

1 shall file Proof(s) of Service showing compliance with this order
2 within 90 days of filing the complaint, i.e., no later than November
3 13, 2023. Non-compliance with this paragraph may result in a
4 dismissal of any defendant not timely served, and/or the issuance
5 of an order to show cause re: dismissal for failure to prosecute.

6 Dkt. 9 (“CMO”) at 1. On October 13, 2023, the Court issued an Order that
7 stated, in part:

8 . . . Rule 4 (b) and (c) of the Federal Rules of Civil Procedure
9 directs that the plaintiff, not the Court, presents a proposed
10 summons to the Court for signature by the Clerk, and directs that
11 the plaintiff, not the Court, is responsible to serve the summons(es)
12 and complaint. Plaintiff remains responsible to present all
13 appropriate summonses and serve process, and do so within the
14 time limits provided in Rule 4, that is, by November 13, 2023. See
15 Dkt. 9. . . .

16 Plaintiff is reminded that failure to timely serve process
17 could result in dismissal of any defendant not timely served. See
18 Dkt. 9 at 1. Rule 4(m) of the Federal Rules of Civil Procedure
19 provides that if a defendant “is not served within 90 days after the
20 complaint is filed, the court – on motion or on its own after notice
21 to the plaintiff – must dismiss the action without prejudice against
22 that defendant or order that service be made within a specified
23 time.” Fed. R. Civ. P. 4(m). However, if a plaintiff shows good
24 cause for the failure to serve, the court must extend the time for
25 service for an appropriate period. *Id.* The burden of establishing
26 good cause is on the plaintiff. Tucker v. City of Santa Monica,
27 2013 WL 653996 at *2 (C.D. Cal. Feb. 20, 2013)). The “good
28 cause” exception to Rule 4(m) applies “only in limited

1 circumstances” and is not satisfied by “inadvertent error or
2 ignorance of the governing rules.” Id. (citations and quotations
3 omitted); see also Townsel v. County of Contra Costa, 820 F.2d
4 319, 320–21 (9th Cir. 1987) (ignorance of Rule 4 is not good cause
5 for untimely service)). Further, unless service is waived, proofs of
6 service must be provided to the Court. Fed. R. Civ. P. 4(l).
7 Plaintiff is given notice of the possible dismissal of this action if
8 service is not effected with the time required by Rule 4, and is
9 hereby ordered to either file complaint proofs of service reflecting
10 service of process on all defendants by November 13, 2023, or, if
11 he seeks to make a showing of good cause to seek additional time
12 for service, file such a request, in writing, supported by evidence
13 and argument, by November 13, 2023. Plaintiff is further advised
14 that, absent a finding of good cause based on a timely application
15 by Plaintiff, any defendant as to whom a proof of proper service
16 has not been filed by November 13, 2023 may be dismissed from
17 this action, and if no such proper proof of service is filed by that
18 time, the entire case may be dismissed.

19 Dkt. 19 (“Second Service Order”).

20 On October 18, 2023, the Court issued a further order that reminded
21 Plaintiff of and quoted the above portions from the CMO and the Second
22 Service Order. Dkt. 23.

23 On November 9, 2023, Plaintiff filed documents with a cover page
24 indicating that eight proofs of service were enclosed reflecting service of the
25 Complaint “by U.S. Postal Service” on eight defendants. Dkt. 25 (“Proofs of
26 Service”). The documents therein that are titled “Proof of Service” reflect that
27 “service” was made via the U.S. Postal Service by “Certified Mail, Receipt
28 Return” to eight defendants or purported representatives of defendants. Dkt.

