

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

MALIBU MEDIA, LLC,	:	Case No. 1:14-cv-718
	:	
Plaintiff,	:	Judge Timothy S. Black
	:	
vs.	:	
	:	
RYAN RAMSEY,	:	
	:	
Defendant.	:	

ORDER TO SHOW CAUSE

Plaintiff filed the complaint in this civil action on September 9, 2014 against a John Doe Defendant identified only by an IP address. (Doc. 1). Subsequently, Plaintiff filed an amended complaint naming Defendant on December 15, 2014. (Doc. 7). The Clerk issued a summons on December 16, 2014. (Doc. 8). On January 7, 2015, Plaintiff moved for an extension of time to complete service of process. (Doc. 9). The Court granted the motion and ordered Plaintiff to complete service of process by February 7, 2015. On February 10, 2015, Plaintiff filed a second motion for extension of time and the Court ordered Plaintiff to complete service by March 7, 2015. (Doc. 10). The record, however, contains no indication that Defendant has waived service of process or that he was served with a summons and a copy of the amended complaint.

Rule 4(m) of the Federal Rules of Civil Procedure provides in pertinent part as follows:

If a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be

made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

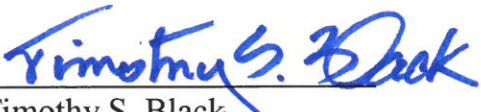
“Unless a named defendant agrees to waive service, the summons continues to be the *sine qua non* directing an individual or entity to participate in a civil action or forgo procedural or substantive rights.” *Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 351 (1999). Indeed, absent either waiver or proper service of process, this Court does not have personal jurisdiction over the Defendant. *See Friedman v. Estate of Presser*, 929 F.2d 1151, 1156 (6th Cir. 1991) (and cases cited therein). Plaintiff bears the burden of exercising due diligence in perfecting service of process and in showing that proper service has been made. *Byrd v. Stone*, 94 F.3d 217, 219 (6th Cir. 1996).

Upon a showing of good cause for the failure to effect timely service, “the court must extend the time for service for an appropriate period.” Fed. R. Civ. P. 4(m); *Osborne v. First Union Nat’l Bank*, 217 F.R.D. 405, 408 (S.D. Ohio 2003). In the absence of a showing of good cause, the court has discretion to dismiss *sua sponte*, provided that the plaintiff has notice of the proposed action. *United States v. Gluklick*, 801 F.2d 834, 837 (6th Cir. 1986), *cert. denied*, 480 U.S. 919 (1987).

Accordingly, Plaintiff is hereby **NOTIFIED** that the Court proposes to dismiss the amended complaint, due to Plaintiff’s failure to effect timely service of process of the summons and amended complaint. Plaintiff, therefore, is **ORDERED** to show cause in writing within **SEVEN DAYS** of the entry date of this Order why the amended complaint should not be dismissed without prejudice for failure of service of process.

IT IS SO ORDERED.

Date: 3/12/15


Timothy S. Black
United States District Judge