

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JAMES IKE SCHAAP,

Plaintiff,

v.

EASTERN WASHINGTON
UNIVERSITY,

Defendant.

NO: 13-CV-0147-TOR

ORDER OF DISMISSAL WITHOUT
PREJUDICE

On April 25, 2013, a Complaint was filed in this case. ECF No. 4. No summons was issued and no proof of service was filed. The Court issued an Order to Show Cause on September 3, 2013, ordering the Plaintiff to show cause on or before September 17, 2013, why this case should not be dismissed for failure to prosecute. ECF No. 5. On September 13, 2013, the Court received Plaintiff's response, which failed to address any reason why the case should not be dismissed for failure to file proof of service of the summons. ECF No. 6. Nor did Plaintiff's response show proof of service of the summons. On September 27, 2013, the

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Court issued an order granting an extension of time to effect service or show cause in this case. ECF No. 7. There, the Court again ordered Plaintiff to file proof of service or show cause why this case should not be dismissed for failure to prosecute. ECF No. 7 at 2. This time, the Court gave Mr. Schaap until October 25, 2013 to comply, warning him that failure to do so would result in the case's dismissal without prejudice. *Id.* Mr. Schaap's response, received October 11, 2013, once again failed to address any reason why proof of service of the summons and complaint had not been filed. *See* ECF No. 8.

Under Fed. R. Civ. P. 4(m), the Plaintiff must serve Defendant within 120 days after the complaint is filed or suffer dismissal. However, district courts have discretion to extend time for service under Rule 4(m). *Efaw v. Williams*, 473 F.3d 1038, 1041 (9th Cir. 2007).

Mr. Schaap's 120 days to serve Defendant expired on August 23, 2013—two months ago. The Court has twice ordered Mr. Schaap to file proof of service or suffer dismissal, extending his time to respond; Mr. Schaap has twice replied with nonresponsive answers.

Accordingly, IT IS HEREBY ORDERED:

Plaintiff's Complaint is DISMISSED without prejudice for failure to serve Defendant under Fed. R. Civ. P. 4(m).

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The District Court Executive is directed to enter this Order, enter judgment of dismissal without prejudice, forward a copy to Plaintiff, and **CLOSE** the file.

DATED October 28, 2013.



Thomas O. Rice
THOMAS O. RICE
United States District Judge