

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JENNIFER BILODEAU, individually and on behalf of all others similarly situated)	Case No.: 11-cv-01752-LHK
)	ORDER TO SHOW CAUSE
Plaintiff,)	
v.)	
MCAFEE, INC., and CAPITAL INTELLECT, INC.,)	
)	
Defendants.)	

For the reasons stated herein, the Court ORDERS Plaintiff to show cause why Defendant Capital Intellect, Inc. should not be dismissed from this action due to Plaintiff’s failure to prosecute.

Federal Rule of Civil Procedure 4(m) requires a plaintiff to serve a defendant within 120 day after it files the complaint. A court must dismiss a case without prejudice if a plaintiff has not complied with Rule 4(m), unless the plaintiff shows good cause for its failure to serve defendant. Fed. R. Civ. P. 4(m). Plaintiff filed her complaint on August 31, 2012. ECF No. 1. Under Rule 4(m), Plaintiff was required to have filed proof of service by December 29, 2012. To date, Plaintiff has not filed any proof of service.

Defendant McAfee filed a Motion to Dismiss on November 9, 2012, ECF No. 22, which is currently set for hearing on June 13, 2013. On January 8, 2013, Plaintiff filed an Opposition to the Motion to Dismiss. ECF No. 29. That Opposition states, “Despite numerous attempts, Capital

1 Intellect has yet to be served. Plaintiff is in the process of re-attempting service.” *Id.* at 1, n.1. No
2 subsequent certificate of service has been filed, nor has Plaintiff filed any other explanation of her
3 failure to serve Defendant Capital Intellect, Inc.

4 Accordingly, the Court ORDERS Plaintiff to show cause why Defendant Capital Intellect,
5 Inc. should not be dismissed from this action, due to Plaintiff’s failure to comply with Rule 4(m).
6 Plaintiff has until May 31, 2013 to file a response to this Order to Show Cause. The Court will
7 hold an Order to Show Cause hearing on June 13, 2013, at 1:30 p.m., in conjunction with the case
8 management conference and Motion to Dismiss hearing set for that date. Plaintiff’s failure to
9 respond to this Order or failure to appear at the June 13, 2013 hearing will result in dismissal of
10 Defendant Capital Intellect, Inc., without prejudice.

11 **IT IS SO ORDERED.**

12
13 Dated: May 14, 2013

14 
15 LUCY H. KOH
16 United States District Judge