

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

BURTON W. WIAND, as Receiver for
OASIS INTERNATIONAL GROUP, LTD.;
OASIS MANAGEMENT, LLC; AND
SATELLITE HOLDINGS COMPANY,

Plaintiff,

v.

Case No: 8:20-cv-00862-VMC-TGW

CHRIS AND SHELLEY ARDUINI, et al.,

Defendants.

PLAINTIFF’S MOTION TO EXTEND TIME TO EFFECT SERVICE OF COMPLAINT

Plaintiff, BURTON W. WIAND, as Receiver for OASIS INTERNATIONAL GROUP, LTD., OASIS MANAGEMENT, LLC, and SATELLITE HOLDINGS COMPANY (“*Plaintiff*”), by and through undersigned counsel and pursuant to Fed.R.Civ.P. 4(m), moves this Court for entry of an order extending the time for service of the Complaint on Defendants Ann Barton, Todd Berry, Maria Charuk, Commonwealth Network Marketing Corp., Crichlow Computer Concepts, Kayla Crowley, Gregory Davis, Silvia Davis, Michael DeYoung, Divergent Investments, LLC, Jason Gladman, Anne Hennessey, Timothy Hunte DBA KATT Distribution, Timothy Hunte, James Jackson, Life’s Elements, Inc., Kevin Kerrigan, Kerrigan Management, Inc., Joseph LaVecchia, Lynne LaVecchia, Matthew Leach, David Lipinczyk, Piotr Luda, Kathryn McClare, Mary McClare, Elizabeth McMahon, Vince Petralis, Sr., Vince Petralis, Jr., Carmine Vona, David Wilkerson, Stefania Wood, and Zhuo Xu (collectively “*Unserved Defendants*”), for a period of ninety (90) days, through and including October 8, 2020. In support of this Motion, Plaintiff states as follows:

1. Plaintiff filed the Complaint (Doc. 1) on April 14, 2020, which named ninety-four (94) defendants.

2. Soon after initiating this action, on May 4, 2020, Plaintiff notified the Unserved Defendants of this action and requested that they waive service of a summons pursuant to Fed.R.Civ.P. 4(d).

3. Plaintiff learned that among the Unserved Defendants, Kayla Crowley, Timothy Hunte, Kevin Kerrigan, David Lipinczyk, Vince Petralis, Sr., Vince Petralis, Jr., and Carmine Vona were represented by attorney, Brent Winters (***“Represented Defendants”***).

4. Plaintiff requested that Mr. Winters obtain waivers of service on behalf of the Represented Defendants or provide a current physical address to effect service. Mr. Winters did not respond to this request and Plaintiff was unable to obtain waivers from the Represented Defendants.

5. Additionally, Plaintiff has been unable to obtain waivers from the remaining Unserved Defendants, Ann Barton, Todd Berry, Maria Charuk, Commonwealth Network Marketing Corp., Crichlow Computer Concepts, Gregory Davis, Silvia Davis, Michael DeYoung, Divergent Investments, LLC, Jason Gladman, Anne Hennessey, James Jackson, Life’s Elements, Inc., Kerrigan Management, Inc., Joseph LaVecchia, Lynne LaVecchia, Matthew Leach, , Piotr Luda, Kathryn McClare, Mary McClare, Elizabeth McMahon, David Wilkerson, Stefania Wood, and Zhuo Xu.

6. Plaintiff has either attempted to serve the Unserved Defendants without success or is still awaiting detailed information surrounding service attempts related to all Unserved Defendants, who live in various states.

7. In order to comply with Fed.R.Civ.P. 4(m), the Unserved Defendants must be served no later than July 13, 2020; therefore, Plaintiff requests an additional ninety (90) days to effect service on the Unserved Defendants.

Memorandum of Law

Rule 4(m) of the Federal Rules of Civil Procedure provides that Plaintiff must effect service on the Unserved Defendants within ninety (90) days after the filing the complaint or the Court must dismiss the action without prejudice. Consequently, Plaintiff must serve the Unserved Defendants by July 13, 2020. However, Rule 4(m) also provides that if the plaintiff shows good cause for failure to effect service, the court must extend the time for an appropriate period. “Good cause requires the party seeking enlargement to show good faith and a reasonable basis for noncompliance with the [90] day service requirement.” *Gambino v. Village of Oakbrook*, 164 F.R.D. 271, 274 (M.D. Fla. 1995). Courts will look to factors outside a plaintiff’s control, “such as sudden illness, natural catastrophe, or evasion of service of process,” to determine whether the plaintiff has shown “good cause.” *Id.* (quoting *Estate of Zachery v. Questcare, Inc.*, 895 F. Supp. 1472 (M.D. Ala. 1995)); *see also Nelson v. Barden*, 145 Fed. Appx. 303, 309 (11th Cir. 2005) (“Good cause” exists “only when some outside factor[,] such as reliance on faulty advice, rather than inadvertence or negligence, prevented service.” (alteration in original) (quoting *Prisco v. Frank*, 929 F.2d 603, 604 (11th Cir. 1991))). Her, Plaintiff has in good faith attempted to obtain waivers of service from the Defendants and also attempted to serve the Defendants. Plaintiff’s failure to effectuate service on Defendants is not due to Plaintiff’s inadvertence or negligence. *See Nelson*, 145 Fed. Appx. At 309.

