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9 UNITED STATES DISTRICT COURT
 10 DISTRICT OF NEVADA

11 HOLIDAY SYSTEMS INTERNATIONAL OF
 12 NEVADA, d/b/a HOLIDAY SYSTEMS
 INTERNATIONAL, a Nevada corporation,

13 Plaintiff,

14 v.

15 ILLUSION BOUTIQUE HOTEL, a corporation
 16 organized pursuant to the laws of Mexico,

17 Defendant.

CASE NO.: 2:10-cv-00592-ECR-RJJ

**PLAINTIFF'S *EX PARTE* MOTION FOR
 ADDITIONAL TIME TO EFFECT
 SERVICE OF PROCESS**

(Second Request)

18 Plaintiff Holiday Systems International of Nevada ("HSI"), by and through its
 19 undersigned counsel, hereby submits this *Ex Parte* Motion for Additional Time to Effect Service
 20 of Process (the "Motion") in light of this Court's having set a deadline of November 23, 2010 for
 21 HSI to effectuate service of process on Defendant Illusion Boutique Hotel ("IBH").¹ As HSI
 22 notes below, this is HSI's second request for such relief as HSI has marshaled service of process
 23 through the bureaucracy of the Mexican legal system. This Motion is based upon the pleadings
 24 and records on file herein, the Memorandum of Points and Authorities set forth below, the
 25 Declaration of James D. Boyle, Esq. attached hereto and incorporated herein by this reference as
 26 **Exhibit A**, and any oral argument the Court entertains.

27
 28 ¹ HSI seeks *ex parte* relief in this Motion because, as HSI explains *infra*, IBH has yet to be served in this action.

SANTORO, DRIGGS, WALCH,
 KEARNEY, HOLLEY & THOMPSON



I. MEMORANDUM OF POINTS AND AUTHORITIES

A. PROCEDURAL OVERVIEW.

On April 23, 2010, HSI filed its Complaint for breach of contract, breach of the covenant of good faith and fair dealing, unjust enrichment, and conversion (Docket No. 1). In its Complaint, HSI noted that, upon information and belief, IBH is a foreign business entity having a principal place of business located at Calle 8 Norte Entre 5 A Ave, Playa Del Carmen, Quintana Roo, Mexico. *See* Complaint, ¶ 2 and Summons.

On June 9, 2010, counsel for HSI submitted the Summons for IBH (Docket No. 4), and the Clerk issued the Summons on June 10, 2010 (Docket No. 6). However, to date HSI has not served IBH for reasons explained *infra* and consistent with this Court's Order dated August 28, 2010 (the "August 28th Order") (Docket No. 10).²

On June 9, 2010, HSI submitted a Motion for Issuance of Letters Rogatory (Docket No. 5). The Court subsequently issued Letters Rogatory on July 19, 2010 (Docket No. 7), copies of which were transmitted to HSI's counsel in Mexico for a review of their compliance with Mexican law. At the recommendation of HSI's counsel in Mexico, a Motion for Issuance of Amended Letters Rogatory was filed August 25, 2010 (Docket No. 9). Boyle Decl., at ¶ 2. Amended Letters Rogatory were issued by this Court on August 31, 2010 (Docket No. 11). In order to obtain the necessary apostilles, HSI requested exemplification certificates from this Court, which were completed October 8, 2010. HSI received the apostilles from this Court on October 21, 2010. Boyle Decl., at ¶ 2.

On October 25, 2010, HSI delivered a final exemplified copy of the Complaint, Summons and Amended Letters Rogatory, along with their respective exemplification certificates and apostilles, to HSI's counsel in Mexico for service on IBH. Boyle Decl., at ¶ 3. HSI is therefore awaiting confirmation of service of process on IBH pursuant to the laws of

² In the August 28th Order, this Court granted HSI ninety (90) additional days to effectuate service of process on IBH. As HSI explains *infra*, the additional time period granted by this Court in the August 28th Order was an insufficient period for HSI to effectuate service of process on IBH, and HSI therefore respectfully requests an additional ninety days to ensure IBH is served with process and thereafter has an opportunity to respond to HSI's Complaint.



1 Mexico, a process that HSI's Mexican co-counsel has informed HSI may take up to ninety (90)
2 days to complete. Boyle Decl., at ¶ 3.

3 **B. LEGAL ARGUMENT.**

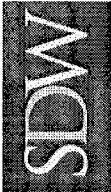
4 Rule 4(m) of the Federal Rules of Civil Procedure states:

5 If a defendant is not served within 120 days after the complaint is
6 filed, the court—on motion or on its own after notice to the
7 plaintiff—must dismiss the action without prejudice against that
8 defendant or order that service be made within a specified time.
9 But if the plaintiff shows good cause for the failure, the court must
10 extend the time for service for an appropriate period. **This
11 subdivision (m) does not apply to service in a foreign county
12 under Rule 4(f) or 4(j)(1).**

13 Fed. R. Civ. P. 4(m) (emphasis added). Rule 4(f) addresses the procedural requirements of
14 service of process of an individual in a foreign country, and through incorporation by reference
15 the procedure for serving a corporation that is not located within any judicial district of the
16 United States. *See* Fed. R. Civ. P. 4(f) and 4(h)(2). Similarly, Rule 4(j)(1) addresses the
17 procedure for service of process of a foreign state or its political subdivision. In the instant
18 matter, service of process of IBH is subject to the procedural requirements of Rule 4(f) as IBH is
19 a corporate entity domiciled in Mexico.

20 As referenced above, HSI has diligently sought to obtain necessary Letters Rogatory and
21 corresponding documents to serve IBH in Mexico. Letters Rogatory to effectuate service of
22 process on IBH in Mexico issued on August 31, 2010 and counsel for HSI has subsequently
23 worked diligently with HSI's Mexican co-counsel to effect service of process through proper
24 Mexican legal channels through the issuance of the Letters Rogatory. On October 25, 2010—
25 having finally gathered all of the documents which HSI understands and believes are required to
26 complete effective service of process pursuant to the laws of Mexico—HSI delivered final and
27 exemplified copies of the Summons, Complaint, and Letters Rogatory, along with the respective
28 certificates of exemplification and apostilles for each, to HSI's co-counsel in Mexico for service
on IBH. Boyle Decl., at ¶¶ 2 – 3.

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1 Under Ninth Circuit jurisprudence, this Court has broad discretion to set the timeframe in
2 which HSI must effectuate service of process on IBH because the 120-day limitation period set
3 forth in Rule 4(m) does not apply to service of process of a corporation in a foreign country. *See*
4 *Lucas v. Natoli*, 936 F.2d 432, 432-33 (9th Cir. 1991) (“The plain language of [Rule 4(m)] makes
5 the 120-day service provision inapplicable to service in a foreign country.”). Thus, by this
6 Motion HSI respectfully requests that this Court grant HSI at least an additional ninety (90) days
7 to effectuate service of process on IBH through appropriate Mexican legal channels.

8 **II. CONCLUSION**

9 HSI is informed and believes that service of process will be effectuated on IBH pursuant
10 to the laws of Mexico within ninety (90) days. Boyle Decl., at ¶ 3. Therefore, for the foregoing
11 reasons, HSI requests that this Court grant HSI a period of at least ninety (90) days to effect
12 service of process on IBH.

13 DATED this 23rd day of November, 2010.

14 **SANTORO, DRIGGS, WALCH,
15 KEARNEY, HOLLEY & THOMPSON**

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18 *Attorneys for Plaintiff*

19 IT IS SO ORDERED.

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21 _____
22 UNITED STATES MAGISTRATE JUDGE

23 DATE: DEC. 20, 2010