

United States District Court  
Northern District of California

RUBEN SUMERA,

Plaintiff,

v.

ERIC HOLDER, et al.,

Defendants.

Case No.: CV 13-01950-KAW

ORDER REQUIRING PLAINTIFF TO FILE  
PROOF OF SERVICE OF THE SUMMONS  
AND COMPLAINT

United States District Court  
Northern District of California

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Plaintiff commenced the above-captioned case against Eric H. Holder, David Gaschke, and Laura Nicolosi on April 29, 2013. (Compl., Dkt. No. 1.) On October 4, 2013, this court ordered Plaintiff to show cause why the case should not be dismissed for failure to prosecute. (Oct. 1, 2013 Order to Show Cause, Dkt. No. 10.) In the order, the court noted that while it had granted Plaintiff an extension of time to serve the defendants, the extended deadline for serving the defendants had passed without Plaintiff filing proof of service of the summons and complaint. (Id.) The extended deadline for serving the defendants was August 31, 2013. (Id.) Plaintiff was to file a written response to the order to show cause by Friday, October 18, 2013 at 5:00 p.m. (Id.)

Plaintiff filed a response to the order to show cause on October 18, 2013 at 10:36 p.m. (Pl.'s Response, Dkt. No. 11.) The court noted that Plaintiff's response was insufficient. (October 25, 2013 Order re Pl.'s Response at 1, Dkt. No. 12.) In the response, Plaintiff indicated that defendants were served on September 18, 2013 and that he would file proof of service upon receipt from the process server. (Pl.'s Response at 1.)

On October 25, 2013, the court ordered Plaintiff to promptly file proof of service of the summons and complaint. (October 25, 2013 Order re Pl.'s Response at 1.) In that order, the court put counsel on notice that it would not discharge the order to show cause until after Plaintiff filed

1 proof of service of the summons and complaint, which Plaintiff was to file by December 4, 2013.  
2 (Id.) Plaintiff filed proof of service of the summons and complaint on December 4, 2013,  
3 however, the filing shows only that the summons and complaint was personally delivered to the  
4 agent for service of process for the Civil Division of the United States Attorney's Office for the  
5 Northern District of California. Plaintiff has not filed any proof of service showing that Eric H.  
6 Holder, David Gaschke, and Laura Nicolosi have been served in this action. Accordingly, the  
7 court hereby orders that Plaintiff file proof of service of the summons and complaint showing that  
8 all of these defendants have been served as required by Federal Rule of Civil Procedure 4(i).  
9 Plaintiff shall file such proof of service by January 3, 2014.

10 As this is the court's third order requiring Plaintiff to file proof of service of the summons  
11 and complaint, if Plaintiff fails to adhere to the January 3, 2014 deadline, the court will dismiss  
12 this case for failure to prosecute.

13 IT IS SO ORDERED.

14 Dated: December 17, 2013

  
KANDIS A. WESTMORE  
United States Magistrate Judge