Moreover, “[e]ven in the absence of good cause, a district court has the discretion to extend the time for service of process.” *Lepone-Dempsey v. Carroll Cty. Comm’rs*, 476 F. 3d 1277, 1281

(11th Cir. 2007) (citing *Horenkamp v. Van Winkle & Co.*, 402 F.3d 1129, 1132 (11th Cir. 2005)). For example, the district court may grant an extension where “the applicable statute of limitations would bar the refiled action, or if the defendant is evading service or conceals a defect in attempted service.” *Horenkamp*, 402 F. 3d at 1132-33 (quoting Fed. R. Civ. P. 4(m), Advisory Committee Note, 1993 Amendments)). In *Horenkamp*, the Eleventh Circuit affirmed the district court’s denial of a single defendant’s motion to dismiss a complaint for the plaintiff’s failure to timely perfect service of process where the district court exercised its discretion and excused the plaintiff’s untimeliness despite the plaintiff’s inability to show “good cause.” 402 F.3d at 1132. Specifically, the plaintiff mailed the defendant a request for waiver of service, which the defendant did not return. *Id.* at 1130. The plaintiff did not mail out a second request for waiver of service until after the time period to perfect service had expired because she mistakenly believed that she still had time to serve the defendant. *Id.* The plaintiff finally served the defendant 29 days after the time limit for service of process had expired. *Id.* Despite the fact that the plaintiff’s failure to serve the defendant was due to her on inadvertence, the court excused the untimely service because defendant had notice of the complaint and was ultimately served. *Id.* The Eleventh Circuit, in affirming the district court’s decision, held that “the circumstances of [the] case militate in favor of the exercise of the district court’s discretion.” *Id.*

Here, even if the Court determines that Plaintiff has failed to show good cause, the Court should use its discretion to extend the time for service because the Unserved Defendants have actual notice of the claims asserted in the Complaint, they will not be prejudiced by the extension of time, and Plaintiff is attempting to serve a large number of Defendants in this action. *See Horenkamp*, 402 F. 3d at 1132-33; *In re Dyer*, 330 B.R. at 278. Indeed, unlike the plaintiff in *Horenkamp* who was only attempting to serve one defendant, Plaintiff here has been attempting to

obtain waivers of service or effectuate service on over ninety (90) defendants. Also unlike *Horenkamp*, Plaintiff is aware of the impending ninety (90) day expiration and is timely moving for this extension before the time has expired. Accordingly, because the Eleventh Circuit affirmed the district court's use of discretion in *Horenkamp* despite the plaintiff's mistake in untimely serving the defendant, failure to move for an extension, and the fact that the plaintiff only had to serve one (1) defendant, this Court should also use its discretion to extend the time for Plaintiff to perfect service on the unserved Defendants.

WHEREFORE, Plaintiff respectfully request this Honorable Court grant Plaintiff's Motion of to Extend Time to Effect Service on Defendants, Ann Barton, Todd Berry, Maria Charuk, Commonwealth Network Marketing Corp., Crichlow Computer Concepts, Kayla Crowley, Gregory Davis, Silvia Davis, Michael DeYoung, Divergent Investments, LLC, Jason Gladman, Anne Hennessey, Timothy Hunte DBA KATT Distribution, Timothy Hunte, James Jackson, Life's Elements, Inc., Kevin Kerrigan, Kerrigan Management, Inc., Joseph LaVecchia, Lynne LaVecchia, Matthew Leach, David Lipinczyk, Piotr Luda, Kathryn McClare, Mary McClare, Elizabeth McMahon, Vince Petralis, Sr., Vince Petralis, Jr., Carmine Vona, David Wilkerson, Stefania Wood, and Zhuo X, for a period of 90 days, through and including October 8, 2020.

Respectfully submitted,

ENGLANDER FISCHER

/s/ Beatriz McConnell

JOHN W. WAECHTER

Florida Bar No. 47151

Primary: jwaechter@eflegal.com

Secondary: dturner@eflegal.com

COURTNEY L. FERNALD

Florida Bar No. 52669

Florida Bar Certified, Appellate Practice

Primary: cfernald@eflegal.com

Secondary: tdillon@eflegal.com
BEATRIZ MCCONNELL
Florida Bar No. 42119
Primary: bmccconnell@eflegal.com
Secondary: tdillon@eflegal.com
ALICIA GANGI
Florida Bar No. 1002753
Primary: agangi@eflegal.com
Secondary: tdillon@eflegal.com
ENGLANDER and FISCHER LLP
721 First Avenue North
St. Petersburg, Florida 33731-1954
(727) 898-7210 / Fax (727) 898-7218
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

Jared J. Perez, Esquire
jperez@wiandlaw.com
Larry Dougherty, Esquire
ldougherty@wiandlaw.com
WIAND GUERRA KING P.A.
5505 West Gray Street
Tampa, Florida 33609
Counsel for Receiver

Frederick S. Schriels, Esquire
frederick.schriels@gray-robinson.com
angela.calderon@gray-robinson.com
Josef Y. Rosen, Esquire
josef.rosen@gray-robinson.com
angela.calderon@gray-robinson.com
GrayRobinson, P.A.
401 East Jackson Street, Suite 2700
Tampa, FL 33602
Counsel for Joseph Martini, Jr. and Joseph Martini, Sr.

Dated: July 10, 2020.

/s/ Beatriz McConnell
Attorney for Plaintiff