

1

2

3

4

5

UNITED STATES DISTRICT COURT

6

Northern District of California

7

8

LORRAINE FERGUSON,

9

Plaintiff,

10

v.

11

HORIZON LINES, INC., et al.,

12

Defendants.

No. CV11-3391 MEJ

**ORDER RE-OPENING CASE AS TO
DEFENDANT ANDREW TRETYAK**

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

On November 14, 2012, the Court granted Defendant Horizon Lines, Inc.'s Motion for Summary Judgment against Plaintiff Lorraine Ferguson. Dkt. No. 41. As Andrew A. Tretyak was the sole remaining Defendant and there was no indication that he had been served with the Complaint, the Court ordered Plaintiff to show cause why her case against Tretyak should not be dismissed for failure to prosecute. Dkt. 42. The Court ordered Plaintiff to file a declaration by November 28, 2012, or, in the alternative, file a voluntary dismissal by November 28. As Plaintiff failed to respond, the Court dismissed Plaintiff's Complaint and terminated the case. Dkt. No. 44.

Now before the Court is Plaintiff's Motion to Set Aside Dismissal and Response to Order to Show Cause. Dkt. No. 45. In her Motion, Plaintiff's counsel states that: "We received the order on the motion for summary judgment, but somehow I never received separately the order to show cause (or never opened it). If I did, I would have responded Had I responded I would have detailed the actions we have taken to serve the defendant Andrei Tretyak." Mot. at 2. As to service on Tretyak, counsel states that "we have had it out for service for over a year and a half from the time we filed the complaint. We asked the defendant for Tretyak's address . . . and only received a telephone number. I spoke with Tretyak once and he told me to send the complaint to a P.O. Box, and I send [sic] a Notice and Acknowledgment of Receipt . . . and it was never returned." *Id.*

1 Counsel further states that they have subpoenaed the records of the union, contacted the DMV, sent
2 an investigator to find him, and took the deposition of Tretyak's ex-wife, all in an effort to properly
3 serve him. *Id.* Plaintiff requests that the Court grant her until March 30, 2013 in which to serve
4 Tretyak, stating that “[w]e do have some insight to some various individuals that know where he
5 goes to eat and drink.” *Id.* at 3.

6 Although it is unclear how Plaintiff intends to effect service despite having failed in her
7 attempts for over a year, the Court finds good cause exists to permit Plaintiff a final opportunity to
8 complete service of process on Tretyak. Accordingly, the Court hereby RE-OPENS this case as to
9 Defendant Andrei Tretyak. Plaintiff shall complete service of process by March 29, 2013. Failure
10 to comply with this Order shall result in dismissal with prejudice.

11 **IT IS SO ORDERED.**

12 Dated: December 17, 2012

13 
14 Maria-Elena James
15 Chief United States Magistrate Judge

16
17
18
19
20
21
22
23
24
25
26
27
28