

COOKSEY, TOOLEN, GAGE, DUFFY & WOOG

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13 Attorneys for Plaintiffs
 14 NATIONWIDE LIFE INSURANCE
 COMPANY AND NATIONWIDE LIFE
 15 AND ANNUITY INSURANCE COMPANY

16 **UNITED STATES DISTRICT COURT**
DISTRICT OF NEVADA

17 Case No. 2:14-CV-01586-APG-CWH

18 NATIONWIDE LIFE INSURANCE
 COMPANY AND NATIONWIDE LIFE AND
 19 ANNUITY INSURANCE COMPANY,

20 Plaintiffs,

21 v.

22 CARL MILLBERG, INSIGHT LIFE
 INCORPORATED, MELVIN WILLIAMS,
 23 CASSIDY COTTEN, PF PARTICIPATION
 FUNDING TRUST, AND DOES 1 through
 24 20,

25 Defendants.

26 **FIRST MOTION TO CONFIRM TIME ALLOWED FOR SERVICE OR,**
 27 **ALTERNATIVELY, FOR AN EXTENSION OF TIME TO**
 28 **SERVE DEFENDANT MELVIN WILLIAMS**

1 Comes now, Plaintiffs, Nationwide Life Insurance Company and Nationwide Life and
2 Annuity Insurance Company (collectively, “Nationwide”), by and through their undersigned
3 attorneys of record, who respectfully move for a confirmation on the time allowed to serve
4 Defendant Melvin Williams or, alternatively, pursuant to Rule 4(m) of the Federal Rules of Civil
5 Procedure for an extension time to serve Defendant Melvin Williams with a copy of the summons
6 and amended complaint in this action. In support of this request, Nationwide states as follows:

7
8 Statement of Facts and Procedural Background

9 Nationwide initiated this action with the filing of a complaint (the “Complaint”) on
10 September 26, 2014. [Dkt. Entry #1]. The complaint sought relief against Carl Millberg
11 (“Millberg”), Insight Life Inc. (“Insight Life”), Cassidy Cotten (“Cotton”), Melvin Williams
12 (“Williams”), First Bank of Delaware, Fortris Financial, LLC (“Fortris”), Wells Fargo Bank, N.A.,
13 as securities intermediary, and Does 1 – 20. [Dkt. Entry #1]. Thereafter, Nationwide sought to serve
14 Williams with the Complaint at his last known address. See Affidavit of Robert A. Riether, Esq., ¶
15 3, attached as Exhibit “A” hereto. On October 16, 2014, Nationwide was advised by its process
16 server that Williams no longer resided at the address at which Nationwide attempted to serve the
17 Complaint upon him. See Affidavit of Robert A. Riether, Esq., ¶ 4. Nationwide thereafter retained
18 the services of a private investigator to locate a current address for Williams. See Affidavit of
19 Robert A. Riether, Esq., ¶ 5.

20
21 On November 10, 2014, Nationwide filed a voluntary dismissal, without prejudice, of its
22 claims against Fortris. [Dkt. Entry 6]. Thereafter, on November 21, 2014, Nationwide filed its first
23 amended complaint (the “Amended Complaint”) against Millberg, Insight Life, Cotten, Williams,
24 and PF Participation Funding Trust (“PF Trust”). [Dkt. Entry #7]. Proof of service of the Amended
25 Complaint upon the defendants is due by March 21, 2015. See [Dkt. Entry #7].

26
27 On December 3, 2014, PF Trust accepted service of the Amended Complaint. [Dkt. Entry
28 #8]. Millberg was served with the summons and Amended Complaint on December 4, 2014. [Dkt.

1 Entry #10]. Cotten was subsequently served on December 7, 2014. [Dkt. Entry #9]. Insight Life
2 was served with the summons and Amended Complaint on January 14, 2015. [Dkt. Entry # 15].

