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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>JOHN C. MONTUE,</p> <p>Plaintiff - Appellant,</p> <p>v.</p> <p>TERESA A. SCHWARTZ; et al.,</p> <p>Defendants - Appellees.</p>
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No. 08-15924

D.C. No. 2:06-CV-01276-MCE-GGH

MEMORANDUM\*

Appeal from the United States District Court  
for the Eastern District of California  
Morrison C. England, Jr., District Judge, Presiding

Submitted May 24, 2011\*\*

Before: PREGERSON, THOMAS, and PAEZ, Circuit Judges.

John C. Montue, a California state prisoner, appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action for failure to serve the complaint in a proper manner. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion, *Oyama v. Sheehan (In re Sheehan)*, 253 F.3d

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

507, 511 (9th Cir. 2001), and we affirm.

The district court did not abuse its discretion by dismissing the action, after granting two extensions of time and issuing an order to show cause, because Montue failed to serve the summonses and complaint in a proper manner, and failed to show good cause for his failure to do so. *See* Fed. R. Civ. P. 4(m) (requiring service within 120 days after the complaint is filed); *In re Sheehan*, 253 F.3d at 512-13 (discussing good cause standard); *see also* Fed. R. Civ. P. 4(c) - (e), (j) (describing proper methods for service of process).

The district court did not abuse its discretion by denying Montue's request for appointment of counsel because Montue failed to demonstrate exceptional circumstances. *See Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991).

Montue's remaining contentions, including those concerning the preliminary injunction, are unpersuasive.

Montue's request for appointment of counsel on appeal, set forth in his opening brief, is denied.

**AFFIRMED.**