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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 RON GIPSON,

11 Plaintiff,

12 v.

13 SNOHOMISH COUNTY, *et al.*,

14 Defendants.
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Case No. C17-505 RSM

ORDER DENYING MOTIONS TO
DISMISS AND GRANTING MOTION TO
AMEND

16 This matter comes before the Court on Defendant Marcella Fleming Reed's Motion to
17 Dismiss (Dkt. #15), Defendants Karen Hasting, and Barbara Lucken, Dee Thayer's Motion to
18 Dismiss (Dkt. #22), and Plaintiff Ron Gipson's Motion to Amend Complaint (Dkt. #17).

19 Despite the significant briefing before this Court, there is a simple, dispositive threshold
20 question: did Plaintiff have good cause for his failure to timely serve the individual Defendants
21 in this case? There is no factual dispute; the parties agree Plaintiff timely served Defendant
22 Snohomish County but not the individual defendants. *See* Dkt. #26 at 2 (Plaintiff admits he
23 timely served Snohomish County "but did not affect service on any of the other named
24 defendants"). Defendants' Motions to Dismiss are based solely on Plaintiff's failure to serve
25 within the time limit, and Defendants' opposition to Plaintiff's Motion to Amend, if any, is
26 based on futility due to Plaintiff's failure to timely serve. *See* Dkts. #15, #21, and #22.
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ORDER DENYING MOTIONS TO DISMISS AND GRANTING MOTION TO AMEND - 1

1 The legal standard is straightforward:

2 If a defendant is not served within 90 days after the complaint is
3 filed, the court — on motion or on its own after notice to the
4 plaintiff — must dismiss the action without prejudice against the
5 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.**

6 Fed. R. Civ. P. 4(m) (emphasis added). The Court notes that the second, emphasized sentence
7 is a part of Rule 4(m), despite the briefing from the individual Defendants omitting it from the
8 Rule. *See* Dkt. #15 at 2; Dkt. #22 at 3; Dkt. #32 at 2.

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10 Plaintiff argues good cause exists here because he initially proceeded *pro se*, and that
11 once he retained counsel that counsel determined it was necessary to file an amended complaint
12 and “the decision was made to serve the remaining Defendants with the First Amended
13 Complaint once drafted.” Dkt. #26 at 3. Plaintiff argues that any delay in drafting this
14 Amended Complaint was due to “the need to review the arbitration testimony and the late date
15 upon which it was delivered to Counsel for the Plaintiff.” *Id.* Plaintiff argues that he has
16 shown at least some diligence in that he “did serve the original Complaint on Defendant
17 Snohomish County.” *Id.* Plaintiff also argues that, practically speaking, “all defendants in this
18 litigation had knowledge of the fact that the Complaint had been filed and were generally aware
19 of its contents,” perhaps because “Defendants were all directly in employed [sic] by Snohomish
20 County or as in the case of Ms. Reed hired by Snohomish County as an independent third-
21 party...” *Id.* at 3-4. Plaintiff further discusses the reasons for the delay in filing the Amended
22 Complaint and service. *Id.* at 4. Plaintiff argues that the individual Defendants suffered
23 “virtually no prejudice” and that they were served within 120 days after the original Complaint
24 was filed. *Id.* Plaintiff also points out that “many the [sic] originally named individual
25 Defendants were not appropriate and thereby the Plaintiff has agreed to their dismissal...” *Id.*
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1 Plaintiff has apparently personally served all remaining Defendants with a copy of the
2 Amended Complaint. *See* Dkt. #25 at 2.

