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**IN THE SUPERIOR COURT
 FOR THE
 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

LORENZO B. HOCOG,)
)
Plaintiff,)
)
v.)
)
COMMONWEALTH HEALTHCARE)
CORPORATION,)
)
Defendant.)

CIVIL ACTION NO. 15-0136

**ORDER DENYING DEFENDANT CHC'S
 MOTION TO DISMISS FOR
 INSUFFICIENCY OF SERVICE OF
 PROCESS**

I. INTRODUCTION

THIS MATTER came before the Court on January 4, 2017, at 10:00 am in Courtroom 202A. The Court heard arguments on Defendant Commonwealth Healthcare Corporation's (CHC) motion to dismiss for insufficient service of process. Defendant was represented by Assistant Attorney General Christopher Timmons. Plaintiff, Lorenzo Hocog, was represented by William Fitzgerald, Esq.

Based on review of the filings, oral arguments, and applicable law, the Court hereby DENIES Defendant's motion to dismiss for the reasons set forth below.

II. BACKGROUND

On August 15, 2015 Plaintiff filed his Complaint against CHC, alleging unpaid wages for work done in service to CHC in 2009. Plaintiff served summons and complaint to Defendant's Chief Executive Officer ("CEO"), Esther Muna, on September 2, 2015 via personal service. According to Plaintiff declarations, after the time for an answer had passed Plaintiff Hocog personally contacted the CNMI Attorney General, Edward Manibusan, who directed Plaintiff to have his attorney contact Nancy Gottfried, the Assistant Attorney General ("AAG") assigned to CHC matters.¹ Plaintiff contacted Defendant's attorney Gottfried and then

¹ Plaintiff could not point to the exact timing of his discussions with the OAG. When asked, however, Plaintiff asserted without contest that contact began before Defendant filed the motion to dismiss on Dec. 9, 2016, which is persuasive.

By order of the Court, Presiding Judge Roberto C. Naraja

1 entered into discussions on the merits of the case. On December 9, 2016, Defendant filed a motion to dismiss
2 for insufficient service of process. Summons and a copy of the Complaint were then personally served to the
3 CNMI Office of the Attorney General (“OAG”) on December 22, 2016.

4 **III. LEGAL STANDARD**

5 CHC seeks dismissal of Plaintiff’s cause of action pursuant to Commonwealth Rules of Civil
6 Procedure 12(b)(5) for insufficient service of process as required by Commonwealth Rules of Civil
7 Procedure 4(i);(m). This Court has held that a motion to dismiss under 12(b)(5) “must be specific as to why
8 service was insufficient.” *Castro v. Commonwealth Dept. of Public Safety, et. al.*, No. 14-0051 (NMI Super.
9 Ct. Dec. 11, 2014 at 3); *see also Banes v. Banes*, No. 11-0257 (NMI Super. Ct. Oct. 13, 2011)(Order Den.
10 Resp’t. [’s] Mot. Dismiss at 4) (citing *Fly Brazil Group, Inc. v. Gov’t of Gabon*, 708 F. Supp 2d 1274, 1279
11 (S.D. Fla. 2010)).

12 **IV. DISCUSSION**

13 Defendant argues that the case should be dismissed for lack of personal jurisdiction because the OAG
14 was not properly served within 240 days of filing. Defendant asserts that Plaintiff failed to fulfill the special
15 procedural requirements to affect service upon and bring suit against the CNMI, namely the requirement that
16 service must be made by mail or personal service upon the OAG as well as upon the named government
17 entity, and that permitting the case to continue would render the rules meaningless. *See* NMI R. Civ. P. 4(i),
18 (m). Plaintiff counters that dismissal for insufficient service is not permitted under the rules because service
19 was made upon the Defendant via service directly to CHC within the 240 day timeframe and, though
20 delayed, service was also made to the OAG before any dismissal. *See* NMI R. Civ. P. 4(m).

21 When bringing suit against a Commonwealth agency the Commonwealth Rule of Civil Procedure 4(i)
22 requires that service be effected by (1) delivering a copy of the summons and complaint to the office of the
23 attorney general by personal service or through registered or certified mail; and (2) by also serving or
24 sending a copy of the summons and of the complaint by registered or certified mail to the officer or agency.²
Id. at 4(i)(1)-(2) (“Rule 4(i)”).

25 In regards to timing of such service, CNMI rules provide:

26 If service of the summons and complaint is not made upon a defendant within 240 days
27 after the filing of the complaint, the court, upon motion or on its own initiative after

28 ² The rule states in full: (i) SERVICE UPON THE COMMONWEALTH, AND ITS AGENCIES, CORPORATIONS,
29 OR OFFICERS. (1) Service upon the Commonwealth shall be effected by delivering a copy of the summons and of the
30 complaint to the attorney general *or to an assistant attorney general* or clerical employee of the office of the attorney
31 general, at the office of the attorney general, or by sending a copy of the summons and of the complaint by registered or
certified mail addressed to the attorney general. (2) Service upon an officer or agency of the Commonwealth shall be
effected by serving the Commonwealth in the manner prescribed by paragraph (1) of this subdivision and by also
serving or sending a copy of the summons and of the complaint by registered or certified mail to the officer or agency.
NMI R. Civ. P. 4(i)(1)-(2) (emphasis added).

1 notice to the plaintiff, shall dismiss the action without prejudice, or may direct that
2 service be effected within a specific time, provided, however, that the failure to make
3 service within 240 days after the filing of the complaint shall not be grounds for dismissal
4 of the complaint as to a defendant once that defendant has been served; and provided
5 further, that if the plaintiff shows good cause for the failure, the Court shall extend the
6 time for service for an appropriate period, and an extension shall be freely given when
7 justice so requires. This subdivision does not apply to service in a foreign country
8 pursuant to subdivision (f) or (j)(1).

9 NMI R. Civ. P. 4(m) (amended May 24, 2004) (hereafter “Rule 4(m)”).

10 The motion at hand centers on the portion of Rule 4(m) that reads: “the failure to make service within
11 240 days after the filing of the complaint shall not be grounds for dismissal of the complaint as to a
12 defendant once that defendant has been served.” Defendant argues that a proper reading of this portion of the
13 rule should be that once a motion to dismiss for insufficient service of process has been filed the plaintiff
14 cannot serve to cure; otherwise the rule would be rendered meaningless. Plaintiff, however, asserts that this
15 rule bars dismissal of the case at hand in its plain language because both the OAG and CHC were served
16 before any dismissal was granted.

17 When construing a statute, the statutory language should be given its “plain meaning, where the
18 meaning is clear and unambiguous.” *Aurelio v. Camacho*, 2012 MP 21 ¶ 20 (quoting *Calvo v. N. Mariana
19 Islands Scholarship Advisory Bd.*, 2009 MP 2 ¶ 21). The court may also “look at the statute as a whole, not
20 just an isolated set of words, to ascertain the legislature’s intent” if there is ambiguity. *Id.* The goal is to
21 “avoid reading a statute in a way that defies common sense or leads to absurd results.” *Id.*; *Commonwealth v.
22 Minto*, 2011 MP 14 ¶ 34.

23 *i) Plain Meaning*

24 CHC argues that the plain reading of the rule specifies that when a complaint is not served within the
25 proper timeframe it must be dismissed unless the plaintiff can show good cause why service was not made
26 during that period. *Guerrero v. L&T International*, 3 CR 650, 652 (Trial Ct. 1989); *Norlock v. City of
27 Garland*, 768 F.2d 654, 657–58 (5th Cir. 1985). CHC points to case law from other jurisdictions whose rules
28 mirror the prior version of Rule 4(m).³ While instructive, these cases and their interpretation of and guidance
29 address the old rule and not the current Rule 4(m) in the CNMI. *See* NMI R. Civ. P. 4(m).

30 The language of Rule 4(m) was amended in 2004. Previously, the rule governing service of process
31 was a more stringent 120 day limit, matching the U.S. Federal Rules of Civil Procedure that were cited in
Guerrero and *Norlock*, but in 2004 the number of days was doubled for CNMI plaintiffs. Compare NMI R.

³ The rule previously read: “If service of the summons and complaint is not made upon a defendant within 120 days
after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss
the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that
if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.”
NMI R. Civ. P. 4(m) (1989).

1 Civ. P. 4(m) (2004), with NMI R. Civ. P. 4(m) (1989). In addition to changing the time limits, the provision
2 at issue was added to the clause dealing with alternatives to dismissal. *Id.*

3 Defendant argues that a proper reading of the added provision should bar Plaintiff from correcting any
4 insufficiency in service after a motion to dismiss for insufficient service has been filed. From a plain reading
5 of the text as amended, outright dismissal for insufficient service is disfavored; but allowing the plaintiff the
6 opportunity to correct any insufficiency and allowing a claim to be addressed on its merits rather than on
7 service of process are strongly preferred. The rule states that even if the plaintiff fails to serve within 240
8 days, the court has four alternatives. Of its own volition, the court can (a) dismiss if done without prejudice
9 and upon notice and presumably a hearing; or (b) direct a specific time to serve. Rule 4(m). Additionally, the
10 court is mandated to (c) extend time for service if the plaintiff shows “good cause” for its failure. *Id.* Finally,
11 the court should (d) freely give extensions when justice so requires. *Id.* Rule 4(m) further states that even
12 after the 240 days have elapsed, if the plaintiff serves the defendant, insufficient service shall not be grounds
13 for dismissal. *Id.*

13 *a. Service Upon Defendants Within 240 Days*

14 Plaintiff made service upon CHC via Esther Muna on September 2, 2015, eighteen days after filing
15 the complaint, which is service upon the government office or agency. *See* Rule 4(i)(2). As of April 11,
16 2016, 240 days after the filing of the complaint, it is clear that no service upon the OAG was made. Thus,
17 applying Rule 4(i), only partial service was made within 240 days. A plain reading of Rule 4(m), then, would
18 permit the Court to either direct a specific time for Plaintiff to complete service or dismiss without prejudice,
19 as long as Plaintiff is given notice.

19 *b. Service Upon Defendants Outside of 240 Days*

20 Before the hearing on defendant’s motion to dismiss, Plaintiff directed service upon OAG via personal
21 service on December 22, 2016. From a plain reading of the rules, service on the OAG would complete the
22 full and proper service required in Rule 4(i)(1).

23 Further, even if this service had not been made, under a plain reading of Rule 4(m), if this Court found
24 “good cause” for the failure or that “justice so required,” an extension would be freely given.

25 *ii) Context and Intent*

26 The court may look at the statute as a whole to remove ambiguity and avoid absurd results. *See*
27 *Aurelio*, 2012 MP 21 ¶ 20. Plaintiff seems to find ambiguity in Rule 4(m)’s requirement for good case, as it
28 argues that service made before dismissal, regardless of the 240 day limit or reason for delay in service,
29 should prevent dismissal on the grounds of insufficient service. Given this perception of ambiguity and that
30 this is a case of first impression on the amended provision, the Court is inclined to examine the context and
31 intent of Rule 4(m) to clarify its meaning.

1 When read in context, Rule 4(m) requires “good cause” when a plaintiff makes service upon a
2 defendant beyond the 240 day limit, even if such service is prior to a dismissal. *Id.* The requirement for
3 “good cause” closes any loophole that would permit a plaintiff to effectively circumvent not only the time
4 period restrictions of Rule 4(m), but also the statute of limitations. NMI R. Civ. P 3; 7 CMC §§2502, 2503,
5 2505. Without a requirement for good cause, a plaintiff could file a complaint the night the statute of
6 limitations would end, take no action on a case for years without good cause, then serve the defendant and
7 proceed with the action years after the statute of limitations had run - as long as the defendant had not
8 somehow been granted a dismissal.⁴ Allowing this kind of undue delay is unacceptable because it defies
9 common sense and is an absurd result. *Aurelio*, 2012 MP at ¶ 20.

10 While the 2004 changes make Rule 4(m) more lenient, the amendment does not effectively remove all
11 time restrictions on service of process and allow undue delay in cases. Thus, the Court reads Rule 4(m) to
12 mean that: failure to make service within 240 days cannot be grounds for dismissal if the defendant has been
13 served before any dismissal has been granted and/or provided that the plaintiff shows good cause for the
14 failure to serve within the 240 days.

15 In the case at hand, there is no dispute that Plaintiff failed to fulfill Rule 4(i) with service upon the
16 OAG within 240 days of filing the complaint and that no dismissal of the case has been granted. The ultimate
17 issues, then, are (a) whether complete service under Rule 4(i) was made outside of the 240 day limit; and (b)
18 whether there is good cause for Plaintiff’s failure.

19 *a. Service Upon the Defendants*

20 As pointed out above, Plaintiff made partial service upon the defendant by serving CHC within the
21 240 day limit and completed service by serving OAG before the hearing on this motion. Accordingly, this
22 court finds that service has been made in accordance with Rule 4(i) outside of 240 days, but before any
23 dismissal of the case.

24 *b. Good Cause*

25 “Good cause” exists “where a plaintiff has made reasonable, diligent efforts to effect service on the
26 defendant.” *N. Mariana Hous. Corp. v. Ruben*, No. 96-485 (NMI Super. Ct. Feb. 10, 1999) (Order Granting
27 Def.’s Mot. To Dismiss at 4); *T & S Rentals v. United States*, 164 F.R.D. 422, 425 (N.D.W.Va. 1996); *see*
28 *also Bachenski v. Malnati*, 11 F.3d 1371, 1377 (7th Cir.1993) (a plaintiff’s attempts at service need be at the
29 very least accompanied by some showing of reasonable diligence before good cause can be found). “The
30 ultimate determination of good cause is left to the sound discretion of the court.” *Ruben*, No. 96-485 at 4;
31 *Friedman v. Estate of Presser*, 929 F.2d 1151, 1157 (6th Cir.1991).

⁴ The Court notes that Plaintiff filed his complaint at the end of the statute of limitations and, thus, would be barred from refileing this action if the case were dismissed. However, the Court observes that this was not a calculated “ambush” of the defendant, but rather a delay due to Plaintiff’s sincere wish to resolve the matter privately, if at all possible.

1 The Court finds that Plaintiff's reasonable, diligent efforts, which gave Defendant constructive notice
2 of the case, are sufficient to establish "good cause." Plaintiff effected service upon CHC within twenty days
3 of filing the complaint and refrained from filing a motion against Defendant for failure to respond because he
4 hoped to come to an amicable resolution of the case. Then Plaintiff made reasonable efforts in the case via
5 discussions with the OAG and CHC's assigned AAG prior to this motion to dismiss. Rule 4(i)(1) also
6 permits Defendant's AAG Gottfried to receive service on behalf of the OAG. Thus, AAG Gottfried would
7 presumably receive any complaints and summons served upon the CHC.⁵ The Attorney General, himself,
8 referred Plaintiff to AAG Gottfried. The foregoing show sufficient reasonable efforts and diligence by
9 Plaintiff to establish good cause to excuse the extended time used for service of process and deny dismissal
10 for insufficient service of process.

11 V. CONCLUSION

12 For the foregoing reasons, CHC's motion to dismiss is **DENIED**. Defendant has 20 days from the date
13 of this order to answer Plaintiff's Complaint. An order submitting the matter to mediation will be
14 forthcoming.

15 **IT IS SO ORDERED** this 13th day of January, 2017.

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18 /s/ _____

19 **ROBERTO C. NARAJA**, Presiding Judge
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31 ⁵ At oral arguments inquiries should have been made as to the exact nexus between Assistant Attorney General
Gottfried, the OAG, and CHC; the location of Ms. Gottfried's office; and on whose payroll she is listed. Ms. Gottfried's
title is "Assistant Attorney General" and she is assigned to CHC, which gives the implication that she handles all
matters for CHC. It is conceivable also that she has an office on its premises.