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 11 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA

12
 13 EDDIE DUTCHOVER, an Individual,

14 Plaintiff,

15 vs.

16 MOAPA BAND OF PAIUTE INDIANS,
 17 MOAPA TRIBAL COUNCIL, AND
 MOAPA TRIBAL ENTERPRISES,
 18 collectively, "Moapa defendants", VICKIE
 SIMMONS, TYLER SAMSON,
 19 GREGORY ANDERSON, URAL BEGAY,
 20 LESLIE BRADLEY, DARREN DEBODA,
 DELAINE BOW, SAMANTHA LEE, a
 21 Corporation, DOES 1-50, inclusive and
 ROE CORPORATIONS 1-50, inclusive,

22
 23 Defendants.

CASE NO.: 2:19-CV-01905-KLD-BNW

**PLAINTIFF'S MOTION FOR
 EXTENSION OF TIME FOR SERVICE**

(THIRD REQUEST)

24 The Plaintiff Eddie Dutchover ("Mr. Dutchover") by and through his attorneys of
 25 record, the law firm of HKM Employment Attorneys LLP, hereby makes this Third Motion to
 26 Extend Time for Service.

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1 **REQUEST FOR ADDITIONAL TIME TO SERVE**

2 **FACTUAL AND PROCEDURAL HISTORY**

3 On or about February 4, 2020, Plaintiff, in proper person, requested an extension of time
4 to serve Defendants so that he could obtain legal counsel to assist him with the matter [ECF 5].
5 The Court granted that Motion [ECF 6].
6

7 Since that time, Plaintiff diligently sought counsel, and HKM Employment Attorneys
8 LLP appeared on Plaintiff's behalf on or about May 5, 2020.

9 On May 11, 2020, the Court issued an Order to Show Cause on why the Plaintiff's
10 Complaint should not be dismissed for failure to serve. [ECF 9]. On May 20, 2020, Plaintiff,
11 through his counsel, responded to the Court's Order to Show Cause and contemporaneously
12 filed a Motion for Extension of Time for Service [ECF 12 and ECF 14].
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14 Plaintiff's Response to the Order to Show Cause and simultaneous Motion for an
15 Extension of Time for Service requested additional time to effectuate service due to the
16 complications of entering Tribal lands to personally serve the Defendant Tribe and the
17 individual Defendants. *See*, ECF 12 and 14. On May 29, 2020, the Court granted Plaintiff's
18 Motion for Extension of Time for Service and provided Plaintiff with an extension until June
19 29, 2020 to serve his Complaint. [ECF 15]. On June 29, 2020, Plaintiff filed his Second Motion
20 for Extension of Time for Service [ECF 16]. Via Minute Order on July 1, 2020 [ECF 17], the
21 Court granted Plaintiff's Second Motion for Extension of Time for Service.
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23 In the interim period since the Court's May 29, 2020 Order granting an extension of
24 time to serve and the making of this motion, Plaintiff and his counsel have diligently attempted
25 to effectuate service on the Defendants. Plaintiff has timely obtained declarations of attempted
26 service from its process server, Legal Wings, for each of its requested extension which
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1 demonstrate numerous and diligent attempts to properly serve Defendants, to no avail. *See*,
2 ECF 16 at Exhibits “1” through “11,” Declarations of Attempted Service on Defendants, Moapa
3 Band of Paiute Indians, Moapa Tribal Council, Moapa Tribal Enterprises, Vickie Simmons,
4 Tyler Samson, Gregory Anderson, Ural Begay, Leslie Bradley, Darren Deboda, Delaine Bow,
5 and Samantha Lee, respectively.
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7 Also, in the interim period since the Court’s May 29, 2020 Order and the filing of this
8 Motion, the Plaintiff himself attempted entry onto the Tribal land to secure information about
9 how the Complaint may be served. Plaintiff was told only members of the Tribe with
10 identification verifying the same were permitted onto the land during the current COVID-19
11 pandemic lockdown. *See*, ECF 16 at Exhibit “12,” Declaration of Plaintiff, Eddie Dutchover.
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13 Since the Court’s most recent order on July 1, 2020, Plaintiff and his counsel have
14 remained diligent regarding their duties to serve the Defendants. Attached hereto at Exhibits
15 “1” through “11” are Affidavits of Attempted Service on each of the Defendants showing
16 Plaintiff’s further attempts, since July 1, 2020, to effectuate service on the Defendants.
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18 ARGUMENT

