DANIEL ARTHUR GUTENKAUF
1847 East Apache Boulevard, No. 41
Tempe, Arizona 85281
(480) 966-7018
dgutenkauf@getnet.net

Plaintiff, *in propria persona*

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

DANIEL ARTHUR GUTENKAUF, an unmarried man Plaintiff, Vs. THE CITY OF TEMPE, a municipal corporation and body politic, et al.: Defendants.	) Civil Action No. 2:10-cv-02129-FJM) PLAINTIFF'S MOTION TO EXTEND TIME TO SERVE PROCESS) (First Request)) EXPEDITED RULING REQUESTED

C-0.

Motion to Extend Time for Service of Process Before Expiration of Time

Plaintiff Daniel Arthur Gutenkauf moves this court, pursuant to LRCiv 7.3, to extend time within which Plaintiff may serve process on Defendants, on the grounds that there is a large number of Defendants (63) to be served, and Plaintiff anticipates in advance that not all of the remaining named Defendants will be served or have waiver of service completed before the expiration of the 120 day time limit, on February 2, 2011. Plaintiff has exerted due diligence on a daily basis to have service of process executed on Defendants since the filing of Plaintiff's First Amended Complaint on January 10, 2011, but has been hindered by several factors out of his control.

FACTUAL BASIS FOR EXTENSION OF TIME

Plaintiff was unable to locate the home addresses of several key Defendants, even after a thorough and exhaustive search of public records in Maricopa County Assessors Office, Maricopa County Recorder's Office, Maricopa County Superior Court Records, Family Court records, and Justice Court records. The home addresses for all of the Tempe Police Officers were not located until very recently within the last two weeks through an alternate resource. Service was attempted on Defendant Arredondo, but the address was apparently not current, so that service is incomplete as of this date.

City of Tempe had not disclosed the name of the Tempe Police Project Manager for Photo Enforcement, when Plaintiff made his public records request last September. Plaintiff did not discover the identity of Sgt. Kerby Rapp, until he accidentally came across that information last month, when Redflex Traffic Systems filed its Breach of Contract lawsuit against the City of Tempe in Superior Court on December 1, 2010. Plaintiff needed this information in order to allege additional facts in his First Amended Complaint, filed earlier this month on 1-10-11.

MEMORANDUM OF POINTS AND AUTHORITIES

Good cause, for purpose of extension of time to effect service, is examined by considering whether delay resulted from inadvertence or whether reasonable effort to effect service has occurred, whether defendant has been prejudiced by delay, or whether plaintiff has moved for enlargement of time to effect service under F.R.Civ.P. 6(b). Television Signal Corp. v. City & County of San Francisco (2000, ND Cal) 193 FRD 645, 49 FR Serv. 3d521

I. PLAINTIFF HAS MADE REASONABLE EFFORT TO EFFECT SERVICE

Plaintiff has made reasonable, diligent, and accelerated efforts to effect service, as shown by the timetable listing of Defendants already served: Vanderpool, Halikowski, DeGraw, and McAllister and spouses, all served on January 17, 2011. Redflex Traffic Systems Inc., and its

employees Bernard, Harper, and Davie were served on January19th. Defendants Barsetti, Arkfeld, Meyer and spouses were also served on January 19th. Reflex Defendant Karen Finley and AAA Photo Safety Inc. and Mr. Pickron and spouse served on January 20th. Defendant spouse Timothy Finley and Mr. Goddard and spouse were served on January 21st. Australian corporation Redflex Holdings Ltd., which apparently has no statutory agent in Arizona, was served at the office of its subsidiary, Redflex Traffic Systems Inc., in Phoenix on January 21st. Defendants Ryff and spouse and Ms. Seyler were served on January 22nd, 2011. Plaintiff is Waiting for status update on attempted service of Defendant Arnett on 1-30-11.

On Wednesday, January 26, 2011, Plaintiff mailed Notice of Lawsuit and Request to Waive Service for the 27 remaining City of Tempe employees and spouses to Assistant City Attorney Clarence Matherson, Jr. Mr. Matherson has tentatively agreed to waive service, pending approval of City of Tempe spouses. which may possibly extend over the Plaintiff's 120 day deadline on February 2, 2011, before Plaintiff receives return of signed waiver of service forms.

On January 31, 2011, Plaintiff telephoned Tempe Attorney Matheson for status update on contacting the Defendants spouses, and counsel indicated that not all spouses have been contacted for approval to accept waiver of service. Plaintiff informed Attorney Matheson of his intention to file this Motion to Extend Time for Service of Process, and Mr. Matheson did not have any position on the Motion, since City of Tempe has not yet filed an Answer. Mr. Matherson indicated that he is preparing a proposed stipulation to extend time, for Tempe Defendants who have already been served, to Answer Plaintiff's First Amended Complaint.

