

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Sep 19, 2017

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JENNIFER L. ADSIT, on behalf of
herself and all others similarly
situated,

Plaintiff,

v.

DUNDRUM, LLC, and LAW
OFFICES OF JAMES R. VAUGHAN,
P.C.,

Defendants.

No. 2:17-CV-00110-SMJ

**ORDER DENYING
DEFENDANTS' MOTION TO
RECONSIDER**

Before the Court, without oral argument, is Defendants Dundrum, LLC and Law Offices of James R. Vaughan, P.C.'s Motion to Reconsider Order Granting Plaintiff's Motion to Extend the Deadline for Service, ECF No. 10.

On August 30, 2017, Plaintiff Jennifer Adsit filed a motion to extend time for service of process, ECF No. 5. After reviewing the motion and the file, the Court granted the motion on September 8, 2017. Later that same day, Defendants filed a motion to dismiss under Rules 4(m) and 12(b)(5), ECF No. 7, and a Motion to Continue hearing on Plaintiff's motion to extend time for service, ECF No. 8. On

1 September 15, Defendants filed this motion for reconsideration of Plaintiff's motion
2 to extend time for service.

3 Defendants assert that Plaintiff violated Rule 5 and LR 5.1(b) by failing to
4 serve Defendants with the motion to extend time for service and filing the motion
5 without a certificate of service. Local Rule 5.1 requires the moving party to attach
6 to each document proof of service on opposing counsel or parties. Parties may
7 utilize the court's electronic transmission facilities to make service of written
8 motions. Fed. R. Civ. P. Federal 5(b)(2)(d),(3). General Order No. 100-04-1 sets
9 out the rules governing the electronic transmission facilities in this Court.
10 Specifically, Section VII provides that notice of service on a registered participant
11 in the ECF filing system shall constitute service under Fed. R. Civ. P. 5(b)(2)(d).
12 The proof-of-service affidavit must state that service was accomplished through the
13 Notice of Electronic Filing for parties and counsel who are filing users or indicate
14 how service was accomplished on any party or counsel who is not an electronic
15 filing user. *Id.*

16 Here, it appears Defendants did not receive notice of Plaintiff's motion to
17 continue the deadline for service, ECF No. 5. Defendants were served with the
18 summons and complaint on August 25, 2017. However, court records indicate that
19 Defense Counsel Adil Siddiki did not file a notice of appearance until he filed the
20 motion to dismiss on September 8, 2017, ECF No. 7. The fact that Defendants did

1 not yet have an attorney of record when Plaintiff filed her motion to extend time for
2 service appears to be the cause of the failure to give notice. The Court does not infer
3 bad faith or malicious intent on the part of the Plaintiff, but advises Plaintiff to
4 ensure service and include an affidavit of service in future filings pursuant to Rule
5 5.1.

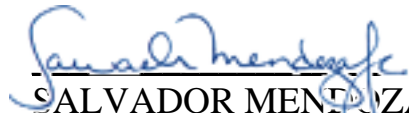
6 Defendants argue that the Court's order granting Plaintiff's motion is
7 "fundamentally unfair" and "inconsistent with due process of law" because they
8 were deprived of the opportunity to meaningfully respond. ECF No. 10 at 5. The
9 Court acknowledges Defendants' interest in responding to a motion that, if denied,
10 could dictate the outcome of the case. However, the Court is not aware of, and
11 counsel has not cited, any law mandating a defendant's right to respond to a
12 plaintiff's motion to extend time of service. The inquiry as set out in the Federal
13 Rules concerns whether the court can conclude that the plaintiff has made the
14 appropriate showing of good cause or excusable neglect. This inquiry does not
15 require a response from defendants. Nonetheless, Defendants have responded by
16 filing the present Motion for Reconsideration. The Court finds that Defendants were
17 not prejudiced by the Court granting Plaintiff's motion to extend time of service
18 without a response from Defendants. The Court further finds no basis to reconsider
19 its decision to extend the time for service.

1 Accordingly, **IT IS HEREBY ORDERED:**

- 2 **1.** Defendants' Motion to Reconsider Order Granting Plaintiff's Motion
3 to Extend the Deadline for Service, **ECF No. 10**, is **DENIED**.
- 4 **2.** Defendants' Motion to Dismiss under Rules 4(m) and 12(b)(5), **ECF**
5 **No. 7**, is **DENIED**.
- 6 **3.** Defendants' Motion to Continue Motion to Extend Time for Service,
7 **ECF No. 8**, is **DENIED**.

8 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
9 provide copies to all counsel.

10 **DATED** this 19th day of September 2017.

11 
12 SALVADOR MENDOZA, JR.
13 United States District Judge

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