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United States District Court  
For the Northern District of California

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

LARY W. GREMP,  
Plaintiff,  
v.  
SARAH LITTLE, et al.,  
Defendants

No. 08-2303 MMC

**ORDER DISCHARGING ORDER TO  
SHOW CAUSE**

Before the Court is plaintiff's response, filed September 23, 2008, to the Court's September 4, 2008 order directing plaintiff to show cause why his claims against defendants Patrick Taylor ("Taylor"), Glenn H. Van Schaack ("Van Schaack"), and Sarah Little ("Little") should not be dismissed for failure to timely serve said defendants.

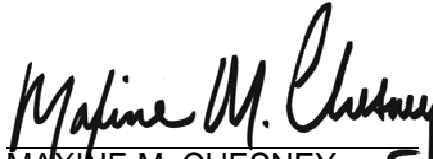
In his response, plaintiff has shown that, subsequent to the filing of the Court's order to show cause, he filed proofs of service indicating Taylor and Van Schaack had each been served with the summons and a copy of the complaint within the 120-day period set forth in Rule 4(m) of the Federal Rules of Civil Procedure. Accordingly, the order to show cause, as it pertains to plaintiff's claims against Taylor and Van Schaack, is hereby DISCHARGED.

Plaintiff has also filed proof of service on Little; such proof of service indicates Little was served approximately one week after the Court's order and expiration of the 120-day

1 period set forth in Rule 4(m). Because the period of delay is not substantial and a  
2 defendant can waive a defect in service, the Court will not sua sponte dismiss plaintiff's  
3 claims against Little. See, e.g., McCurdy v. American Board of Plastic Surgery, 157 F. 3d  
4 191, 195 (3rd Cir. 1998) (holding defendant may waive challenge to timeliness of service).  
5 Accordingly, the order to show cause, as it pertains to plaintiff's claims against Little, is  
6 hereby DISCHARGED.

7 **IT IS SO ORDERED.**

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9 Dated: September 26, 2008

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MAXINE M. CHESNEY  
United States District Judge