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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DR. RACQUEL S. BOVIER, c/o
EPIPHANY ONEPOINTE
TELE THERAPY & ASSOC., LLC,
Plaintiff,

v.

BRIDGEPOINT
EDUCATION/ASHFORD
UNIVERSITY, BRIDGEPOINT
UNIVERSITY GOVERNING BOARD
OF REGENTS, DR. CRAIG MAXWELL,
DR. ANTHONY “TONY” FARRELL,
DR. DENISE MAXWELL, MR. JOHN
GOODISON, DR. IRIS LAFFERTY, DR.
TAMECCA FITZPATRICK, DR. JUDY
DONOVAN, DR. JACKIE KYGER, MS.
HEATHER MASON, DR. ALAN
BELCHER, MR. ARMONDO
DOMINGUEZ & ASSOC.,
Defendants.

Case No.: 3:17-cv-01052-GPC-JMA
**ORDER GRANTING DEFENDANTS’
MOTION TO DISMISS**

[ECF Nos. 35.]

1 Before the Court is Defendants Bridgepoint Education, Inc. (“Bridgepoint”) and
2 Anthony Farrell, Denise Maxwell, Iris Lafferty, Tamecca Fitzpatrick, Judy Donovan,
3 Jackie Kyger, Heather Mason, Alan Belcher, John Goodison, and Armando Dominguez
4 (the “Individual Defendants”) Motion to Dismiss Plaintiff’s First Amended Complaint, or
5 Alternatively Quash Service of Summons and the First Amended Complaint. Dkt. No.
6 35. Plaintiff did not respond to Defendants’ Motion pursuant to the briefing schedule
7 issued in this Court on January 2, 2018. *See* Dkt. No. 36 (requiring response by January
8 19, 2018).

9 On October 30, 2017, the Court previously granted Defendants’ Motion to Quash
10 Service of Summons. Dkt. No. 21. The Court allowed Plaintiff to properly re-serve
11 Defendants “within 30 days” of the docketing of the order. *Id.* at 6.

12 Defendants move to dismiss Plaintiff’s First Amended Complaint under Federal
13 Rule of Civil Procedure 12(b)(5) on two grounds: (1) Untimely Service of Process and
14 (2) Insufficient Service of Process. Mot. at 4.

15 **1. Untimely Service of Process**

16 This Court previously directed Plaintiff to properly serve Defendants within 30
17 days of the docketing of its October 30, 2017 order. Accordingly, Plaintiff had until
18 Wednesday, November 29, 2017 to re-serve Defendants. Plaintiff’s process server did
19 not serve Defendants until December 1, 2017, two days after the court-imposed deadline.
20 Grindle Decl. ¶ 3. Under Federal Rule of Procedure 4(m), the Court has discretion,
21 “absent a showing of good cause,” to “extend the time for service or to dismiss the action
22 without prejudice. *In re Sheehan*, 253 F.3d 507, 513 (9th Cir. 2001). Because plaintiff
23 has not responded to Defendant’s motion, the Court cannot find that good cause exists to
24 extend the time for service. Accordingly, the Court will **GRANT** Defendant’s motion to
25 dismiss the action without prejudice.

26 **2. Insufficient Service of Process**

27 Where a defendant challenges service of process, the Plaintiff bears the burden of
28 establishing the validity of service of process. *Brockmeyer v. May*, 383 F.3d 798, 801

1 (9th Cir. 2004). The Court has discretion to dismiss the action for failure to effect service
2 or quash the defective service and permit re-service. *Jones v. Auto Club of S. Cal*, 26 F.
3 App’x 740, 742 (9th Cir. 2002).

