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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

11 JAMES MCMAHON,

12 Plaintiff,

13 vs.

14 SEDEGHI, Medical Doctor; SEELY,
15 Medical Doctor; CHOO, Chief Medical
16 Doctor,

Defendants.

CASE NO. 12cv151-WQH (MDD)

ORDER

17 HAYES, Judge:

18 On January 18, 2012, Plaintiff initiated this action by filing a Complaint. (ECF No. 1).
19 On January 24, 2012, the Court issued an Order permitting the Plaintiff to proceed in forma
20 pauperis. With regard to service, the Court stated:

21 The Clerk shall issue a summons as to Plaintiff's Complaint [ECF No.
22 1] upon Defendants and shall forward it to Plaintiff along with a
23 blank U.S. Marshal Form 285 for each Defendant. In addition, the
24 Clerk shall provide Plaintiff with a certified copy of this Order and a
25 certified copy of his Complaint and the summons so that he may serve
26 Defendants. Upon receipt of this "IFP Package," Plaintiff is directed to
27 complete the Form 285s as completely and accurately as possible, and
28 to return them to the United States Marshal according to the
instructions provided by the Clerk in the letter accompanying his IFP
package. Upon receipt, the U.S. Marshal shall serve a copy of the
Complaint and summons upon Defendants as directed by Plaintiff on
the USM Form 285s. All costs of service shall be advanced by the
United States. See 28 U.S.C. § 1915(d); FED.R.CIV.P. 4(c)(3).

(ECF No. 3 at 5).

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A proof of service has not been filed for any Defendant.

On June 4, 2012, this Court issued an Order stating:

Federal Rule of Civil Procedure 4 requires that a summons and complaint be served "within 120 days after the complaint is filed." Fed. R. Civ. P. 4(m). If a plaintiff fails to serve the summons and complaint within that time limit, the court may dismiss the action without prejudice after notice to the plaintiff. *Id.*


This Order constitutes notice to Plaintiff that the Court will dismiss this action without prejudice on or after **July 5, 2012**, unless, no later than that date, Plaintiff files either (1) proof that service of the summons and complaint was timely effectuated *or* (2) a declaration under penalty of perjury showing good cause for failure to timely serve the Defendants with the summons and complaint accompanied by a motion for leave to serve process outside of the 120 day period.

(ECF No. 5 at 2).

To date, Plaintiff has failed to file either (1) a proof that service of the summons and complaint was timely effectuated *or* (2) a declaration under penalty of perjury showing good cause for failure to timely serve the Defendants with the summons and complaint accompanied by a motion for leave to serve process outside of the 120 day period. Accordingly, this case is DISMISSED without prejudice.

IT IS SO ORDERED.

DATED: 7/7/12


WILLIAM Q. HAYES
United States District Judge