

The Honorable S. Kate Vaughan

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
STEVE HOBBS,  
  
Defendant.

Case No. 3:25-cv-06078-SKV  
  
UNITED STATES' RESPONSE TO  
ORDER TO SHOW CAUSE

**INTRODUCTION**

The United States respectfully requests that the Court exercise its discretion and not dismiss the Complaint even though service was effectuated outside the 90-day period of Fed. R. Civ. P. 4. The United States was unable to effectuate service on Defendant within 90 days after filing the Complaint primarily due to out-of-state counsel's unfamiliarity with the State of Washington's procedures for effectuating service on State officials. The United States acknowledges that it should have filed a motion for extension of time from this Court and requested additional time to serve Defendant. Counsel apologizes to the Court for not having sought a timely extension. *See* Declaration of Eric Neff.

1 Following the Court's March 10, 2026 Order to Show Cause, out-of-state counsel asked  
2 for assistance from attorneys in the U.S. Attorney's Office for the Western District of Washington  
3 to effectuate service. Due to an unfortunate miscommunication, this resulted in a total of three  
4 attempts at service; two via the Attorney General's email service box and one by personal service  
5 at the Office of the Attorney General, two of which were unnecessary. Dkt. 14. Defendant accepted  
6 service on March 13, 2026, by executing a waiver of service, making his response to the Complaint  
7 due on May 12, 2026. *Id.* By executing the waiver of service, Defendant waived any objections to  
8 the absence of a summons or "of service." Dkt. 14, pg. 5. He has also appeared in the case through  
9 counsel and has not objected to service. Dkts. 10-14. Thus, Defendant has notice of the case, has  
10 executed a waiver of service, has a reasonable time to respond, and is not prejudiced by the  
11 untimely service.

12 The United States apologizes to the Court for failing to acknowledge that service was not  
13 effectuated within the 90-day timeframe in response to the Court's Order to Show Cause. Counsel  
14 mistakenly interpreted the Court's March 10, 2026 Order to Show Cause as allowing the United  
15 States until March 17, 2026, to effectuate service. *See* Declaration of Eric Neff. Counsel apologizes  
16 to the Court and did not mean to mislead the Court or imply that service was completed within the  
17 90-day timeframe. The service on March 13, 2026, was admittedly untimely and without good  
18 cause.

19 The United States respectfully requests that the Court exercise its discretion and allow the  
20 Complaint to proceed despite the untimely service where as here Defendant has accepted service,  
21 executed a waiver of service, has appeared in the action, has not contested service, has a reasonable  
22 time to respond to the Complaint, and is not prejudiced. Moreover, this result would be consistent  
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1 with the preference of federal courts to decide cases on the merits rather than on procedural  
2 technicalities.

### 3 ARGUMENT

4 The Court should not dismiss the Complaint. Normally, a plaintiff has 90 days to serve a  
5 defendant. Fed. R. Civ. P. 4(m). Pursuant to Rule 4(m), if a complaint is not served within 90 days  
6 of its filing, the court “must” dismiss the complaint “without prejudice” or “order that service be  
7 made within a specified time.” *Id.* However, “if the plaintiff shows good cause for the failure, the  
8 court must extend the time for service for an appropriate period.” *Id.*

9 Here, the Court did not order that service be made within a specified time. And, the service  
10 on March 13, 2026, was admittedly untimely and without good cause. Nevertheless, the United  
11 States respectfully requests that the Court not dismiss the Complaint where, as here, Defendant  
12 has accepted service, executed a waiver of service, has appeared in the action, has not contested  
13 service, has a reasonable time to respond to the Complaint, and is not prejudiced—all of which is  
14 consistent with the preference of federal courts to decide cases on the merits rather than on  
15 procedural technicalities.

16 To be sure, Rule 4(m) provides that courts “must” dismiss untimely served complaints  
17 without prejudice. But failure to consider other factors weighing against dismissal can also be  
18 abuse of discretion. *See Lepone-Dempsey v. Carroll Cnty. Cm’rs*, 476 F.3d 1277, 1282 (11th Cir.  
19 2007) (reversing for failure to weigh statute of limitations). A valid and knowing waiver would  
20 qualify as a factor the court would similarly be required to consider.

