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 7  
 8 **UNITED STATES DISTRICT COURT**  
 9 **DISTRICT OF NEVADA**  
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11 )  
 12 LHF PRODUCTIONS, INC., a Nevada ) Case No.: 2:16-cv-02028-APG-CWH  
 Corporation, )  
 13 )  
 )  
 14 Plaintiff, )  
 vs. )  
 15 )  
 MARIA GONZALEZ, an individual; )  
 16 BRIAN KABALA, an individual; JOHN )  
 KOEHLY, an individual; DANIEL )  
 17 O'CONNELL, an individual; DONALD )  
 PLAIN, an individual; ANTE SODA, an )  
 18 individual; MATTHEW STEWART, an )  
 individual; and JOHN AND JANE DOES, )  
 19 1-10 )  
 )  
 20 Defendants )  
 )  
 21 )

HAMRICK & EVANS LLP

22 **PLAINTIFF'S MOTION FOR EXTENSION OF TIME TO SERVE THE**  
 23 **REMAINING UN-SERVED DEFENDANTS**

24 **COMES NOW**, Plaintiff LHF PRODUCTIONS, INC. ("PLAINTIFF"), by and  
 25 through its counsel, Charles Rainey, Esq. of HAMRICK & EVANS LLP, and hereby  
 26 moves this court for an extension of time to serve those Defendants herein that  
 27 have yet to be served. This motion is based upon the memorandum of points and  
 28

1 authorities attached hereto, the pleadings and papers on file, and any arguments  
2 to be had at any hearing of this matter, if the court so requires any hearing.

3 *Respectfully submitted March 19, 2017.*

4 HAMRICK & EVANS LLP

5  
6 /s/ Charles C. Rainey  
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HAMRICK & EVANS LLP



1           **II. FACTUAL BACKGROUND**

2           Plaintiff filed the present action on August 26, 2016. At that time, Plaintiff  
3 only knew the Defendants by their IP Addresses. Accordingly, on the same day the  
4 Plaintiff filed its Complaint, Plaintiff immediately moved *ex parte* to open  
5 discovery for the limited purpose of identifying each of the Defendants by their true  
6 names. The Court granted the Plaintiff's *ex parte* motion on August 30, 2016.  
7 Then, pursuant to this Court's order, Plaintiff immediately, within 24 hours of  
8 receiving the Court's order, served a subpoena upon the Defendants' Internet  
9 Service Provider, seeking the names and addresses of the individual Internet  
10 subscribers responsible for the subject IP Addresses.

11           On September 21, 2016, the Defendants' ISP provided Plaintiff's counsel  
12 with the names and addresses of the individual subscribers for each account  
13 associated with the Defendant IP Addresses. Plaintiff promptly dispatched a  
14 demand letter to each and every individual Internet subscriber, affording each the  
15 opportunity to settle the present case prior to being individually named as  
16 Defendants in an amended complaint. In the original demand letter, the Plaintiff  
17 included a copy of the filed complaint and expressly imposed upon each Defendant  
18 a responsive deadline of two weeks. For those Defendants who failed to timely  
19 respond to the first demand letter, the Plaintiff issued a second demand letter,  
20 again affording each Defendant an additional two weeks to respond.

21           On November 22, 2016, only after several Defendants had ignored the  
22 multiple demands and others had outright refused to make any attempt at a  
23 settlement, the Plaintiff amended the complaint on file to identify each Defendant  
24 by name. Within one week after filing the amended complaint, the Plaintiff issued  
25 yet another round of letters to the Defendants, this time including a copy of the  
26 amended complaint. The Plaintiff also promptly ordered its process server,  
27 AM:PM Legal Solutions, to effectuate personal service upon each of the named  
28 defendants.

1 In the ensuing weeks, the Plaintiff engaged in further negotiations with  
2 certain Defendants, in some cases settling its claims with such Defendants and  
3 dismissing those Defendants from the action. In other instances, the Plaintiff  
4 elected to dismiss Defendants it determined to be no longer residing at the subject  
5 residence or who were otherwise not servable.

