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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **(San Jose Division)**

11 Martin Eric Findley,

12 Plaintiff,

13 v.

14 Carolyn Colvin, Commissioner of Social
Security,

15 Defendant.
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Case No. 5:14-cv-03581-BLF

**Status Report Re: Summons and Motion
and Order Extending Time for Service**

The Hon. Beth Labson Freeman

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18 MARTIN ERIC FINDLEY, Plaintiff, by and through counsel, hereby moves this Court to
19 find good cause or to exercise discretion to extend time for service of the summons under Fed. R.
20 Civ. P. 4(c)(1), Fed. R. Civ. P. 4(c)(3), and Fed. R. Civ. P. 4(m) and 28 U.S.C. 1915. Plaintiff
21 requests that time for service be extended by a sufficient number of days to allow service of the
22 Summons issued on December 19, 2014 to be executed by US Marshal for the reasons explained
23 in this motion and the accompanying declaration.

24 **DECLARATION**

25 I, Lisa Douglass, declare as follows:
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27 1. I am counsel for the Plaintiff in the above-captioned case appealing a final order of
28

1 the Social Security Administration denying disability benefits under the Social Security Act.

2 2. I have personal knowledge of the following facts.

3 3. My office filed the complaint in this matter on August 7, 2014 along with a Motion
4 for Leave to Proceed in forma pauperis. This filing was done manually, in person, at the Clerk's
5 office. The complaint, cover sheet, and motion were e-filed by the Clerk's office.

6 4. The Motion to Proceed in forma pauperis was granted on August 18, 2014.

7 5. After the motion was granted, I assumed that service would be executed by US
8 Marshal. Fed. R. Civ. P. 4(c)(3) rule provides that the Court "must" order that service be made by
9 a United States marshal or deputy marshal or by a person specially appointed by the court, when
10 the plaintiff is, as here, authorized to proceed in forma pauperis under 28 U.S.C. 1915.

11 6. However, I had failed to note that the Order Granting Application for Leave to Proceed
12 in forma pauperis entered by this Court on August 18, 2014 did not contain language ordering the
13 US Marshal to "serve, without prepayment of fees, a copy of the complaint, any amendments,
14 scheduling orders, attachments, plaintiff's affidavit and this order upon the defendant." This is the
15 language used in the Court's form Proposed Order and in the other orders our office had received
16 in prior cases. I wrongly assumed that summons would be issued and that service would be
17 executed by US Marshal prior to the 120 day due date, as in my prior IFP cases.

18 7. On December 10, 2014, I received, and responded to emails, from Court staff
19 inquiring about status of service, which was due on December 5, 2014. On December 16, 2014
20 this Court entered an order requesting status update. On December 18, 2014, I filed a proposed
21 summons. On December 19, 2014, summons were issued as to Carolyn Colvin, U.S. Attorney and
22 U.S. Attorney General along with accompanying 285 forms authorizing service by US Marshal.

23 8. Fed. R. Civ. P. 4(m) provides that the court "shall extend time for service for an
24 appropriate period" if plaintiff "shows good cause" for the failure to serve within 120 days and
25 permits the district court to grant such an extension even absent good cause. *See Henderson v.*
26 *United States*, 517 U.S. 654, 662, 116 S.Ct. 1638, 134 L.Ed.2d 880 (1996). District Courts have
27 broad discretion to event time for service under Rule 4(m). *See Henderson v. United States*, 517
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1 U.S. 654, 661, 116 S.Ct. 1638, 134 L.Ed.2d 880 (1996) (concluding that “the 120-day provision
2 operates not as an outer limit subject to reduction, but as an irreducible allowance”); *Mann v.*
3 *American Airlines*, 324 F.3d 1088, 1090-91 (9th Cir. 2003).
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5 9. Plaintiff, through counsel, requests the court find good cause or exercise discretion to
6 extend the time for service in this case.

7 DATED: January 5, 2014

Respectfully submitted,

8 COMMUNITY LAW CLINIC
9 Mills Legal Clinic at Stanford Law School

10 By: /s/ Lisa Douglass
11 LISA DOUGLASS
12 Director, Social Security Disability Project

13 Attorneys for Plaintiff

14 **ORDER**

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16 Under Fed.R.Civ.P. 4(m) this Court exercises its discretion and orders that the time for
17 service be extended by _____ days for the US Marshal to execute service of the Summons and
18 Complaint as to Carolyn Colvin, US Attorney and US Attorney General.

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20 Dated:


21 THE HONORABLE BETH LABSON FREEMAN
22 United States District Judge
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