

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JEREMY IBARRA,

Plaintiff,

v.

Case No. 3:19-cv-00871-MO

**CITY OF PORTLAND; LARRY
GRAHAM; RYAN LEE; CHRIS
LINDSEY; JEFFREY MCDANIEL;
JOSEPH SANTOS; CHAD DREW; JACE
HALL; JERRAD LITTLE; CORY
SWEET; and JOHN DOES 1-25,**

OPINION AND ORDER

Defendants.

MOSMAN, J.,

Plaintiff (“Mr. Ibarra”) filed his Complaint [ECF 1] on June 4, 2019. Defendants Chad Drew and Cory Sweet filed a Motion to Dismiss for Untimely Service [ECF 12] on September 30, 2019. For reasons discussed below, I GRANT Defendants’ motion.

DISCUSSION

Federal Rule of Civil Procedure 4(m) provides that “[i]f a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant . . .” unless the plaintiff can show good cause for his failure to execute timely service. At a minimum, “good cause” for untimely service requires a showing of “excusable neglect.” *Boudette v. Barnette*, 923 F.2d 754, 756 (9th Cir. 1991). It may also require a showing that “(a) the party to be served

personally received actual notice of the lawsuit; (b) the defendant would suffer no prejudice; and (c) plaintiff would be severely prejudiced if his complaint were dismissed.” *Id.*


Here, Mr. Ibarra does not dispute that he failed to serve Defendants Drew and Sweet by September 3, 2019. Pl.’s Resp. Br. [ECF 20] at 2; Fed. R. Civ. Pro 6(a)(1)(C). He contends only that he had some difficulty in locating Defendants Drew and Sweet and in contacting them via his process server. Pl.’s Resp. [20] at 2. He does not explain why he did not begin the process of locating them until August 28, 2019, mere days before the 90-day deadline expired. This is not excusable neglect. And even if it were, Mr. Ibarra has failed to explain why he would be prejudiced by a dismissal, aside from making a conclusory assertion that he would be. *Id.* at 4. This does not suffice. The motion is granted, and the claims against Defendants Drew and Sweet are dismissed.

CONCLUSION

I GRANT the Motion to Dismiss for Untimely Service [12]. Plaintiff’s claims against Defendants Drew and Sweet are DISMISSED without prejudice. Plaintiff may file an amended complaint within fourteen (14) days of the date of this order.

IT IS SO ORDERED.

DATED this 30 day of December, 2019.


MICHAEL W. MOSMAN
United States District Judge