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8 *Attorneys for the United States*

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10 **UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

11  
12 United States of America,

13 Plaintiff,

14 vs.

15 PCPLV LLC d/b/a Pinnacle Compounding  
16 Pharmacy, Ofir Ventura, Cecelia Ventura,  
17 Brandon Jimenez, Robert Gomez, Gomez &  
18 Associates, Inc., Rock'n Rob Enterprises,  
Amir Shalev, D.P.M., AS Enterprises, Inc.,  
and Ivan Lee Goldsmith, M.D.,

19 Defendants.

Case No. 2:21-cv-00184-JCM-DJA

**United States' *Ex Parte* Fourth Motion to  
Extend the Service Deadline**

20  
21 Pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, the United States  
22 moves the Court for a fourth order extending the United States' deadline to serve the  
23 defendants in this matter. To allow for continued settlement discussions, the United States  
24 requests an additional 90-day extension of the service deadline in this matter. The Court  
25 previously provided an initial 60-day extension of the United States' service deadline and  
26 extended the service deadline from May 3, 2021 to July 2, 2021. Subsequently, the Court  
27 also provided a second 90-day extension of the United States' service deadline and extended  
28 the deadline from July 2, 2021 to September 30, 2021. In light of continued settlement

1 discussions, the Court provided a third 90-day extension of the United States' service  
2 deadline and extended the deadline from September 30, 2021 to December 29, 2021.

3 The Court has broad discretion to provide the brief extension requested, and the  
4 United States respectfully requests this Court grant its Fourth Motion to Extend the Service  
5 Deadline in this matter.

6 Respectfully submitted this 20th day of December, 2021.

7 CHRISTOPHER CHIOU  
8 Acting United States Attorney

9 /s/ Allison C. Reppond  
10 Allison C. Reppond  
11 Assistant United States Attorney  
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## Memorandum of Points and Authorities

### I. Introduction

Pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, the United States moves the Court for an order extending the United States' deadline to serve the defendants in this matter. The United States' service was initially extended by the Court from May 3, 2021 to July 2, 2021 on a showing of good cause. ECF 3, Ex Parte Order Granting United States' Ex Parte Motion to Extend the Service Deadline Under Rule 4(m) of the Federal Rules of Civil Procedure. The Court provided a second extension of the United States' service deadline from July 2, 2021 to September 30, 2021 on a showing of good cause. ECF 5, Ex Parte Order Granting United States' Ex Parte Second Motion to Extend the Service Deadline Under Rule 4(m) of the Federal Rules of Civil Procedure. The Court also provided a third extension of the United States' service deadline, from September 30, 2021 to December 29, 2021 on a showing of good cause. ECF 7, Ex Parte Order Granting United States' Ex Parte Third Motion to Extend the Service Deadline Under Rule 4(m) of the Federal Rules of Civil Procedure. The United States now requests one additional 90-day extension of the deadline to serve defendants. There is good cause for the requested extension.

Since the Court granted the prior extensions of the service deadline, the United States remained actively engaged in discussions with the defendants to determine if this matter may be resolved without the burden and expense of protracted litigation. For example, the United States has conducted multiple meetings with the defendants, exchanged documents and information, engaged in substantive discussions regarding the claims at issue in this matter and the potential for settlement, and discussed settlement strategy internally, including with the impacted agencies, based on information exchanged in various meetings and conversations between the parties. Those negotiations are still ongoing and productive. As noted in the United States' first Motion to Extend the service deadline in this matter, all defendants have notice of the claims at issue and received an

1 informal copy of the Complaint, ECF 1. The parties<sup>1</sup> have not opposed a fourth extension  
2 of the service deadline, as it will further facilitate settlement discussion that will potentially  
3 save the parties much time and expense.

4 Thus, there is good cause to extend the service deadline in this matter for 90 days,  
5 from December 29, 2021 to March 29, 2022, to allow settlement discussions to continue  
6 without disruption. Further, even if the Court finds good cause for an extension is lacking,  
7 the Court should exercise its broad discretion to provide the brief extension requested. The  
8 United States respectfully requests this Court grant its Fourth Motion to Extend the Service  
9 Deadline in this matter.

## 10 II. Statement of Facts and Procedural History

11 This case arises from an illegal kickback scheme in which a compounding pharmacy  
12 (owned and operated by defendant PCPLV LLC d/b/a Pinnacle Compounding Pharmacy  
13 and its principals, defendants Ofir Ventura, Cecelia Ventura, and Brandon Jimenez) paid  
14 illegal kickbacks to third-party marketers (including defendants Robert Gomez and his  
15 businesses, Gomez & Associates, Inc., and Rock'n Rob Enterprises) and physicians  
16 (including defendants Ivan Lee Goldsmith, M.D., Amir Shalev, D.P.M., and Shalev's  
17 business, AS Enterprises, Inc.) in exchange for referral of large volumes of prescriptions to  
18 government healthcare beneficiaries for unnecessary and expensive compounded  
19 medications. *See generally* ECF 1, United States' Complaint. Two government healthcare  
20 programs, TRICARE and CHAMPVA, and their beneficiaries were targets of this scheme.  
21 *Id.*

22 Pinnacle billed TRICARE and CHAMPVA millions of dollars for compounded  
23 prescription medications by Pinnacle. ECF 1 at ¶¶ 88–93. TRICARE and CHAMPVA,  
24 believing the prescription claims to be legitimate, based in a proper physician-patient  
25 relationship, medically necessary for their beneficiaries, and not based in an illegal  
26 kickback scheme, paid the claims submitted by Pinnacle. *Id.* The United States filed suit on

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27 <sup>1</sup> The United States has been unable to engage in any substantive discussions on this issue with defendant Robert  
28 Gomez, as Mr. Gomez has made no plans to proceed with counsel. The United States has encouraged Mr. Gomez to  
seek counsel and has also informally provided Mr. Gomez with a copy of the Complaint.

1 February 2, 2021 on behalf of TRICARE and CHAMPVA. The United States now seeks  
2 recovery of damages incurred through payment of these false and fraudulent claims. *See*  
3 *generally* ECF 1.

4 Prior to filing suit, the United States contacted counsel for the defendants and  
5 informed them while the United States would be filing suit to preserve the United States'  
6 claims under the applicable statute of limitations, the United States also invited the  
7 defendants to engage in early discussions toward a resolution of this matter. Those  
8 discussions have since commenced and have been productive.

9 To promote continued settlement discussions, the United States filed its first Motion  
10 to Extend the service deadline in this matter on April 23, 2021, seeking an extension of the  
11 United States' service deadline under Federal Rule of Civil Procedure 4(m). *See generally*  
12 ECF 2, United States' Ex Parte Motion to Extend the Service Deadline Under Rule 4(m) of  
13 the Federal Rules of Civil Procedure. Under Rule 4(m), the United States' initial deadline  
14 to serve the defendants was May 3, 2021. The Court granted a 60-day extension of the  
15 service deadline, extending the deadline for service to July 2, 2021. ECF 3. Those  
16 settlement discussions remained productive, so the United States sought a second, 90-day  
17 extension of the service deadline, which the Court granted, extending the deadline for  
18 service to September 30, 2021. ECF 5. After settlement discussions remained productive,  
19 the United States sought a second, 90-day extension of the service deadline, which the  
20 Court granted, extending the deadline for service to September 30, 2021. ECF 5. Those  
21 settlement discussions continued to be productive, leading the United States to obtain a  
22 third extension of the service deadline to December 29, 2021. ECF 7.

23 While the parties remain engaged in discussions focused on a resolution of this  
24 matter, the United States expects those discussions will not conclude before the current  
25 December 29 service deadline. The United States has met with the various defendants,  
26 exchanged documents and information, and discussed settlement via e-mail and phone  
27 conversations. These discussions continue to present day and continue to be productive.  
28 Though the United States expects all defendants can be served by December 29, 2021, the

1 United States asks for additional time to complete service in order to facilitate continued  
2 settlement discussions with the various defendants.

### 3 III. Points and Authorities

#### 4 A. Good Cause Exists to Support a 90-Day Extension of the United States' 5 Service Deadline in This Matter.

6 Generally, a plaintiff must serve defendants with summons within 90 days of the  
7 filing of the Complaint. Fed. R. Civ. P. 4(m). Rule 6(b) of the Federal Rules of Civil  
8 Procedure allows a party to seek an extension of any applicable deadline via motion and  
9 upon a showing of good cause for the extension. Thus, if the plaintiff shows good cause for  
10 an extension of the service deadline, “the court *must* extend the time for service for an  
11 appropriate period.” Fed. R. Civ. P. 4(m) (emphasis added). After the plaintiff establishes  
12 good cause, the court has no discretion to deny an extension of the service deadline. *Id.*;  
13 *Efaw v. Williams*, 473 F.3d 1038, 1040 (9th Cir. 2007). Plaintiffs in need of an extension of  
14 the service deadline are encouraged to seek relief from the court before the service deadline  
15 has expired where possible. *See* Fed. R. Civ. P. 6(b); *see also Mendez v. Elliot*, 45 F.3d 75, 79  
16 (4th Cir. 1995).

