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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

PETER POTOTSKY,
Plaintiff,
vs.
ATLAS AIR, INC., et. al.,
Defendants.

No. CV 06-225-FRZ-CRP
REPORT AND RECOMMENDATION

This case was removed to this Court on May 5, 2006 (Doc 1) and on May 23, 2006, Plaintiff filed his First Amended Complaint (Doc 14). After leave from the Court, Plaintiff filed his Second Amended Complaint on January 30, 2007. (Doc 65). Rule 4(m) of the Federal Rules of Civil Procedure provides that “[i]f a defendant is not served within 120 days after the complaint is filed, the court - on motion or on its own after notice to the plaintiff - must dismiss the action without prejudice against that defendant . . .” A showing of good cause for the failure to serve can extend the time for service. Fed.R.Civ.P. 4(m). Plaintiff bears the burden of showing good cause for failure to serve a party within 120 days and “good cause” is more than simple inadvertence, mistake, or ignorance. *See Townsel v. County of Contra Costa*, 820 F.2d 319, 320 (9th Cir.1987) (ignorance of Rule 4(m) does not constitute good cause); *see also King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir.1987) (“Pro se litigants must follow the same rules of procedure that govern other litigants.”).

In excess of 120 days having passed since this action was filed, and service has not been completed on Defendants John Does 1-5, Thomas J Kassin, Ford, Harrison, and AMR

1 Corporation. In the absence of Plaintiff showing good cause for failure to serve these
2 defendants, this action is subject to dismissal without prejudice as to these defendants.

3 On November 20, 2009, Magistrate Judge Pyle ordered Plaintiff to provide the Court
4 with an affidavit showing good cause why any claims alleged against the above-named
5 defendants should not be dismissed pursuant to Federal Rule of Civil Procedure 4(m) and
6 those defendants terminated from this case. (Doc 190). Plaintiff had up to and including
7 Monday, December 28, 2009 to file an affidavit. Plaintiff did not respond to the Magistrate
8 Judge's order to show cause.

9 **Recommendation**

10 Magistrate Judge Pyle recommends that the District Court dismiss without prejudice
11 the claims against Defendants John Does 1-5, Thomas J Kassin, Ford, Harrison, and AMR
12 Corporation and terminate these defendants from the case. Plaintiff never served these
13 defendants and the time to serve them has expired. Plaintiff has not provided this Court with
14 good cause showing why these defendants and any claims against them should not be
15 dismissed pursuant to Federal Rule of Civil Procedure 4(m).

16 Pursuant to 28 U.S.C. § 636(b), any party may file and serve written objections within
17 14 days after being served with a copy of this Report and Recommendation. If objections
18 are not timely filed, the party's right to de novo review may be waived. *See United States*
19 *v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir.2003) (en banc), *cert. denied*, 540 U.S. 900
20 (2003). If objections are filed, the parties should direct them to the District Court by using
21 the following case number: CV 06-225-TUC-FRZ.

22 The Clerk of the Court is direct to send a copy of this Report and Recommendation
23 to all parties.

24 DATED this 4th day of January, 2010.

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27 **CHARLES R. PYLE**
28 **UNITED STATES MAGISTRATE JUDGE**