3 However, to date, and despite repeated attempts to do so, Nationwide has been unable to
4 serve Williams with the summons and Amended Complaint. See Affidavit of Robert A. Riether,
5 Esq., ¶¶ 6, 7. More specifically, Nationwide attempted to serve Williams at the address which
6 Nationwide's private investigator located for Williams on December 6, 2014, twice on December 9,
7 2014, and twice on December 10, 2014. [Dkt. Entry #11]. After these attempts to serve Williams
8 were unsuccessful, Nationwide again enlisted its private investigator in order to obtain a new address
9 for Williams, or to confirm that the address at which it attempted service upon Williams was still
10 accurate. See Affidavit of Robert A. Riether, Esq., ¶¶ 7, 8. After further investigation, Nationwide's
11 private investigator confirmed that the address in question remained a valid address for Williams.
12 See Affidavit of Robert A. Riether, Esq., ¶ 9. Nationwide thereafter attempted service upon
13 Williams again, twice on January 15, 2015, on January 17, 2015 and January 20, 2015. However,
14 those attempts were also unsuccessful. See Affidavit of Robert A. Riether, Esq., ¶ 10, [Dkt. Entry
15 #24]. By way of greater detail, the address at which Williams is fenced with a lock, and surveyed by
16 cameras, and no one has answered the process serves attempts at the property's gate. [Dkt. Entry
17 #24].
18
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20 Legal Argument

21 Based upon the date of filing of the Amended Complaint, as well as the docket report,
22 Nationwide understands that its deadline to serve Williams with the summons and the Amended
23 Complaint to be March 21, 2015. *See* [Dkt. Entry #7] However, to the extent that the deadline to
24 serve Williams was triggered by the filing of the Complaint, Nationwide should be permitted
25 through March 21, 2015 to serve Williams with the summons and the Amended Complaint.
26

27 FED. R. CIV. P. provided that if a plaintiff shows "good cause" as to why he was unable to
28 serve a defendant within 120 days after the filing of a complaint, "the court must extend the time for

1 service for an appropriate period.” See FED. R. CIV. P. 4(m). Here, such good cause exists. After
2 filing the Complaint, Nationwide attempted to serve Williams at his last known address. See
3 Affidavit of Robert A. Riether, Esq., ¶ 3. When it was determined that Williams was no longer at
4 that address, Nationwide retained the services of a private investigator to locate an address for
5 Williams. See Affidavit of Robert A. Riether, Esq., ¶¶ 4, 5. After the Amended Complaint was filed
6 on November 21, 2014, Nationwide attempted service of the summons and Amended Complaint
7 upon Williams at the address which Nationwide’s private investigator had located for Williams. See
8 Affidavit of Robert A. Riether, Esq., ¶ 6, [Dkt. Entry #11]. When those attempts were unsuccessful,
9 Nationwide again enlisted the services of its private investigator to locate or confirm an address for
10 Williams. See Affidavit of Robert A. Riether, Esq., ¶¶ 7, 8. Once Nationwide’s private investigator
11 confirmed Williams’ address, Nationwide again attempted service upon Williams, but again to no
12 avail. See Affidavit of Robert A. Riether, Esq., ¶¶ 9, 10, [Dkt. Entry #24]. Accordingly, Nationwide
13 has been diligent in its attempts to serve Williams and its ability to do so has not been the result of
14 intentional delay.
15

16
17 As an alleged conspirator in the scheme alleged by Nationwide in the Amended Complaint,
18 Williams is a necessary and proper party to this action. Nationwide has worked diligently – and will
19 continue to work diligently – to serve Williams with the summons and Amended Complaint prior to
20 March 21, 2015. [Dkt. Entry #7]. However, to the extent that the deadline to serve Williams was
21 triggered by the filing of the Complaint, Nationwide respectfully requests that it be permitted
22 through March 21, 2015 to serve Williams with a summons and the Amended Complaint. It is
23 respectfully submitted that the “good cause” contemplated by FED. R. CIV. P. 4(m) has been
24 demonstrated here and that such an extension should be granted.
25

26 Conclusion


27 Based upon the foregoing, it is respectfully requested the Court confirm that Nationwide is
28 permitted through March 21, 2015, to serve Williams with the summons and Amended Complaint.