6 As of the date of the present motion, each of the remaining un-served  
7 Defendants has received multiple notices of the present action, should be fully  
8 aware of the present action, and is likely evading service.

### 9 III. ARGUMENT

10 Plaintiff should be afforded additional time to serve the Defendants in the  
11 present case, because good cause exists to extend the service deadline. Each of the  
12 remaining un-served Defendants is aware of the present action. Meanwhile, there  
13 is no risk that extending the deadline would prejudice any of the Defendants.  
14 Furthermore, any dismissal of the un-served defendants would unduly prejudice  
15 the Plaintiff.

16 Rule 4 of the Federal Rules of Civil Procedure governs service of process in a  
17 civil action. See generally, Fed. R. Civ. P. 4. Subpart (m) of the rule sets forth the  
18 time period during which service must occur. *Id.* The relevant portion states the  
19 following:

20 **Time Limit for Service.** If a defendant is not served within 90 days  
21 after the complaint is filed, the court—on motion or on its own after  
22 notice to the plaintiff—must dismiss the action without prejudice  
against that defendant or order that service be made within a  
specified time. But if the plaintiff shows good cause for the failure, the  
court must extend the time for service for an appropriate period.

23 Fed. R. Civ. P. 4(m). (Emphasis added.)

24 Rule 4(m) requires a two-step analysis in deciding whether to extend the  
25 time for service of the summons and complaint. *In re Sheehan*, 235 F.3d 507, 512  
26 (9th Cir. 2001). First, upon a showing of good cause, the court must extend the time  
27 period. *Id.* Second, if there is no good cause, the court has the discretion to dismiss  
28 without prejudice or to extend the time period. *Id.* "[A]t a minimum, 'good cause'

1 means excusable neglect." *Boudette v. Barnette*, 923 F.2d 754, 756 (9th Cir. 1991).  
2 *In Boudette*, the Ninth Circuit stated a plaintiff may be required to show the  
3 following factors in order to bring the excuse to the level of good cause: "(a) the  
4 party to be served received actual notice of the lawsuit; (b) the defendant would  
5 suffer no prejudice; and (c) plaintiff would be severely prejudiced if his complaint  
6 were dismissed." *Id.* (citing *Hart v. United States*, 817 F.2d 78, 80-81 (9th Cir.  
7 1987)). The Ninth Circuit has not articulated specific factors for a district court to  
8 apply when exercising its discretion in the absence of a showing of good cause. *In*  
9 *re Sheehan*, 253 F. 3d at 512. However, the court's discretion is broad. *Id.*

10 The facts of the present case satisfy each element for a finding of good cause  
11 to extend the service deadline. First, each of the un-served Defendants has  
12 received multiple notices of the pending action. Prior to the case even being filed,  
13 each Defendant would have received an email warning from its ISP, notifying each  
14 Defendant of the copyright infringement occurring over their respective Internet  
15 connections. Then, shortly after the filing of the present action, upon submission of  
16 the Plaintiff's subpoena to the Defendant's ISP, each Defendant would have  
17 received from its respective ISP a written notice of the pending subpoena. Then,  
18 immediately after the Plaintiff's receipt of the subpoena response, the Plaintiff  
19 served a demand letter upon each of the Defendants. When first demand letter  
20 was ignored, the Defendant served a second demand letter upon each of the  
21 Defendants. Subsequently, after the present case was amended to identify each of  
22 the Defendants by name, the Plaintiff sent yet another letter to each of the  
23 Defendants, this time providing each with a copy of the amended complaint.

