

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

4 Plaintiff, *in propria persona*

5 UNITED STATES DISTRICT COURT  
6 FOR THE DISTRICT OF ARIZONA

7 DANIEL ARTHUR GUTENKAUF, )  
8 an unmarried man )

9 Plaintiff, )

10 Vs. )

11 THE CITY OF TEMPE, a municipal corporation and )  
12 body politic, et al.: )

13 Defendants. )  
14 )  
15 )  
16 )

) Civil Action No.  
) 2:10-cv-02129-FJM  
)  
) PLAINTIFF'S  
) MOTION TO EXTEND TIME  
) TO SERVE PROCESS  
)  
) (First Request)  
)  
) EXPEDITED RULING  
) REQUESTED

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

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



1 employees Bernard, Harper, and Davie were served on January 19<sup>th</sup>. Defendants Barsetti,  
2 Arkfeld, Meyer and spouses were also served on January 19<sup>th</sup>. Reflex Defendant Karen Finley  
3 and AAA Photo Safety Inc. and Mr. Pickron and spouse served on January 20<sup>th</sup>. Defendant  
4 spouse Timothy Finley and Mr. Goddard and spouse were served on January 21<sup>st</sup>. Australian  
5 corporation Redflex Holdings Ltd., which apparently has no statutory agent in Arizona, was  
6 served at the office of its subsidiary, Redflex Traffic Systems Inc., in Phoenix on January 21<sup>st</sup>.  
7 Defendants Ryff and spouse and Ms. Seyler were served on January 22<sup>nd</sup>, 2011. Plaintiff is  
8 Waiting for status update on attempted service of Defendant Arnett on 1-30-11.  
9

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

16 On January 31, 2011, Plaintiff telephoned Tempe Attorney Matheson for status update on  
17 contacting the Defendants spouses, and counsel indicated that not all spouses have been con-  
18 tacted for approval to accept waiver of service. Plaintiff informed Attorney Matheson of his  
19 intention to file this Motion to Extend Time for Service of Process, and Mr. Matheson did not  
20 have any position on the Motion, since City of Tempe has not yet filed an Answer. Mr. Mather-  
21 son indicated that he is preparing a proposed stipulation to extend time, for Tempe Defendants  
22 who have already been served, to Answer Plaintiff's First Amended Complaint.  
23

24 Although Plaintiff believes that Australian corporate Defendant has been properly served  
25 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

1 Melbourne, Australia via a United States Central Authority, pursuant to the Hague Convention.  
2  
3 From Plaintiff's research on serving a foreign corporation, it appears that Australia may have  
4 only very recently acceded to the Hague Convention in October 2010, the same month when  
5 Plaintiff filed his original Complaint.

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

## 12 II. NO PREJUDICE TO THE DEFENDANTS BY EXTENSION OF TIME

13 The second factor in evaluating good cause for extension of time, prejudice to the  
14 Defendants, does not appear to be a concern to Defendant Redflex Traffic Systems, Inc., and its  
15 employees. RTS attorney Nicole Goodwin and Plaintiff have already agreed to a stipulation to  
16 extend time for Redflex Defendants to answer Plaintiff's First Amended Complaint until March  
17 14, 2011. Per telephone discussion on 1-26-2011, Ms. Goodwin stated that Redflex takes no  
18 position on Plaintiff's Motion to Extend Time for service of process, so there is no apparent  
19 prejudice to the Redflex Traffic Systems Defendants.  
20

## 21 III. PLAINTIFF'S MOTION IS MADE PRIOR TO DEADLINE

22 The third factor for good cause is demonstrated by Plaintiff's proactive motion before the  
23 expiration of time under Rule 4 (m). District courts have discretion to enlarge period for  
24 effecting  
25 service, even if Plaintiffs fail to show good cause. Bruce v. City of Wheeling (2008, ND W Va)

1 The instant case is compounded by the large number of Defendants, due to the nature of  
2 the conspiracies involved and the complexity of the civil RICO in particular, and diversity  
3 jurisdiction. Plaintiff believes it is appropriate for the Court to grant the extension of time under  
4 the circumstances described and in the interest of justice.  
5

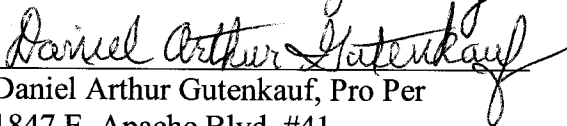
6 This is Plaintiff's first request for an extension of time for service of process. Since none  
7 of the Defendants have filed an Answer in this case as of the date of this Motion, the position of  
8 the other Parties regarding this motion would not seem either relevant or applicable.

9 RELIEF REQUESTED

10 WHEREFORE, Plaintiff respectfully requests this Court to grant an extension of time  
11 of ninety (90) additional days from the original deadline of February 2<sup>nd</sup>, 2011, until May 4<sup>th</sup>,  
12 2011 to effect service of process on the remaining Defendants not already served or waived for  
13 service.

14 RESPECTFULLY SUBMITTED,

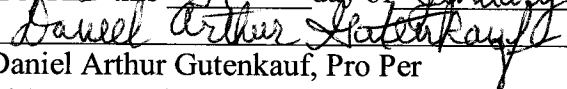
15 DATED this 31<sup>st</sup> day of January, 2011.

16   
17 Daniel Arthur Gutenkauf, Pro Per  
18 1847 E. Apache Blvd. #41  
19 Tempe, Arizona 85281  
20 480-966-7018

21 ATTESTATION

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

DATED this 31<sup>st</sup> day of January, 2011.

  
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 31<sup>st</sup> 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 31<sup>st</sup> 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 31<sup>st</sup> 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