1 Alternatively, to the extent that the deadline to serve Williams was triggered by the filing of the
2 Complaint, Nationwide respectfully requests that, based upon the foregoing demonstration of "good
3 cause," the deadline to serve Williams the summons and Amended Complaint be extended through
4 through March 21, 2015.

5
6 DATED: January 26, 2015

Respectfully Submitted,

7 COOKSEY TOOLEN GAGE DUFFY & WOOG, P.C

8 By: 

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10 Nevada Bar No. 7374
11 Andrew R. Muehlbauer
12 Nevada Bar No. 10161
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Attorneys for
Plaintiffs
NATIONWIDE LIFE INSURANCE
COMPANY AND NATIONWIDE LIFE
AND ANNUITY INSURANCE COMPANY

ORDER

It is HEREBY ORDERED that the deadline to serve Williams is extended through **March 21, 2015.**

Dated: January 27, 2015


United States Magistrate Judge

COOKSEY, TOOLEN, GAGE, DUFFY & WOOG

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EXHIBIT "A"

COOKSEY, TOOLEN, GAGE, DUFFY & WOOG

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22 v.)

23 CARL MILLBERG, INSIGHT LIFE)
 INCORPORATED, MELVIN WILLIAMS,)
 24 CASSIDY COTTEN, PF PARTICIPATION)
 FUNDING TRUST, AND DOES 1 through)
 25 20,)

26 Defendants.)
 27 _____)
 28 _____)

AFFIDAVIT OF ROBERT A. RIETHER, ESQ. IN SUPPORT OF MOTION TO CONFIRM TIME ALLOWED FOR SERVICE OR, ALTERNATIVELY, FOR AN EXTENSION OF TIME TO SERVE DEFENDANT MELVIN WILLIAMS

STATE OF NEVADA _____)
COUNTY OF CLARK _____) ss.

Affiant, ROBERT A. RIETHER, Esq., being first duly sworn, deposes and states as follows:

1. I am an attorney at law, licensed to practice law before the District Courts of the State of Nevada. I am an associate at the law firm of Cooksey, Toolen, Gage, Duffy & Woog, attorneys of record for Plaintiffs, Nationwide Life Insurance Company and Nationwide Life and Annuity Insurance Company (collectively, "Nationwide").

2. Nationwide initiated this action with the filing of a complaint (the "Complaint") on September 26, 2014.

3. Thereafter, Nationwide sought to serve Defendant Melvin Williams ("Williams") with the Complaint at his last known address.

4. On October 16, 2014, I was advised by the process server retained by Nationwide that Williams no longer resided at the address at which Nationwide attempted to serve the Complaint upon him.

5. Nationwide thereafter retained the services of a private investigator to locate a current address for Williams.

6. After Nationwide filed its amended complaint (the "Amended Complaint") in this action, Nationwide attempted to serve Williams at the address which Nationwide's private investigator located for Williams.

7. Attempts to serve Williams at this address were unsuccessful.

COOKSEY, TOOLEN, GAGE, DUFFY & WOOG

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8. Accordingly, Nationwide again enlisted its private investigator in order to obtain a new address for Williams, or to confirm that the address at which it attempted service upon Williams was still accurate.

9. After further investigation, Nationwide's private investigator confirmed that the address in question remained a valid address for Williams.

10. Nationwide thereafter attempted service upon Williams again at this address, but those attempts were also unsuccessful.

11. Based on the foregoing, there is good cause to allow Nationwide an extension of time through March 21, 2015 to serve Williams with the summons and amended complaint.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Executed this 26th day of January, 2015,
in the City of Las Vegas, County of Clark, Nevada.



Robert A. Riether, Esq., Affiant

SUBSCRIBED TO AND SWORN TO
BEFORE ME THIS 26th DAY OF
JANUARY, 2015


NOTARY IN AND FOR CLARK
COUNTY, NEVADA

