

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

PHILIP EMIABATA	)	3:18-CV-02057 (KAD)
<i>Plaintiff,</i>	)	
	)	
v.	)	
	)	
SETON HEALTHCARE FAMILY,	)	
INSTITUTE OF RECONSTRUCTIVE	)	
PLASTIC SURGERY, JAMES R.	)	
CULLINGTON, and SANJAY SHAR,	)	
<i>Defendants.</i>	)	JUNE 3, 2019

**ORDER RE:  
SERVICE OF SUMMONS AND COMPLAINT**

Kari A. Dooley, United States District Judge

Before the Court are the Plaintiff’s “MOTION for Proof of Service,” in which the Plaintiff purports to set forth the manner by which he served two of the four named defendants, (ECF No. 7), and the Plaintiff’s “EXPARTE Motion for Alternative Service,” in which Plaintiff seeks permission to effectuate service by alternative means, to include email, social media and postal delivery, (ECF No. 8). The Court resolves those motions as follows.

On November 14, 2018, the self-represented Plaintiff, Philip Emiabata, (the “Plaintiff”) initiated this medical malpractice action against the four Defendants. (ECF No. 1.) Thereafter, the Plaintiff failed to file timely returns of service or waivers of service in accordance with Rule 4(m) of the Federal Rules of Civil Procedure. Accordingly, on April 16, 2019, the Court ordered the Plaintiff to establish compliance with Rule 4(m) within thirty days. (ECF No. 6.) On May 16, 2019, the Plaintiff filed his Motion for Proof of Service, which outlines his proof of service for two of the defendants — Seton Healthcare Family, d/b/a Dell Seton Medical Center at the University of Texas, (“Seton”) and Dr. James R. Cullington (“Dr. Cullington”). (ECF No. 7.) In the accompanying affidavit, the Plaintiff affirms that he hand-delivered a copy of the summons

and complaint to Seton's registered agent for service in Austin, Texas. (*Id.* at ¶ 3.) He further represents that he mailed a copy of the summons and complaint, via certified mail, to Dr. Cullington at his office in Austin, Texas. (*Id.* at ¶ 4.)

The Plaintiff is hereby notified that his proof of service on Seton and Dr. Cullington does not comply with Rule 4. Rule 4 sets forth, among other things, the procedural requirements for service, including restrictions on who can serve a summons and complaint and the manner by which service can be made. As relevant to this case, when the defendant is an individual or a business service can be made only by the persons listed in Rule 4(c) or persons authorized by the law of the state where the district court is located or service is made. Fed. R. Civ. P. 4(c)(2)–(3), (e)(1), (h)(1)(A). Here, service was made **by the Plaintiff**. But, neither Rule 4(c) nor the law of Connecticut or Texas permit a party to serve a summons or complaint. Fed. R. Civ. P. 4(c); Conn. Gen. Stat. Ann. § 52-50; Tex. R. Civ. P. 103. Accordingly, the Court extends the time within which the Plaintiff must serve and provide proof that he has served Seton and Dr. Cullington until **July 24, 2019**.<sup>1</sup>

In addition, it does not appear that the Plaintiff has served the other two defendants in this action — the Institute of Reconstructive Plastic Surgery (the “Institute”) and Dr. Sanjay Shar (“Dr. Shar”). If the Plaintiff intends to pursue his claims against the Institute or Dr. Shar, he must file proofs of service for the Institute and Dr. Shar that comport with the Requirements of Rule 4 **on or before July 24, 2019**.

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<sup>1</sup> Rule 4 permits a plaintiff, as an alternative, to obtain and file a waiver of service. The process for seeking and filing a waiver of formal service are set forth in Rule 4(d), and the appropriate form can be obtained from the Clerk's Office. If the Plaintiff obtains waivers of service from some or all of the Defendants, they must be filed **on or before July 24, 2019**.

Finally, although the Plaintiff purports to have served summonses on Seton and Dr. Cullington, he has not requested, nor as the Clerk's office issued, summonses in this matter. In order to serve the Defendants properly, the Plaintiff must request and obtain summonses from the Clerk's Office for the United States District Court for the District of Connecticut.

The Plaintiff is hereby on notice that failure to file proofs of service by July 24, 2019, as directed herein, shall result in a dismissal of the Complaint pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

**SO ORDERED** at Bridgeport, Connecticut, this 3rd day of June 2019.

/s/ Kari A. Dooley  
KARI A. DOOLEY  
UNITED STATES DISTRICT JUDGE