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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

F.G. CROSTHWAITE, et al.,

Plaintiffs,

v.

APOSHIAN EXCAVATING COMPANY,
INC., a Utah Corporation,

Defendant.

Case No.: C13-0363 TEH

**PLAINTIFFS' REQUEST FOR AN
EXTENSION OF TIME TO SERVE
DEFENDANT AND REQUEST TO
CONTINUE CASE MANAGEMENT
CONFERENCE;**

**DECLARATION OF SHIVANI NANDA IN
SUPPORT THEREOF;**

~~[PROPOSED]~~ ORDER THEREON

Date: July 29, 2013
Time: 1:30 p.m.
Location: 450 Golden Gate Ave.
San Francisco
Courtroom: 12, 19th Floor,
Judge: Honorable Thelton E. Henderson

Pursuant to Rule 4 of the Federal Rules of Civil Procedure and Civil Local Rule 6-3, Plaintiffs respectfully request that the Court issue an Order extending the time to accomplish service of the Summons and Complaint on Defendant by approximately ninety (90) days, and that the Case Management Conference scheduled for July 29, 2013 be continued for approximately ninety to one hundred and twenty (90-120) days. Good cause exists for the granting of the extension and continuance, as follows:

1. As the Court's records will reflect, Plaintiffs filed a Complaint against Defendant Aposhian Excavating Company, Inc., a Utah corporation, on January 25, 2013.

PLAINTIFFS' REQUESTS FOR EXTENSION AND CONTINUANCE; ~~[PROPOSED]~~ ORDER THEREON

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2. Plaintiffs subsequently discussed the complaint and a possible payment plan with David Aposhian, President and Agent for Service of Process for Defendant. During those discussions, Mr. Aposhian indicated that he would agree to acknowledge service of the Summons and Complaint, and enter into a Judgment Pursuant to Stipulation (“Stipulation”) on behalf of Defendant, and as an individual guarantor, for all amounts owed to Plaintiffs. On February 4, 2013, Plaintiffs emailed and mailed Defendant, care of Mr. Aposhian, a Notice and Acknowledgment of Receipt of the Summons and Complaint, as well as a draft Stipulation.

3. Although Mr. Aposhian received the documents, he has since refused to sign the proposed Stipulation, and refused to acknowledge service of process.

4. As a result, on or about February 20, 2013, the Summons, Complaint and related documents were provided to a process server with the instructions to serve the documents upon Defendant. The process server made 6 attempts to serve Defendant at the address of record listed on the Utah Secretary of State website, but to no avail. True and correct copies of Non-Service Reports prepared by Plaintiffs’ process servers are attached hereto as Exhibit A, and incorporated by reference.

5. Thereafter, Plaintiffs retained a private investigator to locate and personally serve Defendant. The investigator advised Plaintiffs’ counsel that the address of record for Defendant designated with the Utah Secretary of State for service of process was not accurate, as Mr. Aposhian had relocated from that address some time ago. Plaintiffs’ investigator identified several other potential addresses for Defendant, but was unable to confirm any of them, or otherwise locate Defendant.

6. Although Plaintiffs have been diligent in their attempts to serve Defendant, personal or substituted service could not be accomplished as Defendant. As a result, Plaintiffs anticipate promptly filing a motion for leave to serve Defendant by publication.

7. Pursuant to Rule 4 of the Federal Rules of Civil Procedure, Plaintiffs have 120 days from the date the Complaint was filed to serve Defendant. The time period to serve Defendant expires today. However, Federal Rule 4(m) further provides that if a plaintiff shows good cause for failure to timely serve a Defendant, the court must extend that time for service for an appropriate

period.

8. Plaintiffs respectfully request that the Court issue an Order extending the time for service of the Complaint and Summons for a period of ninety (90) days to allow time for Plaintiffs to prepare and file a motion to serve Defendant by publication, effectuate service, and file a Proof of Service of Summons with the Court.

I declare under penalty of perjury under the laws of the United States of America that I am the attorney for the Plaintiffs in the above entitled action, and that the foregoing is true of my own knowledge.

Executed this 28th day of May, 2013, at San Francisco, California.

SALTZMAN & JOHNSON
LAW CORPORATION

By: _____ /S/_____
Shivani Nanda
Attorneys for Plaintiffs

IT IS SO ORDERED.

The time limit for service of the Complaint and Summons in this action is hereby extended to August 26, 2013. The currently set Case Management Conference is hereby continued to October 28, 2013 at 1:30 p.m., and all previously set deadlines and dates related to this case are continued accordingly.

Date: 05/30/2013

