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4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**
6

7 RAFIK VARTANPOUR,)

8 Plaintiff,)

9 vs.)

10 D.W. NEVEN, et al.,)

11 Defendants.)
12

Case No. 2:15-cv-00951-JAD-CWH

ORDER

13 Presently before the Court is Plaintiff Rafik Vartanpour's Motion for Leave to File
14 Supplemental Complaint (ECF No. 18), filed on February 22, 2016, and Defendants' Response
15 (ECF No. 21), filed March 9, 2016. Plaintiff also filed a document titled "Motion to Withdraw to
16 Pending Exhausting Remedies (sic)" (ECF No. 24), on March 25, 2016, which the Court construes
17 as a reply to Defendants' Response because it specifically addresses Defendants' responsive
18 argument that Plaintiff failed to exhaust his administrative remedies. Additionally, Plaintiff filed a
19 document entitled "Motion to Leave to File Supplemental Complaint" (ECF No. 30) on August 22,
20 2016, and Defendants responded with their Limited Opposition to Plaintiff's Motion for Leave to
21 File Supplemental Complaint (ECF No. 31), filed September 7, 2016.

22 Also before the Court is Plaintiff's Motion for Extended Time to Pay an Initial Partial Filing
23 Fee (ECF No. 20), filed March 4, 2016. Defendant did not respond.

24 Also before the Court is Plaintiff's Motion to Extend Time for Service (ECF No. 25), filed
25 on March 29, 2016. Defendants did not respond.

26 Also before the Court is Plaintiff's Motion for Opposition to Allegations and Statements in
27 Defendant's Answer (ECF No. 28), filed May 4, 2016, and Defendant's Motion to Strike Plaintiff's
28 Motion for Opposition to Allegations and Statements in Answer (ECF No. 29), filed May 6, 2016.

1 **A. Motions for Leave to File Supplemental Complaint**

2 In his motions to file a supplemental complaint (ECF Nos. 18, 30), Plaintiff argues that he
3 needs to add facts to supplement his existing complaint. Defendants oppose the motions because
4 the supplement would be futile for Plaintiff's failure to exhaust administrative remedies, and also
5 because Plaintiff has failed to attach a proposed amended complaint to his motions.

6 Local Rule 15-1 requires that the moving party must attach the proposed amended pleading
7 to a motion seeking leave of the court to file an amended pleading. LR 15-1. Without viewing the
8 proposed amended complaint, the Court is unable to determine whether to grant leave to amend.
9 The Court notes that in Plaintiff's second motion to supplement (ECF No. 30), Plaintiff attaches
10 Exhibit 1 titled "Plaintiff's Supplement to Complaint" (ECF No. 30-1), but it contains points and
11 authorities about whether a supplemental pleading is allowed, and is not a proposed amended
12 pleading to replace the one currently on file. (*See* Complaint (ECF No. 7).) Plaintiff is advised that
13 although the court will liberally construe his filings given that he is not represented by an attorney,
14 he nevertheless is required to follow the same rules of procedure that govern other litigants. *See*
15 *Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995). Plaintiff has failed to attach the proposed
16 pleading, and so his motions for leave to file a supplemental complaint are denied without
17 prejudice.¹

18 **B. Motion for Extended Time to Pay an Initial Partial Filing Fee**

19 Plaintiff's Motion for extended time to pay an initial partial filing fee is denied as moot
20 because the fee was paid on March 8, 2016. (*See* Receipt (ECF No. 22).)

21 **C. Plaintiff's Motion to Extend Time for Service**

22 Plaintiff requests additional time to serve Sergeant Joseph and three John Does in the
23 Mailroom. Plaintiff filed his complaint on November 6, 2015 (ECF No. 7), and therefore had 120
24 days, or until March 5, 2016, to serve those defendants, and has not yet done so. Plaintiff indicates
25 that he served all defendants with documents in the same envelope and cannot explain why service
26

27 ¹ The Court therefore takes no position at this time as to whether Plaintiff has exhausted his
28 administrative remedies.

1 was not successful.

2 Rule 4(m) establishes the time for service on domestic defendants:
3 If a defendant is not served within 120 days² after the complaint is filed, the court—
4 on motion or on its own after notice to the plaintiff—must dismiss the action
5 without prejudice against that defendant or order that service be made within a
6 specified time. But if the plaintiff shows good cause for the failure, the court must
7 extend the time for service for an appropriate period.

