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11 UNITED STATES DISTRICT COURT

12 DISTRICT OF NEVADA

13 ALAN CURT SHUFELT, an individual,
14 Plaintiff,

15 vs.

16 OWENS PRECISION, INC., a Domestic
Corporation; BRUCE HARMON, an
17 individual; AMANDA HIGHTOWER, an
18 individual,
19 Defendant.

CASE NO: 3:18-cv-00079-MMD-VPC

**PLAINTIFF'S
MOTION TO ENLARGE TIME TO
EFFECT SERVICE OF PROCESS ON
DEFENDANTS HARMON AND
HIGHTOWER**

21 COMES NOW Plaintiff ALAN CURT SHUFELT, by and through his counsel, William J.
22 Geddes, Esq. of the law firm THE GEDDES LAW FIRM, P.C. and Raelene K. Palmer, Esq. of the law
23 firm GALLIAN WELKER & BECKSTROM, L.C., and files *Plaintiff's Motion to Enlarge Time to*
24 *Effect Service of Process on Defendants Harmon and Hightower* ("Motion") in the above-captioned
25 matter. This *Motion* is made pursuant to the following Points and Authorities, the pleadings and papers
26 on file in this action, the Declaration of *William J. Geddes* ("*Declaration*"), and any oral arguments the
27 Court may entertain at any hearing set for this matter. This is the first request for such an enlargement
28 of time.

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1 **I. INTRODUCTION**

2 **A. CASE OVERVIEW**

3 This is an employment-discrimination case arising under the Americans with Disabilities Act.
4 For over seventeen years, Plaintiff Alan Curt Shufelt worked as a machinist at Owens Precision, Inc., a
5 manufacturing-services company located in Carson City, Nevada. During his tenure, from December
6 19, 1999 through February 3, 2017, Plaintiff was promoted to the position of lead machinist. Plaintiff
7 alleges herein that he suffered discrimination based on his disabilities, arising from workplace injuries
8 to his left shoulder and rotator cuff. Defendants refused to accommodate his disabilities, harassed him,
9 retaliated against him, failed to engage in the interactive process, and fired him. After Defendants fired
10 Plaintiff, their unlawful retaliation continued, when they wrongfully disparaged Plaintiff to third
11 parties, including prospective employers, stating that he was incompetent, that he was fired for non-
12 performance, and that he was not eligible for rehire because he filed many worker's compensation
13 claims. Plaintiff's supplemental, state-tort claims assert causes of action for: (1) tortious discharge in
14 violation of public policy—relating to Defendants' termination of Plaintiff in retaliation for Plaintiff
15 having sought worker's compensation benefits for his workplace injuries/disabilities; (2) invasion of
16 privacy—relating to Defendants' wrongful disclosure of private facts concerning Plaintiff's historical
17 filing of worker's-compensation claims, which implicates his private medical information and
18 disabilities, the confidentiality of which is protected under the ADA and other law; and (3) defamation.
19 Plaintiff seeks monetary, equitable, and injunctive relief.

20 **B. PROCEDURAL BACKGROUND**

21 On February 26, 2018, Shufelt filed his *First Amended Complaint* ("*Complaint*") in the above-
22 captioned matter. (ECF 004.) The 90-day, service-of-process, measured from when the original
23 complaint was filed on February 22, 2018, deadline will run on Wednesday, May 23, 2018. *See*
24 Federal Rule of Civil Procedure ("Fed. R. Civ. P.") 4(m). Shufelt attempted service on all three
25 Defendants, as follows:

26 1. On April 25, 2018, Shufelt served the *Summons* and *Amended Complaint* on Owens
27 Precision, Inc., by serving its registered agent, James Owen at the business address of Owens Precision,
28 5966 Morgan Mill Road, Carson City, NV 89701-1449. (*See* ECF 007 (Summons Returned Executed,

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1 *Declaration of Service* filed herein));

2 2. On April 25, 2018, Shufelt attempted to serve the *Summons* and *Amended Complaint* on
3 Defendant Bruce Harmon on April 25, 2018 at his place of employment, at the business address of
4 Owens Precision, 5966 Morgan Mill Road, Carson City, NV 89701-1449. (*See* ECF 008 (*Summons*
5 *Returned Unexecuted, Declaration of Service* filed herein)). However, an Owens Precision employee
6 named Maura Lens advised the process server that Defendant Harmon was fired, and service of process
7 could not be made on Defendant Harmon at that location (*See Id.*);

