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10 **UNITED STATES DISTRICT COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**
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13 MERLENE F. CASTRO,

14 Plaintiff,

15 vs.

16 HOME CAPITAL FUNDING;
17 AMERICAS SERVICING COMPANY;
18 FIRST AMERICAN LOAN STAR
19 TRUSTEE SERVICES; and DOES 1-10,

20 Defendants.

CASE NO. 09cv1347-WQH-POR

ORDER

21 HAYES, Judge:

22 On June 23, 2009, Plaintiff initiated this action by filing a Complaint. (Doc. # 1). No
23 proof of service has been filed as to Defendant Home Capital Funding. Federal Rule of Civil
24 Procedure 4 requires that a summons and complaint be served “within 120 days after the filing
25 of the complaint.” Fed. R. Civ. P. 4(m). If a plaintiff fails to serve the summons and
26 complaint within 120 days, the court may dismiss the action without prejudice after notice to
27 the plaintiff. *See id.*

28 On October 27, 2009, the Court issued an Order to Show Cause, which stated:

This Order constitutes notice to Plaintiff that the Court will dismiss this action
without prejudice as to Defendant Home Capital Funding on or after **November
30, 2009**, unless, no later than that date, Plaintiff files either: (1) proof of service
of the summons and the Complaint to Defendant Home Capital Funding; or (2)
a declaration under penalty of perjury showing good cause for failure to timely

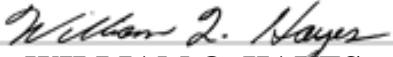
1 serve Defendant Home Capital Funding, accompanied by a motion for leave to
2 serve process outside of the 120 day period.

3 (Doc. # 7).

4 The docket reflects no case activity by Plaintiff since the issuance of the Order to Show
5 Cause.

6 IT IS HEREBY ORDERED that, pursuant to Rule 4(m), the Complaint is **DISMISSED**
7 **WITHOUT PREJUDICE** as to Defendant Home Capital Funding.

8 DATED: December 17, 2009

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10 **WILLIAM Q. HAYES**
11 United States District Judge
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