8 Fed. R. Civ. P. 4(m). The Court must extend the time limit of Rule 4(m) if the serving party shows
9 good cause for failure to serve within 120 days. *Lemoge v. United States*, 587 F.3d 1188, 1198 (9th
10 Cir. 2009). If the serving party does not show good cause, the Court has discretion to extend time
11 for service, or to dismiss the complaint without prejudice. *In re Sheehan*, 253 F.3d 507, 513 (9th
12 Cir. 2001). The Court’s discretion to extend time for service, or to dismiss without prejudice for
13 failure to timely serve, is broad. *Id.*

14 Courts must determine on a case-by-case basis whether the serving party has shown good
15 cause. *In re Sheehan*, 253 F.3d at 512. Generally, good cause is equated with diligence. *Townsel*
16 *v. Contra Costa Cnty., Cal.*, 820 F.2d 319, 320 (9th Cir. 1987). A showing of good cause requires
17 more than inadvertence or mistake of counsel. *Id.* “[A]t a minimum, good cause means excusable
18 neglect.” *In re Sheehan*, 253 F.3d at 512 (quotation omitted).

19 Plaintiff has not demonstrated good cause to extend time to serve defendants. Although
20 Plaintiff argues good cause exists because the information was sent in a particular envelope,
21 Plaintiff has not been diligent because he failed to move to extend time to serve defendants before
22 the 120-day deadline expired. Regardless, under Rule 4, the Court has discretion, even without
23 good cause, to extend the time for service. Given that this is Plaintiff’s first request to extend time
24 for service, the Court will grant Plaintiff until **December 12, 2016**, to serve the unserved
25 defendants. Plaintiff is advised that failure to comply with this deadline or to timely request an
26 extension of this deadline will weigh strongly against a finding of good cause in the future.

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28 ² Rule 4(m) was amended effective December 1, 2015, to reduce the presumptive time for
serving a defendant from 120 days to 90 days.

1 Plaintiff is proceeding *in forma pauperis* in this matter. When a plaintiff is authorized to
2 proceed *in forma pauperis*, the court must order that service be made on behalf of the plaintiff,
3 generally by a United States marshal or deputy marshal. Fed. R. Civ. P. 4(c)(3). It is Plaintiff's
4 obligation, however, to provide sufficient information to allow service of process. Plaintiff's
5 identity of the defendants to be served, "Sgt Joseph, and 3x John Does (Mailroom Staff)" is
6 insufficient because according to the Attorney General, these employees cannot be identified. (*See*
7 *Acceptance of Service* (ECF No. 19).) Accordingly, the Court will extend time for Plaintiff to
8 provide sufficient identification and location of the defendants to allow service of process. Plaintiff
9 has until **October 12, 2016**, to investigate the identity of these defendants and to file with the court
10 a notice containing sufficient information to allow service of process on those defendants. Upon
11 receipt of the notice, the court will provide to Plaintiff additional documentation that he will need
12 to provide to the United States Marshal to complete service by **December 12, 2016**.

13 **D. Motion for Opposition to Allegations and Statements in Defendant's Answer**

14 Plaintiff has filed a motion in opposition to Defendant's answer, and has provided a variety
15 of documents in support of his motion, arguing that the answer contains false or incorrect
16 information. The Defendants respond by motion to strike Plaintiff's opposition because it is not a
17 proper pleading.

18 Under Rule 7(a), only certain pleadings are allowed, and a reply to an answer is allowed
19 only if the court orders one. *See* Fed. R. Civ. P. 7(a)(7). To be granted leave to file a reply, the
20 moving party must make a clear and convincing showing that substantial reason or extraordinary
21 circumstances require a reply. *See e.g. Fed. Deposit Ins. Corp. v. First Nat'l Fin. Co.*, 587 F.2d
22 1009, 1012 (9th Cir. 1978)(Given the fact that an answer without a counterclaim is deemed
23 automatically denied or avoided under Fed. R. Civ. P. 8(b)(6), a party must make a clear and
24 convincing showing that a substantial reason or extraordinary circumstances compel the filing of a
25 reply.) *See also Sullivant v. Spectrum Med. Servs.*, 2012 U.S. Dist. LEXIS 17120 (D. Mont. Feb.
26 10, 2012)(same). Plaintiff provides no such justification, and the Court has not ordered such a
27 reply. Accordingly, Plaintiff's motion is denied, and Defendants' motion to strike the reply is
28 granted.