17 “In the ordinary course, a litigant who seeks an extension of time must show good  
18 cause for the desired extension.” *Rivera-Almodovar v. Instituto Socioeconomico Comunitario, ;*  
19 *Inc.*, 730 F.3d 23, 27 (1st Cir. 2013). “If good cause is present, the district court must extend  
20 time for service and the inquiry is ended.” *Petrucelli v. Bohringer & Ratzinger*, 46 F.3d 1298,  
21 1305 (3rd Cir. 1995). The meaning of good cause in this context does not include mistakes  
22 of counsel or a desire to amend the complaint in a particular action. *Fimbres v. United States*,  
23 833 F.2d 138, 139 (9th Cir. 1987).

24 The analysis of whether good cause supports extension of the service deadline is an  
25 equitable one that focuses on the totality of the circumstances. *See Pioneer Inv. Servs. Co. v.*  
26 *Brunswick Assocs. Ltd. P’ship*, 507 U.S. 380, 395 (1993). A court’s response to requests to  
27 extend service “should be consistent with the trend towards flexibility under [Federal] Rule  
28 4(m)” *See United States v. 2,164 Watches, More or Less Bearing a Registered Trademark of Guess?*,

1 *Inc.*, 366 F.3d 767, 772 (9th Cir. 2004) . Courts commonly consider three factors in  
2 determining whether good cause exists, including (1) the reasonableness of plaintiff's efforts  
3 to serve, (2) prejudice to the defendant by lack of timely service, and (3) whether plaintiff  
4 moved for an enlargement of time to serve. *See MCI Telecomm. Corp. v. Teleconcepts, Inc.*, 71  
5 F.3d 1086, 1097 (3rd Cir. 1995) (citing *United States v. Nuttall*, 122 F.R.D. 163, 166–67 (D.  
6 Del. 1988)). “A plaintiff may also be required to show the following: (a) the party to be  
7 served personally received actual notice of the lawsuit; (b) the defendant would suffer no  
8 prejudice; and (c) plaintiff would be severely prejudiced if his complaint were dismissed.”  
9 *Boudette*, 923 F.2d at 756. Ultimately, “when a plaintiff has offered an explanation for  
10 noncompliance with the rule which could support a finding of “good cause,” the absence of  
11 prejudice to the defendant is a factor that ought to be considered in assessing whether the  
12 explanation offered justifies relief.” *Floyd v. United States*, 900 F.2d 1045, 1049 (7th Cir.  
13 1990).

14 The United States seeks a fourth extension of the service deadline for the sake of  
15 ongoing discussions focused on resolving this matter, not as a result of any neglect or  
16 mistake. The United States has elected not to serve the defendants to date in hopes of  
17 resolving most or all of the claims at issue and bringing an early end to this litigation. To  
18 that end, the United States has held several meetings with the defendants, exchanged  
19 documents and information with them, maintained continuous communication via e-mail  
20 and phone with the defendants, and engaged in internal discussions focused on settlement  
21 strategy based on information exchanged in various meetings and conversations between  
22 the parties. Once service has occurred in this matter, a variety of deadlines fall into place,  
23 including answer deadlines and various early motion deadlines. This will increase expense  
24 to all parties and potentially disrupt early settlement efforts.

25 Further, the defendants have received notice of this lawsuit, were well aware of the  
26 nature of the claims prior to filing, and will not be prejudiced by an additional extension of  
27 the service deadline. To the contrary, all parties agree they will benefit from an extension of  
28 the service deadline to allow for continued early settlement discussions. As there is good

1 cause to extend the service deadline, the Court should grant the United States' Fourth  
2 Motion to Extend and provide a brief, 90-day extension of the service deadline in this  
3 matter.

4 **B. Even Assuming *Arguendo* the Court Finds a Lack of Good Cause, the**  
5 **Court Should Exercise Its Discretion to Provide a Permissive Sixty-Day**  
6 **Extension of the United States' Service Deadline.**

7 Even in the event the Court finds a lack of good cause to support a brief extension of  
8 the United States' service deadline, the Court still has broad discretion to provide an  
9 extension of the service deadline. *See 2,164 Watches*, 366 F.3d at 772 (“We have previously  
10 held that district courts have broad discretion under [Federal] Rule 4(m) to extend time for  
11 service even without a showing of good cause.”). This principle reflects the idea that  
12 “service of process is more flexible than it once was.” *Id.* (internal quotation marks and  
13 citation omitted). A court’s response to a plaintiff’s request for additional time to serve the  
14 defendants should reflect this flexibility. *See id.* If the plaintiff establishes “excusable  
15 neglect” on the part of the plaintiff, the court should provide a permissive extension of the  
16 service deadline. *Hoffman v. Red Wing Brands of Am., Inc.*, No. 3:13–CV–00633–LRH–VPC,  
2014 WL 4636349, at \*4 (D. Nev. Sept. 16, 2014).

