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Attorneys for Defendants City of Sierra Vista,
7 Officer E. Slusser, Officer R. Hertman, Officer
S. McHunting, and Officer W. Partridge
8

9 **SUPERIOR COURT OF THE STATE OF ARIZONA**

10 **COUNTY OF COCHISE**

11 ELI DALTON-WEBB,

12 Plaintiff,

13 v.

14 CITY OF SIERRA VISTA, a municipal
corporation in Arizona, OFFICER E.
15 SLUSSER, R. HERTMAN, OFFICER S.
MCHUNTTING, M. PARTIDGE, peace
16 officers of the Sierra Vista Police Department,

17 Defendants.

NO. S0200CV202400628

**DEFENDANTS' REPLY IN SUPPORT OF
THEIR OBJECTION TO PLAINTIFF'S
APPLICATION FOR ENTRY OF
DEFAULT JUDGMENT**

AND

**RESPONSE TO MOTION FOR
ALTERNATIVE SERVICE**

(Assigned to the Honorable David Thorn)

19 Plaintiff's response¹ fails to adequately address the legal arguments raised in the
20 Individual Officers' Objection to the Application of Default Judgment, which Plaintiff construed
21 as a motion.² In fact, Plaintiff's response only confirms that service was improper and his
22

23 ¹ Defendants will respond to Plaintiff's Motion for Sanctions under separate cover.

² The Individual Officers preserve their argument that this is a limited appearance only and
do not waive service or any other Rule 12(b)(2)-(5) defenses.

1 application should therefore be denied. The crux of Plaintiff's response does not focus on the
2 service rule or on the legal arguments the Individual Officers raised, but instead makes
3 inappropriate accusations against the Defendants that they are "abusing procedures." [See
4 Response at pp. 1-2 (using "abuse" and variations thereof on more than five occasions in his three-
5 page response).] Notably, there is no allegation or evidence that any of the Defendants are evading
6 service or attempting to impede Plaintiff's ability to properly serve them. Defendants vehemently
7 deny that requiring Plaintiff to comply with the Rules for service constitutes abusive tactics, and
8 requests that the application be denied. .

9 **I. PLAINTIFF FAILED TO ESTABLISH THAT THE OFFICERS WERE**
10 **PROPERLY SERVED**

11 Plaintiff's sole argument that service should be considered proper is that
12 Ms. Sarinana was appointed to receive service of process. Plaintiff is silent as to *who* allegedly
13 appointed Ms. Sarinana to receive service on the Individual Officer Defendants' behalf. Plaintiff
14 argues that "It is a common practice for lawsuits against peace officers to serve the peace officers
15 at the front desk of the police department." [Response at p. 2.] Plaintiff provides no factual or
16 legal support for such a conclusory statement, however, and Defendants are not aware of any.
17 Arizona law is clear that apparent authority to accept service on another's behalf can never be
18 based on the actions of the agent, i.e., Ms. Sarinana. There must have been reliance on
19 representations from the Individual Officers themselves. That did not happen here; nor does
20 Plaintiff even conclusory allege that it did. Contrary to Plaintiff's argument, the fact that the
21 alleged agent was a "supervisor" who has been working for the Sierra Vista Police Department
22 "for not less than 346 days" is immaterial to the question of whether the Individual Officers
23 represented to Plaintiff that Ms. Sarinana could accept service on their behalf. It is also immaterial
24 that the Individual Officer Defendants have actual notice of the lawsuit as Plaintiff contends. *See*
25 *Melendez v. Melancon*, No. 1 CA-CV 21-0145, 2022 WL 554057, at *2 (Ariz. App. Feb. 24, 2022)

1 (“Actual notice does not validate otherwise improper service.”) (citing *Bank of New York Mellon*
2 *v. Dodev*, 246 Ariz. 1, 10 ¶ 29 (App. 2018) (“Proper, effective service on a defendant is a
3 prerequisite to a court’s exercising personal jurisdiction over the defendant.”)).

4 Plaintiff also argues that the Defendants have not shown any good cause for delay.
5 Defendants do not understand what delay Plaintiff is referring to or what Plaintiff believes
6 Defendants need good cause for. Because Plaintiff has not properly served the Individual Officer
7 Defendants, no response deadline exists, and therefore no delay is taking place. It is irrelevant that
8 Defendants have hired a law firm to represent them in this matter. Plaintiff appears to be confused
9 as to his requirements to ensure each individual defendant is properly served with his lawsuit with
10 the amount of time it will take to respond to his lawsuit *after* proper service is completed.

