

THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

ANDREW JOSEPH SEDILLO,)	CIVIL NO. 2:08-00782 JMS
)	
Plaintiff,)	ORDER TO SHOW CAUSE
)	
vs.)	
)	
K.A. JOHNSON, and CALIFORNIA)	
DEPARTMENT OF CORRECTIONS)	
AND REHABILITATION,)	
)	
Defendants.)	
)	
_____)	

ORDER TO SHOW CAUSE

On April 7, 2008, pro se prisoner Plaintiff Andrew Joseph Sedillo (“Plaintiff”) submitted a civil rights complaint and an application to proceed *in forma pauperis* (“Application”). Plaintiff’s Application was granted, but the court subsequently dismissed the Complaint with leave to amend for failure to state a claim. On April 10, 2009, Plaintiff to file a First Amended Complaint (“FAC”), and on April 29, 2009, the court directed service of the FAC as to Defendant K.A. Johnson (“Johnson”). The April 29, 2009 Order notified Plaintiff that he must submit all of the documents required for service by the U.S. Marshal’s Service to the court, so that the Marshal could effect service of the FAC on Plaintiff’s behalf. Doc. No. 22 ¶ 5. On August 12, 2009, the court directed service by the Marshal on

Johnson. Doc. No. 27. On September 21, 2009, the summons as to Johnson was returned unexecuted, indicating that the Marshal was unable to locate Johnson based on the information provided. Doc. No. 29.

Pursuant to Fed. R. Civ. P. 4(m), if service of the summons and complaint is not made upon a defendant within 120 days of filing the complaint, or in this case, within 120 days of the date that service was directed to be made, the court has discretion to “either dismiss the action without prejudice or order service within a specified time, unless however plaintiff can show ‘good cause’ for an extension, in which case the district court must extend the time for accomplishing service.” *Tyson v. City of Sunnyvale*, 159 F.R.D. 528, 530 (N.D. Cal. 1995); *accord Petrucelli v. Bohringer and Ratzinger*, 46 F.3d 1298, 1305 (3rd Cir. 1995); *Adams v. Allied Signal General Aviation Avionics*, 74 F.3d 882, 887 (8th Cir. 1996); *Espinoza v. United States*, 52 F.3d 838, 841 (10th Cir. 1995). Good cause applies only in limited circumstances, and inadvertence or ignorance of the rule alone does not constitute good cause, even in a pro se action. *Hamilton v. Endell*, 981 F.2d 1062, 1065 (9th Cir. 1992) (citing *Wei v. State of Hawaii*, 763 F.2d 370, 372 (9th Cir. 1985)).

It has been over 120 days since the FAC was filed and service was directed and it does not appear that Johnson has been served. Plaintiff is hereby

ORDERED TO SHOW CAUSE in writing by May 10, 2010, why this action should not be dismissed for Plaintiff's failure to timely serve, or cause to be served, Defendant K.A. Johnson. Plaintiff is warned that failure to respond will result in dismissal of this action without prejudice.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, April 23, 2010.



/s/ J. Michael Seabright

J. Michael Seabright
United States District Judge

Sedillo v. Johnson et al., Civ. No. 2:08-00782 JMS, Order to Show Cause