

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MALIBU MEDIA, LLC,

Plaintiff,

v.

CASE NO.: 8:14-cv-869-T-23EAJ

JOHN DOE,

Defendant.

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ORDER

On April 14, 2014, the plaintiff sued (Doc. 1) the defendant. Rule 4(m), Federal Rules of Civil Procedure, allows the plaintiff 120 days from the filing of the complaint to serve the defendant. The time for the plaintiff to serve the defendant expired on August 12, 2014. On August 12, 2014, the plaintiff moved (Doc. 7) for an extension of time to serve the defendant. Under Rule 4(m), Federal Rules of Civil Procedure, an extension is granted only if the plaintiff can “show good cause for the failure” to serve.

The plaintiff’s motion fails to show good cause. For example, the plaintiff states, “Plaintiff issued [a] subpoena on or about May 6, 2014, and received the ISP’s response on June 26, 2014.” (Doc. 7 at 1) Also, the motion states:

Through the course of Plaintiff’s initial investigation of the information provided by the ISP, Plaintiff has reason to believe

that the infringer is not the subscriber of the internet service, but another individual residing at the subscriber's home. Plaintiff is in the process of contacting the Defendant to better determine the identity of the infringer.

(Doc. 7 at 1) Forty-seven days passed between the ISP's response and the deadline to serve the defendant. The plaintiff's generic explanation fails to offer sufficient information to determine whether the plaintiff pursued this action with due diligence.

Although the plaintiff fails to "show good cause for the failure," "Rule 4(m) requires that, before the court may dismiss for failure to serve, the plaintiff must be given notice of the possibility of dismissal and afforded an opportunity to show good cause for the failure to serve." *Moore's Federal Practice*, Vol. 1, § 48.1[2] (3d ed. 2013). No later than **AUGUST 21, 2014**, the plaintiff must show why this action should not be dismissed. In the response, the plaintiff must account for all 120 days.

ORDERED in Tampa, Florida, on August 14, 2014.



STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE