## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION DOCKET NO. 3:10-cy-00019-W

AVANTI HEARTH PRODUCTS, LLC,	)
Plaintiff,	) )
vs.	) ORDER
JANIFAST, INC., et. al.,	)
Defendants.	)
	_ )

THIS MATTER is before the Court upon a Motion to Dismiss for Lack of Prosecution filed by Defendants Janifast, Inc., and MPHASE Technologies, Inc. (Doc. No. 39). Plaintiff responded in opposition to the motion (Docs. Nos. 45, 46); and Defendants replied (Doc. No. 48). The gravamen of Defendants' motion is that Plaintiff has failed to prosecute its case and has not diligently attempted service on Janifast, LTD, a Chinese corporation. Plaintiff's response, however, details its continued efforts to serve the complaint, including the employment of what appears to be an international process-server. In early June, the Court permitted Plaintiff to amend the complaint to change references to China and Hong Kong in the hopes of satisfying the Hong Kong authorities to serve the amended complaint. (Doc. No. 51). Therefore, it appears to the Court that Plaintiff is making diligent efforts to attempt service on Janifast LTD in order to comply with prior orders in this matter. Defendants' motion is DENIED.

Also before the Court, *sua sponte*, is the readiness of this matter for trial. It is currently set for the Court's September 12, 2011, trial calendar. In light of the fact Plaintiff is still attempting to serve Janifast LTD, and the recently-filed motions to dismiss that will not become ripe until late August, the Court will *sua sponte* continue this matter until December 5, 2011.

IT IS SO ORDERED.

Signed: August 15, 2011

Graham C. Mullen United States District Judge

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