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UNITED STATES DISTRICT COURT
FOR DISTRICT OF NORTHERN CALIFORNIA

MARIO YEPEZ, RAFAEL PEREZ AND
ALFONSO GARCIA RIOS

Plaintiffs,

vs.

JASPER SEA PALACE ET AL

Defendants

Case No.: 08 CV 04411 ORDER TO

~~NOTICE OF MOTION, EXTEND TIME TO
SERVE SUJUAN LI AND MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF~~

PLAINTIFFS HEREBY GIVE NOTICE THAT on June 17, 2009 at 9:30 am in courtroom 4 of
the 5th Floor of the United States District Court at 280 South 1st Street in San Jose, CA 95113
Plaintiff will motion the court to extend the time to serve Defendant Sujuan Li. The motion is
based upon this motion and the attached Memorandum of Points and Authorities.

s/jdb

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1 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF EXTENSION OF
2 TIME TO SERVE SUJUAN LI

3 STATEMENT OF FACTS

4 Plaintiffs are all Spanish speaking restaurant workers living in Santa Clara County.
5 Plaintiffs worked for the Defendants until August of 2008 when they left their jobs over pay
6 issues. See Dec. James Dal Bon They filed a complaint against Defendants Sujuan Li, dba
7 Grand Palace and Jasper Sea Palace Inc. dba Grand Palace on September 19, 2008. See Dec.
8 James Dal Bon, Doc. 1 Yepez v. Jasper Sea Palace 08 CV 04411. On January 27, 2009 our
9 process server served a person who he believed was Sujuan Li both on behalf of herself and
10 Jasper Sea Palace. He served them at the Grand Palace Restaurant at 1628 Hostetter Road, San
11 Jose, CA 95131 Docs. 8, 9. Yepez v. Jasper Sea Palace 08 CV 04411

12
13 On March 25, 2009 Plaintiff amended the complaint to include Lavender Investment Inc.,
14 Tamson LLC and Ve Ly Nguyen as Defendants. Doc. 14 Yepez v. Jasper Sea Palace 08 CV
15 04411 On April 6, 2009 Plaintiff's new process server went to the Grand Palace Restaurant. At
16 that point the a Ms. Kim Nguyen informed him that Sujuan Li no longer worked at the Grand
17 Palace. Ms. Nguyen gave him her business card. Dec. James Dal Bon Ex. 1 Business Card On
18 this basis, Plaintiff believes that Sujuan Li has not been successfully served. On that same date
19 the process server served Lavender Investment Inc. the amended complaint on its agent for
20 service of process. Ms. Li is listed as the President and Secretary of Lavender Investment Inc.
21 with the California State Bureau of Alcohol. See Dec. James Dal Bon, Ex. 2.
22

23 Plaintiff respectfully requests an extension of time to serve Ms. Sujuan Li. The attorney
24 for the Defendants Ve Ly Nguyen and Tamson LLC informed the plaintiff on May 5, 2009 they
25 would not oppose the motion.

1 Argument

2 Rule 4(m) of the Federal Rules of Civil Procedure provides:

3
4 “If a defendant is not served within 120 days after the complaint is
5 filed, the court-on motion or on its own after notice to the plaintiff-
6 must dismiss the action without prejudice against that defendant or
7 order that service be made within a specified time. But if the plaintiff
shows good cause for the failure, the court must extend the time for
service for an appropriate period.”

8 Rule 4(m) requires a district court to grant an extension of time to serve a defendant if the
9 plaintiff shows good cause for the delay in service. *Efaw v. Williams*, 473 F.3d 1038, 1040 (9th
10 Cir.2007); *In re Sheehan*, 253 F.3d 507, 512 (9th Cir.2001). The court must consider whether a
11 plaintiff has shown good cause for the delay in service on a case-by-case basis. *In re Sheehan*,
12 253 F.3d at 512. In *Boudette v. Barnette*, 923 F.2d 754, 755 (9th Cir.1991), the court analyzed
13 Rule 4(j) of the Federal Rules of Civil Procedure, the predecessor to Rule 4(m). The Ninth
14 Circuit noted that, “[a]t a minimum, ‘good cause’ means excusable neglect.” *Id.* at 756. Further,
15 to justify more time for service of a complaint based on “good cause,” a “plaintiff may also be
16 required to show the following: (a) the party to be served personally received actual notice of the
17 lawsuit; (b) the defendant would suffer no prejudice; and (c) plaintiff would be severely
18 prejudiced if his complaint were dismissed.” *Id.* See also *Faaita v. Liang Slip Copy*, 2008 WL
19 3833380 D. Hawaii. Absent prejudice to defendant or anyone else, or to the court itself, it
20 “cannot be an abuse of discretion” to extend the time for service even after expiration of the
21 120-day per 4(m). *Mann v. American Airlines* (9th Cir. 2003) 324 F3d 1088, 1090.
22

23
24 In this case there is good cause to extend the time to serve the complaint. The
25 Defendant, Sujuan Li would not suffer any prejudice since discovery has not begun. Only eight

1 months has passed since the complaint was filed. Ms Li also must have notice of the
2 proceeding since Lavender Investment Inc. was served with the amended complaint on April 6,
3 2009. Ms Li is listed as the president and secretary of Lavender Investments with the California
4 Bureau of Alcohol. As the president of one of the corporate owners, Ms. Li will be involved in
5 the litigation anyway.

6 Plaintiffs will suffer prejudice if Ms. Li is dismissed. According to Rule 4(m) the case
7 must be dismissed without prejudice, the plaintiffs will file another case against her alone. The
8 plaintiff will lose time and money on the second case. This will result in a waste of time and
9 money on the part of the courts and all parties.

10 For the forgoing reasons the plaintiff respectfully requests a 45 day extension from the
11 date of the signed order to serve Sujuan Li.

12
13
14 May 8, 2009

15
16 Respectfully Submitted

17
18 s/jdb

19 James Dal Bon

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23
24 Respectfully Submitted:
25

1
2 March 7, 2008

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4 ~~PROPOSED~~ ORDER

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6 IT is ordered that under Federal Rule of Civil Proc. § 4(m) the plaintiffs are granted an
7 additional 45 days from today's date to serve Defendant Sujuan Li.

8
9 Dated: 5/8/09

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11 

12
13 Honorable Magistrate Judge

14 Richard Seeborg