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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DANTAO SU, CASE NO. 5:10-cv-04194 EJD

Plaintiff(s), **ORDER DISMISSING CASE**

v.

DEFENSE LANGUAGE INSTITUTE
FOREIGN LANGUAGE CENTER, et. al.,

Defendant(s).

On September 20, 2012, the court ordered Plaintiff Dantao Su (“Plaintiff”) to produce to the clerk of the court two Summons forms, one for the United States Attorney for the Northern District of California and one for the United States Attorney General, so that service of process could be accomplished in this action pursuant to Federal Rule of Civil Procedure 4(i). See Docket Item No. 42. As noted by the court, Plaintiff has alleged that Defendant’s status as a federal agency forms the basis for federal jurisdiction. Id.; see also Compl., Docket Item No. 1, at ¶ 1. The court further explained that absent such status on the part of Defendant, federal subject matter jurisdiction over Plaintiff’s claims would not arise. Id. The court also admonished Plaintiff that this case would be dismissed if she did not comply with order to produce the Summons forms. Id.

As of this date, Plaintiff has not complied as directed. Moreover, Plaintiff’s more recent filings reveal she maintains the position that service on the United States Attorney and Attorney General are unnecessary. However, in light of the jurisdictional quandary identified above as well

1 as the fact that Plaintiff herself has alleged Defendant's status as a federal agency, this court cannot
2 proceed with this matter further under the current circumstances.

3 Accordingly, this case is DISMISSED WITHOUT PREJUDICE pursuant to Federal Rule of
4 Civil Procedure 4(m).¹ The Clerk shall close this file.

5 **IT IS SO ORDERED.**

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7 Dated: October 16, 2012


EDWARD J. DAVILA
United States District Judge

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¹ Although the court previously indicated it would dismiss this case with prejudice for lack of prosecution pursuant to Federal Rule of Civil Procedure 41(b), it now finds it more appropriate to dismiss for lack of service under Rule 4(m).