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7 Officer E. Slusser, Officer R. Hertman, Officer
S. McHunting, and Officer M. 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.
18

NO. S0200CV202400628

**DEFENDANTS E. SLUSSER, R.
HERTMAN, S. McHUNTTING, AND M.
PARTRIDGE'S LIMITED APPEARANCE
TO RESPOND TO PLAINTIFF'S
APPLICATION FOR DEFAULT**

(Assigned to the Honorable David Thorn)

19 Defendants Officer E. Slusser, Officer R. Hertman, Officer S. McHunting, and
20 Officer M. Partridge (collectively, "Individual Officers"),¹ make this timely limited appearance
21

22 ¹ Defendant City of Sierra Vista has timely filed a Motion to Dismiss under separate cover,
23 on this date, which is within the 10-day window to respond to Plaintiff's Complaint. Therefore,
by operation of Rule 55, Ariz.R.Civ.Proc, no default can be entered or made effective against the
City of Sierra Vista.

1 for purposes of responding to Plaintiff's improper Application for Default.² As demonstrated by
2 Plaintiff's Affidavit of Service, the Individual Officers have not been properly served as required
3 by Ariz. R. Civ. P. 4.1(d), and thus, Plaintiff's Application for Default should be denied.

4 **I. THE COURT LACKS JURISDICTION OVER THE INDIVIDUAL OFFICER**
5 **DEFENDANTS BECAUSE THEY HAVE NEVER BEEN SERVED.**

6 "Proper, effective service on a defendant is a prerequisite to a court's exercising
7 personal jurisdiction over the defendant." *Barlage v. Valentine*, 210 Ariz. 270, 272 ¶ 4 (App.
8 2005); *see also Hirsch v. Nat'l Van Lines, Inc.*, 136 Ariz. 304, 308 (1983). Under Ariz. R. Civ.
9 P. 4.1(d) an individual may be served by:

10 (1) delivering a copy of the summons and the pleading being served
11 to that individual personally; (2) leaving a copy of each at that
12 individual's dwelling or usual place of abode with someone of suitable
13 age and discretion who resides there; or (3) delivering a copy of each
to an agent authorized by appointment or by law to receive service of
process.

14 None of these situations occurred here. Plaintiff's affidavit of service confirms that
15 service was purportedly done for all Individual Officers by serving Megan Sarinana. While not
16 stated, it would appear that Plaintiff attempted service pursuant to Ariz. R. Civ. P. 4.1(d)(3).
17 Plaintiff's affidavit does not allege who Megan Sarinana is, or that she is an agent authorized by
18 appointment or by law to received service of process for the Individual Officers. Plaintiff's
19 Affidavit of Service provides the address where the service was made as 911 N. Coronado Dr.,
20 Sierra Vista, AZ. [See Plaintiff's Affidavit of Service, attached as **Exhibit 1**, at p. 1.] That is the
21 address for the Sierra Vista Police Department. To be clear, Plaintiff attempted to serve the
22 Individual Officers by serving some other employee at the Sierra Vista Police Department. The
23

24 ² Nothing in this objection should be construed as the Individual Officers making a general
25 appearance, waiving service, or otherwise waiving their defenses under Arizona Rule of Civil
Procedure 12(b)(2)–(5).

1 Individual Officer Defendants have not authorized any individual to accept service on their behalf.
2 *See Koven v. Saberdyne Sys., Inc.*, 128 Ariz. 318, 322 (App. 1980).

3 Indeed, when one is attempting to make service upon an agent, apparent authority
4 to accept service can never be derived from the actions of the apparent agent alone. *Id.* see also
5 *Anchor Equities, Ltd. v. Joya*, 160 Ariz. 463, 466 (App. 1989) (holding that appellant’s theory of
6 apparent authority failed because the appellant did not identify any conduct on the part of the
7 principal that led appellant to believe there was individual had apparent authority); *Grand Canyon*
8 *Resort Corp. v. Drive-Yourself Tours, Inc.*, CV-05-03469-PHX-SMM, 2006 WL 1722314, *6 (D.
9 Ariz. June 22, 2006) (“Arizona courts have only allowed service on an ostensible agent where
10 reliance on a *defendant's* representations about an individual's apparent authority was reasonable”
11 (emphasis added)) (citing *Koven v. Saberdyne Sys., Inc.*, 128 Ariz. 318, 322 (App. 1980)); *see*
12 *also Duenas v. Town of Oro Valley*, 2021 WL 268805 n. 11 (D).

13 There has been zero allegation or contention that any of the Individual Officer
14 Defendants spoke to Plaintiff or a process server and represented that Ms. Sarinana was authorized
15 to accept service on their behalf. Likewise, there is no law applicable for which Ms. Sarinana
16 would be authorized to accept service on the Individual Officer Defendants without their
17 authorization. Because Plaintiff did not properly serve the Individual Officer Defendants pursuant
18 to Rule 4.1(d), this Court lacks jurisdiction over these defendants and must deny the Application
19 for Default.

20 **II. PLAINTIFF FAILED TO COMPLY WITH THE RULE FOR APPLICATIONS**
21 **FOR DEFAULT**

22 As pertinent here, an application for default must include “a current mailing address
23 for the party claimed to be in default” and “a copy of the Rule 4(g) proof of service, establishing
24 the date and manner of service on the party claimed to be in default.” Ariz. R. Civ. P. 55(a)(2)(C),
25 (F). Plaintiff must comply with the requirements of the rule. *See MacLean v. Newgioco Grp.*,

1 *Inc.*, 251 Ariz. 31, 34 ¶ 13 (App. 2021) (finding court did not abuse its discretion when it set aside
2 a default for failure to comply with the requirements of Rule 55). The application in this case has
3 attached an alleged proof of service, but as described above, the proof of service does not
4 demonstrate that the Individual Officer Defendants were properly served. Additionally, the
5 address provided is that of the City of Sierra Vista Police Department, not their residence. The
6 application for default and its affidavit is, therefore, insufficient and this Court must deny
7 Plaintiff's application.

8 **III. CONCLUSION**

9 For the foregoing reasons, the Individual Officer Defendants make this limited
10 appearance for purposes of requesting that the Court deny Plaintiff's Application for Default
11 against them.

12 DATED this 3rd day of December, 2024.

13 JONES, SKELTON & HOCHULI P.L.C.

14
15 By /s/ Michele Molinario

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21 Officer E. Slusser, Officer R. Hertman, Officer S.
22 McHunting, and Officer M. Partridge
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ORIGINAL of the foregoing electronically filed
this 3rd day of December, 2024.

COPY of the foregoing mailed and emailed
this 3rd day of December, 2024, to:

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Plaintiff, in Pro Per

/s/ *Cindy Castro*