

Plaintiff, a California prisoner incarcerated at Salinas Valley State Prison, filed this civil rights action pursuant to 42 U.S.C. § 1983 alleging deliberate indifferent to his medical needs. The case was reopened upon remand from the Ninth Circuit to address unresolved claims against defendant Kelly Ogle. (See Docket No. 41.)

The Court reviewed the docket to ascertain if defendant Ogle had ever appeared in this action, and found that it was unclear whether defendant Ogle had ever been actually served with the complaint. In the interest of justice, the Court 26 ordered the clerk to reissue summons and the Marshal to re-attempt to serve the complaint on defendant Ogle 45. On December 2, 2009, the summons was returned with a stamp "executed" with the following remarks dated November 19, 2009:

Order of Dismissal Under Rule 4(m) P:\PRO-SE\SJ.JW\CR.05\Hoffman04555_4m.dism.wpd

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"Subject is a contract employee. Facility no longer knows whereabouts of subject. Facility will not accept service." (Docket No. 47.)

The Attorney General's office made a special appearance on behalf of defendant Ogle and filed a motion to dismiss the complaint pursuant to Rule 12(b)(5) of the Federal Rules of Civil Procedure, on the grounds that there was insufficient service of process or alternatively, to quash the service of process as to this defendant. (Docket No. 48.) On June 22, 2010, the Court denied the motion to dismiss, finding good cause for plaintiff's failure to adequately serve defendant Ogle at the last known address, and granted the motion to quash the service of process. (See Docket No. 51.) The Court granted plaintiff an extension of time to perfect his process of service on defendant Ogle. (Id.) Plaintiff was directed to provide the Court with a current location for defendant in a pleading no later than July 12, 2010, with the warning that failure to provide the necessary information may result in dismissal of the complaint against this defendant under Rule 4(m) of the Federal Rules of Civil Procedure. (Id.) Thereafter, the Court extended the time until July 27, 2010, for plaintiff to provide the Court with a current location for unserved defendant Ogle. (See Docket No. 53.) Plaintiff was again advised that failure to do so may result in the dismissal of the complaint against this defendant under Rule 4(m) of the Federal Rules of Civil Procedure. The deadline has since passed and plaintiff has failed to comply.

Accordingly, the action is DISMISSED without prejudice as to unserved defendant Kelly Ogle pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. The clerk shall close the file.

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DATED: September 21, 2010

United States District Judge

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United States District Court For the Northern District of California 1

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UNITED STATES DISTRICT COURT

FOR THE

NORTHERN DISTRICT OF CALIFORNIA

PIERRE LEBON HOFFMAN,

Case Number: CV05-04555 JW

Plaintiff,

CERTIFICATE OF SERVICE

v.

M. S. EVANS, et al.,

Defendants.

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

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

Pierre L. Hoffman P-22734 Salinas Valley State Prison P. O. Box 1050 Soledad, CA 93960-1050

Dated: 9/22/2010

Richard W. Wieking, Clerk /s/ By: Elizabeth Garcia, Deputy Clerk