


FILED  
 CLERK, U.S. DISTRICT COURT  
 JAN 8 2014  
 CENTRAL DISTRICT OF CALIFORNIA  
 BY  DEPUTY

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
 CENTRAL DISTRICT OF CALIFORNIA

TACORI ENTERPRISES, ) NO. CV 13-5741-E  
 )  
 Plaintiff, )  
 )  
 v. ) ORDER OF DISMISSAL  
 )  
 HOLITION LIMITED, ET AL., )  
 )  
 Defendants. )  
 )

Plaintiff filed this action on August 8, 2013. Plaintiff did not file a proof of service of the Summons and Complaint within 120 days thereafter.

On December 10, 2013, the Magistrate Judge filed an "Order to Show Cause" ("OSC"). The OSC required that Plaintiff file a declaration within twenty (20) days of December 10, 2013, showing good cause, if there be any, why service of the Summons and Complaint was not made upon Defendant within 120 days after the filing of the Complaint. The OSC warned Plaintiff that failure to comply with the OSC or failure to demonstrate good cause might result in the dismissal

1 of the action without prejudice. Nevertheless, Plaintiff failed to  
2 respond to the OSC within the allotted time.

3  
4 Under Rule 4(m) of the Federal Rules of Civil Procedure, the  
5 Court may dismiss an action without prejudice if the summons and  
6 complaint are not served on the defendant within 120 days after filing  
7 the complaint or within the time specified by the Court. Efaw v.  
8 Williams, 473 F.3d 1038, 1041 (9th Cir. 2007). Rule 4(m) requires a  
9 court to extend the time for service if a plaintiff shows good cause  
10 for the failure to serve. "At a minimum, 'good cause' means excusable  
11 neglect." Bourdette v. Barnette, 923 F.2d 754, 756 (9th Cir. 1991).  
12 Here, Plaintiff has not shown good cause for its failure to effect  
13 timely service on the Defendant.

14  
15 A court has "broad discretion" to extend the time for service  
16 under Rule 4(m), even absent a showing of good cause. See Efaw v.  
17 Williams, 473 F.3d at 1040-41; see also United States v. 2,164  
18 Watches, More or Less, Bearing a Registered Trademark of Guess?, Inc.,  
19 366 F.3d 767, 773 (9th Cir. 2004) (Rule 4(m) gives courts "leeway to  
20 preserve meritorious lawsuits despite untimely service of process").  
21 A court may consider various factors including prejudice to the  
22 defendant, actual notice, a possible limitations bar, and eventual  
23 service. Efaw v. Williams, 473 F.3d at 1041. Any such dismissal  
24 should be without prejudice. See id. at 772.

25  
26 In the present case, Plaintiff's failure to comply with the OSC  
27 renders an evaluation of these factors somewhat speculative. There is  
28 no evidence the Defendant has actual notice of this action. The

1 possible prejudice to the Defendant resulting from the delay is  
2 unknown, as is the impact of dismissal on a possible future  
3 limitations bar. There is no indication when, if ever, Plaintiff  
4 eventually would effect service. Dismissal without prejudice under  
5 Rule 4(m) would appear to be appropriate in the present case.

6  
7 In addition to dismissing this action for failure to effect  
8 timely service, the action is appropriately dismissed for failure to  
9 prosecute. Plaintiff failed to file a timely declaration, despite a  
10 Court order that Plaintiff do so. The Court has inherent power to  
11 achieve the orderly and expeditious disposition of cases by dismissing  
12 actions for failure to prosecute. See Link v. Wabash R.R., 370 U.S.  
13 626, 629-30 (1962).

14  
15 For all of the foregoing reasons, it is ordered that the action  
16 is dismissed without prejudice.

17  
18 DATED: 1/8, 2014.

19  
20  
21   
22 \_\_\_\_\_  
23 GEORGE H. KING  
24 CHIEF UNITED STATES DISTRICT JUDGE  
25  
26  
27  
28