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5
6 IN THE UNITED STATES DISTRICT COURT FOR THE
7 CENTRAL DISTRICT OF CALIFORNIA

9 AF HOLDINGS LLC,)
10)
Plaintiff,)
11 v.)
12 JOHN DOE,)
13)
Defendant.)
14)

No. 2:12-cv-05709-ODW-JC

**PLAINTIFF’S RESPONSE TO ORDER TO
SHOW CAUSE RE LACK OF SERVICE**

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16 On December 20, 2012, this Court issued its Order to Show Cause Re Lack of Service
17 in this case. (ECF No. 16). In that order, the Court pointed out that under the Federal Rule of
18 Civil Procedure 4(m), “defendant must be served within 120 days after the complaint is filed,
19 or else the Court ‘must dismiss the action without prejudice.’” (*Id.*) Further, the Court
20 ordered that Plaintiff “has 7 days to comply with this order, or if Defendant have [sic] been
21 served, Plaintiff has 7 days to file the proof of service.” (*Id.*) The Supreme Court, however,
22 has unambiguously held that “the 120-day provision operates not as an outer limit subject to
23 reduction, but as an irreducible allowance.”¹ The Supreme Court also noted that “courts
24 have been accorded discretion to enlarge the 120-day period even if there is no good cause
25 shown.”² Plaintiff nevertheless responds as follows. Plaintiff’s delay in complying with the
26 irreducible allowance of FRCP 4(m) was caused by the fact that its investigation in this case
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¹ *Henderson v. United States*, 517 US 654, 661 (1996).
² *Id.* (Internal citations omitted).

1 was quite burdensome. Plaintiff's efforts to reach out to the subscriber were unsuccessful,
2 and Plaintiff's investigation was made even more difficult by complications with the
3 subscriber's name, Liu Hsia Guo, which had multiple variations. Nevertheless, Plaintiff
4 persisted in its investigation, and was able to determine that Justin Guo was the likely
5 infringer in the household. Having made this initial determination, Plaintiff sought to
6 confirm Justin Guo's present residence address, in order to ascertain the most proper venue
7 for Plaintiff to pursue its litigation against Mr. Guo. Plaintiff's further investigations have
8 established that Mr. Guo does indeed still reside within the boundaries of the Central District
9 of California. As such, Plaintiff mailed to the Court an Amended Complaint naming Justin
10 Guo as the Defendant in this action.
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12 Respectfully Submitted,
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14 **DATED: December 27, 2012**

15 By: /s/ Brett L. Gibbs

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