

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

4
5 JOHN M. SCHOPPE-RICO,
6 Plaintiff,

No. C 11-02809 YGR (PR)

**NOTICE REGARDING INABILITY TO
SERVE DEFENDANT E. C. McKELLEP**

7 vs.

8 GOVERNOR SCHWARZENEGGER, et al.,
9 Defendants.

10 Service has been ineffective on Defendant E. C. McKellep. The Court has been informed
11 that Defendant McKellep is not employed at the following prisons: Pelican Bay State Prison; the
12 California Correctional Institution; or the Richard J. Donovan Correctional Facility.

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

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

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

IT IS SO ORDERED.

DATED: January 26, 2012


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT COURT JUDGE