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FOR PUBLICATION

**IN THE SUPERIOR COURT FOR THE
 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

ANA SABLAN TEREGEYO,

Plaintiff,

v.

**COMMONWEALTH OF THE
 NORTHERN MARIANA ISLANDS,**

Defendant.

CIVIL ACTION NO. 16-0085

**ORDER DISMISSING COMPLAINT FOR
 LACK OF PERSONAL JURISDICTION
 BECAUSE OF INSUFFICIENCY OF
 SERVICE PURSUANT TO COM. R. CIV.
 P. 4(i)(1) AS PLAINTIFFS SUING THE
 COMMONWEALTH GOVERNMENT
 MUST DELIVER A COPY OF THE
 SUMMONS AND COMPLAINT TO THE
 OFFICE OF THE ATTORNEY
 GENERAL**

I. INTRODUCTION

This matter came before the Court on July 31, 2018 on Plaintiff’s Request for Entry of Default against Defendant Pursuant to Rule 55(a) filed on May 7, 2018. Plaintiff Ana Sablan Teregeyo appeared Pro Se and the Defendant Commonwealth of the Northern Mariana Islands (“Commonwealth Government”) was represented by Office of the Attorney General Chief of Civil Division Christopher Timmons. In response, the Commonwealth Government filed the Commonwealth’s Opposition to Entry of Default and Its Motion to Dismiss on June 25, 2018.¹

Based on a review of the filings, oral arguments, and applicable law, the Court orders as follows.

¹ Plaintiff filed her Declaration of Ana Teregeyo in support of opposition to motion to dismiss on July 11, 2018, the Commonwealth Government Filed Commonwealth’s Reply To Plaintiff’s Opposition To Its Motion To Dismiss on July 23, 2018, and, finally, Plaintiff filed her Memorandum in Further Opposition to Commonwealth’s Motion to Dismiss on October 3, 2018.

By order of the Court, Judge Joseph N. Camacho

II. BACKGROUND

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2 On May 9, 2016, Plaintiff filed a Complaint for negligence against the Commonwealth
3 Government. Plaintiff alleges that on or about November 2, 2013, Plaintiff was admitted to the
4 Commonwealth Health Center Corporation (“CHCC”) for a shattered tibia bone. Complaint, ¶
5 6–7. Plaintiff alleges she was treated by Dr. Grant E. Walker and had follow-up appointments
6 with physician assistant Benjamin J. Hochhalter. Complaint, ¶ 8, 10. Plaintiff claims that
7 “[she] did not consent to the absence of her doctor for her entire post-operative care” and that
8 “[t]he CHCC Hospital was negligent by not properly advising Plaintiff at the time of her
9 admission, and thus not giving her the opportunity to be transferred to Guam for her full course
10 of treatment.” Complaint, ¶ 23, 25. Plaintiff alleged that CHCC did not treat her in accordance
11 with the proper medical standard of care. Complaint, ¶13, 15. Plaintiff further alleged that as a
12 result of CCHC’s negligence she suffered from osteomyelitis, which “necessitated 6 surgeries,
13 including a full artificial replacement of her knee.” Complaint, ¶ 17–18.
14

15 On May 11, 2016, Plaintiff filed a Declaration of Service indicating that the Summons
16 and Complaint were delivered to Bernie Itibus at the Commonwealth Health Center Office of
17 the CEO in lower Navy Hill on May 9, 2016. Neither the Summons nor Complaint was ever
18 served upon the Defendant Commonwealth Government. On May 7, 2018, Plaintiff filed a
19 Request for Entry of Default Against Defendant Pursuant to Rule 55(a). The Defendant
20 Commonwealth Government opposed Plaintiff’s Request for Entry of Default and moved to
21 dismiss, with prejudice, pursuant to Rules 12(b)(5) and 12(b)(6) of the Commonwealth Rules
22 of Civil Procedure.
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III. LEGAL STANDARD

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25 The Supreme Court of the Commonwealth of the Northern Mariana Islands has yet to
26 articulate the legal standard for Rule 12(b)(5) motions. However, because Rule 1(b)(5) of the

1 Commonwealth Rules of Civil Procedures is patterned after Rule 12(b)(5) of the Federal Rules
2 of Civil Procedure,² “it is appropriate to look to federal interpretation for guidance.”³

3 Rule 12(b)(5) authorizes the Court to dismiss a complaint for insufficient service.⁴ A
4 plaintiff must substantially comply with Rule 4 of the Commonwealth of Civil Procedure to
5 survive a Rule 12(b)(5) challenge. “Without substantial compliance with Rule 4 ‘neither actual
6 notice nor simply naming the defendant in the complaint will provide [the Court with] personal
7 jurisdiction’” to adjudicate the case.⁵ When deciding a Rule 12(b)(5) motion, “a Court must
8 look to matters outside the complaint to determine whether it has jurisdiction.”⁶ Once a Rule
9 12(b)(5) motion is filed, “plaintiffs bear the burden of establishing that service was valid under
10 Rule 4.”⁷

11 IV. DISCUSSION

12 Rule 4(i)(1) of the Commonwealth Rules of Civil Procedure states that “[s]ervice upon
13 the Commonwealth *shall* be effected by delivering a copy of the summons and of the
14 complaint to the attorney general or to an assistant attorney general or clerical employee of the
15 office of the attorney general, *at the office of the attorney general*, or by sending a copy of the
16 summons and of the complaint by registered or certified mail addressed to the attorney
17 general” (emphasis added).^{8,9}

18 Furthermore, if service of the summons and complaint are not made upon the
19 defendant within 240 days of the filing of the complaint, the Court may dismiss the action
20 without prejudice unless the plaintiff shows good cause for her failure to timely serve the
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23 ² Compare Com. R. Civ. P. 12(b)(5) (“a party may assert the following defenses by motion: (5) insufficient
24 service of process), with Fed. R. Civ. P. 12(b)(5) (“a party may assert the following defenses by motion: (5)
insufficient service of process”).

