

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

GS Holistic, LLC v. Ashes Plus Nine

GS Holistic · No. 22-cv-07101-LJC · Decided March 10, 2023

SUMMARY

The United States District Court for the Northern District of California granted GS Holistic, LLC's third motion to extend the time to serve Ashes Plus Nine and Gaizan N. Alreyashi under Federal Rule of Civil Procedure 4(m). Although counsel's staff turnover and failure to preserve service documents did not establish good cause or excusable neglect, the Court exercised its discretion to extend the service deadline to March 13, 2023, and deemed completed service timely. The Court denied as moot the motion to extend the deadline for filing a case management statement and set an initial case management conference for April 27, 2023.

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7
GS HOLISTIC, LLC, Case No. 22-cv-07101-LJC 8 Plaintiff, ORDER DENYING MOTION FOR
9 v. EXTENSION OF TIME TO FILE CASE MANAGEMENT STATEMENT AS 10 ASHES
PLUS NINE, et al., MOOT AND GRANTING THIRD MOTION FOR EXTENSION OF TIME
11 Defendants. TO FILE AND PERFECT SERVICE UPON DEFENDANTS 12 Re: Dkt.

Nos. 13, 19 13 14 Pending before the Court is Plaintiff GS Holistic, LLC's Motion for Extension
of Time to 15 File Case Management Statement, Dkt. 13, and Third Motion for Extension of Time
to File and 16 Perfect Service Upon Defendants (Third Motion). Dkt. 19.

Under Rule 4(m) of the Federal Rules 17 of Civil Procedure, Plaintiff had ninety days from the
filing of its Complaint to serve summons on 18 Defendants. Fed. R. Civ. P. 4(m). Plaintiff filed its
Complaint on November 11, 2022, which 19 gave it until February 9, 2023, to timely effectuate
service. Dkt. 1. 20 On the day of Plaintiff's deadline, February 9, 2023, Plaintiff filed its First
Motion for 21 Extension of Time to File and Perfect Service Upon Defendants (First Motion),
Dkt.

12, which the 22 Court denied without prejudice in part for Plaintiff's failure to comply with
Local Rule 6-3(a). 23 Dkt. 15. Plaintiff filed its Second Motion for Extension of Time to File and
Perfect Service Upon 24 Defendants (Second Motion) on February 22, 2023, Dkt. 16, and the
Court again denied without 25 prejudice for Plaintiff's failure to fully comply with all applicable
local rules as to motion practice 26 in this District.

Dkt. 17. 27 Now, in its Third Motion, Plaintiff requests an order from the Court granting an extension 1 In support of this request, Plaintiff submits a declaration from its counsel which claims that: “Due 2 to a turnover in staff, documents related to the issuance of the summons and service of process 3 were not saved to the Plaintiff corporate counsel’s computer program in enough time to serve the 4 Defendants prior to the ninety days deadline.

As soon as the undersigned Plaintiff’s counsel 5 became aware of this oversight on February 9, 2023, Plaintiff’s counsel requested service from a 6 process server on each defendant[.]” Dkt. 19-1. Plaintiff’s counsel goes on to state that Defendant 7 Ashes Plus Nine was served on February 14, 2023, and Defendant Gaizan N Alreyashi was served 8 on February 22, 2023.

Id. 9 If a plaintiff fails to serve a defendant within ninety days, but “shows good cause for the 10 failure, the court must extend the time for service for an appropriate period.” Fed. R. Civ. P. 4(m). 11 “Good cause” may be established by demonstrating, “at a minimum, excusable neglect.” Lemoge 12 v. United States, 587 F.3d 1188, 1198 (9th Cir. 2009).

Here, Plaintiff’s counsel’s inadvertent 13 failure to save the documents related to the summons and service of process onto his computer 14 program does not constitute good cause or excusable neglect under Fed. R. Civ. P. 4(m). See Wei 15 v. State of Hawaii, 763 F.2d 370, 372 (9th Cir. 1985) (holding that counsel’s oversight in 16 calendaring the deadline for effectuating service imposed by Rule 4 of the Federal Rules of Civil 17 Procedure did not qualify as good cause). “The rule is intended to force parties and their attorneys 18 to be diligent in prosecuting their causes of action.” Id. A “turnover in staff” does not excuse 19 Plaintiff and its attorney from the responsibility of timely serving Defendants in this matter.

20 “In the absence of a showing of good cause, the Court’s discretion to extend the time for 21 service or to dismiss the action without prejudice ‘is broad.’” Lawrence v. City & Cnty. of San 22 Francisco, No. 14-CV-00820-MEJ, 2016 WL 5869760, at *4 (N.D. Cal. Oct. 7, 2016) (quoting In 23 re Sheehan, 253 F.3d 507, 513 (9th Cir. 2001)). Factors which the Court may consider in making 24 extension decisions under Rule 4(m) include “a statute of limitations bar, prejudice to the 25 defendant, actual notice of a lawsuit, and eventual service.” Efaw v. Williams, 473 F.3d 1038, 26 1041 (9th Cir.

2007) (quoting Troxell v. Fedders of N. Am., Inc., 160 F.3d 381, 383 (7th 27 Cir.1998)).] Court is not aware of any prejudice to Defendants that would result from granting Plaintiff’s 2 || request for an extension.

The Court is also cognizant of the fact that dismissing the case now 3 || would require Plaintiff to incur additional expenses in re-filing its case and re-serving Defendants. 4 || Accordingly, the Court will GRANT Plaintiff’s Third Motion for an Extension of Time to File 5 and Perfect Service Upon Defendants. Dkt. 19. Plaintiff’s new service period will run until 6 || March 13, 2023.

As a result, the service of process already completed for both Defendants is 7 || considered timely. 8 In its February 15, 2023 Order denying Plaintiff's First Motion, the Court deferred ruling 9 on Plaintiff's Motion for an Extension of Time to File Case Management Statement, Dkt. 13, until 10 || the issue of timely service on Defendants was resolved. Dkt. 15.

The Court also vacated the Case 11 Management Conference set for February 16, 2023. Id. 12 Because there is currently no Case Management Conference scheduled, Plaintiff's Motion E 13 for an Extension of Time to File Case Management Statement is DENIED AS MOOT. Dkt. 13. 14 || The Court will set an Initial Case Management Conference in this matter for April 27, 2023, at 3 15 1:30 pm via Zoom.

The Case Management Statement will be due April 20, 2023. 16 IT IS SO ORDERED. i 17 Dated: March 10, 2023 18. 19 itn, | Ae A J. SSANEROS 20 nited States Magistrate Judge 21 22 23 24 25 26 27 28