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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ERIC TASARANTA and DARILOU
TASARANTA,

Plaintiffs,

vs.
HOMECOMINGS FINANCIAL LLC;
AMERICAN MORTGAGE NETWORK,
INC.; and DOES 1 through 50,

Defendants.

CASE NO. 09cv1666-WQH-JMA
ORDER

HAYES, Judge:

On July 2, 2009, Plaintiffs, proceeding pro se, initiated this action by filing a Complaint in San Diego County Superior Court. (Notice of Removal, Ex. A, Doc. # 1). On July 31, 2009, Defendant Homecomings Financial LLC (“Homecomings”) removed the action to this Court, alleging federal question jurisdiction.¹ (Doc. # 1). The Notice of Removal was accompanied by an affidavit from Homecomings’ counsel, stating that Defendant American Mortgage Network, Inc. had not been served as of July 31, 2009. (Doc. # 3, ¶ 5). American Mortgage Network, Inc. has not yet entered an appearance, and Plaintiffs have filed no proof of service as to American Mortgage Network, Inc. with this Court.

Federal Rule of Civil Procedure 4 requires that a summons and complaint be served “within 120 days after the filing of the complaint.” Fed. R. Civ. P. 4(m). If a plaintiff fails to

¹ On September 21, 2009, the Complaint was dismissed without prejudice as to Defendant Homecomings. (Doc. # 10).

1 serve the summons and complaint within 120 days, the court may dismiss the action without
2 prejudice after notice to the plaintiff. *See id.*

3 On December 17, 2009, the Court issued an Order to Show Cause, which stated:


4 This Order constitutes notice to Plaintiffs that the Court will dismiss this action
5 without prejudice as to Defendant American Mortgage Network, Inc. on or after
6 **January 29, 2010**, unless, no later than that date, Plaintiffs file either: (1) proof
7 of service of the summons and the Complaint to Defendant American Mortgage
8 Network, Inc.; or (2) a declaration under penalty of perjury showing good cause
9 for failure to timely serve American Mortgage Network, Inc., accompanied by
10 a motion for leave to serve process outside of the 120 day period.

11 (Doc. # 11 at 2).

12 The docket reflects no case activity by Plaintiffs since the issuance of the Order to Show
13 Cause.

14 IT IS HEREBY ORDERED that, pursuant to Rule 4(m), the Complaint is **DISMISSED**
15 **WITHOUT PREJUDICE** as to American Mortgage Network, Inc. The Clerk of the Court
16 shall close this case.

17 DATED: February 2, 2010

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19 **WILLIAM Q. HAYES**
20 United States District Judge
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