IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

PRZEMYSLAW BRONCEL,

NO. 1:08-CV-496-AWI-DLB

ORDER RESETTING MOTION FOR SUMMARY JUDGMENT HEARING TO OCTOBER 8, 2009 AND ORDER TO SHOW CAUSE AS TO PLAINTIFF BRONCEL

H & R TRANSPORT, LTD, et al.,

(Documents #35)

Defendants.

On August 18, 2009, plaintiff Przemyslaw Broncel ("Plaintiff") filed an ex parte application to continue the motion for summary judgment hearing set for September 8, 2009, to October 8, 2009. On August 20, 2009, defendant H&R Transport, LTD ("Defendant") filed a letter agreeing to Plaintiff's request to change the hearing date. The Court has reviewed its calender, and will not be able to hear this matter on October 8, 2009. The Court, however, will be able to continue the hearing to October 13, 2009, at 2:00 p.m. Accordingly, pursuant to the parties' stipulation, the Court will continue the hearing on the motion for summary judgment from September 8, 2009, to October 13, 2009, at 2:00 p.m. in Courtroom 2.

Additionally, although the court granted Plaintiff's motion to dismiss Defendants Jose

Amezquita, Cayetano Cruz, and South Bound Express Co., Inc. (See Court's September 3, 2008) Order), it appears that Plaintiff has not served Defendant Randy Wilson ("Wilson"), who is a Canadian resident. See Parties' May 15, 2009 Joint Scheduling Report at page 2. On March 13, 2008, Plaintiff filed his action in the California Superior Court, County of Merced. On April 9, 2008, Defendant H & R Transport filed a notice of removal to the U.S. District Court for the Eastern District of California. Plaintiff is in violation of Rule 4(m) because under the Rule, Plaintiff has not served Defendant Wilson within 120 days after the complaint was filed. Rule 4(m) provides, "If 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 or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period." See Fed. R. Civ. P. 4(m). Plaintiff is also in violation of L.R. 5-135(d) because under the Local Rule, Plaintiff is required to effectuate service upon all parties of all documents submitted to the court. Accordingly, the court will order Plaintiff to show cause why Defendant Wilson should not be dismissed from this action due to Plaintiff's violation of Rule 4(m).

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ORDER

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

- 1. The Motion for Summary Judgment hearing set for September 8, 2009 is **CONTINUED** to October 13, 2009, at 2:00 p.m. in courtroom 2;
- 2. Plaintiff must show cause why Defendant Wilson should not be dismissed from this action for violation of Rule 4(m);
- 3. Plaintiff show cause in writing on or by October 6, 2009, by 4:00 p.m.¹; and

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¹If Plaintiff intends to dismiss Defendant Wilson, then Plaintiff shall file notice of such intention with the court ideally before October 6, 2009, or as soon as possible.

1	4.	A hearing on the ord	der to show cause will be held on October 13, 2009, at 2:00
2		p.m. in Courtroom 2	2.
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4	IT IS	SO ORDERED.	
5	Dated: A	ugust 21, 2009	/s/ Anthony W. Ishii CHIEF UNITED STATES DISTRICT JUDGE
6			CHIEF UNITED STATES DISTRICT JUDGE
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