11 Consequently, Plaintiff’s response fails to establish that he properly served the
12 Individual Officer Defendants, a prerequisite for this Court having personal jurisdiction over
13 defendants, and his Application for Default Judgment must be denied.

14 **II. PLAINTIFF’S MOTION FOR ALTERNATIVE SERVICE MUST BE DENIED**

15 Plaintiff’s response includes four alternative requested remedies, the last option
16 being that his response be construed as a Motion for Alternative Means of Service under Rule
17 4.1(k). That rule states, in pertinent part:

18 If a party shows that the means of service provided in Rule 4.1(c)
19 through 4.1(j) are impracticable, the court may—on motion and
20 without notice to the person to be served—order that service may be
accomplished in another manner.

21 Ariz.R.Civ.P. 4.1(k)(1). Plaintiff has not shown that traditional service is impractical, and thus,
22 the Individual Officers request that Plaintiff’s Motion for Alternative Means of Service be denied.

23 Arizona Rule of Civil Procedure 4.1(d) governs service on an individual.
24 Specifically, Rule 4.1(d)(1), allows for service to be completed personally on the individual to be
25 served. Plaintiff’s Motion makes it clear that service pursuant to Rule 4.1(D)(1) is practical.

1 Plaintiff is aware of the location of the Sierra Vista Police Department. He is also aware that there
2 are employees at the police station that interact with individuals attempting to complete service.
3 Plaintiff's accompanying affidavit from his process server states only that he served the lawsuit
4 on Megan Sarinana and that she said she was allegedly authorized to accept service. The affidavit
5 does not state that the process server asked to speak with any of the Individual Officer Defendants,
6 asked whether any of the Individual Officers were present, asked when they would be at the police
7 department, or asked to be put into contact with the Individual Officer to get confirmation directly
8 from them that Ms. Sarinana was authorized to accept service on their behalf. All of this could
9 have been done—and still can be. One failed attempt to serve a defendant is not sufficient grounds
10 to constitute impracticability, particularly when the process server did nothing more than serve a
11 Sierra Vista Police Department employee without attempting to personally serve the officers
12 themselves.

13 Moreover, Rule 4.1(k)(1) requires that Plaintiff establish that service under Rule
14 4.1(c) be shown to be impracticable. Rule 4.1(c) deals with waivers of service. Under that Rule,
15 a Plaintiff may notify the defendant that an action has been commenced and request that the
16 defendant waive service of a summons. Ariz.R.Civ.P. 4.1(c)(1). The Rule further requires that
17 Plaintiff provide the defendant with a waiver form prescribed by Rule 84, Form 4. Plaintiff is
18 required to give the defendant at least 30 days to return the waiver and 60 days to file an answer
19 or motion from the date the request was sent. Ariz.R.Civ.P. 4.1(c)(1)(A)–(G). Although Plaintiff
20 has had multiple communications and conversations with undersigned counsel, he has not once
21 attempted to seek a waiver from the Individual Officer Defendants in compliance with Rule 4.1(c).
22 This is presumably because he does not wish to provide the Individual Officers with anything
23 more than the bare minimum amount of time to respond to his lawsuit. Skirting the rules so that a
24 defendant is not provided 60 days to respond to a complaint pursuant to waivers of service does
25 not establish impracticability. Notably, undersigned counsel has previously informed Plaintiff that

1 the Individual Officers would be agreeable to waiving service if Plaintiff were to withdraw the
2 pending Application for Default Judgment. Plaintiff refused to stipulate to this agreement and
3 disagreed with the stipulation undersigned counsel provided to him.

4 For the foregoing reasons, the Individual Officers respectfully request that the Court
5 deny Plaintiff's Application for Default Judgment and his Motion for Alternative Service.

6 DATED this 26th day of December, 2024.

7 JONES, SKELTON & HOCHULI P.L.C.
8

9 By /s/ Derek R. Graffious

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14 ORIGINAL of the foregoing electronically filed
15 this 26th day of December, 2024.

16 COPY of the foregoing mailed and emailed
17 this 26th day of December, 2024, to:

18 Eli Dalton-Webb
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22 *Plaintiff, in Pro Per*

23 /s/ Cindy Castro
24
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