

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSEPH PUCKETT,

Plaintiff,

V.

JERRY DYER, ET. AL.,

Defendants.

Case No. 1:22-cv-00750-ADA-HBK
ORDER TO SHOW CAUSE
FOURTEEN-DAY DEADLINE

17 This matter comes before the Court upon periodic review of the file. Plaintiff initiated
18 this action by filing a pro se complaint alleging violations of his Fourth Amendment rights on
19 June 21, 2022. (Doc. No. 1). The complaint names various members of the Fresno City police
20 department, a judge, and the police chief, *inter alia*. Plaintiff paid the filing fee in full on July 26,
21 2022. (Receipt No. CAE1000050978). The clerk issued summonses on August 26, 2022. (Doc.
22 Nos. 5-6). On November 4, 2022, the summonses were returned as unexecuted. (Docs Nos. 8-9).
23 Federal Rule of Civil Procedure 4(m) requires a plaintiff to serve a defendant within 90 days of
24 filing the complaint. Fed. R. Civ. P. 4(m). The time may be extended for good cause shown. *Id.*
25 If a defendant is not served within the requisite time period, after notice to plaintiff, the court
26 *must* dismiss the action without prejudice, or order that service be made within a certain time
27 period. *Id.* (emphasis added).

“*Pro se* litigants must follow the same rules of procedure that govern other litigants.”

1 *Thomas v. Scott*, 2015 U.S. Dist. LEXIS 96365, *6-*7 (C.D. Cal. Jun. 4, 2016)(findings and
2 recommendations to dismiss the prisoner plaintiff's case for a failure to effect service adopted by
3 *Thomas v. Scott*, 2015 U.S. Dist. LEXIS 96387, 2015 WL 4507255 (C.D. Cal. Jul. 22, 2015))
4 (quoting *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987)(overruled in part by *Lacy v. Maricopa*
5 *County*, 693 F.3d 896 (9th Cir. 2021)) (citing *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir.
6 1995)(the failure of a *pro se* litigant to follow the procedural rules justified the dismissal of the
7 *pro se* litigant's civil rights action). The rules of civil procedure are "based on the assumption
8 that litigation is normally conducted by lawyers[;]" however, the rules should not be interpreted
9 in a manner that excuses "mistakes by those who proceed without counsel." *McNeil v. United*
10 *States*, 508 U.S. 106, 113 (1993).

11 The period in which Plaintiff was required to complete service has expired. (See docket).
12 Thus, Plaintiff shall show cause within fourteen (14) days from the date of this Order why
13 Defendants should not be dismissed under Rule 4(m). In the alternative, because no defendant
14 has yet been served or filed an answer or motion for summary judgment, Plaintiff may voluntarily
15 dismiss this action pursuant to Federal Rule of Civil Procedure 41 by filing a Notice of Voluntary
16 Dismissal.

17 Accordingly, it is **ORDERED**:

18 1. Plaintiff shall show cause within **fourteen (14) days** why Defendants should not be
19 dismissed under Fed. R. Civ. P. 4(m).

20 2. Failure to timely respond to this Order will result in the recommendation to the district
21 court that this action be dismissed for Plaintiff's failure to effectuate service under Fed. R. Civ. P.
22 4(m) and as a sanction for failure to comply with a court order under Local Rule 110.

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24 Dated: November 18, 2022


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE

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