

1 Following ordinary business practices, I sealed [true and correct copies of the
2 [Federal Complaint] in addressed envelope(s) and placed them at my workplace
3 for collection and mailing with the United States Postal Service.... In the ordinary
course of business, the sealed envelope(s) that I placed for collection would be
deposited, postage prepaid, with the United States Postal Service that same day.

4 *Id.* at 2.

5 On August 7, 2012, Defendant Commonwealth Land Title waived service by filing a
6 Motion to Dismiss. (ECF No. 5). On August 8, 2012, Defendants Alternative Loan Trust
7 2007-OA8, Michael J. Ballmann, CWalt, Inc., Countrywide Home Loans Servicing LP,
8 Countrywide Home Loans, Inc., Christine Daymude, None PSA Custodian, Recontrust
9 Company, and Bank of New York waived service by filing a Motion to Dismiss. (ECF No.
10 6). On September 11, 2012, the Court granted both Motions to Dismiss, and the Complaint
11 was dismissed as to Defendants Commonwealth Land Title, Alternative Loan Trust 2007-OA8,
12 Michael J. Ballmann, CWalt, Inc., Countrywide Home Loans Servicing LP, Countrywide
13 Home Loans, Inc., Christine Daymude, None PSA Custodian, Recontrust Company, and Bank
14 of New York. (ECF No. 10).

15 Defendants Aegis Wholesale Corporation and Alliance Title have not appeared in this
16 action. On September 11, 2012, the Court issued an Order finding that “the proof of service
17 filed by Plaintiffs fails to indicate that service upon Defendants Aegis Wholesale Corporation
18 and Alliance Title was effectuated by one of the permissible procedures set forth in Rule 4 or
19 under California law.” (ECF No. 11 at 3). The Court stated that “the Court will dismiss this
20 action without prejudice on **October 5, 2012**, unless, no later than that date, Plaintiffs file: (1)
21 proof that service of the Summons and Complaint was timely effectuated upon Defendant
22 Aegis Wholesale Corporation and Defendant Alliance Title, or (2) a declaration under penalty
23 of perjury showing good cause for failure to timely serve Defendant Aegis Wholesale
24 Corporation and Defendant Alliance Title, accompanied by a motion for leave to serve process
25 outside of the 120 day period.” *Id.* at 3-4 (emphasis in original).


26 “A federal court is without personal jurisdiction over a defendant unless the defendant
27 has been served in accordance with Fed. R. Civ. P. 4.” *Travelers Cas. & Sur. Co. of Am. v.*
28 *Brenneke*, 551 F.3d 1132, 1135 (9th Cir. 2009) (quotation omitted). If a plaintiff fails to

1 properly serve the summons and complaint, the court may dismiss the action without prejudice
2 after notice to the plaintiff. *See* Fed. R. Civ. P. 4(m). To date, Plaintiffs have not responded
3 to the Court's September 11, 2012 Order or filed any proof that service of the summons and
4 complaint was timely effectuated upon Defendant Aegis Wholesale Corporation or Defendant
5 Alliance Title. Accordingly,

6 IT IS HEREBY ORDERED that this action is dismissed without prejudice.

7 The Clerk of the Court is instructed to mail a copy of this Order to Plaintiffs at their last
8 known address.

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10 DATED: 12/14/12


11 WILLIAM Q. HAYES
12 United States District Judge
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