1 25 at 4-12 (CM/ECF pagination). Such “service” does not facially appear to
2 comply with any provision for service of process under Rule 4 of the Federal
3 Rules of Civil Procedure (“Rule 4”), nor do the Proofs of Service facially
4 purport to apply California state law, to the extent such law applies. Further,
5 Plaintiff has only requested and obtained a summons for a single defendant.
6 See Dkt. 1-2; 8. To be effective, service of process under Rule 4 must include a
7 valid summons, rendering any service seemingly ineffective as to all but one
8 defendant even if service had otherwise complied with Rule 4. See Rule
9 4(c)(1). Other than the Proofs of Service (Dkt. 25), no other purported proof of
10 service was filed by November 13, 2023, the 90th day after the filing of the
11 Complaint.

12 II.

13 DISCUSSION

14 Rule 4(c)(1) provides that, in a federal civil case, the “plaintiff is
15 responsible for having the summons and complaint served within the time
16 allowed by Rule 4(m).” Rule 4(b) provides that when plaintiff in a civil case
17 presents a “properly completed” summons, the clerk will issue the summons
18 for service upon the defendant. Further, unless service is waived, proofs of
19 service must be provided to the Court in an appropriate form. Rule 4(l).

20 Rule 4(m) provides: “If a defendant is not served within 90 days after the
21 complaint is filed, the court – on motion or on its own after notice to the
22 plaintiff – must dismiss the action without prejudice against that defendant or
23 order that service be made within a specified time. But if the plaintiff shows
24 good cause for the failure, the court must extend the time for service for an
25 appropriate period.” The burden of establishing good cause is on the plaintiff.
26 Tucker v. City of Santa Monica, 2013 WL 653996 at *2 (C.D. Cal. Feb. 20,
27 2013)). The “good cause” exception to Rule 4(m) applies “only in limited
28 circumstances” and is not satisfied by “inadvertent error or ignorance of the

1 governing rules.” Id. (citations and quotations omitted); see also Townsel v.
2 County of Contra Costa, 820 F.2d 319, 320–21 (9th Cir. 1987) (ignorance of
3 Rule 4 is not good cause for untimely service)).

4 Here, Plaintiff filed the Complaint on August 15, 2023. Dkt. 1. Plaintiff
5 sought and received a single summons for a single defendant. Dkt. 1-2, 8.
6 Plaintiff was repeatedly advised of the requirements of Rule 4 and ordered to
7 properly serve all defendants with process and file proofs of such service by
8 November 13, 2023. As noted, the Proofs of Service (Dkt. 25) reflect that
9 “service” was made via the U.S. Postal Service, certified mail, return receipt,
10 on the eight defendants. However, Rule 4 facially does not authorize such
11 service. To the extent Plaintiff believes such service is appropriate under
12 California state law made applicable under, for example, Rule 4(e)(1), the
13 Proofs of Service (Dkt. 25) themselves do not purport to rely on California law.
14 Further, Plaintiff sought and obtained only one summons, as to a single
15 defendant (Judge Harris); as such, no service of any other defendant has been
16 or could have been effected under Rule 4(c)(1). For the foregoing reasons,
17 facially, it appears that no defendant has been properly served with process
18 under Rule 4. As of the date of this Order, more than 90 days have passed
19 since the filing of the Complaint and it appears that no proof of service
20 reflecting proper service of process upon any defendant has been filed, nor has
21 a sufficient showing of good cause for the failure been made.

22 III.

23 CONCLUSION AND ORDER

24 For the foregoing reasons, Plaintiff is ORDERED to show cause, in
25 writing, within 14 days from the date of this Order, why this action should not
26 be dismissed for failure to properly serve any defendant within 90 days of the
27 filing of the Complaint under Rule 4(m). If Plaintiff contends that the Proofs of
28 Service evidence valid service on any defendant under Rule 4 or any applicable

1 California state law made applicable by Rule 4, Plaintiff is ordered to offer all
2 evidence and argument in support of such position. If Plaintiff contends that
3 good cause exists for the failure to service process in a timely fashion, he is
4 ordered to submit all evidence and argument in support of such claim with his
5 response.

6 IT IS SO ORDERED.

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8 Dated: November 15, 2023

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10 JOHN D. EARLY
11 United States Magistrate Judge
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