Although Plaintiff believes that Australian corporate Defendant has been properly served notice of the lawsuit through its subsidiary and involuntary agent Redflex Traffic Systems, Inc., Plaintiff desires to ensure perfection of service of process on the foreign corporation in

Melbourne, Australia via a United States Central Authority, pursuant to the Hague Convention. From Plaintiff's research on serving a foreign corporation, it appears that Australia may have only very recently acceded to the Hague Convention in October 2010, the same month when Plaintiff filed his original Complaint.

Research on service of process abroad for Australia has been complicated, conflicting, and confusing. The Australian Attorney General's website containing information on service of documents abroad was last modified on Sept. 3, 2009. Plaintiff requires additional time to obtain accurate and up-to-date information on Australia's status as a party to the Hague Convention, and reliable guidance on proper, accepted procedures for service of documents abroad. Indications are that it may take from six weeks to three months to effect confirmation of service.

II. NO PREJUDICE TO THE DEFENDANTS BY EXTENSION OF TIME

The second factor in evaluating good cause for extension of time, prejudice to the Defendants, does not appear to be a concern to Defendant Redflex Traffic Systems, Inc., and its employees. RTS attorney Nicole Goodwin and Plaintiff have already agreed to a stipulation to extend time for Redflex Defendants to answer Plaintiff's First Amended Complaint until March 14, 2011. Per telephone discussion on 1-26-2011, Ms. Goodwin stated that Redflex takes no position on Plaintiff's Motion to Extend Time for service of process, so there is no apparent prejudice to the Redflex Traffic Systems Defendants.

III. PLAINTIFF'S MOTION IS MADE PRIOR TO DEADLINE

The third factor for good cause is demonstrated by Plaintiff's proactive motion before the expiration of time under Rule 4 (m). District courts have discretion to enlarge period for effecting

service, even if Plaintiffs fail to show good cause. Bruce v. City of Wheeling (2008, ND W Va) 71 FR Serv 3d 1381

The instant case is compounded by the large number of Defendants, due to the nature of the conspiracies involved and the complexity of the civil RICO in particular, and diversity jurisdiction. Plaintiff believes it is appropriate for the Court to grant the extension of time under the circumstances described and in the interest of justice.

This is Plaintiff's first request for an extension of time for service of process. Since none of the Defendants have filed an Answer in this case as of the date of this Motion, the position of the other Parties regarding this motion would not seem either relevant or applicable.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests this Court to grant an extension of time of ninety (90) additional days from the original deadline of February 2nd, 2011, until May 4th, 2011 to effect service of process on the remaining Defendants not already served or waived for service.

RESPECTFULLY SUBMITTED,

DATED this 31st day of January, 2011.

Daniel Arthur Gutenkauf

Daniel Arthur Gutenkauf, Pro Per
1847 E. Apache Blvd. #41
Tempe, Arizona 85281
480-966-7018

ATTESTATION

I, Daniel Arthur Gutenkauf, am the Plaintiff in this action, and I hereby attest and solemnly affirm that I have read this motion, which is well grounded in facts and in law, and it is filed in good faith, and not for the purpose of delay or harassment. The facts stated herein are based on personal knowledge, and those facts are true, correct, and accurate, to the best of my knowledge and ability at this time.

DATED this 31st day of January, 2011.

Daniel Arthur Gutenkauf

Daniel Arthur Gutenkauf, Pro Per
1847 E. Apache Blvd. #41
Tempe, Arizona 85281

CERTIFICATE OF SERVICE

I, Daniel Gutenkauf, hereby certify that copies of the foregoing were served in the following manner: Daniel Arthur Gutenkauf

ORIGINAL and one copy of the foregoing
Filed this 31st day of January, 2011 with:

Clerk of the Court
United States District Court-District of Arizona
Sandra Day O'Connor U. S. Courthouse
401 West Washington St.
Phoenix, AZ 85003

A copy of the foregoing mailed by U. S. Postal Service this 31st day of January, 2011 to

Nicole M. Goodwin, Attorney for Redflex Traffic Systems Defendants
One Renaissance Square
Two North Central Avenue
Phoenix, AZ 85004

A copy of the foregoing mailed by U.S. Postal Service this 31st day of January 2011 to

Clarence Matherson, Jr., Assistant City Attorney for City of Tempe Defendants
21 E. Sixth Street, Suite 201
Tempe, AZ 85281