATE OF SERVICE

7 v.

8 DR. HENRY et al,
9 Defendant.

10

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

13 That on August 17, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said
14 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
15 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
16 in the Clerk's office.

15

16 Melvin D. Price F-37541
17 Richard J. Donovan State Prison
18 P.O. Box 799003
19 San Diego, CA 92179

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20 Dated: August 17, 2011

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

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