UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

MALIBU MEDIA, LLC,

Plaintiff,

v.

JOHN DOE, subscriber assigned IP address 69.133.38.117,

Defendant.

Case No. 3:15-cv-316

Judge Thomas M. Rose

ENTRY AND ORDER GRANTING DEFENDANT'S MOTION TO DISMISS PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(5) (DOC. 11)

This copyright infringement action is before the Court on the Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(5) ("Motion to Dismiss") filed by Defendant John Doe, subscriber assigned IP address 69.133.38.117 ("Defendant").[1] (Doc. 11.) Defendant argues that the Complaint should be dismissed without prejudice because Plaintiff Malibu Media, LLC ("Plaintiff") failed to serve Defendant with process within the forty-five day extension that the Court granted under Fed. R. Civ. P. 4(m). (*Id.* at PAGEID # 103-4 (citing January 7, 2016 Order).) Plaintiff has not filed an opposition to the Motion to Dismiss, and the time for it to do so has expired. The Motion to Dismiss is therefore ripe for review. For the reasons stated below, the Motion to Dismiss is **GRANTED**.

On January 7, 2016, the Court granted Plaintiff a forty-five day extension to complete service of the Summons and Complaint, which period would begin to run after the Court's ruling

[1] The Court previously granted Defendant leave to proceed anonymously as "John Doe" through the close of discovery. (Doc. 10.)

on Defendant's then pending Motion to Quash Subpoena and Motion for Leave to Proceed Anonymously. On February 1, 2016, the Court ruled on the pending motions; as a result, Plaintiff had until March 17, 2016 to complete service of process. (Doc. 10.) Defendant asserts that he has not received proper service and Plaintiff has not requested a further extension of time to complete service under Fed. R. Civ. P. 4(m). (Doc. 11 at PAGEID # 104.)

Rule 4(m) requires a plaintiff to complete service of process within ninety days after a complaint is filed. If service is not made within that period, the court must dismiss the action without prejudice or direct that service be completed within a specified time. Fed. R. Civ. P. 4(m). If a plaintiff shows good cause for failing to complete service, then the court must allow the plaintiff additional time for service. *Id.*

Here, the Court extended the deadline for Plaintiff to complete service to March 17, 2016. Defendant's assertion that Plaintiff failed to meet that deadline is undisputed and Plaintiff has not made any showing that would justify a further extension of time. Dismissal of Plaintiff's Complaint without prejudice under Rule 4(m) is therefore appropriate.

Defendant's Motion to Dismiss is **GRANTED**. The Complaint (Doc. 1) is **DISMISSED** without prejudice under Fed. R. Civ. P. 4(m) and 12(b)(5).

DONE and **ORDERED** in Dayton, Ohio, this Friday, April 22, 2016.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE