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3 UNITED STATES DISTRICT COURT
4 FOR THE NORTHERN DISTRICT OF CALIFORNIA
5
6 OAKLAND DIVISION

7 CARDELL NEWTON,

8 Plaintiff,

9 vs.

10 OFFICER CURZEN and SAN QUENTIN
11 STATE PRISON,

12 Defendants.

Case No: C 11-00309 SBA

ORDER TO SHOW CAUSE

13 On January 21, 2011, Plaintiff Cardell Newton ("Plaintiff") brought this action
14 against Defendants Officer Curzen and San Quentin State Prison, alleging four causes of
15 action styled as follows: (1) "Violation of Constitutional Right to Due Process"; (2)
16 "Malice"; (3) "Negligent"; and (4) "Liable." Compl., Dkt. 1. To date, however, Plaintiff
17 has not properly served either Defendant with a summons and complaint in accordance
18 with Rule 4 of the Federal Rules of Civil Procedure.

19 Under Rule 4(m), if a defendant is not served within 120 days after the complaint is
20 filed, the Court must dismiss the action without prejudice against that defendant or order
21 that service be made within a specified time. Fed.R.Civ.P. 4(m). The Court, however,
22 must extend the time for service for an appropriate period if the plaintiff shows good cause
23 for the failure to serve the defendant. *Id.* Good cause means, at a minimum, excusable
24 neglect. *Boudette v. Barnette*, 923 F.2d 754, 756 (9th Cir. 1991). A plaintiff may be
25 required to show the following factors in order to bring the excuse to the level of good
26 cause: (1) the party to be served personally received actual notice of the lawsuit; (2) the
27 defendant would suffer no prejudice; and (3) plaintiff would be severely prejudiced if his
28 complaint were dismissed. *In re Sheehan*, 253 F.3d 507, 512 (9th Cir. 2001).

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In light of Plaintiff's failure to serve Defendants within 120 days after the complaint was filed, the Court orders Plaintiff to show cause why this case should not be dismissed under Rule 4(m). Plaintiff shall file a response to this Order to Show Cause by no later than May 4, 2012. Plaintiff is warned that the failure to file a timely response to this Order will result in dismissal of this action without prejudice.

IT IS SO ORDERED.

Dated: 4/24/12


SAUNDRA BROWN ARMSTRONG
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 NEWTON et al,

5 Plaintiff,

6 v.

7 CURZEN et al,

8 Defendant.

9 _____/

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Case Number: CV11-00309 SBA

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CERTIFICATE OF SERVICE

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14 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District
15 Court, Northern District of California.

16

17 That on April 25, 2012, I SERVED a true and correct copy(ies) of the attached, by placing said
18 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing
19 said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle
20 located in the Clerk's office.

18

19

20 Cardell Newton
21 718 33rd Street
22 Oakland, CA 94609

23 Dated: April 25, 2012

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Richard W. Wieking, Clerk
By: Lisa Clark, Deputy Clerk

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