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

PATTIE A. COXEY,

Plaintiff,

No. CIV S-09-2530 GEB EFB

vs.

MICHAEL J. ASTRUE,  
Commissioner of Social Security,

ORDER

Defendant.

\_\_\_\_\_ /  
This action is before the undersigned pursuant to Local Rule 302(c)(15) and 28 U.S.C. § 636. On December 15, 2009, the undersigned issued a scheduling order herein. Dckt. No. 7. That order directed plaintiff to complete service of process within twenty days from filing the complaint and to file with the Clerk a certificate reflecting such service within ten days thereafter. *Id.* On April 29, 2010, because the court file revealed that plaintiff had not filed a certificate of service on defendant, as required by the December 15, 2009 order, the undersigned ordered plaintiff to show cause why this case should not be dismissed for failure to follow court orders and/or for failure to effect service of process within the time prescribed by Federal Rule of Civil Procedure 4(m).

Later on April 29, 2010, plaintiff served the complaint, summons, and related documents on defendant, and filed a certificate reflecting such service. Dckt. No. 10. On May 10, 2010,

1 plaintiff's counsel filed a response to the order to show cause, admitting failure to effect timely  
2 service of process, but contending that the failure was due to oversight and excusable neglect by  
3 plaintiff's counsel. Dckt. No. 12. In that filing, plaintiff's counsel requested relief from the  
4 failure to timely serve pursuant to Federal Rule of Civil Procedure 60(b)(1). Dckt. No. 12.  
5 Because Rule 60(b) only authorizes relief "from a final judgment, order, or proceeding," and no  
6 such final judgment or order has been issued herein, plaintiff's request for relief under that  
7 section is denied. However, in light of plaintiff's counsel's filing and because plaintiff has now  
8 served defendant, the undersigned finds that plaintiff has shown good cause for the failure to  
9 serve defendant within the time prescribed by Rule 4(m), and therefore declines to dismiss the  
10 case under that section. Accordingly, the April 29, 2010 order to show cause is discharged.

11 SO ORDERED.

12 DATED: May 11, 2010.

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14 EDMUND F. BRENNAN  
15 UNITED STATES MAGISTRATE JUDGE  
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