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UNITED STATES DISTRICT COURT  
Northern District of California  
San Francisco Division

LUIDIA INC,

No. C 12-02993 LB

Plaintiff,

**ORDER REGARDING PLAINTIFF'S  
SERVICE OF DEFENDANTS**

v.

PEN AND FREE CO., LTD., et al.,

Defendants.

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Plaintiff filed a complaint for patent infringement on June 11, 2012. Complaint, ECF No. 1.

Federal Rule of Civil Procedure 4(m) states that “[i]f a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own and after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Fed. R. Civ. P. 4(m). “But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.” *Id.*

In this case, the 120-day period for service ended on October 9, 2012 and at that time, neither Defendant had appeared in the action, and the court had not received any indication that either Defendant had been served with the complaint and summons. *See generally* Docket. Accordingly, the court ordered Plaintiff to file a status update and show cause why this case should not be dismissed without prejudice for failure to prosecute. October 10, 2012 Order, ECF No 6.

On October 15, 2012, Luidia filed a status update. October 15, 2012 Status Update, ECF No 9. In it, Luidia says that they engaged in active discussions with both defendants regarding the

1 allegations in the complaint. *Id.* On October 15, 2012, counsel for Pen and Free provided Luidia  
2 with a Waiver of the Service of Summons in this case, and Luidia filed that Waiver the same day.  
3 Waiver, ECF No 7. Pursuant to that Waiver and due to Pen and Free's status as a foreign defendant,  
4 Pen and Free's response to the complaint is now due to be filed on or before January 14, 2013.  
5 Under the circumstances, the court finds that the Plaintiff provided good cause for the delay in  
6 satisfying the requirements of Rule 4(m) and extends the time for service to encompass the filing of  
7 the Waiver on October 15, 2012.

8 As concerns Peerless Industries, Luidia need not serve it, as Luidia dismissed its claims against it  
9 on October 15, 2012. Notice of Voluntary Dismissal, ECF No. 8.

10 **IT IS SO ORDERED.**

11 Dated: October 16, 2012



12 LAUREL BEELER  
13 United States Magistrate Judge  
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