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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

BMO HARRIS BANK, N.A.,  
Plaintiff(s),  
vs.  
KENNETH R. ORCHARD, et al.,  
Defendant(s).

Case No. 2:15-cv-00593-JCM-NJK  
ORDER GRANTING MOTION TO  
SERVE BY PUBLICATION AND  
MOTION TO ENLARGE TIME  
FOR SERVICE  
(Docket Nos. 10, 11)

Pending before the Court is Plaintiff’s motion for leave to complete service by publication. Docket No. 10. Also pending before the Court is Plaintiff’s motion to enlarge time for service. Docket No. 11. The Court finds the motions properly resolved without oral argument. *See* Local Rule 78-2. For the reasons discussed below, the motions are hereby **GRANTED**.

**I. MOTION FOR LEAVE TO COMPLETE SERVICE BY PUBLICATION**

The pending motion seeks leave to allow service by publication on Defendants Kenneth Raymond Orchard and Cheryl Kathleen Orchard. Service by publication implicates a defendant’s fundamental due process rights. *See, e.g., Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15 (1950); *Price v. Dunn*, 787 P.2d 785, 787 (Nev. 1990). As a result, service by publication is generally disfavored. *See, e.g., Trustees of the Nev. Resort Assoc.–Int’l Alliance of Theatrical Stage Employees & Moving Picture Machine Operators v. Alumifax, Inc.*, 2013 U.S. Dist. Lexis. 106456, \*2 (D. Nev. July 29, 2013).

...

1 Federal Rule of Civil Procedure 4(e)(1) provides for service “pursuant to the law of the state in  
2 which the district court is located, or in which service is effected.” Under Nevada Rule of Civil  
3 Procedure (“NRCP”) 4, parties are required to personally serve summons and the complaint upon  
4 defendants. When personal service proves impossible, however, NRCP 4(e)(1)(i) provides that a party  
5 may file a motion for service by publication when the opposing party “resides out of the state, or has  
6 departed from the state, or cannot, after due diligence be found within the state, or by concealment seeks  
7 to avoid the service of summons.” When service of the summons is made by publication, the summons  
8 shall, in addition to any special statutory requirements, also contain a brief statement of the object of the  
9 action. N.R.C.P. 4(b).

10 A party moving for service by publication must seek leave of court by filing an affidavit  
11 demonstrating he diligently attempted to personally serve the defendant. There are several factors courts  
12 consider to evaluate a party’s due diligence, including the number of attempts made to serve the  
13 defendants at their residence and other methods of locating defendants, such as consulting public  
14 directories and family members. *See Price*, 787 P.2d at 786-87; *Abreu v. Gilmer*, 985 P.2d 746, 747  
15 (Nev. 1999); *McNair v. Rivera*, 874 P.2d 1240, 1241 (Nev. 1994).

16 Here, the Court finds that Plaintiff has diligently attempted to serve Defendants Kenneth  
17 Raymond Orchard and Cheryl Kathleen Orchard on multiple occasions at numerous addresses. *See*  
18 Docket No. 10 at 10-14. For example, Plaintiff hired a process server who attempted to serve  
19 Defendants at three residential addresses in Nevada, *Id.*, at 10-14. In total, Plaintiff attempted to serve  
20 Defendants on ten occasions. *See id.*, at 10-14. Moreover, the process server also attempted  
21 unsuccessfully to locate additional addresses for Defendants utilizing multiple databases and  
22 investigative sources. *Id.*, at 10-14. The Court will therefore permit Plaintiff to serve Defendants by  
23 publication.

## 24 **II. MOTION TO ENLARGE TIME FOR SERVICE**

25 Plaintiff also requests additional time to complete service. Docket No. 11. Pursuant to Federal  
26 Rule of Civil Procedure 4(m), “[i]f a defendant is not served within 120 days after the complaint is filed,  
27 the court . . . must dismiss the action without prejudice against that defendant or order that service be  
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1 made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend  
2 the time for service for an appropriate period.” Fed. R. Civ. P. 4(m).

3 Here, service is supposed to be completed by July 29, 2015. See Docket No. 1. Plaintiff has  
4 shown that it is actively trying to pursue this litigation and, although it needs more time, has made  
5 several attempts to serve Defendants. See Docket No. 11. Therefore, good cause exists to extend the  
6 service deadline by 45 days.

7 **III. CONCLUSION**

8 Accordingly, for the reasons discussed above,

9 IT IS SO ORDERED:

- 10 1. Plaintiff’s motion for leave to complete service by publication (Docket No. 10) is hereby  
11 **GRANTED.**
- 12 2. Plaintiff shall comply with the requirements of Nevada Rule of Civil Procedure 4 and  
13 shall:
- 14 (a) Serve Defendants Kenneth Raymond Orchard and Cheryl Kathleen Orchard by  
15 publication in a newspaper of general circulation in the State of Nevada on a  
16 weekly basis for a period of four weeks.
- 17 (b) After publication is complete, Plaintiff shall file an Affidavit of Publication from  
18 the Nevada newspaper.
- 19 3. Plaintiff’s motion to enlarge time for service (Docket No. 11) is hereby **GRANTED.**  
20 The Court hereby **EXTENDS** the time for Plaintiff to serve Defendants, pursuant to  
21 Federal Rule of Civil Procedure 4(m), by 45 days, to **September 14, 2015.**

22 DATED: June 22, 2015

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26 NANCY J. KOPPE  
27 United States Magistrate Judge  
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