



good cause for the failure, the court must extend the time for service for an appropriate period.”

The Seventh Circuit has noted that “[g]ood cause means a valid reason for delay, such as the defendant’s evading service.” *Coleman v. Milwaukee Bd. of School Directors*, 290 F.3d 932, 934 (7th Cir. 2002). Where a plaintiff demonstrates good cause, “an extension is mandatory.” *Id.* In the case of excusable neglect causing lack of service, an extension is “permissive.” *Id.*

3. Since filing this case, the FTC has made repeated and concerted efforts to serve Defendant Xavier Ratelle, a resident of Montreal, Canada.<sup>2</sup> First, a process server company in Montreal hired by the FTC tried repeatedly to personally serve Mr. Ratelle. Beginning on October 5, 2007, bailiffs made at least eight visits to three different addresses where Mr. Ratelle is believed to work or reside. During one visit, at the address immediately next door to the address listed on Mr. Ratelle’s driver’s license, a bailiff spoke to Mr. Ratelle’s father, Bernard Ratelle. Bernard Ratelle told the bailiff that he did not know his son’s home address or phone number. Another bailiff saw a car suspected to be Mr. Ratelle’s at two of the locations he attempted to serve, but was never able to locate Mr. Ratelle. By all accounts, Mr. Ratelle attempted to evade service. (*See Exhibit 1, Process Server Declarations.*)

4. In or about the beginning of December 2007, the FTC sought assistance from the Royal Canadian Mounted Police (“RCMP”) to serve Mr. Ratelle. Since early January 2008, an RCMP investigator repeatedly has attempted to serve Mr. Ratelle. (*See Exhibit 2, RCMP Investigator Declaration.*) On three occasions, the investigator and Mr. Ratelle arranged to meet so that Mr. Ratelle could be served. On each of those occasions, Mr. Ratelle did not show up to meet the investigator. On or about January 21, 2008, the RCMP was informed by Mr. Ratelle

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<sup>2</sup> The remaining defendants in this matter have been served with the Complaint and Summons and have filed their Answers.

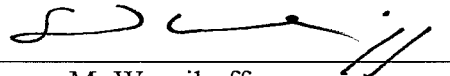
that Mr. Ratelle had left Canada for Nicaragua and would not return to Canada until on or about January 31, 2008. Thus, it is now essentially impossible that the FTC can serve Mr. Ratelle within the 120 days required by Rule 4(m).

5. In short, Mr. Ratelle has been aware of the FTC's attempts to serve him since early October. In the face of the FTC's repeated attempts to serve him, Mr. Ratelle has evaded service both by private process servers and an investigator with the RCMP. Delay of service for an additional two months – until March 31, 2008 – will cause no prejudice to Mr. Ratelle or any additional parties in this matter.

**WHEREFORE**, the FTC respectfully requests that the Court extend the time by which the FTC may serve process on Defendant Xavier Ratelle until March 31, 2008 pursuant to Fed. R. Civ. P. 4(m).

Respectfully Submitted,

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