19 I. GOOD CAUSE EXISTS TO EXTEND PLAINTIFFS’ TIME TO SERVE

20 Rule 4(m) of the Federal Rules of Civil Procedure governs extension of time to serve
21 complaints. “Rule 4(m) requires a two-step analysis in deciding whether or not to extend the
22 prescribed time period for the service of a complaint. In re Sheehan, 253 F.3d 507, 512 (9th
23 Cir. 2001), citing Fed.R.Civ.P. 4(m); *Petrucelli v. Bohringer & Ratzinger, GMBH*, 46 F.3d
24 1298, 1305 (3d Cir.1995). “First, upon a showing of good cause for the defective service, the
25 court must extend the time period. Second, if there is no good cause, the court has the discretion
26 to dismiss without prejudice or to extend the time period.” *Id.*
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1 “We have recognized that ‘[a]t a minimum, ‘good cause’ means excusable neglect.”
2 *Id.*, citing *Boudette v. Barnette*, 923 F.2d 754, 756 (9th Cir.1991). *Boudette v. Barnette*, 923
3 F.2d 754, 756 (9th Cir.1991). “In *Boudette*, we stated that a plaintiff may be required to show
4 the following factors in order to bring the excuse to the level of good cause: ‘(a) the party to be
5 served received actual notice of the lawsuit; (b) the defendant would suffer no prejudice; and
6 (c) plaintiff would be severely prejudiced if his complaint were dismissed.’” *Id.*

8 On May 19, 2020, Plaintiff’s counsel reached out to counsel for Defendant requesting
9 that he accept service of the Complaint and First Amended Complaint due to the current
10 lockdown situation of the Tribal lands. *See*, ECF 16 at Ex. “13,” email thread from Jenny Foley,
11 Esq. to Brian Chestnut, Esq. On May 20, 2020, Defendants’ counsel responded that he could
12 not accept service. *Id.* On May 26, 2020 Plaintiff’s counsel again contacted Mr. Chestnut
13 inquiring about an alternative address at which to serve Defendants in light of the current
14 COVID-19 lockdown. *Id.* Mr. Chestnut did not respond to such email inquiry. Based upon
15 the foregoing, it is clear that the Defendants have received actual notice of the lawsuit. Further,
16 there is no indication that Defendants would be prejudiced in any way by an extension of the
17 deadline to serve. Such impediments to serving the Complaint have resulted not from a lack of
18 diligence on the part of the Plaintiff, but rather from a closing of the Tribal lands by the
19 Defendants, understandably so, due to the COVID-19 pandemic situation. Granting an extension
20 of the deadline to serve would maintain the *status quo*, even the playing field between the
21 Plaintiff and Defendants, and allow the Plaintiff’s claims to be fully litigated on their merits.
22 Dismissing Plaintiff’s Complaint, on the other hand, would only serve to punish Plaintiff who
23 has remained diligent throughout the course of this case. Plaintiff should not be prejudiced by
24 the dismissal of his complaint due solely to an unavoidable procedural infirmity.
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1 Plaintiff submits that in light of the continuing COVID-19 pandemic, including the
2 recent resurgence of the same in Nevada, the subsequent closure of the reservation to all but
3 tribal members, and Plaintiff's documented good-faith efforts to effectuate service, including
4 process server attempts, Plaintiff's own attempt to gather information relevant to effectuating
5 service, and Plaintiff's counsel's efforts to secure Defendants' counsel's consent to accept
6 service of the Complaint, good cause exists to extend the time for service. Based upon the
7 repeated, unsuccessful attempts of the Plaintiff to serve his Complaint over the course of the
8 past two months, and the fact that there remains uncertainty regarding any imminent opening
9 of the tribal lands, Plaintiff respectfully requests an additional sixty (60) days to effectuate
10 service in this matter. Plaintiff further requests that in lieu of a potential Fourth Motion for
11 Extension of Time for Service, the Court agree to allow Plaintiff to submit a status report at the
12 conclusion of the sixty (60) day period which will inform the Court of any additional efforts
13 made to effectuate service. Plaintiff submits such status report, in lieu of a motion, would
14 conserve the Court's and the Plaintiff's resources and provides a sufficient alternative which
15 will allow the Plaintiff to keep the Court informed of the status of service while the pandemic
16 lockdown continues for the foreseeable future. Plaintiff will continue his endeavors to properly
17 effectuate service during the interim period.
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CONCLUSION

For all of the foregoing reasons, Plaintiff respectfully requests the Court grant a sixty (60) day extension of time to serve the Defendants in the matter and allow plaintiff to submit a status report in sixty (60) days' time if service cannot be effectuated in the interim.

Dated: July 28, 2020.

Respectfully submitted,

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Plaintiff's motion is GRANTED in part and DENIED in part. The motion is GRANTED insofar as the deadline to effect service is extended an additional 60 days. The motion is DENIED with respect to plaintiff's request to file a joint status report if service cannot be completed within the enlarged period. Although the Court finds that there exists good cause for the extension, the Court encourages plaintiff to consider whether other means of service might be reasonably calculated to provide defendants with notice and an opportunity to respond.

IT IS SO ORDERED

DATED: 5:41 pm, July 30, 2020



BRENDA WEKSLER
UNITED STATES MAGISTRATE JUDGE