25 ³ *Ishimatsu v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 60.

26 ⁴ Com. R. Civ. P. 12(b)(5).

⁵ *Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc.*, 840 F.2d 685, 688 (9th Cir. 1988) (quoting
Benny v. Pipes, 799 F.2d 489, 492 (9th Cir. 1986)).

⁶ *Darden v. DaimlerChrysler N. Am. Holding Corp.*, 191 F. Supp. 2d 382, 387 (S.D.N.Y. 2002)

⁷ *Brockmeyer v. May*, 383 F.3d 798, 801 (9th Cir. 2004).

⁸ Com. R. Civ. P. 4(i)(1).

⁹ The word “shall” indicates that the prescribed action is mandatory to be effective. See *Aquino v. Tinian
Cockfighting Bd.*, 3 NMI 284, 292 (1992).

1 defendant.¹⁰ Com. R. Civ. P. 4(m). If good cause is shown, the court shall extend the time for
2 service for an appropriate period. *Id.*

3 Plaintiff's Complaint was filed on May 9, 2016 and named the Commonwealth
4 Government as Defendant. On May 11, 2016, the Plaintiff's Declaration of Service shows that
5 the Summons and Complaint were delivered to Bernie Itibus at the Commonwealth Health
6 Center Office of the Chief Executive Officer in lower Navy Hill on May 9, 2016. However, the
7 Commonwealth Health Center is not a named defendant in this case. Rule 4(i)(1) is very clear
8 –when suing the Commonwealth Government, a copy of the summons and complaint must be
9 delivered to the Office of the Attorney General.

10 Here, neither the Attorney General, his clerical staff, nor any Assistant Attorney
11 General were served with a copy of the summons and complaint at the Office of the Attorney
12 General. Accordingly, the Commonwealth Government has not been served in accordance with
13 the Rule 4(i)(1) of the Rules of Civil Procedure.

14 To avoid dismissal, the plaintiff bears the burden of establishing “good cause” to
15 justify failure of timely service. *NMHC v. Ruben*, SC 96-0485 (Trial Ct. 1999) (Order Granting
16 Defendant Chipwelong’s Motion to Dismiss at 4) (citing *Fimbres v. United States*, 833 F.2d
17 138, 139 (9th Cir. 1987)). “‘Good cause exists’ in situations where a plaintiff has made
18 reasonable, diligent efforts to effect service on the Defendant.” *NMHC v. Ruben*, SC 96- 0485
19 (Trial Ct. 1999) (Order Granting Defendant Chipwelong’s Motion to Dismiss at 4) (citing *T&S*
20 *Rentals v. United States*, 164 F.R.D. 422, 425 (N.D.W. Va 1996)); *see also Pompey v.*
21 *Lumpkin*, 321 F. Supp. 2d 1254, 1260 (M.D. Ala. 2004) (finding that “[t]he original
22 defendants' failure to inform Pompey that he had named the wrong defendant does not
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¹⁰ The current Rule 4(m) has a 120 day time limit for service. Com. R. Civ. P. 4(m). However, the current rules only apply to civil actions commenced after January 9, 2019. Com. R. Civ. P. 1(b).

1 constitute good cause”). Furthermore, “[p]ro se status does not exempt a party from
2 compliance with relevant rules of procedural and substantive law.”¹¹

3 Here, Plaintiff failed to show any attempts to serve the office of the attorney general or
4 circumstances that prevented her from serving the Defendant Commonwealth Government in a
5 timely manner as mandated by Com. R. Civ. P. 4(i). Furthermore, Plaintiff had ample time to
6 discover the proper party to serve after incorrectly serving CHCC. Accordingly, Plaintiff has
7 not shown good cause to extend time for service.

8 Plaintiff failed to comply with the requirements of Rule 4(i) and Rule 4(m) of the
9 Commonwealth Rules of Civil Procedure. Therefore personal jurisdiction upon the
10 Commonwealth Government has not attached and the case must be dismissed for insufficiency
11 of service of process pursuant to Rule 12(b)(5) of the Commonwealth Rules of Civil
12 Procedure.

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14 **V. CONCLUSION**

15 For the foregoing reasons, the Commonwealth Government’s Motion to Dismiss is
16 **GRANTED.**¹²

17 **IT IS SO ORDERED** this 13th day of March, 2019.

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20 /s/
JOSEPH N. CAMACHO, Associate Judge

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¹¹ *Asad v. Crosby*, 158 Fed. Appx. 166, 171 n. 4 (11th Cir. 2005) (quoting *Kersh v. Derozier*, 851 F.2d 1509,
26 1512 (5th Cir. 1988)).

¹² There are ambiguities of Plaintiff’s allegations of facts that hamper the full determination of whether
Plaintiff filed within the two-year statute of limitations. Therefore, the Court cannot adequately apply the
alleged facts to determine whether the statute of limitation has passed. Without more, the Court cannot dismiss
this action with prejudice.