21 At any rate, dismissal is not appropriate under controlling Ninth Circuit precedent. *Borzeka*  
22 *v. Heckler*, 739 F.2d 444, 447 (9th Cir. 1984). In *Borzeka*, the plaintiff failed to personally serve  
23 the complaint on the United States Attorney pursuant to Rule 4. The court rejected an argument  
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1 that “dismissal of the complaint is always required” when Rule 4’s “personal service requirement  
2 has not been” met. That’s because dismissal is not warranted where “(a) the party that had to be  
3 served personally received actual notice, (b) the defendants would suffer no prejudice from the  
4 defect in service, (c) there is a justifiable excuse for failure to serve properly, and (d) the plaintiff  
5 would be severely prejudiced if his complaint were dismissed.” *Id.*

6 All of these factors weigh against dismissal. According to social media posts and media  
7 quotes, Defendant had actual notice of this action. *See* Declaration of Eric Neff. By waiving  
8 service, Defendant disclaimed any prejudice arising from defects in service. Where the defect is  
9 “technical,” and the Plaintiff not the Defendant would face prejudice from dismissal, then granting  
10 additional time to serve is a proper exercise of judicial discretion. *See Clark v. Wash. State Dep’t*  
11 *of Health*, 735 F. Supp. 3d 1334, 1349 (W.D. Wash. 2024). In this case, the United States would  
12 face real prejudice if the Complaint were dismissed, based on the need to refile a nearly identical  
13 case based largely on statutory interpretation. Both parties have an interest in the case being orderly  
14 adjudicated under thorough briefing. Such briefing will be evolving as precedent continues to  
15 emerge, including at the Ninth Circuit. *See United States v. Weber*, Case No. 2:25-cv-09149-DOC-  
16 ADS, 2026 WL 118807 (C.D. Cal. Jan. 15, 2026), *appeal docketed* No. 26-1232 (9th Cir. Feb. 25,  
17 2026).

18 Importantly, Defendant has actual notice of this action and following execution of the  
19 waiver of service has sixty days to respond to the Complaint. Dkt. 14, Fed. R. Civ. P. 4(i). He  
20 accepted service via the Attorney General’s email box, returned a waiver of service under Fed. R.  
21 Civ. P. 4(i), four attorneys have entered notices of appearance on his behalf, and they did not  
22 appear specially or indicate that Defendant was contesting service. Dkts. 10-14. Defendant also  
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1 filed a Notice acknowledging that he had issued a waiver of service and did not object to service.  
2 Dkt. 14. Defendant's response is due May 12, 2026, and he has a reasonable time to respond.

3 There is a justifiable excuse for the failure to timely serve Defendant in the 90-day period.  
4 The United States instituted multiple related actions across the country and is coordinating these  
5 actions out of the Department of Justice's Civil Rights Division, Voting Section. Litigating in  
6 multiple jurisdictions presents unique challenges to navigate each District's local rules and varying  
7 service requirements in each state. The Department experienced difficulties effectuating service in  
8 this District. *See* Declaration of Eric Neff. The Department, however, has engaged the U.S.  
9 Attorney's Office in this District to act as local counsel in this matter to take advantage of its  
10 greater familiarity with the unique requirements of litigation in the District.

11 The United States would be prejudiced if the Court were to dismiss the complaint under  
12 Fed. R. Civ. P. 4(m), because it would be forced to refile the action and proceed at additional delay,  
13 which is unnecessary now that Defendant has waived service, is aware of this action, and has a  
14 reasonable time to respond. Moreover, dismissal would be inconsistent with the general preference  
15 of federal courts that cases be decided on their merits whenever reasonably possible. *Eitel v.*  
16 *McCool*, 782 F.2d 1470, 1472 (9th Cir. 1986).

### 17 CONCLUSION

18 Defendant accepted email service on March 13, 2026, issued a waiver of service indicating  
19 he would not object to service, has appeared through counsel in this matter, has not contested  
20 service, and has a reasonable time to respond. Under these circumstances, the United States  
21 respectfully requests that the Court not dismiss the Complaint. Counsel apologizes to the Court for  
22 not seeking a timely extension of the 90-day period and for not acknowledging that service was

1 untimely or providing the Court with an explanation. The United States has obtained assistance in  
2 this District and will be diligent in adhering to the Court's Orders and Local Rules.

3 DATED this 23rd day of March, 2026.

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5 Respectfully submitted,

6 */s Eric V. Neff*

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