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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BOY RACER, INC.,

CASE NO. 1:11-cv-01935-LJO-SKO

Plaintiff,

v.

ORDER FOR STATUS REPORT

JOHN DOE,

Defendant.

_____/

On February 13, 2012, Plaintiff filed a request to continue the scheduling conference that is currently set for March 22, 2012. Plaintiff states that a scheduling conference would be a "waste of time" because "it appears that an agreement in this case will allow Plaintiff to voluntarily dismiss this case with prejudice by October of 2012." (Doc. 7.) The complaint in this action was filed on November 21, 2011, and no executed summons has been filed.

Pursuant to the Federal Rules of Civil Procedure 4(m), "[i]f a defendant is not served within 120 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 the defendant or order that service be made within the specified time." Where a defendant shows good cause for the failure to serve process, the court must extend the time for service for an appropriate period. Fed. R. Civ. P. 4(m).

1 Rule 4(m) *requires* that the action be dismissed in the absence of service of a defendant
2 within the 120-day time period. As no executed summons has been filed, Plaintiff shall provide a
3 status report to address whether service of the complaint will be completed on or before March 16,
4 2012, or whether additional time for service is warranted. Plaintiff should provide the information
5 necessary for the Court to determine whether the scheduling conference should be continued.

6 Accordingly, IT IS HEREBY ORDERED that:

- 7 1. Plaintiff's request to continue the scheduling conference is DENIED without
8 prejudice; and
- 9 2. Plaintiff shall file a status report on or before February 23, 2012, in compliance with
10 this order.

11
12 IT IS SO ORDERED.

13 **Dated:** February 15, 2012

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE