

No. _____
Supreme Court of Nevada

MARIA DEL ROSARIO CERVANTES-GUEVARA,

Petitioner,

VS.

CLARK COUNTY DISTRICT COURT, THE HONORABLE
JUDGE ERIKA BALLOU, DISTRICT JUDGE, DEPARTMENT 23

Respondents,

AND

MARK THOMAS ANDERSON; THOR DEVELOPMENT, LLC, a
limited liability corporation;
Real Parties In Interest

**PETITION FOR WRIT OF
MANDAMUS**

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Petitioner MARIA DEL ROSARIO CERVANTES-GUEVARA is an individual, and not a corporation.

Petitioner has been represented by, and only by, Bighorn Law, to include Jacqueline R. Bretell (Nev. Bar No. 12335), Evan K. Simonsen (Nev. Bar No. 13762), and former Bighorn Law attorney Siria L. Gutierrez (Nev. Bar No. 11981).

/s/ Evan Simonsen

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**DECLARATION IN SUPPORT OF PETITION FOR WRIT
OF MANDAMUS**

STATE OF NEVADA)

) ss:

COUNTY OF CLARK)

Evan K. Simonsen Esq., being first duly sworn, deposes and states the following:

1. I am an attorney of record for the Petitioner and make this Declaration pursuant to N.R.A.P. 21(a)(5).

2. The facts and procedural history contained in this Petition for Writ of Mandamus and the Memorandum of Points and Authorities are based upon my personal knowledge as counsel for the Petitioner. This Affidavit is not made by the Petitioner because the issues involve procedural and legal issues and require legal analysis.

3. The contents of the Petition for Writ of Mandamus and the Memorandum of Points and Authorities are true based upon my personal knowledge, except as to those matters stated upon information and belief.

4. All documents contained in the Petitioner's Appendix, filed herewith, are true and correct copies of the pleadings and

documents they are represented to be in the Petitioner's Index as cited herein.

5. The Complaint in this matter was filed on January 7, 2020. Petitioner's Appendix ("PA")-I 0001-0007.

6. The 120-day deadline for Service of Process would initially have run on May 6, 2020. *See*, PA-I 0001-0007, *and*, N.R.C.P. 4.

7. On February 12, 2020, Process server was assigned to complete service on the named Defendants. PA-I 0048-0050.

8. On information and belief, on February 18, 2020, Process server traveled to the address believed to be the residence of named-Defendant, Real Party in Interest MARK THOMAS ANDERSON at 6325 Wichita Falls Street, North Las Vegas, Nevada 89031 where a white female answered the door and claimed to not know MR. ANDERSON and that she had purchased the home three years before. PA-I 0048-0050.

9. On February 26, 2020, Process sever was instructed to conduct a background search on named-Defendant, Real Party in Interest MARK THOMAS ANDERSON in which it was discovered

his most recent residency was at 7700 Plunging Falls Drive, Las Vegas, Nevada 89131. PA-I 0048-0050.

10. On information and belief, on February 26, 2020, Process server confirmed with Clark County Assessor's Office records that Real Party in Interest MARK THOMAS ANDERSON owned the property located at 7700 Plunging Falls Drive, Las Vegas, Nevada 89131. PA-I 0048-0050.

11. On information and belief, on March 1, 2020, Process server traveled to 7700 Plunging Falls Drive, Las Vegas, Nevada 89131 where a woman answered through a Ring Camera that Real Party in Interest MARK THOMAS ANDERSON was not home. PA-I 0048-0050.

12. On information and belief, on March 1, 2020, Process server asked the answering woman at 7700 Plunging Falls Drive, Las Vegas, Nevada 89131 if she would accept service on his behalf to which she declined and refused to identify herself but stated that Real Party in Interest MARK THOMAS ANDERSON would be back home the following week. PA-I 0048-0050.

13. On information and belief, on March 8, 2020, Process server returned to 7700 Plunging Falls Drive, Las Vegas, Nevada 89131 where no one answered the door even as it was visible from the front house window that there was a male resident inside. PA-I 0048-0050.

14. On March 11, 2020, named-Defendant THOR DEVELOPMENT, LLC was served. PA-I 0051-0053.

15. On March 12, 2020, Governor Sisolak declared a state of emergency due to the novel COVID-19 Coronavirus. Since Governor Sisolak's stay at home orders were in place, Petitioner was not able to attempt personal service until the stay was lifted on July 1, 2020. PA-I 0008-0010, PA-I 0011-0014.

16. That, but-for the state of emergency, the 120-days for service of the Complaint would have run on May 6, 2020. *See*, PA-I 0001-0007, *and*, N.R.C.P. 4.

17. When Governor Sisolak declared a state of emergency, Petitioner had 55-days remaining within which to serve named-Defendant MARK THOMAS ANDERSON, before the expiration of the 120-day deadline. *See*, PA-I 0001-0007, *and*, N.R.C.P. 4.

18. Emergency Directive 009 was Revised to a start date of April 1, 2020, leaving Petitioner 36 days from the termination of the state of emergency within which to serve Real Party in Interest MARK THOMAS ANDERSON. PA-I 0008-0010.

19. The Administrative Orders and Emergency Directives put in place as part of the state of Emergency tolled statutory timelines for the commencement of an action, as well as all action within civil matters until 30 days after the state of emergency is terminated. PA-I 0008-0010.

20. The state of emergency was terminated on July 1, 2020. PA-I 0011-0014.

21. All tolled time thus recommenced on July 31, 2020 at 11:59 p.m. PA-I 0011-0014.

22. Petitioner therefore had until September 5, 2020 to serve Real Party in Interest MARK THOMAS ANDERSON after the stay was lifted and the time recommenced on August 1, 2020. *See*, PA-I 0001-0007, PA-I 0008-0010, *and*, PA-I 0011-0014.

23. Out of an abundance of caution, Petitioner filed a Motion to Enlarge Time for Service and Serve by Publication on May 6, 2020. PA-I 0054-0073.

24. The District Court granted Petitioner's Motion to Enlarge Time for Service and to Serve Real Party in Interest MARK THOMAS ANDERSON via Publication on June 5, 2020. PA-I 0074-0075.

25. The District Court ruling provided Petitioner an additional 90-days from expiration of the 120-day deadline—extended to September 5, 2020 by the Emergency Directives—to serve Real Party in Interest MARK THOMAS ANDERSON. PA-I 0074-0075.

26. The last date to serve Real Party in Interest MARK THOMAS ANDERSON was, therefore December 4, 2020. *See*, PA-I 0001-0007, N.R.C.P. 4, PA-I 0008-0010, PA-I 0011-0014, *and*, PA-I 0074-0075.

27. Nevada Legal News published the Summons and Complaint to Real Party in Interest MARK THOMAS ANDERSON on October 15, 2020. PA-I 0076.

28. Nevada Legal News again published the Summons and Complaint to Real Party in Interest MARK THOMAS ANDERSON on October 22,2020, October 29, 2020, November 05, 2020, and November 12, 2020. PA-I 0076.

29. Service of Process of Real Party in Interest MARK THOMAS ANDERSON, was thus completed by publication on November 12, 2020 and an affidavit of publication was filed with the District Court. PA-I 0076.

30. Out of an abundance of caution, Petitioner filed a Motion to Enlarge Time for Service on October 28, 2020. PA-I 0077-0098.

31. Real Party in Interest opposed Petitioner's Motion to Enlarge Time, and the matter was heard by the District Court, Respondent herein, on December 15, 2020. PA-I 0099.

32. At oral argument, Petitioner raised the issue of another District Court ruling from December 10, 2020. PA-I 0100-0108, PA-I 0109-0111.

33. The District Court Judge, the Honorable Joseph Bonaventure, stated that he would take the information into advisement and issue an Order. PA-I 0100-0108.

34. On December 16, 2020, the District Court issued a Minute Order denying Petitioner's Motion to Enlarge Time stating that it was not filed timely. PA-I 0099.

35. The District Court did not address whether Petitioner had good cause for the allegedly untimely filing of the Motion to Enlarge. PA-I 0100-0108, PA-I 0099.

36. On December 30, 2020, Petitioner filed a Motion for Reconsideration on the premises that a) the District Court Order which was raised at Oral Argument was new evidence that had not been fully briefed; and b) the District Court's Minute Order denying Petitioner's Motion to Enlarge Time was manifestly unjust as it only addressed whether Petitioner's Motion to Enlarge was timely and failed to complete the analysis required under N.R.C.P. 4, specifically whether Petitioner had good cause for the untimely filing. PA-I 0112-0134.

37. After full briefing, oral argument on Petitioner's Motion to Reconsider was heard by Respondent District Court on February 23, 2021. PA-I 0135-0143.

38. Honorable Erika Ballou denied Petitioner's Motion to Reconsider on the basis that she believed that Honorable Joseph Bonaventure had considered the elements of an untimely Motion to Enlarge when issuing his Minute Order on December 16, 2020. PA-I 0135-0143, PA-I 0144-0152.

39. The Instant Writ Petition follows for a determination on the issues presented herein.

40. The Petition complies with N.R.A.P 21(d) and N.R.A.P. 32 (c)(2).

FURTHER YOUR AFFIANT SAYETH NAUGHT.

By /s/ Evan K. Simonsen

Evan Simonsen, Esq.

Table of Authorities

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ROUTING STATEMENT

This matter should be assigned to the Supreme Court of Nevada under NRAP 17(a)(12) as it raises as a principal issue a question of statewide public importance insofar as it relates to the interpretation of Emergency Directives instituted in response to the novel COVID-19 Coronavirus. As the Nevada Supreme Court was involved in enactment of Directives regarding statutory time limits for court proceedings, the Nevada Supreme Court is uniquely poised to rule on an interpretation of language it was instrumental in crafting. Thus, the Nevada Supreme Court is best poised to rule on the intention of said language.

PETITION FOR WRIT OF MANDAMUS

INTRODUCTION

This writ concerns tolling of time periods to perform service as a result of the District Court's Administrative Orders issued in connection with the COVID-19 pandemic.

This case arises from a motor vehicle incident on or about February 28, 2018 on the public streets of Clark County, Nevada. PA-I 0001-0007. Petitioner MARIA CERVANTES GUEVARA was the restrained driver of a 2013 Ford Sedan on or approximately at the intersection of Fremont Street and S. Eastern Avenue when named-Defendant and Real Party in Interest MARK THOMAS ANDERSON negligently and carelessly rear-ended Petitioner's Vehicle. PA-I 0001-0007.

Petitioner requested additional time from the District Court to enlarge the time for service Real Party in Interest, MARK THOMAS ANDERSON, by Publication, so that publication could be completed. PA-I 0077-0098. Petitioner requested the deadline for service be deemed extended through at least November 13,

2020, such that service by publication, which was completed on November 12, 2020, could be effectuated. PA-I 0077-0098.

On December 16, 2020, the District Court ordered that Petitioner's Motion for an enlargement of time to perform service be denied. PA-I 0099. Likewise, the District Court ordered that Petitioner's claims made against Real Parties in Interest MARK THOMAS ANDERSON and SHARI ANDERSON personally, were dismissed. PA-I 0099. Petitioner's claims against THOR DEVELOPMENT, LLC, remained intact. *See*, PA-I 0099.

The District Court's Order refers to arguments made by Petitioner in motion practice relating to an Order by Judge Gonzalez which found that the time to commence or recommence an action was tolled by Emergency Directives authored and Ordered by Governor Sisolak. PA-I 0099. The District Court's Order then concluded that they had reviewed the Gonzalez Order, and that it referred only to commencing of legal actions, and dealt solely with Statutes of Limitations. PA-0099.

Petitioner brings this Writ Petition because it believes that the District Court erred in ruling that the Emergency Directives

and the Supreme Court's Administrative Order 20-17 did not speak to tolling of time to serve parties. PA-I 0015-0047. Petitioner argues that the thrust of the Administrative Orders issued by the Court in response to the Emergency Directives ordered by Governor Sisolak were to be considered as liberally as possible due to the problematic nature of effecting service during a pandemic.

RELIEF REQUESTED

The Court should grant Petitioner's Petition and enter an order reversing the District Court's Order denying enlargement of time to perform service by publication and reversing the District Court's Order Dismissing Real Parties in Interest in this matter.

ISSUES PRESENTED

1. Did the District Court err in determining that Governor Sisolak's Emergency Directives tolling time limits to commence an action did not refer to performing service?
2. If the time limit for performing service was not tolled, was it reasonable for Petitioner to interpret the Administrative Orders and Emergency Directives in a manner that caused delay in filing the Motion to Enlarge Time?

3. If Petitioner's Motion was Untimely, was there good cause for the delay; and does good cause exist to grant Petitioner's Motion?

STATEMENT OF RELEVANT FACTS

As noted above, Petitioner named Real Parties in Interest as Defendants in this case. AP-I 0001-0007. Petitioner requested additional time from the District Court to enlarge to perfect service on Real Party in Interest, MARK THOMAS ANDERSON, by publication, to allow time for publication to be completed. PA-I 0077-0098. Petitioner requested that the deadline for service be deemed extended through at least November 13, 2020, such that service by publication, which was completed on November 12, 2020, could be effectuated. PA-I 0077-0098.

On December 16, 2020, the District Court ordered that Petitioner's Motion for an enlargement of time to perform service be denied. PA-I 0099. Likewise, the District Court ordered that Petitioner's claims made against Real Parties in Interest MARK THOMAS ANDERSON and SHARI ANDERSON personally, were dismissed. PA-I 0099. Petitioner's claims against THOR DEVELOPMENT, LLC, remained intact. AP-I 0099.

This issue is imperative to the matter as Real Party in Interest THOR DEVELOPMENT, LLC has moved to be dismissed and to thereby dismiss the entire case because the driver of the adverse vehicle, Real Party in Interest, MARK THOMAS ANDERSON was dismissed by the District Court. As of the filing of this Writ, that Motion is pending with the District Court

The relevant timeline is calculated with a start date of January 7, 2020, when Petitioner filed her initial Complaint in this matter. PA-I 0001-0007. As such, the 120-day period to serve Real Parties in Interest would typically have expired on May 6, 2020—if not for the global pandemic, and Nevada’s lockdown orders which tolled the time to complete service. *See*, PA-0001-0007, *and*, N.R.C.P. 4.

On March 12, 2020, Governor Sisolak declared a state of emergency due to COVID-19. *See* PA-I 0008-0010. This Emergency Directive states that “Any specific time limit set by state statute or regulation for the commencement of any legal action is hereby tolled from the date of this Directive until 30

days from the date the state of emergency declared on March 12, 2020 is terminated.” *See* PA-I 0008-0010.

Governor Sisolak’s Declaration of Emergency Directive 009 was revised on April 1, 2020. PA-I 0008-0010. On that date, Petitioner had 36 days left before the expiry of the 120-day time limit set by N.R.C.P.¹ 4. *See*, PA-I 0001-0007, *and*, N.R.C.P. 4. The State of Emergency was ended as of 11:59 p.m. on July 1, 2020. PA-I 0011-0014. Therefore, as of the date of the termination of the State of Emergency on July 1, 2020, Plaintiff still had 36 days within which to serve Real Party in Interest MARK THOMAS ANDERSON with the Summons and Complaint. *See*, PA-I 0001-0007, N.R.C.P. 4, PA-I 0008-0010, *and*, PA-I 0011-0014. However, as noted in Emergency Directive 009 (Revised), the tolling ended 30 days after the state of emergency was lifted. PA-I 0008-0010.

¹ When the state of emergency was first declared, on March 12, 2020, 55 days remained within which to perfect service. The Revised Emergency Directive 009 moved the date to April 1, 2020, leaving Petitioner with 36 days within which to perfect service.

Consequently, when the state of emergency was lifted as of July 1, 2020, the tolling did not end until 11:59 p.m. July 31, 2020. PA-I 0008-0010, PA-I 0011-0014. Petitioner's remaining 36 days did not recommence until August 1, 2020. *See* PA-I 0011-0014. Petitioner had until September 5, 2020 to effect service on Real Party in Interest MARK THOMAS ANDERSON under the initial 120-days pursuant to N.R.C.P. 4. *See*, PA-I 0001-0007, N.R.C.P. 4, PA-I 0008-0010, *and*, PA-I 0011-0014.

However, on June 5, Petitioner was granted an additional 90 days for service via publication—not from June 5, 2020, but of the total time left to perfect service. *See*, PA-I 0074-0075.

90 days from September 5, 2020 is December 4, 2020. Consequently, pursuant to the relevant Emergency Directives, Rules of Civil Procedure and Court Administrative Orders, Petitioner had until December 4, 2020 to complete service. *See*, PA-I 0001-0007, N.R.C.P. 4, PA-I 0008-0010, PA-I 0011-0014, *and*, PA-I 0074-0075. Petitioner completed service by publication on November 12, 2020. PA-I 0076.

Petitioner argues that the District Court's determination that Real Parties in Interest were not timely served was flawed, as they were timely served, and dismissal was not warranted.

The District Court's Order was based solely upon a conclusion that the Governor's directive which was lifted on July 1, 2020, applied only to Statute of Limitations timelines. PA-0011-0013. Petitioner argues that the language of the Emergency Directives make no such limitation.

Further, the District Court's Order denied Petitioner's Motion out-of-hand, on the premise that the Motion was filed untimely. PA-I 0011-0013. However, assuming, *arguendo*, that the Motion to Enlarge Time was untimely, where a Motion to Enlarge is filed *after* the expiry of the time in which to serve, the District Court is required to determine whether there is justification for the untimely filing, pursuant to N.R.C.P. 4(e)(4). *See*, N.R.C.P. 4. The District Court's Order failed to address whether good cause existed for the allegedly untimely filing, and further failed to address whether there was good cause for

granting Petitioner’s Motion. PA-I 0074-0075, *see, also*, PA-I 0100-0108.

LEGAL ARGUMENT AND ANALYSIS

This Court should entertain Petitioner’s writ petition, and grant it. The issue presented is a straightforward matter of interpreting whether the Emergency Directives and Administrative Orders of the Executive and Judiciary branches of the State tolled time to perform service in this matter. Petitioners respectfully state that the District Court inappropriately concluded that the tolling effect of the Orders did not apply to timelines for performing service—only to applicable statutes of limitation. This error, in light of the nature of the Orders, warrants the granting of this extraordinary relief.

I. Standard for Writ Review

A writ of mandamus may issue when there is no plain, speedy, and adequate remedy at law, *see* NRS § 34.170, or where circumstances reveal urgency or strong necessity, the Supreme Court may grant extraordinary writ relief. Falcke v. Douglas County, 116, Nev. 583, 3 P.3d 661, 662 (2000). “Whether to

consider a petition for mandamus is entirely within the discretion of this court.” Nevada v. District Court (Ducharm), 118 Nev. 609, 55 P.3d 420, 423 (2002) (granting writ review but denying petition for writ of mandamus or prohibition).

Writ of mandamus relief is appropriate when a district court manifestly abused its discretion. E.g., Cote H. v. District Court, 175 P.3d 906, 910 (Nev. 2008). A “[m]anifest abuse of discretion does not result from a mere error in judgment, but occurs when the law is overridden or misapplied, or when the judgment exercised is manifestly unreasonable or the result of partiality, prejudice, bias or ill will.” State v. District Court (Armstrong), 127 Nev. Adv. Op. 84, 267 P.3d 777, 780 (2011) (quoting Blair v. Zoning Hearing Bd. of Tp. of Pike, 676 A.2d 760, 761 (Pa. Commw. Ct. 1996)).

Where there is no “plain, speedy, and adequate remedy” available at law, extraordinary relief may be available via writ of mandamus or prohibition. See Mona v. Eighth Judicial Dist. Court of State in & for Cty. of Clark, 380 P.3d 836, 840 (Nev. 2016) (citing, inter alia, NRS 34.170). Even if an adequate legal

remedy exists, this Court will still consider a writ petition if an important issue of law needs clarification or if review would serve a public policy or judicial economy interest. *See Id.* The interests of judicial economy are paramount, considered “the primary standard” in determining whether to entertain a writ petition. *See Smith v. Eighth Jud. Dist. Ct.*, 113 Nev. 1343, 1345 (1997). Petitioners’ case satisfies the criteria for hearing a writ petition.

Petitioners have no other remedy at their disposal to receive redress for Real Parties in Interest’s alleged negligence towards Petitioner. Furthermore, it is in the best interest of public policy to reverse the District Court’s abuse of discretion in misinterpreting the Court’s Administrative Orders and Emergency Directives. As such, the Court is warranted in granting Petitioner’s writ.

II. The Emergency Directives and Administrative Orders Unquestionably Refer to Time to Serve

N.R.C.P. 4 is, unequivocally, a regulation. It is a state Rule of Civil Procedure regulating how attorneys and the Courts conduct themselves. The plain meaning of “regulation” in this context is

that is a rule. *See, e.g.*, “Regulation”, Merriam-Webster online, *See, e.g.*, <https://www.merriamwebster.com/dictionary/regulation?src=search-dict-box> (“an authoritative rule dealing with details or procedure; a rule or order issued by an executive authority or regulatory agency of a government and having the force of law.”); *and*, “Regulation”, Black’s Law Dictionary Online, <https://thelawdictionary.org/regulation/>, (“a rule or order prescribed for management or government”).

Moreover, N.R.C.P. 4 sets a “specific time limit” pertaining to the commencement of an action—once a Complaint has been filed, service of process must be perfected before the action proceeds. *See, e.g.*, N.R.C.P. 12(a)(1)(A), *and*, N.R.C.P. 12(b)(3-4). In other words, while the filing of a Complaint commences an action with regard to the Plaintiff, it is Service of the Summons and Complaint which commences the action for the Defendant(s). *See, e.g.*, N.R.C.P. 12(a)(1)(A), *and*, N.R.C.P. 12(b)(3-4).

Commencement of an Action therefore requires **both** that a Complaint be filed **and** that the Complaint be served on the Defendant. *See, e.g.*, N.R.C.P. 12(a)(1)(A), *and*, N.R.C.P. 12(b)(3-

4). There is therefore no disputing that both filing of the Complaint and Service of Process are part and parcel of the commencement of a legal action. By definition, then, N.R.C.P. 4 is a “regulation for the commencement of [a] legal action” as referenced in section 2 of Emergency Directive 009 (Revised). N.R.C.P. 4, PA-I 0008-0010.

Emergency Directive 009 (Revised) was issued on April 1, 2020. PA-I 0008-0010. Notably, this transpired prior to the expiration of Petitioner’s time to perform service. PA-I 0001-0007, N.R.C.P. 4. As such, Petitioner’s time to serve Real Parties in Interest remained tolled, or “paused” during the entire time the Directives were in effect. PA-I 0008-0010. The District Court should have considered that time still remained to serve Real Parties in Interest, as outlined above.

This interpretation of the Court’s Administrative Orders was recently approved by Former Justice Gibbons. PA-I 0153-0160. In that hearing, former Justice Gibbons opined upon a case where dismissal was sought for being filed after the initial Statute of Limitations. PA-I 0153-0160. The Defendant failed to

include the tolling time period from April 1, 2020 to August 1, 2020. PA-I 0153-0160. Justice Gibbons noted that he was on the Supreme Court when these orders and directives were drafted, that the Supreme Court was involved in the tolling of statutory time-limits, and that they, indeed, tolled the applicable Statutes of Limitations in the traditional understanding of the word “tolled”: “As far as the Statute of Limitations mentioned, to my knowledge I was on the Supreme Court until January 4, we very much were involved in this issue on Court management, extending the time period under Rule 41(e) to do trials beyond the five years set forth in the Rule and are concerned about the Statute of Limitations of these cases based upon the emergency. I do not believe it’s limited to 30-days, it’s a longer period of time, I agree with the other departments even though that’s not binding precedence on myself since these other District Court Judges; but as such, I do conclude that the complaint was filed timely within the Statute of Limitations so the motion to dismiss is denied.” See, PA-I 0153-0160.

To interpret the Emergency Directives such that they would toll the fixed, and unmovable, timeline for filing a Complaint, but *would not* toll the more malleable flexible deadline within which to Serve Process is illogical and absurd.

III. Even if the District Court Considered that the 120-day period had Expired, Petitioner's delay was reasonable

N.R.C.P. 4(e)(3) states: "If a plaintiff files a motion for an extension of time before the 120-day service period – or any extension thereof – expires and shows that good cause exists for granting an extension of the service period, the court must extend the service period and set a reasonable date by which service should be made."

N.R.C.P. 4(e)(4) states: "If a plaintiff files a motion for an extension of time after the 120-day service period – or any extension thereof – expires, the court must first determine whether good cause exists for the plaintiff's failure to timely file the motion for an extension before the court considers whether good cause exists for granting an extension of the service period. If the plaintiff shows that good cause exists for the plaintiff's

failure to timely file the motion and for granting an extension of the service period, the court must extend the time for service and set a reasonable date by which service should be made.”

In other words, pursuant to N.R.C.P. 4, in ruling on Plaintiff’s Motion to Enlarge Time, the District Court was required to follow a three-step process:

- 1) Was the Motion to Enlarge Time for Service made before the expiration of the 120-day service period, inclusive of any extensions thereto? If so, then the District Court skips to step-3;

- 2) If the Motion was made after the expiration of the 120-day service period, inclusive of any extensions thereto, then the District Court must consider whether there was good cause for any delay in filing the Motion; and

- 3) Finally, the District Court must determine whether good cause exists for granting the Motion to Enlarge Time.

The District Court’s Order Denying Plaintiff’s Motion only considered the first of these steps and did not provide any reasoning as to the other required issues. PA-I 0099, *see, also*,

PA-I 0100-0108. As such, even if the District Court considered that the 120-day period was expired, the District Court's Order failed to comply with the rationale of NRCP 4. PA-I 0099, *see, also*, PA-I 0100-0108.

1) Was Plaintiff's Motion to Enlarge Timely Filed?

The District Court's Minute Order Denying Petitioner's Motion to Enlarge states "COURT FINDS, the Order by Judge Gonzalez concerns the statute of limitations for the commencement of a legal action... Accordingly, COURT FINDS, the findings in Judge Gonzalez's Order are not applicable to the instant Motion... Therefore, COURT FINDS, the Motion is untimely..." PA-I 0099.

Petitioner believes that this finding was inaccurate for the reasons set forth hereinabove. Simply put: Emergency Directive 009 (Revised) tolled all statutory and regulatory time limits for commencing an action; Service timelines are state regulatory time limits; Service of Process is part and parcel of the commencement of a legal action; Service of Process timelines were tolled as part of the Emergency Directives; The 120-days for

service, inclusive of extensions thereto, was tolled, thus Petitioner's Motion was timely. PA-I 0001-0007, PA-I 0074-0075, N.R.C.P. 4, PA-I 0008-0010, PA-I 0011-0014, PA-I 0153-0160.

Based on Petitioner's reading of the Emergency Directives and Administrative Orders, as set forth above, the expiry of the 120-day service time, inclusive of all extensions thereto, occurred on December 4, 2020, four (4) weeks after Real Party in Interest MARK THOMAS ANDERSON was officially served in this matter. PA-I 0001-0007, PA-I 0074-0075, N.R.C.P. 4, PA-I 0008-0010, PA-I 0011-0014, PA-I 0153-0160. As such, if Petitioner's Motion was timely, it was also moot as Real Party in Interest was officially served before said expiration. PA-I 0001-0007, PA-I 0074-0075, N.R.C.P. 4, PA-I 0008-0010, PA-I 0011-0014, PA-I 0153-0160.

Nevertheless, should this Court consider that Petitioner's Motion was untimely in spite of the analysis set forth above, the District Court failed to continue its analysis, despite the clear requirement by N.R.C.P. 4(e)(4) to do so. *See*, N.R.C.P. 4.

2) Did Good Cause Exist for Any Delay?

While Petitioner steadfastly maintains the position that her Motion to Enlarge Time was timely given the Emergency Directives, even if the District Court disagrees, the analysis is not over.

In its Minute Order Denying Plaintiff's Motion to Enlarge, the District Court states: "COURT FINDS, the Motion is untimely, pursuant to Administrative Order 20-17. Therefore, COURT ORDERS, Plaintiff's Ex Parte Motion to Enlarge Time for Service and Serve by Publication is DENIED..." PA-I – 0099, *see, also*, PA-I 0015-0047.

Despite the clear and unambiguous language of N.R.C.P. 4(e)(4), the District Court provided no findings related to whether good cause existed for any delay in the Petitioner's filing of her Motion to Enlarge.² PA-I 0099. Moreover, during oral argument,

² This failure to complete the analysis required under N.R.C.P. 4(e)(4) provides further reasoning for allowing Plaintiff's Motion for Reconsideration as it would be manifestly unjust for the District Court to Rule on Plaintiff's Motion and terminate the case (as against Defendant MARK THOMAS ANDERSON) at its

the District Court did not discuss whether good cause existed for said delay. PA-I 0100-0108.

In the instant Matter, there were two (2) ways in which such Good Cause could be established.

First, if Petitioner were to provide evidence of the various ways in which service was attempted during the period between the granting of the prior Motion to Enlarge Time and the filing of the Instant Motion. Certainly, showing a myriad of attempts of failed service would provide adequate evidence to warrant good cause in said delay.

Alternatively, good cause exists for any delay in filing the Motion if Petitioner *reasonably believed there was no need to file the Motion*.

Petitioner believed that her time for service was tolled during the state of emergency, and therefore that the time for service did not expire until *at least* November 23, 2020. *See*, PA-I 0077-0098. Under Petitioner's belief and interpretation of the

outset without full consideration of the issue as required by the Rules of Civil Procedure.

Emergency Directives and Administrative Orders, there would be no need to file a Motion to Enlarge Time, so any delay would be both understandable and reasonable.

Of course, this necessarily leads to the question: was the Petitioner's interpretation and belief *reasonable*? If yes, then good cause existed for any delay by the Petitioner in filing her Motion to Enlarge Time because it was reasonable to believe that the Motion was unnecessary.

Given the argument set forth above regarding the interpretation of Declaration of Emergency Directive 009 (Revised) and 026, Plaintiff submits that it was more than reasonable to believe that she had time to complete service and that her Motion to Enlarge was therefore unnecessary, but filed out of an abundance of caution.

Moreover, it is indisputable that all of the COVID-19-related Administrative Orders and Emergency Directives (as they pertain to the courts) are generally understood to extend time as a matter of course, given the unusual state of the world and the difficulties the pandemic has imposed on everyone: working

remotely; unexpected skeleton staffs caused both by business necessity and the unfortunate reality of how families have to deal with their children being “home-schooled;” the unforeseen consequence of internet brown-outs and black-outs caused by a shortage of bandwidth for people suddenly forced to conduct all of their (and their children’s) daily business from home, rather than the office; and a myriad of other, less ubiquitous difficulties.

The clear and obvious *intent* of the Administrative Orders and Emergency Directives during the pandemic was to enlarge time and provide recourse for the difficulties caused by the State of Emergency. PA-I 0008-0010, PA-I 0153-0160. It was therefore undeniably reasonable for the Plaintiff to believe that the intent of Emergency Directive 009 (Revised) was to toll time for all issues related to the “commencement of an action” including Service of Process and therefore believe that Service was not due until at least November 23, 2020.

Consequently, since it was reasonable for Petitioner to believe that Emergency Directive 009 (Revised) was intended to toll all time limits related to the commencement of an action,

including those regarding Service, Good Cause also clearly exists for any delay in Plaintiff's filing of the Motion to Enlarge Time.

