

1 Having reviewed and considered the matter, the court finds the Plaintiffs have established good
2 cause for a sixty (60) enlargement of time in which to serve summons and complaint on the Colbert
3 Defendants, however, the court will deny the Plaintiffs' request to attempt service by certified mail,
4 return receipt requested as the Federal Rules of Civil Procedure do not authorize service of summons
5 and complaint by this method. Plaintiffs reliance on the Ninth Circuits' decision in *Salta v. INS*, 314
6 Fed. 3d 1076, 1078-79 (9th Cir. 2002) is misplaced. In that case an alien sought review of a decision of
7 the Board of Immigration Appeals denying her motion to reopen or reconsider an order of removal
8 entered *in absentia*. Immigration cases are governed by specific statutory provisions which place the
9 burden on the immigrant to establish that she did not receive notice of a removal proceeding.

10 The Federal Rules of Civil Procedure do not authorize summons of service and complaint by
11 certified mail, return receipt requested. The rules do permit service by publication. Accordingly, the
12 court will deny the request to serve the Defendants by certified mail, but grant the request to serve by
13 publication. Plaintiffs may send the Colbert Defendants a request to waive service pursuant to the
14 provisions in Fed. R. Civ. P. 4(d). An individual that is subject to service under Rule 4(e), (f), or (h)
15 has a duty to avoid unnecessary expense of serving summons. If the Colbert Defendants are located
16 within the United States and fail, without good cause, to sign and return a waiver requested by the
17 Plaintiffs, the provisions of Rule 4(d)(2) specify the court must impose on the Defendants the expenses
18 later incurred in making service and the reasonable expenses, including attorneys fees, of any motion
19 required to collect those service expenses.

20 **IT IS ORDERED:**

- 21 1. Plaintiffs' Motion to Enlarge Time for Service of Process on Defendants Thomas E.
22 Colbert and Thomas E. Colbert Irrevocable Life Insurance Trust is **GRANTED**, and
23 Plaintiff shall have until **November 7, 2011** to serve these Defendants.

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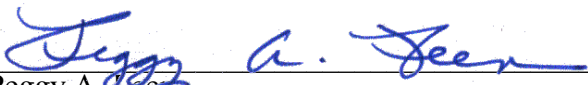
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2. Plaintiffs' Motion to Permit Service by Alternative Means is granted in part and denied in part. The Motion is **GRANTED** to the extent that Plaintiffs have leave to serve by publication in accordance with the requirements of Fed. R. Civ. P. 4(e)(1) and Nev. R. Civ. P. 4(e)(1)(I). The motion to serve by certified mail, return receipt requested is **DENIED**.

Dated this 2nd day of August, 2011.


Peggy A. Leen
United States Magistrate Judge