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## IN THE UNITED STATES DISTRICT COURT

## FOR THE NORTHERN DISTRICT OF CALIFORNIA

SHOP IRONWORKERS LOCAL 790  
PENSION TRUST, et al.,

Plaintiffs,

v.

COFAB STEEL CORPORATION, et al.,

Defendants.

No. CV 07-2500 JSW

**ORDER DISCHARGING ORDER  
TO SHOW CAUSE**

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In the order regarding the motion to dismiss, the Court held that Arcmatic Welding Systems, Incorporated and William Bong (“Movants”) had not been properly served and issued an Order to Show Cause (“OSC”) why the case should not be dismissed for failure to serve within the time period provided by Federal Rule of Civil Procedure 4(m) (“Rule 4(m)”). Rule 4(m) provides that service must be effected within 120 days, but “explicitly permits a district court to grant an extension of time to serve the complaint *after* that 120-day period.” *Mann v. Am. Airlines*, 324 F.3d 1088, 1090 (9th Cir. 2003) (emphasis in original). A district court has full discretion to extend the time for service of process upon a showing of good cause. Fed. R. Civ. P. 4(m); *In re Sheehan*, 253 F.3d 507, 513 (9th Cir. 2001). “At minimum, ‘good cause’ means excusable neglect. A plaintiff may also be required to show the following: (a) the party to be served personally received actual notice of the lawsuit; (b) the defendant would suffer no prejudice; and (c) plaintiff would be severely prejudiced if his complaint were dismissed.”

1 *Boudette v. Barnette*, 923 F.2d 754, 756 (9th Cir. 1991). Upon Plaintiffs' response to the OSC,  
2 the Court finds that Plaintiffs have made a sufficient showing of good cause. Plaintiffs'  
3 reasonable interpretation of the applicable statutes constitute excusable neglect for not properly  
4 serving Movants within 120 days. Moreover, Plaintiffs have shown that Movants had actual  
5 notice, would not be prejudiced, and that Plaintiffs would be severely prejudiced if this action  
6 were dismissed. Therefore, the Court DISCHARGES the OSC and extends the time for  
7 Plaintiffs to serve Movants. The Court further rules that it will quash the original service as  
8 insufficient, but will not dismiss this action. Plaintiffs shall properly serve Movants within 60  
9 days from the date of this Order.

10 **IT IS SO ORDERED.**

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12 Dated: July 1, 2009

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15 JEFFREY S. WHITE  
16 UNITED STATES DISTRICT JUDGE  
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