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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ARNEL FRANCISCO, et al.,

Plaintiffs,

No. 2:12-cv-0522 LKK DAD PS

vs.

GREENPOINT MORTGAGE FUNDING ORDER
INC., et al.,

Defendants

_____ /

This matter came before the court on July 13, 2012, for Status (Pretrial Scheduling) Conference. Plaintiff Arnel Francisco, who is proceeding pro se in this action, appeared on his own behalf. No appearance was made by or on behalf of plaintiff Janeth Francisco or any defendant.¹

At the July 13, 2012 hearing the undersigned advised plaintiff Arnel Francisco that plaintiffs have filed no evidence that service of the summons and complaint was effected on any defendant and also noted that no defendant has appeared in the action. Plaintiff Arnel Francisco represented to the court that the plaintiffs had paid a process server to effect service on

¹ Plaintiff Arnel Francisco stated at the hearing that plaintiff Janeth Francisco was ill and could not appear.

1 the defendants, believed that the process server had served each defendant and that each
2 defendant would appear at the July 13, 2012 hearing. Moreover, plaintiff Arnel Francisco
3 represented that the plaintiffs were in discussions with an attorney who they hoped to retain to
4 represent them in this matter. Finally, plaintiff Arnel Francisco reported that if counsel was
5 retained, he wished to file an amended complaint on behalf of the plaintiffs.

6 Federal Rule of Civil Procedure 4(m) requires a plaintiff to serve a defendant
7 within 120 days after it files the complaint. A court must dismiss a case without prejudice if a
8 plaintiff has not complied with this provision unless the plaintiff shows good cause for its failure
9 to serve a defendant. Fed. R. Civ. P. 4(m). If good cause appears, the court must extend the time
10 for service for an appropriate period. Id. Even without good cause, “[c]ourts have discretion
11 under Rule 4(m) . . . to extend the time for service.” In re Sheehan, 253 F.3d 507, 513 (9th Cir.
12 2001); see also Efaw v. Williams, 473 F.3d 1038, 1041 (9th Cir. 2007) (“District courts have
13 broad discretion to extend time for service under Rule 4(m).”). In this regard, “if good cause is
14 not established, the district court may extend time for service upon a showing of excusable
15 neglect.” Lemoge v. United States, 587 F.3d 1188, 1198 (9th Cir. 2009).

16 Here, there appears to be no prejudice to defendants in granting plaintiffs a brief
17 extension of time in which to serve defendants. Moreover, given the reason stated for plaintiffs’
18 failure to effect service, and the possibility that plaintiffs will retain counsel in the near future, it
19 is likely that plaintiffs will serve defendants if granted a short extension of time. Finally, it
20 appears that the pro se plaintiffs failure to serve the defendants was not the result of inexcusable
21 neglect, since they reportedly employed a process server to serve the defendants but the process
22 server nevertheless failed to properly serve any defendant. Plaintiffs will therefore be granted a
23 brief extension of time in which to effect service.

24 Accordingly, IT IS ORDERED that:

25 1. Plaintiffs are granted thirty days from the date of this order to either file proof
26 of service of the original complaint on each defendant or file and serve an amended complaint on

1 each defendant and file with the court proof of service of the amended complaint on each
2 defendant;

3 2. A Status (Pretrial Scheduling) Conference is set for **Friday, October 5, 2012,**
4 **at 10:00 a.m.** at the United States District Court, 501 I Street, Sacramento, California, in
5 Courtroom No. 27 before the undersigned;

6 3. Within fourteen (14) days after plaintiffs are served with this order, plaintiffs
7 shall serve upon each defendant one copy of this order, as well as a copy of the Notice of
8 Availability of a Magistrate Judge and the related form that were served on plaintiffs by the Clerk
9 on February 28, 2012; within five (5) days after serving the required copies on the defendants,
10 plaintiffs shall file a certificate of service indicating the date and manner of service of the copies
11 on each defendant;

12 4. Any party may appear at the Status (Pretrial Scheduling) Conference
13 telephonically if the party pre-arranges such appearance by contacting Pete Buzo, the courtroom
14 deputy of the undersigned magistrate judge, at (916) 930-4128 at least 48 hours before the Status
15 (Pretrial Scheduling) Conference. A land line telephone number must be provided;

16 5. Plaintiffs shall file and serve a status report on or before **September 21, 2012,**
17 **2012,** and defendants shall file and serve status reports on or before **September 28, 2012.** Each
18 party's status report shall address all of the following matters:

- 19 a. Progress of service of process;
- 20 b. Possible joinder of additional parties;
- 21 c. Possible amendment of the pleadings;
- 22 d. Jurisdiction and venue;
- 23 e. Anticipated motions and the scheduling thereof;
- 24 f. Anticipated discovery and the scheduling thereof,
25 including disclosure of expert witnesses;
- 26 g. Future proceedings, including the setting of
appropriate cut-off dates for discovery and for law

1 and motion, and the scheduling of a final pretrial
2 conference and trial;

3 h. Modification of standard pretrial procedures
4 specified by the rules due to the relative simplicity
5 or complexity of the action;

6 i. Whether the case is related to any other case,
7 including matters in bankruptcy;

8 j. Whether the parties will stipulate to the magistrate
9 judge assigned to this matter acting as settlement
10 judge, waiving any disqualification by virtue of his
11 so acting, or whether they prefer to have a
12 Settlement Conference before another magistrate
13 judge;

14 k. Whether the parties intend to consent to proceed before a
15 United States Magistrate Judge; and

16 l. Any other matters that may aid in the just and
17 expeditious disposition of this action.

18 6. Plaintiffs are again advised that failure to file a timely status report, or failure
19 to appear at the status conference either in person or telephonically, may result in a
20 recommendation that this action be dismissed for lack of prosecution and as a sanction for failure
21 to comply with court orders and applicable rules. See Local Rules 110 and 183; and

22 7. Plaintiffs are hereby cautioned that if service of the summons and original
23 complaint, or any amended complaint filed by plaintiffs, is not accomplished on a defendant
24 within 30 days of the date of this order, the undersigned will recommend that this matter be
25 dismissed.

26 DATED: July 16, 2012.

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22 _____
23 DALE A. DROZD
24 UNITED STATES MAGISTRATE JUDGE

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