

1 Amezquita, Cayetano Cruz, and South Bound Express Co., Inc. (See Court’s September 3, 2008
2 Order), it appears that Plaintiff has not served Defendant Randy Wilson (“Wilson”), who is a
3 Canadian resident. See Parties’ May 15, 2009 Joint Scheduling Report at page 2. On March 13,
4 2008, Plaintiff filed his action in the California Superior Court, County of Merced. On April 9,
5 2008, Defendant H & R Transport filed a notice of removal to the U.S. District Court for the
6 Eastern District of California. Plaintiff is in violation of Rule 4(m) because under the Rule,
7 Plaintiff has not served Defendant Wilson within 120 days after the complaint was filed. Rule
8 4(m) provides, “If a defendant is not served within 120 days after the complaint is filed, the
9 court—on motion or on its own after notice to the plaintiff—must dismiss the action without
10 prejudice against that defendant or order that service be made within a specified time. But if the
11 plaintiff shows good cause for the failure, the court must extend the time for service for an
12 appropriate period.” See Fed. R. Civ. P. 4(m). Plaintiff is also in violation of L.R. 5-135(d)
13 because under the Local Rule, Plaintiff is required to effectuate service upon all parties of all
14 documents submitted to the court. Accordingly, the court will order Plaintiff to show cause why
15 Defendant Wilson should not be dismissed from this action due to Plaintiff’s violation of Rule
16 4(m).

18 ORDER

19 For the reasons stated above, the court HEREBY ORDERS that:

- 20 1. The Motion for Summary Judgment hearing set for September 8, 2009 is
21 **CONTINUED** to October 13, 2009, at 2:00 p.m. in courtroom 2;
- 22 2. Plaintiff must show cause why Defendant Wilson should not be dismissed from
23 this action for violation of Rule 4(m);
- 24 3. Plaintiff show cause in writing on or by October 6, 2009, by 4:00 p.m.¹; and
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26 ¹If Plaintiff intends to dismiss Defendant Wilson, then Plaintiff shall file notice of such
27 intention with the court ideally before October 6, 2009, or as soon as possible.

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4. A hearing on the order to show cause will be held on October 13, 2009, at 2:00 p.m. in Courtroom 2.

IT IS SO ORDERED.

Dated: August 21, 2009

/s/ Anthony W. Ishii
CHIEF UNITED STATES DISTRICT JUDGE