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**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

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PHILIP KLEIN,

Plaintiff,

vs.

STATE OF UTAH et al.

Defendants.

Case No. 2:07-CV-248 DAK

**REPORT AND RECOMMENDATION**

Judge Dale Kimball

Magistrate Judge Brooke C. Wells

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District Judge Dale Kimball referred this matter to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(B).<sup>1</sup>

Plaintiff Phillip Klein filed his complaint in this case on April 17, 2007.<sup>2</sup> On April 30, 2009, the court issued an order to show cause why the case should not be dismissed because more than 120 days had passed since the filing of Plaintiff's complaint<sup>3</sup> and Plaintiff has not provided the court with the requisite proof of service to demonstrate that the summons and complaint had been served on each of the Defendants named in his complaint.<sup>4</sup> That order directed Plaintiff to respond to the court within fifteen (15) days and inform the court why service has not been made upon the Defendants. The order also warned Plaintiff that failure to

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<sup>1</sup> Docket no. 4.

<sup>2</sup> Docket no. 3.

<sup>3</sup> See Fed.R.Civ.P. 4(m) (2008).

<sup>4</sup> See *id.* 4(l).

so respond would result in the court dismissing this action on its own motion.<sup>5</sup> As of the date of this Report and Recommendation, the fifteen-day period referenced in the court's order has expired and the court has not received any response from Plaintiff.

In relevant part, rule 4(m) provides that

[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 that defendant or order that service be made within a specified time.<sup>6</sup>

As noted by the record, more than 120 days have passed since the filing of Plaintiff's complaint and Plaintiff has not provided the court with the requisite proof of service to show that the summons and complaint have been served on each of the Defendants named in his complaint.<sup>7</sup> The court's order to show cause has provided Plaintiff with notice of this deficiency as required by rule 4(m) and Plaintiff has failed to respond to that order.

Accordingly, pursuant to rule 4(m), **IT IS HEREBY RECOMMENDED** that this case be dismissed, without prejudice.

Copies of the foregoing report and recommendation are being mailed to all parties who are hereby notified of their right to object. Any objection must be filed within ten days after receiving this Report and Recommendation. Failure to object may constitute a waiver of objections upon subsequent review.

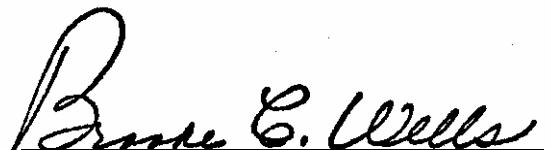
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<sup>5</sup> See Order dated April 30, 2009.

<sup>6</sup> Fed.R.Civ.P. 4(m).

<sup>7</sup> See *id.* 4(l).

DATED this 18th day of May, 2009.

  
Brooke C. Wells  
Brooke C. Wells  
United States Magistrate Judge