



1 *Bernardino Police Dep't*, 530 F.3d 1124, 1129–31 (9th Cir. 2008). “Something labeled a  
2 complaint but written more as a press release, prolix in evidentiary detail, yet without simplicity,  
3 conciseness and clarity as to whom plaintiffs are suing for what wrongs, fails to perform the  
4 essential functions of a complaint.” *McHenry v. Renne*, 84 F.3d 1172, 1180 (9th Cir. 1996).

5           The complaint here is ninety-seven pages long. ECF No. 1. It contains no short  
6 and plain statement. For example, it discusses California’s government between 1846 and 1850  
7 by the United States Military, *id.* ¶ 32, makes paragraph-length quotations from law review  
8 articles and judicial decisions, *id.* ¶¶ 33–34, and reproduces several sections of the California  
9 Health and Safety Code, Public Resources Code, and Penal Code, *id.* ¶ 95. It is caustic and  
10 argumentative. *See, e.g., id.* ¶ 2 (alleging the defendants “have committed some of the most  
11 heinous and grisly of crimes”); *id.* ¶¶ 265–83 (arguing previous litigation has no issue or claim  
12 preclusive effect). Despite the complaint’s length, it includes only two claims: one for “Tortious  
13 Violation of Status and Negligence,” and one for “Declaratory and Injunctive Relief,” both  
14 asserted against all the defendants without differentiation. *See id.* ¶¶ 305–27. Attached to the  
15 complaint are twenty-seven evidentiary exhibits that add more than four hundred pages. ECF  
16 Nos. 1-1 to 1-7. The complaint is dismissed with leave to amend, as detailed in the conclusion  
17 below.

## 18 II. SERVICE OF PROCESS

19           Amy Dutschke, John Rydzik, Kenny Meza, Richard Mesa, and Richard Tellow  
20 argue for dismissal because the plaintiffs have not correctly served them with process. *See Fed.*  
21 *Defs.’ Mem.* at 3–4, ECF No. 33-1; *Tribe. Defs.’ Mem.* at 44–49, ECF No. 27.<sup>1</sup>

22           As summarized in the court’s previous order, “[i]f a defendant is not served within  
23 120 days after the complaint is filed, the court—on motion or on its own after notice to the  
24 plaintiff—must dismiss the action without prejudice against that defendant or order that service  
25 be made within a specified time.” *Fed. R. Civ. P. 4(m)*;<sup>2</sup> *see Order Nov. 4, 2015, ECF No. 14.*

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27 <sup>1</sup> The defendants move to dismiss on several other additional grounds; however, because  
the complaint is dismissed under Rule 8, the court does not reach these arguments in this order.

28 <sup>2</sup> Rule 4(m) now requires the completion of service within 90 days.

1 A defendant may move to dismiss for “insufficient service of process” under Federal Rule of  
2 Civil Procedure 12(b)(5).

3 Rule 4 imposes specific requirements when the defendant is an officer or  
4 employee of the United States:

5 To serve a United States officer or employee sued in an individual  
6 capacity for an act or omission occurring in connection with duties  
7 performed on the United States’ behalf (whether or not the officer  
8 or employee is also sued in an official capacity), a party must serve  
the United States and also serve the officer or employee [as an  
individual].

9 Fed. R. Civ. P. 4(i)(3). When an official is sued in both her individual and official capacities,  
10 service of the United States or agency alone—i.e., service under Rule 4(i)(2)—is not sufficient;  
11 the official must be dismissed from the action in her individual capacity unless she is also served  
12 as an individual. *See, e.g., Hutchinson v. United States*, 677 F.2d 1322, 1328 (9th Cir. 1982).

13 A. Defendants Dutschke and Rydzik

14 Dutschke and Rydzik are federal officers and are sued in both their individual and  
15 official capacities. *See* Compl. ¶ 12. The plaintiffs served a process clerk at the Sacramento  
16 offices of the Bureau of Indian Affairs (BIA), then mailed the summons and complaint to the  
17 same BIA office. ECF Nos. 15, 16, 25, 47. The court previously found that this was a sufficient  
18 “preliminary showing of having timely served them through an authorized agent pursuant to  
19 Federal Rule of Civil Procedure 4(e)(2)(C),”<sup>3</sup> but allowed the defendants to challenge the  
20 sufficiency of service. Order Dec. 4, 2015, ECF No. 28.

21 The defendants protest that the BIA process clerk was not authorized to receive  
22 service for them in their personal capacities. *See* Fed. Defs.’ Mem. at 3–4; Fed. Defs.’ Reply  
23 at 2. In response, the plaintiffs filed revised proofs of service. ECF No. 47. They are essentially  
24 identical to the originals, but include one additional note: the clerk was purportedly “authorized to  
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27 <sup>3</sup> That Rule provides that “an individual . . . may be served in a judicial district of the  
28 United States by . . . delivering a copy of [the summons and complaint] to an agent authorized by  
appointment or by law to receive service of process.”

1 accept personal service on behalf of [the defendants] in their official and individual capacities.”  
2 *Compare* ECF Nos. 15, 16 (original) *with* ECF No. 47 (revised).

