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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

EVERETT JOSEPH JEWETT,
Plaintiff,

No. 2:06-CV-02857 ODW

vs.

PRISON HEALTH SERVICES, INC.
Defendant.

ORDER

_____ /
Plaintiff has filed his third request for case status. Curiously, there has been no appearance by any defendant nor a request for entry of default. A review of the docket explains why.

On January 7, 2008 Plaintiff filed his [second] amended complaint, attached to which is a proof of service dated January 2, 2008. In it, he names Prison Health Services, Inc. as the sole defendant. The proof of service shows that the following documents were mailed to Prison Health Services, Inc. in Brentwood, TN as well as the Shasta County Council (sic) in Redding, California and two individuals: “the

1 amended complaint, request court order re: discovery and original complaint.”
2 No mention is made of a summons advising the defendant(s) of the name of the
3 court and parties, the name and address of the plaintiff, the time within which the
4 defendant must appear and defend and the consequences of failure to appear
5 and defend. (Fed R Civ Proc Rule 4(a).

6 In general, “[a] summons must be served with a copy of the complaint. The
7 plaintiff is responsible for having the summons and complaint served within the
8 time allowed by Rule 4(m) and must furnish the necessary copies to the person
9 who makes service.” (Rule 4(c)(1).)

10 Putting aside the fact that the amended complaint was apparently mailed
11 to putative defendants who are not named in the caption of the pleading, there
12 has been a failure to comply with Rule 4(m). Fed R Civ Proc 4(m) provides in part:

13 If a defendant is not served within 120 days after the complaint is filed, the
14 court - on motion or on its own after notice to the plaintiff - must dismiss
15 the action without prejudice against that defendant or order that service be
16 made within a specified time.

17 Here, the [Second] Amended Complaint was filed January 7, 2008. By rule,
18 proof of service of the summons and complaint was to have been filed with the
19 court no later than May 6, 2008, over two years ago.

20 IT IS HEREBY ORDERED that Plaintiff must file a proof of service of the
21 summons and complaint on defendant(s) within 90 days of this order or suffer
22 dismissal of this complaint without prejudice.

23
24 DATED: September 20, 2010



25 OTIS D. WRIGHT, II, DISTRICT JUDGE