

1 **UNITED STATES DISTRICT COURT**
2 **DISTRICT OF NEVADA**

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4
5 DANJON CAPITAL, INC.,

6 Plaintiffs,

7 vs.

8 HONEY BEAR ENTERPRISES INC., et al.,

9 Defendants.

2:16-cv-02624-RFB-VCF

**ORDER GRANTING SERVICE BY
PUBLICATION (ECF NO. 12)**

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11 Before the court is Plaintiff's Motion to Serve Summons and Complaint on Defendant Sean
12 McLean via Publication (ECF No. 12).

13 Plaintiff asks this court to permit service of the Summons and Complaint against McLean by
14 publication. Id. No opposition has been filed.

15 **Service By Publication**

16 Pursuant to Fed. R. Civ. P. 4(e)(1), "an individual – other than a minor, an incompetent person, or
17 a person whose waiver had been filed – may be served in a judicial district of the United States by
18 following state law for serving a summons in an action brought in courts of general jurisdiction in the state
19 where the district court is located or where service is made." Under Rule 4(e)(1) of the Nevada Rules of
20 Civil Procedure, "when the person on whom service is to be made resides out of the state, or has departed
21 from the state, or cannot, after due diligence, be found within the state, or by concealment seeks to avoid
22 the service of summons, and the fact shall appear, by affidavit, to the satisfaction of the court or judge
23 thereof, and it shall appear, either by affidavit or by a verified complaint on file, that a cause of action
24 exists against the defendant in respect to whom the service is to be made, and that the defendant is a
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1 necessary or proper party to the action, such court or judge may grant an order that the service be made
2 by the publication of summons.”

3 Plaintiff asserts that after diligent effort, it is unable to serve McLean within the state of North
4 Carolina. (ECF No. 12 at 2). In support of this assertion, Plaintiff provided the court with an affidavit of
5 attempted services at Lean’s address at 321 Oxfordshire Lane, Chapel Hill, NC 27517. Id. at 9.

6 The court finds that pursuant to Fed. R. Civ. P. 4(e)(1) and Nev. R. Civ. P. 4(e)(1), permitting
7 service by publication of the Summons and Complaint on McLean is warranted. Pursuant to Rule
8 4(e)(1)(iii), the publication must be made in a newspaper, published in the State of North Carolina, for a
9 period of 4 weeks, and at least once a week during said time. Nev. R. Civ. P. 4(e)(1)(iii).

10 **Extension For Service**

11 Fed. R. Civ. P. 4(m) requires a defendant to be served within 90 days after the complaint is filed.
12 If “the plaintiff shows good cause for the failure [to serve a defendant within that time-frame], the court
13 must extend the time for service for an appropriate period.” Fed. R. Civ. P. 4(m).

14 The Complaint was filed on September 19, 2016. (ECF No. 1). The last date to effectuate service
15 on McLean was December 18, 2016. Fed. R. Civ. P. 4(m). Given that Plaintiff has demonstrated “good
16 cause” for its failure to effectuate service and has provided sufficient support that warrants an extension
17 to serve McLean, the court will extend the 4(m) deadline until March 24, 2017. See Fed. R. Civ. P. 4(m).

18 Accordingly, and for good cause shown,

19 IT IS HEREBY ORDERED that Plaintiff’s Motion to Serve Summons and Complaint on
20 Defendant Sean McLean via Publication (ECF No. 12) is GRANTED.

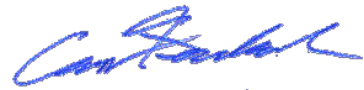
21 IT IS FURTHER ORDERED that Plaintiff is permitted to serve McLean by publication. A copy
22 of the Summons and Complaint must be mailed to McLean at his last known address by certified U.S.
23 Mail, return receipt requested.

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1 IT IS FURTHER ORDERED that, pursuant to Fed. R. Civ. P. 4(e)(1) and Nev. R. Civ. P. 4(e)(1)(i)
2 and (iii), the Summons in this action must be served by publication in a newspaper, published in the states
3 of North Carolina, for a period of four weeks and at least once a week during that time.

4 IT IS FURTHER ORDERED that the deadline to effect service of process is extended up to and
5 including March 24, 2017.

6 DATED this 7th day of February, 2017.

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CAM FERENBACH
10 UNITED STATES MAGISTRATE JUDGE
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