

AUG 21 2013

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CHARLES WANG,

Plaintiff - Appellant,

v.

GOVERNOR OF THE STATE OF
CALIFORNIA; et al.,

Defendants - Appellees.

No. 12-16303

D.C. No. 3:11-cv-05648-JW

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
James Ware, District Judge, Presiding

Submitted August 14, 2013**

Before: SCHROEDER, GRABER, and PAEZ, Circuit Judges.

Charles Wang appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action alleging defendants violated his Fourteenth Amendment rights. We have jurisdiction under 28 U.S.C. § 1291. We review for

* 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).

an abuse of discretion a dismissal for failure to serve the summons and complaint in a timely manner. *Oyama v. Sheehan (In re Sheehan)*, 253 F.3d 507, 511 (9th Cir. 2001). We vacate and remand.

Contrary to Wang's contentions, Wang did not properly serve the summons and complaint. *See Barlow v. Ground*, 39 F.3d 231, 234 (9th Cir. 1994) ("Although California law does permit service of a summons by mail, such service is valid only if a signed acknowledgment is returned and other requirements are complied with."); *see also* Cal. Civ. Proc. Code § 415.30 (listing the requirements for service by mail under California law).

However, the district court abused its discretion in dismissing sua sponte Wang's action under Rule 4(m) because it did not first give Wang notice and opportunity to show good cause why service was not made. *See* Fed. R. Civ. P. 4(m) (recognizing that a district court may sua sponte dismiss a complaint for failure to serve "after notice to the plaintiff"); *In re Sheehan*, 253 F.3d at 512-13 (discussing Rule 4(m)'s "good cause" standard and the discretion afforded a district court in extending the time for service even in the absence of good cause). Accordingly, we vacate the judgment and remand for further proceedings.

VACATED and REMANDED.