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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 KDB Finance LLC,

10 Plaintiff,

11 v.

12 Michael J Mills, M&M Refining Solutions  
13 Incorporated, Plasmaarc Industries  
14 Incorporated, Carmil Energy Incorporated,  
15 Unknown Parties, Minotaur Remediation  
16 Far East Limited, Minotaur Holdings LLC,  
17 Green Planet Investments LLC, Modern  
18 Mining Solutions LLC, Recovered Earth  
19 Technologies LLC, Recovered Earth GP  
20 LLC, and Rare Earth Solutions LLC,

21 Defendants.

No. CV-17-02250-PHX-SMB

**ORDER GRANTING MINOTAUR  
REMEDICATION FAR EAST  
LIMITED'S MOTION TO DISMISS**

22 At issue is Defendant Minotaur Remediation Far East Limited's ("Minotaur")  
23 Motion to Dismiss for Lack of Jurisdiction and Motion to Dismiss for Failure to State a  
24 Claim. (Doc. 79, Mot.). Plaintiff KDB Finance, LLC ("KDB") responded. (Doc. 90, Resp.).  
25 Minotaur replied (Doc. 91, Reply). Neither party requested oral argument, and the Court  
26 finds the matter appropriate for resolution without such argument. *See* LRCiv 7.2(f). For  
27 the reasons that follow, the Court grants the motion and will dismiss Minotaur without  
28 prejudice.

Among its other arguments for dismissal, Minotaur contends that it was not served within the 14-day time period as required by the Court's Order. On November 14, 2017, KDB filed a Motion for Leave to Amend Verified Complaint, which added Minotaur and others as new defendants. (Doc. 34). On December 8, 2017, the Court granted the motion

1 and ordered all parties be served within 14 days. (Doc. 38). Defendant Minotaur was not  
2 served until June 13, 2018. KDB responds that the Court already settled this issue in its  
3 favor at a July 20, 2018, status conference. At the status conference, KDB said it served  
4 Defendant Mills’s lawyer in Arizona and accountant in Texas to effectuate service. The  
5 Docket and the transcript from that hearing, however, reveals no such order settling the  
6 service issue. In fact, from the hearing, the only order ruled on was granting Minotaur more  
7 time to file a motion to dismiss, and Minotaur specifically stated at the hearing that it did  
8 not agree to jurisdiction and intended to raise the issue in the motion to dismiss.

9 Under the local rules, when a motion for leave to amend is granted, the amended  
10 pleading must be served “on all parties under Rule 5 of the Federal Rules of Civil Procedure  
11 within fourteen (14) days of the filing of the order granting leave to amend, *unless the*  
12 *Court orders otherwise.*” LRCiv 15.1 (emphasis added). Additionally, the Court is aware  
13 that other circuits have held that when an amended complaint names a new defendant, the  
14 longer deadline of Rule 4(m) applies. *See Lindley v. City of Birmingham*, 2011 WL  
15 6347866, at \*1 (11th Cir. Dec. 20, 2011) (“Thus when an amended complaint names a new  
16 defendant, a plaintiff has 120 days from the date on which the amended complaint is filed  
17 to serve that defendant with process.”); *Carmona v. Ross*, 376 F.3d 829, 830 (8th Cir. 2004)  
18 (“[T]he district court erred in dismissing all of the defendants named in the second  
19 amended complaint for lack of service, as [Plaintiff] should have been given an additional  
20 120 days to serve those defendants who were added by the second amended complaint.”).  
21 Since *Lindley* and *Carmona*, the time to serve under Rule 4(m) has been reduced to 90  
22 days.

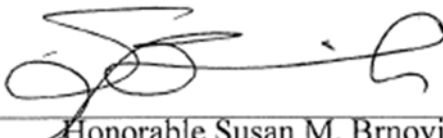
23 When service of process is challenged, the plaintiff bears the burden of establishing  
24 the validity of service. *Falco v. Nissan N. Am. Inc.*, 987 F. Supp. 2d 1071, 1074 (C.D. Cal.  
25 2013) Here, KDB never requested an extension to complete service nor has it given any  
26 reason for the Court to find good cause for failing to serve Minotaur promptly. Instead of  
27 serving Minotaur within the 14-day deadline ordered by the Court on December 8, 2017,  
28 or within the 90-day deadline provided by Rule 4(m), KDB took over six months from the

1 date of being granted leave to file an amended complaint before eventually serving two of  
2 Minotaur's agents, one in Arizona and one in Texas. The Court finds that KDB failed to  
3 serve Minotaur within the deadline for doing so and dismissal is proper. Because dismissal  
4 is proper for lack of timely service, the Court will not address the other grounds Minotaur  
5 raised for dismissal.

6 Accordingly, **IT IS ORDERED** that:

- 7 1. The motion to dismiss by Defendant Minotaur Remediation Far East Limited is  
8 **GRANTED.**

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10 Dated this 21st day of February, 2019.

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15 Honorable Susan M. Brnovich  
16 United States District Judge  
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