3 This summary assertion of authorization is neither credible nor legally sufficient.  
4 *See, e.g., Brockmeyer v. May*, 383 F.3d 798, 801 (9th Cir. 2004) (“Once service is challenged,  
5 plaintiffs bear the burden of establishing that service was valid under Rule 4.”). Neither may the  
6 plaintiffs rely on their assertions that Dutschke and Rydzik must have learned by now that they  
7 have been sued. *See* Opp’n Fed. Defs.’ Mot. 13–14, ECF No. 40. If the court were to agree, Rule  
8 4(i)(3) would have no effect. Service has not been completed on Dutschke and Rydzik in their  
9 personal capacities.

10 B. Meza, Mesa, and Tellow

11 The plaintiffs’ process server attempted to serve Meza, Mesa, and Tellow in  
12 person on September 21, 23, 25, and 28, 2015 at “14191 State Route Highway 94, Jamul, CA  
13 91935.” Meza Service 3, 6, ECF No. 19; Mesa Service 3, 6, ECF No. 20; Tellow Service, 3, 6,  
14 ECF No. 21. That is the address of the Tribe’s office, community center, cemetery, and the  
15 location of a casino construction site. Pinto Decl. ¶ 19, ECF No. 27-1. The defendants were not  
16 there. Meza Service at 3, 6; Mesa Service at 3, 6; Tellow Service at 3, 6. On September 28,  
17 2015, the process server attempted to leave a copy of the summons and complaint with a man  
18 named “Leonel” at the Highway 94 address, but Leonel refused to accept service on the  
19 defendants’ behalf. Meza Service at 5; Mesa Service at 8; Tellow Service at 8. The next day, the  
20 process server mailed a copy of the summons and complaint, purportedly to the same address.  
21 Meza Service at 7; Mesa Service at 10; Tellow Service at 10. In addition, on Saturday October  
22 17, 2015, the process server left a copy of the summons and complaint with “Tom Groenda,  
23 Senior Superintendent,” at the same address, Meza Service at 2; Mesa Service at 2; Tellow  
24 Service at 2, and again mailed a copy of the summons and complaint, Meza Service at 4; Mesa  
25 Service at 4; Tellow Service at 4.

26 The plaintiffs contend they completed substitute service by delivering copies of the  
27 summons and complaint to the people referred to in the proofs of service as “Leonel” and “Tom  
28 Groenda,” because the Highway 94 address is the defendants’ place of business. *See* Opp’n Tribe

1 Defs.’ Mot. at 37; Resp. OSC at 2, ECF No. 26; Fed. R. Civ. P. 4(e)(1) (allowing service as  
2 would be permitted by California law); Cal. Civ. Proc. Code 415.20(b) (providing for substitute  
3 service at a person’s dwelling or usual place of business).<sup>4</sup>

4 The Tribe’s office was not Mesa’s place of business or dwelling at the time the  
5 process server attempted service. Pinto Decl. ¶ 18. The plaintiffs have therefore not completed  
6 service on Mesa. This leaves Meza and Tellow. Section 415.20(b) required the plaintiffs to mail  
7 copies of the summons and complaint to the Tribe’s physical address after leaving them with a  
8 person “apparently in charge” at that location. The proofs of service on file report that the  
9 summons and complaint were mailed to the same Highway 94 address, but they were not received  
10 at this address; rather, copies of the summons and complaint were received at the Tribe’s U.S.  
11 Postal Service post office box. Pinto Decl. ¶¶ 20–21. The plaintiffs have not borne their burden  
12 to show service was properly completed.

13 C. Whether to Allow Delayed Service

14 The 120-day deadline must be extended if a plaintiff shows good cause for the  
15 failure. *Crowley v. Bannister*, 734 F.3d 967, 975 (9th Cir. 2013). Good cause is at minimum  
16 excusable neglect, *Lemoge v. United States*, 587 F.3d 1188, 1198 & n.3 (9th Cir. 2009), and the  
17 court may also consider whether “(a) the party to be served personally received actual notice of  
18 the lawsuit; (b) the defendant would suffer no prejudice; and (c) [the] plaintiff would be severely  
19 prejudiced if his complaint were dismissed,” *Boudette v. Barnette*, 923 F.2d 754, 756 (9th Cir.  
20 1991). If the plaintiff cannot establish good cause, the court may nevertheless extend the deadline  
21 as a matter of discretion if the plaintiff establishes excusable neglect. *Crowley*, 734 F.3d at 975.

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23 <sup>4</sup> “If a copy of the summons and complaint cannot with reasonable diligence be personally  
24 delivered to the person to be served . . . , a summons may be served by leaving a copy of the  
25 summons and complaint at the person’s dwelling house, usual place of abode, usual place of  
26 business, or usual mailing address other than a United States Postal Service post office box, in the  
27 presence of a competent member of the household or a person apparently in charge . . . at least 18  
28 years of age, who shall be informed of the contents thereof, and by thereafter mailing a copy of  
the summons and of the complaint by first-class mail, postage prepaid to the person to be served  
at the place where a copy of the summons and complaint were left.” Cal. Civ. Proc. Code  
§ 415.20(b).

