

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

CHRISTIANA TRUST,)	Case No. 2:15-cv-02295-RFB-NJK
)	
Plaintiff(s),)	ORDER
)	
vs.)	(Docket No. 12)
)	
9796 MOUNT CUPERTINO TRUST, et al.,)	
)	
Defendant(s).)	

Pending before the Court is Plaintiff’s motion for an extension of time to serve Defendants and for leave to serve Defendants by publication. Docket No. 12. The Court finds the motion properly resolved without oral argument. *See* Local Rule 78-2. For the reasons stated below, the motion for is **GRANTED** in part and **DENIED** in part.

I. MOTION FOR EXTENSION OF TIME

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

1 Here, Plaintiff has shown good cause to warrant an extension of the Rule 4(m) deadline. The
2 Court therefore **GRANTS** Plaintiff a 120-day extension of time to effectuate service on Defendants and
3 extends the Rule 4(m) deadline to August 3, 2016.

4 **II. MOTION FOR SERVICE BY PUBLICATION**

5 Service by publication implicates a defendant’s fundamental due process rights. *See, e.g.,*
6 *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-15 (1950); *Price v. Dunn*, 787 P.2d
7 785, 787 (Nev. 1990). As a result, service by publication is generally disfavored. *See, e.g., Trustees*
8 *of the Nev. Resort Assoc.–Int’l Alliance of Theatrical Stage Employees & Moving Picture Machine*
9 *Operators v. Alumifax, Inc.*, 2013 U.S. Dist. Lexis. 106456, *2 (D. Nev. July 29, 2013).

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

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

25 In this case, Plaintiff has failed to establish the due diligence required to warrant service by
26 publication. Attached to Plaintiff’s motion are four affidavits of due diligence. Docket No. 15 at 5-13.
27 Two of those affidavits, however, are duplicates. *See id.* Therefore, Plaintiff only offers evidence
28

1 indicating that it attempted service on Defendants twice. Further, Plaintiff fails to detail the methods
2 that it used in attempting to locate Defendants.

3 **III. CONCLUSION**

4 Accordingly, the Court hereby **GRANTS** Plaintiff's motion for extension of the 4(m) deadline.
5 The deadline to effectuate service on Defendants is extended to August 3, 2016. Plaintiff's motion for
6 service by publication is **DENIED**.

7 IT IS SO ORDERED.

8 DATED: March 9, 2016

9
10 
11 _____
12 NANCY J. KOPPE
13 United States Magistrate Judge
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28