3) Good Cause Existed for Granting Plaintiff's Motion

It bears noting that the reasonableness of Plaintiff's interpretation of the Emergency Directives and Administrative Orders also provides good cause for Granting Plaintiff's Motion. Certainly, if Petitioner was reasonable in believing that the expiration of the 120-day service deadline, inclusive of any extensions thereto, was not until at least November 23, 2020, then it is reasonable to believe that Petitioner was sufficiently diligent in pursuing service of Real Party in Interest MARK THOMAS ANDERSON to warrant a determination that good cause exists for granting Petitioner's Motion. The issue in question is not what Petitioner did to effectuate service, but was Petitioner *reasonably diligent in her attempts*. N.R.C.P. 4. The deadline in N.R.C.P. 4 "was not adopted, however, to become an automatic sanction when a plaintiff fails to serve the complaint within 120 days of filing. When making a determination under NRCP4(i), the district court should recognize that 'good public

policy dictates that cases be adjudicated on their merits.” Kahn v. Orme, 108 Nev. at 516 (1992).

It is axiomatic that Nevada has a strong public policy in favor of adjudication on the merits, and the Rules of Civil Procedure governing Service are intentionally flexible to promote this policy. Kahn v. Orme, 108 Nev. at 516 (1992). Moreover, as outlined above, the clear intent of the Emergency Directives and Administrative Orders was to facilitate deadline extensions in order to further the strong public policy in favor of adjudication on the merits. *See, e.g.*, PA-I 0153-0160.

Consequently, where a Plaintiff has timely effectuated service within a deadline based on a reasonable interpretation of all of the Public Policy, Rules of Civil Procedure, Emergency Directives, and Administrative Orders, good cause exists for a determination that filing a Motion to Enlarge within said timeframe was reasonable.

Moreover, in the instant case, good cause also existed to GRANT her Motion to Enlarge. The Administrative Orders and Emergency Directives make clear that documented difficulties

resulting from COVID-19 “will be considered good cause” to extend time to serve. PA-I 0015-0047. In the instant matter, though it was never even addressed by the District Court in determining Petitioner’s Motion, social distancing/quarantine limitations prevented petitioner from attempting personal service and skeleton staffing at counsel’s office created difficulties in submitting Process for Service via publication.

Finally, it bears noting that the Real Party in Interest in Question, MARK THOMAS ANDERSON, is the General Manager, and thus agent, for the remaining Defendant, THOR DEVELOPMENT. PA-I 0001-0007. As such, he has been aware of this litigation since his employer was served in March 2020. PA-I 0011-0013.

While service of Mr. Anderson has been in process, no discovery has taken place, meaning that there is no prejudice to Mr. Anderson in the way of missing out on depositions or other discovery. Perhaps most importantly, Mr. Anderson’s potential dismissal from this matter ***will not preclude him from the proceedings***. Mr. Anderson is both a percipient witness and the

most knowledgeable person at THOR DEVELOPMENT regarding this incident (and thus the presumptive 30(b)(6) witness). As such, whether Mr. Anderson is an individually named defendant will have no bearing on his participation in the lawsuit. His participation and testimony is part and parcel of the case as a whole. In other words, dismissing him from the case will severely prejudice the Petitioner, *while at the same time having no effect on Mr. Anderson's need to participate in the matter.*

Given all of the foregoing, most notably that dismissing Mr. Anderson severely prejudiced and harmed the Petitioner and that Mr. Anderson has clearly been on notice of the proceeding since March 2020, good cause clearly exists for Granting Petitioner's Writ Petition and allowing for an enlargement of time for service, and overturning of the District Court's determination that dismissal of Real Parties in Interest was proper.

CONCLUSION

Petitioner respectfully requests that the Court grant this Petition and enter an order directing the district court to reverse its prior decision dismissing Real Parties in Interest. These

Parties were properly and timely served based upon the tolling of time to serve parties effectuated by the Emergency Directives.

Respectfully submitted July 2, 2021.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Century Schoolbook in 14-size font.

2. I further certify that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) and NRAP 21(d) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains less than 7,000 words and less than 650 lines of text. This brief consists of approximately 4,500 words making up 476 lines of text. It is my understanding of the Rules that the Declaration is not to be considered part of the type-volume limitations. Nevertheless, even if the declaration is considered, it consists of approximately 1,300 words making up 155 lines of text, meaning that the briefing is still only approximately 5,800 words and 631 lines of text.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of **BIGHORN LAW**, and on the 6th day of July 2021, I served the foregoing ***PETITIONERS WRIT OF MANDAMUS*** as follows:

- ☒ Electronic Service – By serving a copy thereof through the Court’s electronic service system; and/or
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