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 5 Attorneys for Plaintiff

6 UNITED STATES DISTRICT COURT
 7 DISTRICT OF NEVADA

9 MOHAMMAD EL ALI,)
)
 10 Plaintiff,)
 vs.)
 11 WALGREEN CO., an Illinois Corporation,)
 12 dba WALGREENS; CHRIS SCALZITTI,)
 an Individual; MATT FOSTER, an)
 13 Individual; and DOES and ROES 1-100,)
 inclusive,)
 14 Defendants.)

Case No.: 2:10-CV-01401-RLH-PAL

**APPLICATION FOR AND
 AFFIDAVIT IN SUPPORT OF
 ORDER ALLOWING SERVICE
 OF SUMMONS AND COMPLAINT
 BY PUBLICATION**

15 STATE OF NEVADA)
 16) ss
 17 COUNTY OF CLARK)

18 NORMAN N. HIRATA, being first duly sworn on oath, deposes and says:

19 That I am an attorney duly licensed to practice law in the State of Nevada and am a
 20 member of the law firm of AMESBURY LAW OFFICES, attorneys for Plaintiff,
 21 MOHAMMAD EL ALI.

22 That I have personal knowledge of the facts stated herein, and if called as a witness
 23 could competently testify thereto under oath.

24 That a Complaint was filed herein with the Clerk of this Court on the 7th day of July,
 25 2010, and Summons was regularly issued thereon directed to the above-named Defendant,
 26 MATT FOSTER.
 27
 28

Amesbury Law Offices

703 S. 8th St, Las Vegas, NV 89101-7006
 Tel: (702) 385-5570 Fax: (702) 385-4234

1 That Defendant, MATT FOSTER, is a necessary and proper party to this action.

2 That Affiant has hired a professional process server who has made a full and diligent
3 search of the appropriate records in Clark County, Nevada, however, the present address and
4 location of Defendant, MATT FOSTER, is nevertheless unknown to Affiant except as stated in
5 the Affidavit of Due Diligence attached hereto as Exhibit 1.
6

7 Pursuant to F.R.C.P. Rule 4(e)(1), a Summons and Complaint on an individual
8 defendant "...may be served in a judicial district of the United States by: (1) following state
9 law for serving a summons in an action brought in courts of general jurisdiction."

10 Nevada Rules of Civil Procedure, Rule 4(e)(1)(i) allows for Service by Publication to
11 be made "...when the person on whom service is to be made resides out of state, or has
12 departed from the state, or cannot, after due diligence, be found within the state..."
13

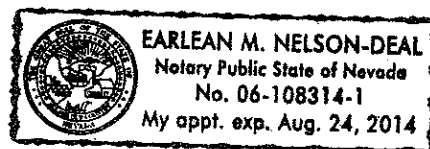
14 That your Affiant therefore has moved this Court for its Order allowing service by
15 publication of Defendant, MATT FOSTER.

16 WHEREFORE, Affiant prays for an Order of this Court directing that Summons in this
17 action may be served upon Defendant, MATT FOSTER, by publication in accordance with the
18 law as provided for in such cases in the state of Nevada.
19

20
21 
22 _____
23 NORMAN N. HIRATA

24 SUBSCRIBED and SWORN to before me
25 this 22nd day of September, 2010.


26 
27 _____
28 NOTARY PUBLIC



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Submitted by:

AMESBURY LAW OFFICES

By 

NORMAN N. HIRATA, Esq.
Nevada Bar No. 9419
703 South Eighth Street
Las Vegas, NV 89101
Attorneys for Plaintiff

Exhibit 1

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA

3 MOHAMMAD EL ALI,

4
5 Plaintiff(s),

6 vs

7 WALGREEN CO., an Illinois Corporation, dba
8 WALGREENS; CHRIS SCALZITTI, an
9 Individual; MATT FOSTER, an Individual; and
10 DOES and ROES 1-100, inclusive,

11 Defendant(s).
12
13
14

) Case No. A-10-620290-C

) Dept. No. VI

15 AFFIDAVIT OF DUE DILIGENCE

16 Michael Casillas, being duly sworn says:

17 That at all times herein affiant was and is a citizen of the United States, over
18 eighteen years of age, not a party to nor interested in the proceedings in which this
19 affidavit is made.

20 That on August 13, 2010 at 11:45 AM, affiant received a Summons and a
21 Complaint that were to be served on Matt Foster. An address of 4340 S. Valley View
22 Blvd #208, Las Vegas, NV 89103 was provided for Matt Foster.