24 After affording each Defendant ample opportunity to resolve the pending  
25 dispute, the Plaintiff ordered its process server, AM:PM Legal Solutions, to  
26 effectuate personal service upon each of the Defendants. While Plaintiff's process  
27 server successfully effectuated service on some Defendants in the present case, it  
28 was not able to effectuate service on all Defendants. For those Defendants the

1 Process Server was unable to serve, the Plaintiff assessed whether the individual  
2 Defendant was still residing at the subject residence. In cases where the Plaintiff's  
3 counsel had reason to believe the Defendant had moved away from the service  
4 address, the Plaintiff dismissed the Defendant from the present action. This  
5 created a circumstance where the only un-served Defendants were those  
6 individuals residing at the same address where they would have received at least  
7 four (4) notices of the pending litigation, along with multiple other warnings of  
8 copyright infringement occurring at their address.

9 Secondly, extending the deadline for service poses no risk of prejudice upon  
10 the Defendants. In fact, the lengthy notice process that caused the Plaintiff to run  
11 up against the service deadline is designed to alleviate any prejudice to the  
12 Defendants and afford each of them ample opportunity to either (i) settle the  
13 pending claims without litigation; or (ii) identify and retain counsel to reasonably  
14 dispute the pending claims.

15 Finally, if the Court were to dismiss the present action, forcing the Plaintiff  
16 to re-file its case, the Plaintiff would suffer undue prejudice. Internet piracy  
17 cases, such as the one at hand, are administratively burdensome to begin with.  
18 Meanwhile, the data we rely upon in proving these cases is often maintained for a  
19 finite period of time. In many ways, these cases are a race against the clock.  
20 Each day that passes, gives the infringer more opportunity to cover its digital  
21 tracks. In light of the foregoing, if the Court were to dismiss the un-served  
22 Defendants from the present action "without prejudice," it is unlikely the Plaintiff  
23 would find it feasible to re-file its case against those Defendants. Consequently,  
24 even if a Defendant is dismissed "without prejudice," the practical effect is the  
25 Plaintiff loses the ability to pursue its claim any further.

26 Meanwhile, our District is confronted with a crisis of copyright infringement.  
27 Nevada is ranked among the worst offenders for Internet piracy.<sup>1</sup> Every day,

28 <sup>1</sup> See <http://www.movoto.com/blog/novelty-real-estate/torrenting-us-state/> (notes Nevada is among the worst states for bitorrent usage, with particular emphasis on the peer-to-peer downloads of movies).

1 thousands of copyright infringements occur over our State's Internet connections.  
2 The practice has become so commonplace that we have developed a culture of theft  
3 – a culture where pirating downloads of copyrighted material is widely accepted.  
4 This culture of piracy threatens some of the core principals of our Nation's  
5 founding and success. Indeed, our founding fathers held the protection of  
6 copyrights to be so important that they specifically wrote it into our Constitution.  
7 See U.S. Const., Art 1, §8(8). Meanwhile, many economists and other scholars  
8 correlate the growth and strength of our Nation's economy in the past century to  
9 our strong system of intellectual property rights.<sup>2</sup> These cases are essential to  
10 preserving the rights of copyright-holders and reversing the unsettling trend of  
11 widespread Internet piracy.

12 **IV. CONCLUSION**

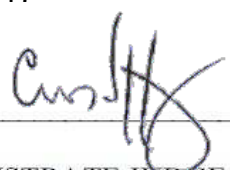
13 For the foregoing reasons, the Plaintiff respectfully requests that the Court  
14 extend the deadline to serve the remaining un-served Defendants herein by an  
15 additional ninety (90) days.

16 Respectfully submitted this March 19, 2017.

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26 *Attorney for Plaintiff*

21 IT IS SO ORDERED.

22 DATED: March 27, 2017



24 C.W. HOFFMAN, JR.  
25 UNITED STATES MAGISTRATE JUDGE

28 <sup>2</sup> See e.g., Walter G. Park, et al., "Intellectual Property Rights and Economic Growth," Contemporary Economic Policy, Vol. 15, Issue 3, pp. 51-61 (1997).