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

GARY R. XAVIER,

Plaintiff,

No. 2:09-cv-0783 LKK CKD P

vs.

M. FRENCH, et al.,

Defendants.

ORDER

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Plaintiff is a prisoner who is proceeding with counsel and in forma pauperis.

Plaintiff seeks relief pursuant to 42 U.S.C. § 1983.

On July 9, 2012, the court ordered the United States Marshal to serve the complaint filed September 1, 2011 on defendants Holland and French. (Dkt. No. 36.) Neither defendant has been served to date. (See Dkt. Nos. 39, 40.) Rule 4(m) of the Federal Rules of Civil Procedure requires a plaintiff to serve a defendant within 120 days after it files the complaint. A court must dismiss a case without prejudice if plaintiff has not complied with Rule 4(m) unless the plaintiff shows good cause for failure to serve a defendant. *Id.* If good cause appears, the court must extend the time for service for an appropriate period. *Id.* Whether good cause exists is determined on a case-by-case basis. *In re Sheehan*, 253 F.3d 507, 512 (9th Cir. 2001). A plaintiff may show good cause where he attempted to serve a defendant but not yet

1 completed it, was confused about the requirements for service of process, or was prevented from  
2 serving defendants because of events outside his control. See Wei v. Hawaii, 763 F.2d 370, 372  
3 (9th Cir. 1985).

4 Accordingly, IT IS HEREBY ORDERED that plaintiff is to show good cause  
5 within thirty days why his claims against defendants French and Holland should not be dismissed  
6 for failure to execute service. Plaintiff's response should include new information that might  
7 allow the Marshals Service to locate these defendants or how such information might reasonably  
8 be obtained.

9 Dated: November 8, 2012

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11 CAROLYN K. DELANEY  
12 UNITED STATES MAGISTRATE JUDGE

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