

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

3
4 RICHARD GLEN COLTER,
5 Plaintiff,
6 v.
7 QUENTIN KOPP, et al.,
8 Defendants.

No. C 10-05759 CW
ORDER GRANTING
PLAINTIFF'S
MOTION FOR RELIEF
FROM ORDER
DISMISSING CLAIMS
(Docket No. 11)

9
10
11 On April 5, 2011, a case management conference (CMC) in this
12 action was held. Pro se Plaintiff Richard Glen Colter did not
13 appear and, as a result, on April 19, 2011, his claims were
14 dismissed without prejudice for failure to prosecute.

15 Plaintiff now moves for relief from the Court's Order
16 dismissing his claims. He contends that he was not aware of the
17 CMC, asserting that he did not receive notice of it until April 7,
18 2011. Plaintiff also represents that he has decided to "forgo the
19 RICO cause of action" plead in his amended complaint and that only
20 "Governor Brown and Ray LaHood are appropriate" Defendants in this
21 action. Defendant Edmund G. Brown, Jr., who answered Plaintiff's
22 claims before they were dismissed, opposes Plaintiff's motion.

23 Having considered the papers submitted by the parties, the
24 Court GRANTS Plaintiff's motion. A case management conference in
25 this action will be held on September 13, 2011 at 2:00 p.m.
26 Plaintiff's failure to appear at this case management conference
27 will result in the dismissal of his claims with prejudice.

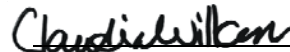
28 Based on Plaintiff's statements in his motion, the Court

1 dismisses his RICO claims against Governor Brown and Secretary
2 LaHood and his claims against all Defendants other than Governor
3 Brown and Secretary LaHood.

4 In its April 19, 2011 Order, the Court noted that there was no
5 evidence that Plaintiff served Secretary LaHood. Along with his
6 motion, Plaintiff submitted a United States mail return receipt,
7 addressed to him, indicating that an article of mail was received
8 on behalf of Secretary LaHood on March 18, 2011. This does not
9 suffice as proof of service. "Except for service by a United
10 States marshal or deputy marshal, proof must be by the server's
11 affidavit." Fed. R. Civ. P. 4(1)(1). The server must be "at least
12 18 years old and not a party" to the action. Fed. R. Civ. P.
13 4(c)(2). Within seven days of the date of this Order, Plaintiff
14 shall file valid proof that Secretary LaHood was served in
15 accordance with Federal Rule of Civil Procedure 4. If he does not
16 do so, the claims against Secretary LaHood will be dismissed for
17 failure of timely service.

18 IT IS SO ORDERED.

19
20 Dated: 8/11/2011



CLAUDIA WILKEN

United States District Judge

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

4 RICHARD GLEN COLTER,

5 Plaintiff,

6 v.

7 QUENTIN KOPP et al,

8 Defendant.

Case Number: CV10-05759 CW

CERTIFICATE OF SERVICE

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

11 That on August 11, 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 located
14 in the Clerk's office.

15 Richard Glen Colter
16 P.O. Box 11312
17 Pleasanton, CA 94588

Dated: August 11, 2011

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