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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

INN S.F. ENTERPRISE, INC.,  
Plaintiff,  
v.  
NINTH STREET LODGING, LLC,  
Defendant.

Case No. [16-cv-00599-JD](#)

**ORDER RE DEFAULT AND SERVICE**

Re: Dkt. No. 18

Defendant Ninth Street Lodging, LLC (“Ninth Street”), asks the Court to set aside the default entered by the Clerk on May 3, 2016 (Dkt. No. 15). Dkt. No. 18. As Ninth Street has shown, plaintiff Inn S.F. Enterprise, Inc. (“Inn S.F.”) failed to perfect service under Federal Rule of Civil Procedure 4 by failing to serve a summons with the complaint. *See* Fed. R. Civ. P. 4(c)(1) (“A summons must be served with a copy of the complaint. The plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m) and must furnish the necessary copies to the person who makes service.”). As of today, no docket entry shows that Inn S.F. has even sought to have a summons issued by the Court, let alone served it. Faced with these facts, and despite its counsel’s prior declaration under penalty of perjury to the Clerk that service was perfected, *see* Dkt. No. 14-1 ¶ 4, Exh. 2, Inn S.F. does not oppose setting aside the default. Dkt. No. 20. Consequently, the Court vacates the Clerk’s entry of default (Dkt. No. 15) for good cause shown, pursuant to Rule 55(c).


In the statement of non-opposition, Inn S.F. asks that Ninth Street agree “to save the expense of serving a summons and complaint” by signing a waiver of the service of summons. Dkt. No. 20 at 1. This request was filed on May 12, 2016, which is 98 days after the filing of the complaint on February 4, 2016. Service of the complaint was thus already overdue under Rule 4(m), which requires a complaint to be served within 90 days or risk dismissal of the case. Inn

1 S.F. provides no explanation or good cause for failing to serve Ninth Street within the time and in  
2 the manner mandated by the Federal Rules of Civil Procedure.

3 But because the Court favors the disposition of cases on the merits, Inn S.F. has one final  
4 opportunity to serve the complaint properly. Inn S.F. should obtain a summons from the Clerk of  
5 the Court and serve the summons and complaint on Ninth Street no later than June 3, 2016. The  
6 service must comply in all respects with the Federal Rules of Civil Procedure and the Court's  
7 Civil Local Rules. If Inn S.F. fails to comply with this order, or any of the applicable procedural  
8 rules, or fails to serve Ninth Street properly by June 3, 2016, the Court will dismiss this action  
9 under Rule 4 or for failure to prosecute. *See* Fed. R. Civ. P. 41(b) ("If the plaintiff fails to  
10 prosecute or to comply with these rules or a court order, a defendant may move to dismiss the  
11 action or any claim against it.")

12 **IT IS SO ORDERED.**

13 Dated: May 20, 2016

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16 JAMES DONATO  
17 United States District Judge  
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