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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

ANDY NGO,

Plaintiff,

v.

ROSE CITY ANTIFA, an unincorporated
association; BENJAMIN BOLEN, an
individual; JOHN HACKER, an individual;
CORBYN (KATHERINE) BELYEA, an
individual; JOSEPH CHRISTIAN EVANS,
an individual; MADISON LEE ALLEN, an
individual; DOES 1-50,

Defendants.

Case No.: 20CV19618

**PLAINTIFF’S MOTION FOR
APPROVAL OF ALTERNATIVE
MEANS TO OBTAIN SERVICE OF
PROCESS**

Plaintiff Andy Ngo ("Plaintiff" or "Ngo"), by and through undersigned counsel, hereby moves this Court for Approval of Alternative Means to Obtain Service on Defendants Joseph Christian Evans ("Evans") and Madison Lee Allen ("Allen") (collectively, "Defendants") pursuant to ORCP 7(d)(6)(A) as follows:

Preliminary Statement

Ngo files this motion after repeated, unsuccessful attempts to serve Defendants with the Summons and Complaint seeking damages for assault, battery, and intentional infliction of emotional distress after Evans and Allen injured Ngo during a June 29, 2019, attack in Portland, Oregon.

Ngo filed his Complaint on June 4, 2020 and prepared Summonses as to Defendants. (See Declaration of Caldwell, Ex. A filed herewith) After repeated unsuccessful attempts to locate Evans and Allen, Ngo filed a Motion for Continuance to Obtain Service on September 14, 2020,

1 and this Court granted Ngo’s motion and provided a 60-day extension to obtain service by Order
2 filed September 16, 2020. Pursuant to that Order, the current deadline to obtain service on Evans
3 and Allen is November 15, 2020.

4 To date, Ngo has been unable to obtain any new information regarding the whereabouts of
5 either Defendant Evans or Allen. Ngo believes that Evans is evading the service of process due to
6 criminal charges pending against him in Multnomah County, while Allen is evading the service of
7 process because of a bench warrant issued for her arrest in Ada County, Idaho. (*See Caldwell Decl.*,
8 at ¶ 13) . As discussed below, Ngo cannot obtain service by any method otherwise specified in the
9 Oregon Rules of Civil Procedure or other Oregon rule or statute and hereby moves this Court for an
10 Order Approving Alternative Means to Obtain Service pursuant to ORCP 7(D)(6)(a).

11 **Service Attempts as to Joseph Christian Evans**

12 On July 29, 2020, Ngo’s counsel requested the Douglas County Sheriff’s Office serve the
13 Summons and Complaint on Evans at 308 Woodpath Lane, Azalea, OR 97410. (*Caldwell Decl.*, at
14 ¶ 5, Ex. B.) On August 19, 2020, Counsel’s staff contacted Ms. Kathy Cross with the Douglas
15 County Sheriff’s Office regarding the status of service. Ms. Cross verified that she received the
16 documents, however, she requested information we received indicating Evans actually lived at that
17 residence for safety purposes. (*Id.* at ¶ 6, Ex. C.) Counsel complied with Ms. Cross’s request and
18 the Douglas County Sheriff’s Office attempted to service.

19 On October 12, 2020, Counsel received Proof of Non-Service from Douglas County
20 Sheriff’s Office advising that Evans could not be found at 308 Woodpath Lane, Azalea, OR 97410.
21 (*Id.* at ¶ 7, Ex. D). To date, this is the only address to which Mr. Ngo had information to which
22 Evans may have been identified.

23 **Service Attempts as to Madison Lee Allen**

24 On June 4, 2020, Counsel’s staff obtained a copy of Allen’s driver’s license record from the
25 Idaho Transportation Department, *id.* at ¶ 9, which revealed Allen obtained an Idaho driver’s
26 license on May 28, 2020 and provided Counsel with a very recent address. The attempts of service

1 on Allen at that address are detailed in the Caldwell Declaration, ¶ 11, Ex. E.

2 **Argument**

3 **1. Ngo Should be Permitted to Serve Defendants by Alternative Means.**

4 Oregon Rules of Civil Procedure 7(D)(2)(a)(i) states that service may be made “by personal
5 delivery of true copies of the summons the complaint to the defendant or other person authorized
6 by appointment of law to receive service of summons on behalf of the defendant, by substituted
7 service, or by office service...or by a mailing made in accordance with paragraph D(2)(d) of this
8 rule provided the defendant or other person signs a receipt for the certified, registered, or express
9 mail filing...”. In order for Ngo to obtain service by any of the above-articulated methods, Ngo
10 must either locate Defendants or obtain their home addresses – neither of which Ngo has been able
11 to do despite reasonably diligent efforts.

12 In light of this, Ngo seeks approval to obtain alternative means of service pursuant to ORCP
13 7(D)(6)(a), which states:

14 On motion upon a showing by affidavit or declaration that service cannot be made
15 by any method otherwise specified in these rules or other rule or statute, the court,
16 at its discretion, may order service by any method or combination of methods that
17 under the circumstances is most reasonably calculated to apprise the defendant of
18 the existence and pendency of the action, including but not limited to: publication
19 of summons; mailing without publication to a specified post office address of the
20 defendant by first class mail and any of the following: certified, registered, or
21 express mail, return receipt requested; or posting at specified locations. If service
22 is ordered by any manner other than publication, the court may order a time for
23 response.

24 Ngo even hired two different investigative firms to assist in locating Defendants, yet their respective
25 efforts did not yield any further information beyond the addresses previously known. Absent the
26 relief requested, Ngo will be unable to obtain service on either Defendant Evans or Allen and the
27 failure to obtain service will cause undue delay to all parties and this Court and further unfairly
28 prejudice Ngo in his attempt to seek justice for Defendants’ unlawful actions.

1 ORCP 7(D)(2) *et seq.* Accordingly, and based on Ngo’s exhaustion of all reasonable efforts to
2 obtain service, Ngo requests that this Court enter an Order permitting him to serve Defendant
3 Joseph Christian Evans with the Summons and Complaint by publication in the Oregonian and by
4 sending copies of the same via certified first-class mail to 308 Woodpath Lane, Azalea, OR 97410,
5 and further permit Ngo to serve Madison Lee Allen by publication along with Evans in the
6 Oregonian, and by mailing the Summons and Complaint via certified first-class mail and by posting
7 copies of the same at her last known address, 12109 W Reutzel Drive, Boise, ID, 83709.

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Dated: November 13, 2020.

Respectfully submitted,

/s/ James L. Buchal
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Attorneys for Plaintiff Andy Ngo

CERTIFICATE OF SERVICE

I, Carole Caldwell, hereby declare under penalty of perjury under the laws of the State of Oregon that the following facts are true and correct:

I am a citizen of the United States, over the age of 18 years, and not a party to or interested in the within entitled cause. I am an employee of Murphy & Buchal LLP and my business address is 3425 SE Yamhill Street, Suite 100, Portland, OR 97214.

On November 13, 2020, I caused the following document to be served:

PLAINTIFF’S MOTION FOR APPROVAL OF ALTERNATIVE MEANS TO OBTAIN SERVICE OF PROCESS

in the following manner on the parties listed below:

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/s/ Carole A. Caldwell _____