8 3. On April 25, 2018, Shufelt attempted to serve the *Summons* and *Amended Complaint* on
9 Defendant Amanda Hightower on April 25, 2018 at her place of employment, at the business address of
10 Owens Precision, 5966 Morgan Mill Road, Carson City, NV 89701-1449. (*See* ECF 009 (*Summons*
11 *Returned Unexecuted, Declaration of Service* filed herein)). However, an Owens Precision employee
12 named Maura Lens advised the process server that Defendant Hightower was fired, and service of
13 process could not be made on Defendant Harmon at that location (*See Id.*); and

14 4. Subsequently, Plaintiff's Counsel has conferred with Ms. Elizabeth M. Bittner, counsel
15 for Defendant Owens Precision, and learned that Ms. Bittner has authority from her client Owens
16 Precision, Inc. to represent Defendants Harmon and Hightower, and she will be meeting with them
17 during the week of May 21, 2018. Plaintiff's counsel presumes this means that Ms. Bittner will likely
18 represent all three Defendants in this case, provided no conflicts of interest arise after her meeting with
19 Defendants Harmon and Hightower. (*See Ex. 1, Declaration, ¶¶ 1-9.*)

20 This *Motion* seeks sixty (60) days' additional time to serve Defendants Harmon and Hightower,
21 **up to and including, Monday July 22, 2018.**¹ Sixty days is required because, Plaintiff intends to first
22 wait and see if Ms. Bittner can accept service of process for Defendants Harmon and Hightower, and, if
23 not, then thereafter, Plaintiff will need to discover the last-known address of Defendants Harmon and
24 Hightower, and attempt service of process at their residences.

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¹ The sixtieth (60th) day following Wednesday, May 23, 2018 will fall on a Sunday. Thus, this deadline is advanced to the next Court business day, pursuant to Federal Rule of Civil Procedure 6.

1 **II. LEGAL ARGUMENT**

2 **A. RULE 4(m) GOVERNS SERVICE OF PLEADINGS**

3 Fed. R. Civ. P. 4(m) governs the time limit for service of pleadings and allows parties to obtain
4 extensions of time to effect service of process beyond 90 days:

5 If a defendant is not served within 90 days after the complaint is filed, the
6 court—on motion or on its own after notice to the plaintiff—must dismiss
7 the action without prejudice against that defendant or order that service be
8 made within a specified time. But if the plaintiff shows good cause for the
9 failure, the court must extend the time for service for an appropriate
period. This subdivision (m) does not apply to service in a foreign country
under Rule 4(f) or 4(j)(1) or to service of a notice under Rule
71.1(d)(3)(A).

10 Fed. R. Civ. P. 4(m).

11 **B. RULE 6(b) ALLOWS PARTIES TO EXTEND DEADLINES**

12 Separately, Fed. R. Civ. P. 6 (b) also permits parties to ask the Court to extend litigation
13 deadlines: “if a request is made before the original time or its extension expires.” Fed. R. Civ. P.
14 (b)(1)(A). However, if a motion to extend a litigation deadline is made *after* the deadline has expired,
15 then the party show excusable neglect to extend the deadline. Fed. R. Civ. P. 6 (b)(1)(B). Here,
16 Plaintiff requests an enlargement of time to effect service of process on Defendants *before* the 90-day-
17 service deadline has expired. Accordingly, the more lenient standard of “good cause” applies, not
18 “excusable neglect.” *See* Fed. R. Civ. P. (b)(1)(A). Support for this lenient standard can also be found
19 in Fed. R. Civ. P. 4(m), which allows *even post-deadline* requests for additional time to effect service
20 of process on defendants to be granted for “good cause.” Fed. R. Civ. P. 4(m). Good cause supports
21 Plaintiff’s request here for additional time to effect service of process on Defendants Harmon and
22 Hightower, **up to and including, Monday July 22, 2018.**

23 **C. GOOD CAUSE EXISTS TO EXTEND THE SERVICE-PERIOD**

24 Plaintiff reasonably attempted to effect service of process of Defendants Harmon and
25 Hightower at their place of employment, Owens Precision. However, the process server was advised
26 that both defendants had been fired. Subsequently, Plaintiff’s counsel attempt to expedite matters by
27 having counsel for Owens Precision, Inc. accept service of process, which is being attempted at this
28 time and appears that such efforts will be successful.