3 Defendant Reed argues that “plaintiff points to his pro se status to gain the court’s
4 favor,” and that “no extra leniency is granted to pro se litigants.” Dkt. #28 at 2. Defendant
5 Reed fails to frame the issue in terms of “good cause” and refers to the Rule 4(m) 90-day time
6 limit as a firm deadline without citation to the emphasized second sentence of the rule above.
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8 Defendants Lucken, Hastings, and Thayer argue that Plaintiff’s strategic reasons nor a
9 desire to amend the complaint before effective service constitutes good cause. Dkt. #32 at 2–3
10 (citing *Fimbres v. United States*, 833 F.2d 138, 139 (9th Cir. 1987); *Wei v. State of Hawaii*,
11 763 F.2d 370 (9th Cir. 1985)). Defendants argue that prejudice to the Defendants is not
12 relevant because the word “prejudice” does not appear in Rule 4(m). *Id.* at 3–4.
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14 The Court begins by noting that Defendant Reed misstates the appropriate standard and
15 provides no compelling argument as to good cause. Defendants Lucken, Hastings, and Thayer
16 do address this issue in their Reply brief, but the cases they cite are readily distinguishable. In
17 *Fimbres*, the plaintiffs argued they intentionally did not serve the defendant. *See* 833 F.2d at
18 139. Here, there is no evidence that Mr. Gipson’s original failure to serve the individual
19 Defendants was intentional rather than a misunderstanding of the law. The Court could easily
20 find that Mr. Gipson, acting *pro se*, believed, perhaps unreasonably, that service on Snohomish
21 County would qualify as service for the individually named Defendants who worked for
22 Snohomish County. His failure, in other words, was likely mere negligence. In *Wei*, the
23 plaintiff did not attempt to explain how he was delayed in amending the Complaint. *See* 763
24 F.2d at 372. Here, Mr. Gipson, via his new counsel, has provided at least some explanations
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1 for the delay in filing the Amended Complaint. Defendants fail to analyze whether these
2 explanations were reasonable or could support a finding of good cause.

3 Plaintiff's arguments for good cause are thin. The Court is surprised to find no
4 declaration of Mr. Gipson explaining his failure to timely serve while he proceeded in this case
5 *pro se*. Nevertheless, the Court believes that Plaintiff, when he was *pro se*, assumed service on
6 Snohomish County was sufficient for all Defendants. This mistake, although understandable, is
7 insufficient alone to constitute good cause. However, Plaintiff also argues that failure to timely
8 serve was due to a delay, reasonable or not, while new counsel got up to speed and drafted a
9 proper Amended Complaint.
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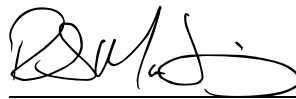
11 Rule 4(m) allows for substantial court discretion. For example, even if Plaintiff failed
12 to demonstrate good cause, the Court could easily "order that service be made within a
13 specified time." Fed. R. Civ. P. 4(m). The Court believes that all remaining Defendants have
14 now been served with a copy of Plaintiff's Amended Complaint. If this is not the case, they are
15 at least on full notice of the filings in this lawsuit. Plaintiff is correct that Defendants have
16 suffered virtually no prejudice at this early stage in the litigation. The failure to timely serve
17 was due, in part, to a good faith effort of Plaintiff's counsel to move this case forward on
18 proper footing. The Court sees no value in dismissing this case with prejudice. Accordingly,
19 the Court finds that Plaintiff has presented sufficient good cause to warrant 14 days' additional
20 time to serve under Rule 4(m) and will therefore deny Defendants' Motions to Dismiss. Since
21 this was the only basis for opposition to Plaintiff's Motion to Amend Complaint, the Court will
22 grant the requested relief.
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1 The Court acknowledges' Defendant Snohomish County's request that the Court "enter
2 an Order dismissing the individual Defendants named in the initial Complaint who are no
3 longer included in the proposed Amended Complaint" and will do so. Dkt. #20 at 2.

4 Having reviewed the relevant briefing and the remainder of the record, the Court hereby
5 finds and ORDERS that:

- 6 1. Defendant Reed's Motion to Dismiss (Dkt. #15) is DENIED.
- 7 2. Defendants Hasting Lucken, and Thayer's Motion to Dismiss (Dkt. #22) is
8 DENIED.
- 9 3. Plaintiff Gipson's Motion to Amend Complaint (Dkt. #17) is GRANTED. Plaintiff
10 must, within seven (7) days, file the First Amended Complaint attached as Exhibit B
11 to Dkt. #17 and serve all remaining Defendants within fourteen (14) days of this
12 Order.
13 4. Defendants Bridget Clawson, Marilynn Finsen, Shane Nybo, Bob Terwilleger,
14 Steven Bladek, Charlotte Comer, Judge Michael Downs, Sara DiVittorio, Rhea
15 Reynolds, Jason Cummings, and Margie Holloway are DISMISSED from the
16 above-entitled action without prejudice.
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20 DATED this 1st day of September 2017.

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24 RICARDO S. MARTINEZ
25 CHIEF UNITED STATES DISTRICT JUDGE
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