

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

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| Case No. | CV 13-6598 FMO (MRWx) | Date | November 27, 2013 |
| Title | Dana Suttles v. Patrick R. Donahue | | |

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|------------------------------------|--|----------|--|
| Present: The Honorable | Fernando M. Olguin, United States District Judge | | |
| Vanessa Figueroa | None | None | |
| Deputy Clerk | Court Reporter / Recorder | Tape No. | |
| Attorney Present for Plaintiff(s): | Attorney Present for Defendant(s): | | |
| None Present | None Present | | |

Proceedings: (In Chambers) Order Re: Order to Show Cause Re: Dismissal for Lack of Prosecution

Absent a showing of good cause, an action must be dismissed without prejudice if the summons and complaint are not served on a defendant within 120 days after the complaint is filed. Fed. R. Civ. P. 4(m). While plaintiff filed a proof of service regarding the summons and complaint on October 7, 2013, it appears that service was not properly effected.

Under Federal Rule of Civil Procedure 4(i)(1), in order to serve the United States, a party must:

(A)(i) deliver a copy of the summons and of the complaint to the United States attorney for the district where the action is brought – or to an assistant United States attorney or clerical employee whom the United States attorney designates in a writing filed with the court clerk – or

(ii) send a copy of each by registered or certified mail to the civil-process clerk at the United States attorney's office;

(B) send a copy of each by registered or certified mail to the Attorney General of the United States at Washington, D.C.; and

(C) if the action challenges an order of a nonparty agency or officer of the United States, send a copy of each by registered or certified mail to the agency or officer.

Fed. R. Civ. P. 4(i)(1)(A)-(C).

It appears from plaintiff's proof of service that she has complied with requirements (B) and (C), but not requirement (A). (See Proof of Service, Summons and Complaint at 2-4). Plaintiff must comply with all of these requirements in order for service to be proper. See Fed. R. Civ. P. 4(i)(1); Rhodes v. United States I.R.S., 2010 WL 5392636 (D. Ariz. 2010) ("To serve the United

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States, the summons and complaint must be served on both the United States Attorney for the district where suit was filed *and* on the United States Attorney General in Washington, D.C.") (emphasis in original). Therefore, plaintiff must file a new proof of service showing that service has been properly effected prior to the 120-day deadline. See Fed. R. Civ. P. 4(m).

Accordingly, IT IS ORDERED THAT:

1. The Order to Show Cause Re: Dismissal Re: Lack of Prosecution of November 19, 2013 **(Document No. 6)** is hereby **discharged**. Plaintiff may not file a motion for default judgment in this action until service is properly effected.

2. Plaintiff shall file a new proof of service of the summons and complaint, in compliance with the requirements of Federal Rule of Civil Procedure 4(i)(1), no later than **January 7, 2014**.

3. Failure to file the required proof of service by the deadline set forth above shall be deemed consent to the dismissal of this action.

Initials of Preparer 00 : 00
vdr