1 Such efforts do not suggest that Plaintiff was neglectful in attempting service of process, but
2 even if the failure to serve these Defendants arose through neglect, it would be excusable neglect. A
3 court's finding of "excusable neglect" can excuse not only the negligence, carelessness, and inadvertent
4 mistake of a party, but also that of a party's counsel. *Bateman v. U.S. Postal Service*, 231 F.3d 1220,
5 1220 and 1223 (9th Cir. 2000) (citing *Pioneer Investment Services Co. v. Brunswick Assocs. Ltd.*
6 *Partnership*, 507 U.S. 380, 394 (1993).) In *Bateman*, the Ninth Circuit Court of appeals addressed the
7 meaning of "excusable neglect," to clarify:

8 In *Briones*, 116 F.3d at 381, we noted that *Pioneer* changed our law on
9 excusable neglect. Before *Pioneer*, we had held that "ignorance of court
10 rules does not constitute excusable neglect" and had applied a *per se* rule
11 against the granting of relief when a party failed to comply with a
12 deadline. See *Briones*, 116 F.3d 381, 382. After *Pioneer*, however, we
13 recognized that the term covers cases of negligence, carelessness and
14 inadvertent mistake. See *id.* at 381.

15 *Bateman*, 213 F.3d at 1224 (citing *Pioneer*, 507 U.S. at 395).

16 The important judicial policy of adjudicating cases on their merits, rather than dismissing cases
17 for failure to comply with procedural rules, can be gleaned from the case of *Mayweather v. Wine*
18 *Bistro, LLC*, No. 2:13-cv-210-JAD-VCF (D. Nev. October 4, 2013). In *Mayweather*, the plaintiff had
19 filed a motion to extend time to serve the pleadings on some of the defendants outside the 120-day
20 service period, after having failed to attempt such service within the 120-day service period.
21 *Mayweather*, No. 2:13-cv-210, at p. 11. With respect to the plaintiff's delay in attempting to serve one
22 of the defendants, such attempts were not made until "two full months after the 120-day period ran."
23 *Mayweather*, No. 2:13-cv-210, at p. 11. The *Mayweather* Court found that the plaintiff had failed to
24 demonstrate good cause for extending the 120-day service period as to three of the defendants. *Id.*, at
25 p. 12. Nevertheless, the district court still allowed the extension of time to serve the defendants, as
26 requested, noting that, "Where no good cause is shown, the Court has discretion to extend the time
27 period." *Mayweather*, No. 2:13-cv-210, at p. 12 (citing *U.S. v. 2,164 Watches More or Less Bearing a*
28 *Registered Trademark of Guess?, Inc.*, 366 F.3d 767, 772 (9th Cir. 2004); and *Mann v. American*
Airlines, 324 F.3d 1088, 1090 (9th Cir. 2003)).

Here, Shufelt submits that good cause and/or excusable neglect has been shown above, based on
the service-attempt efforts stated above. As well, good cause is shown by Plaintiff's attempt to effect

1 service of process on Defendants Harmon and Hightower within the 90-day period, but such service
2 was rejected. As well, Plaintiff has attempted in good faith to effect substitute service of process
3 effected on Defendants Harmon and Hightower through Owens Precision Inc.'s counsel, Ms. Bittner.
4 There will be no unfair prejudice to the Defendants because the case is still in its beginning stages and
5 no Defendant has yet made an appearance in this action or filed an answer or responsive motion to the
6 *Complaint*. Good cause exists to extend the deadline to effect service of process on Defendants
7 Harmon and Hightower up to and including, Monday July 22, 2018.

8 **III. CONCLUSION**

9 FOR ALL THE FOREGOING REASONS, Plaintiff respectfully requests that the Court extend
10 the deadline to effect service of process on Defendant Defendants Harmon and Hightower up to and
11 including, Monday July 22, 2018. This is the first request for such an enlargement of time for
12 Defendant Defendants Harmon and Hightower, and this request is not offered for any dilatory or
13 improper purpose.

14
15 Dated this 22nd Day of May 2018.

THE GEDDES LAW FIRM, P.C.