4 Plaintiff has failed to effect adequate personal service on Defendant Bridgepoint.
5 Specifically, Plaintiff’s process server served Christine Grindle, a corporate paralegal at
6 Defendant Bridgepoint Education. Grindle Decl. ¶ 3. Ms. Grindle is neither an officer,
7 managing agent, or general agent of Bridgepoint, nor is she authorized by appointment or
8 by law to receive service of process for Bridgepoint. *See* Grindle Decl. ¶ 6; Fed. R. Civ.
9 P. 4(h)(1)(B) (service may be received by “an officer, a managing or general agent, or
10 any other agent authorized by appointment or by law to receive service of process”).
11 Further, Ms. Grindle did not engage in actions such that the process server could have
12 presumed her authority to accept service. *See* Grindle Decl. ¶ 7 (“I did not tell the
13 process server I had authority to accept service of process on behalf of any of the
14 Defendants named in this matter.”).

15 Plaintiff has further failed to effect service under Rule 4(h)(1)(A) which allows for
16 service “following state law for serving a summons.” Service to Ms. Grindle, a paralegal,
17 does not meet the requirement that personal service be made on the “President, chief
18 executive officer, or other head of the corporation, a vice president, a secretary or
19 assistant secretary, a general manager, or a person authorized by the corporation to
20 receive service of process.” Cal. Civ. Proc. Code § 416.10(b). She has further failed to
21 accomplish “substitute service” by failing to (1) show that Ms. Grindle was “in charge”
22 of the office; and (2) mail a copy of the summonses and first amended complaint to
23 Bridgepoint. *See* Cal. Civ. P. Code. § 415.20(a).

24 Further, Plaintiff failed to effect service on the individual Defendants under Rule
25 4(e)(2) because the process server delivered the complaints solely to Ms. Grindle, instead
26 of the individual Defendants’ dwellings or usual places of abode. Moreover, Plaintiff
27 failed to effect service on the individual Defendants under Rule 4(e)(1) by failing to
28 exercise “reasonable diligence” in attempting personal service before resorting to

1 substitute service at an individual’s place of business pursuant to California Civ. Proc.
2 Code § 415.20(b). *Rodriguez v. Man Min Cho*, 236 Cal. App. 4th 742, 751 (2015) (“A
3 plaintiff may serve individual defendants through substitute service when they cannot be
4 personally served with reasonable diligence.”).

5 3. Failure to Respond

6 Finally, the Court observes that Plaintiff’s failure to respond is an independent
7 basis to grant Defendants’ unopposed motion.¹ The Ninth Circuit has held a district court
8 may properly grant an unopposed motion pursuant to a local rule where the local rule
9 permits, but does not require, the granting of a motion for failure to respond. *See*
10 *generally Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Local Civil Rule 7.1(f)(3)(c)
11 provides that “[i]f an opposing party fails to file papers in the manner required by Local
12 Rule 7.1(e)(2), that failure may constitute a consent to the granting of that motion or
13 other ruling by the court.” As such, the Court has the option of granting Defendant’s
14 motion on the basis of Plaintiffs’ failure to respond, and it chooses to do so. While
15 recognizing that public policy favors disposition of cases on the merits, a “case cannot
16 move forward toward resolution on the merits when the plaintiff[] fails to defend
17 themselves against a Rule 12(b)(5) motion.” Accordingly, the Court will also dismiss
18 this case without prejudice based on the plaintiff’s failure to respond under *Ghazali* and
19 Local Civil Rule 7.1(f)(3)(c). *See Park v. Washington Mut. Bank*, No. 10 CV 1548
20 MMA AJB, 2010 WL 4235475, at *1 (S.D. Cal. Oct. 21, 2010)

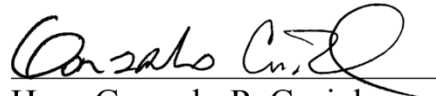
22 CONCLUSION

23 For the reasons set forth above, the Court will **GRANT** Defendants’ Motion to
24 Dismiss without prejudice. The Court hereby **VACATES** the hearing scheduled for this
25 matter on March 2, 2018 at 1:30 PM.

27 ¹ On February 2, 2018 at 1:46 PM, this Court received a phone call from Dr. Bovier, where she indicated
28 that she would be filing a motion to seek leave to file a late response. This Court has not yet received
any further filing or motion from Dr. Bovier.

IT IS SO ORDERED.

Dated: February 22, 2018


Hon. Gonzalo P. Curiel
United States District Judge

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