17 The court may consider four factors in determining whether a permissive extension  
18 of the service deadline is appropriate: “(1) the danger of prejudice to the opposing party; (2)  
19 the length of the delay and its potential impact on judicial proceedings; (3) the reason for  
20 the delay; and (4) whether the movant acted in good faith.” *Harco Nat’l Ins. Co. v. Ackerman*,  
21 No. 2:20-cv-01208-RFB-BNW, 2020 WL 6785934, at \*2 (D. Nev. Nov. 17, 2020). In  
22 determining whether an extension of the service deadline is appropriate, the district court  
23 should particularly consider the prejudice that will result to the parties to the action if an  
24 extension is (or is not) provided. *See 2,164 Watches*, 366 F.3d at 772. A lack of prejudice to  
25 the defendants may “tip the scale” in favor of an extension of the service deadline. *See MCI*  
26 *Telecomm. Corp.*, 71 F.3d at 1097.

27 The defendants will not suffer prejudice by an additional brief extension of the  
28 service deadline. Rather, all parties agree they will benefit from the extension, as they can



1 continue efforts for an early resolution of this matter and avoid unnecessary additional  
2 expense. The United States, on the other hand, would be prejudiced by a denial of this brief  
3 extension, including incurring the expense associated with serving the various defendants  
4 and potential disruption of ongoing settlement discussions. Further, a portion of the United  
5 States' claims would be barred if this matter is dismissed, despite the United States' efforts  
6 to resolve the claims at issue without unduly burdening the Court. The United States brings  
7 this Fourth Motion to Extend in good faith and for a justifiable reason, as the purpose of  
8 this Motion is to promote resolution of this matter without prolonged litigation. Finally,  
9 the United States only seeks a 90-day extension of the upcoming service deadline, which  
10 will not result in undue delay to the parties or the Court. The United States respectfully  
11 asks the Court to grant its Motion to Extend and provide an additional 90-day extension of  
12 the service deadline.

#### 13 **IV. Conclusion**

14 Based on the above, this Court should grant the United States' *Ex Parte* Motion to  
15 Extend the Service Deadline, provide a 90-day extension of the United States' service  
16 deadline, and require service to be completed by Tuesday, March 29, 2022, and grant any  
17 such further relief to which the United States' may be entitled.

18 Respectfully submitted this 20th day of December , 2021.

19  
20 CHRISTOPHER CHIOU  
Acting United States Attorney

21  
22 /s/ Allison C. Reppond  
Allison C. Reppond  
23 Assistant United States Attorney  
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**Certificate of Service**

I hereby certify that on December 20, 2021, I electronically filed the foregoing **United States' Ex Parte Fourth Motion to Extend the Service Deadline** with the Clerk of the Court for the United States District Court for the District of Nevada using the CM/ECF system

Dated this 20th day of December, 2021.

/s/ Allison C. Reppond  
Allison C. Reppond  
Assistant United States Attorney  
United States Attorney's Office

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9 *Attorneys for the United States*

10 **UNITED STATES DISTRICT COURT**  
11 **DISTRICT OF NEVADA**

12 United Sates of America,

13 Plaintiff,

14 vs.

15  
16 PCPLV LLC d/b/a Pinnacle Compounding  
Pharmacy, Ofir Ventura, Cecelia Ventura,  
17 Brandon Jimenez, Robert Gomez, Gomez &  
Associates, Inc., Rock’n Rob Enterprises,  
18 Amir Shalev, D.P.M., AS Enterprises, Inc.,  
and Ivan Lee Goldsmith, M.D.,  
19

20 Defendants.  
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Case No. 2:21-cv-00184-JCM-DJA

**United States’ *Ex Parte* Fourth Motion to  
Extend the Service Deadline**

22 The Court having considered the United States’ *Ex Parte* Fourth Motion to Extend  
23 the service deadline, and good cause having been shown, it is ORDERED that:

24 (1) The motion is GRANTED; and

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1 (2) The United States has up to and including March 29, 2022, to serve the  
2 defendants named in the Original Complaint [ECF 1].  
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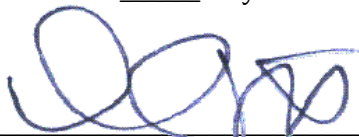
4 Respectfully submitted this 20th day of December, 2021  
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6 CHRISTOPHER CHIOU  
7 United States Attorney

8 *s/ Allison Reppond*  
9 \_\_\_\_\_  
Allison Reppond  
Assistant United States Attorney  
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13 IT IS SO ORDERED:

14 DATED this 21<sup>st</sup> day of December, 2021.

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17 UNITED STATES MAGISTRATE JUDGE  
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