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Attorneys for Plaintiff Alan Curt Shufelt

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18 **IT IS SO ORDERED**

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22 **U.S. MAGISTRATE JUDGE**

23 **DATED:** June 19, 2018
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Geddes Law Firm, P.C., and that on **May 22, 2018**, I caused to be served a copy of the foregoing *Plaintiff's Motion to Enlarge Time to Effect Service of Process on Defendant Harmon and Hightower (First Request)* by email and deposit in the U.S. Mail, first-class postage prepaid, addressed to:

Elizabeth M. Bittner, Esq.
Bittner Legal LLC
316 California Ave. #426
Reno, NV 89509
Tel (775) 720-9197
elizabeth@bittnerlegal.com

Attorneys for Defendants Owens Precision, Inc.



WILLIAM J. GEDDES
An employee of the Geddes Law Firm, P.C.

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EXHIBIT LIST

<u>Exhibit No.</u>	<u>Description</u>
EX. 1	DECLARATION OF WILLIAM J. GEDDES

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EXHIBIT 1

Declaration of William J. Geddes In Support Of
Motion to Enlarge Time to Effect Service of Process on
Defendants Harmon and Hightower

EXHIBIT 1

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10 Attorneys for Plaintiff Alan Curt Shufelt

11 UNITED STATES DISTRICT COURT
12 DISTRICT OF NEVADA

13 ALAN CURT SHUFELT, an individual,
14 Plaintiff,
15 vs.
16 OWENS PRECISION, INC., a Domestic
17 Corporation; BRUCE HARMON, an
individual; AMANDA HIGHTOWER, an
18 individual,
19 Defendant.

CASE NO: 3:18-cv-00079-MMD-VPC
DECLARATION OF WILLIAM GEDDES
In Support of
PLAINTIFF'S
MOTION TO ENLARGE TIME TO
EFFECT SERVICE OF PROCESS ON
DEFENDANTS HARMON AND
HIGHTOWER

21 I, Declarant William J. Geddes, depose and state:

22 1. I am employed by the Geddes Law Firm, P.C., and in the course and scope of my duties
23 as an attorney, I am assigned to handle the above-captioned matter, representing the Plaintiff;

24 2. I have knowledge of the matters asserted herein and am competent to testify thereto,
25 save for those matters asserted on information and belief, and for those matters, I am informed and
26 believe them to be true;

27 3. I offer this Declaration in support of Plaintiff's Motion to Enlarge Time to Effect
28

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1 Service of Process on Defendants Harmon and Hightower (the "Motion");

2 4. On May 14, 2018, after service of process of the Summons and Amended Complaint
3 was attempted and failed on Defendants Harmon and Hightower, I spoke with a woman who identified
4 herself to be Ms. Elizabeth Bittner, counsel for Defendant Owens Precision, Inc., in the above-
5 captioned matter;

6 5. During our phone call, Ms. Bittner requested an extension of time to file a responsive
7 pleading on behalf of Defendant Owens Precision, Inc., and I granted that request;

8 6. During our phone call, I asked Ms. Bittner if she could accept service of process for the
9 co-Defendants Harmon and Hightower, who were employees or former-employees of Owens
10 Precision, Inc., and Ms. Bittner stated she would look into the matter and get back in touch with me;

11 7. Subsequently, on May 18, 2018, Ms. Bittner advised me that she had authority to
12 accept service of process for Defendants Harmon and Hightower from her client, Owens Precision, but
13 she still had to meet with Defendants Harmon and Hightower, during the week of May 21, 2018,
14 which I presume means that she believes that she will be representing them and has no conflicts of
15 interest in a joint representation.

16 8. In his Motion, Plaintiff has requested additional time to effect service of process on
17 Defendants Harmon and Hightower. Presuming that Ms. Bittner will be representing Defendants
18 Harmon and Hightower, service of process will be effected by means of an acceptance of service by
19 Ms. Bittner. However, if for some reason, Ms. Bittner is unable to represent Defendants Harmon and
20 Hightower in this case, or if a conflict of interest arises based on her meetings with- them, then service
21 of process will be effected by other means.

22 9. Based on the foregoing, and out of an abundance of caution, it is prudent to request
23 additional time to effect service of process on Defendants Harmon and Hightower, which original
24 service deadline expires tomorrow, Wednesday, May 23, 2018;

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1 FURTHER DECLARANT SAYETH NAUGHT.

2

3 Pursuant to 28 U.S.C. § 1746, Declarant herein certifies, under penalty of perjury, that the foregoing is
4 true and correct.

5

6 Executed on this 22nd day of May 2018.

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9 Declarant William J. Geddes

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