IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION

GROUP INDEPENDENT SALES ORGANIZATION, INC.,	)))	
Plaintiff,	))	
vs.	))	No. 2:09-cv-02231-JPM-cgc
TELESERVICES, INC. et al.,	)))	
Defendants.	))	

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS
FOR UNTIMELY SERVICE

Before the Court is Defendant Martin Rodrigues's pro se Motion to Dismiss for Untimely Service (Docket Entry ("D.E.") 27), filed December 28, 2009. Plaintiff has not responded to this motion. For the following reasons, Rodrigues's motion is GRANTED.

The complaint in this matter was filed on April 17, 2009 (D.E. 1), and a summons was issued for Rodrigues on April 21, 2009 (D.E. 6). Rodrigues's motion is accompanied by a declaration indicating that he has not been served. (Def.'s Mot. to Dismiss for Untimely Service Ex. 2, Decl. of Martin Rodrigues 1.) Rodrigues contends that he is subject to service outside the United States. (Id.) Federal Rule of Civil Procedure 4(m)'s requirement that service be made within 120

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days of the filing of the complaint is thus inapplicable. <u>See</u>

Fed. R. Civ. P. 4(m). Nonetheless, "[i]t is well established

that in cases involving improper service, courts have broad

discretion to dismiss the action." <u>Sherer v. Construcciones</u>

<u>Aeronauticas, S.A.</u>, 987 F.2d 1246, 1247 (6th Cir. 1993) (<u>citing</u>

5A Charles Alan Wright & Arthur R. Miller, <u>Federal Practice &</u>

<u>Procedure</u> § 1354 at 288 (2d ed. 1987)).

Plaintiff has made no effort to explain the lack of service

or request an extension of time in which to effectuate service,

despite the fact that this action was filed over a year ago.

Rodrigues's motion is therefore GRANTED, and Plaintiff's claims

against him are DISMISSED without prejudice. <u>Cf.</u> Fed. R. Civ.

P. 4(m) (allowing a district court to dismiss an action against

a defendant without prejudice where service is untimely).

IT IS SO ORDERED this 27th day of April, 2010.

/s/ Jon P. McCalla_____
JON P. McCALLA
CHIEF U.S. DISTRICT JUDGE

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