23 That on August 16, 2010 at 11:48 AM, affiant attempted service at 4340 S.
24 Valley View Blvd #208, Las Vegas, NV 89103. This building is currently unoccupied
25 and is completely vacant inside.

26 That affiant returned the documents to his employer, Jim Thomas, who
27 completed locate work on Matt Foster. The Las Vegas Metropolitan Police Department
28 will not provide information to private investigators/process servers. Utility companies

1 will not provide subscriber information because those records are proprietary, not
2 public. The Department of Motor Vehicles and Clark County Election Department both
3 require a date of birth in order to make inquiries and we were not provided that
4 information. The Clark County Assessor provided information that Matthew Wayne and
5 Starla L. Foster are the vested owners of a residential condominium at 5101 River Glen
6 Dr #129, Las Vegas, NV 89103. Inquiries with the Clark County Recorder, Clark
7 County Clerk, Nevada Secretary of State, Clark County Business Licensing, Las Vegas
8 Business Licensing, North Las Vegas Business Licensing and Henderson Business
9 Licensing provided no information that was more current for Matt Foster.

10 That on August 17, 2010 at 1:20 PM, affiant attempted service on Matt Foster at
11 5101 River Glen Dr #129, Las Vegas, NV 89103. This is a guard gated community.
12 There was no response at the door.

13 That on August 18, 2010 at 7:55 PM, affiant attempted service on Matt Foster at
14 5101 River Glen Dr #129, Las Vegas, NV 89103. There was no response at the door
15 and no lights could be seen within the residence.

16 That on August 20, 2010 at 6:00 AM, affiant attempted service on Matt Foster at
17 5101 River Glen Dr #129, Las Vegas, NV 89103. Affiant received no response at the
18 door but as affiant was leaving, a person within the condominium closed the blinds on
19 the front window.

20 That on August 24, 2010 at 3:30 PM, affiant attempted service on Matt Foster at
21 5101 River Glen Dr #129, Las Vegas, NV 89103. There was no response at the door.

22 That on August 30, 2010 at 8:20 PM, affiant attempted service on Matt Foster at
23 5101 River Glen Dr #129, Las Vegas, NV 89103. Lights were turned on within the
24 residence and affiant could hear a person inside but they would not answer the door.

25 That affiant has been unable to complete service on Matt Foster who appears to
26 be avoiding service.

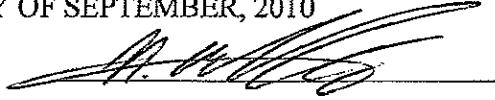
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That further, affiant sayeth naught.

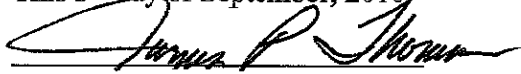
DATED THIS 3RD DAY OF SEPTEMBER, 2010



AFFIANT

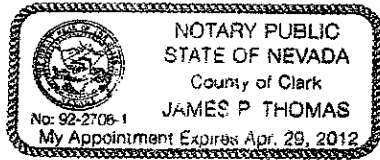
SUBSCRIBED AND SWORN TO BEFORE ME

This 3rd day of September, 2010.



NOTARY PUBLIC in the State of Nevada,

County of Clark.



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7 **UNITED STATES DISTRICT COURT**
8 **DISTRICT OF NEVADA**

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Case No.: 2:10-cv-01401-RLH-PAL

**ORDER ALLOWING SERVICE
BY PUBLICATION**

15
16 Upon reading the Affidavit of Norman N. Hirata, Esq., on file herein, it satisfactorily
17 appears to the Court that a cause of action for damages exists in favor of the Plaintiff and
18 against the Defendant, MATT FOSTER; that a Complaint was duly and regularly filed herein
19 on the 7th day of July, 2010, and that due and regular issuance of Summons thereon was
20 directed to the above-named Defendant, MATT FOSTER; that Defendant, MATT FOSTER, is
21 a necessary and proper party to this action and personal service of process cannot be had on
22 said Defendant in the State of Nevada, all as set forth in the Affidavit of Plaintiff's counsel,
23 Norman N. Hirata, Esq., and the Affidavit of Due Diligence of the process server.
24

25 NOW, THEREFORE, IT IS HEREBY ORDERED that as to the said Defendant,
26 MATT FOSTER, Summons in this action be served upon said Defendant by publication in the
27 Nevada Legal News, a newspaper of general circulation published daily at Las Vegas, Nevada,
28

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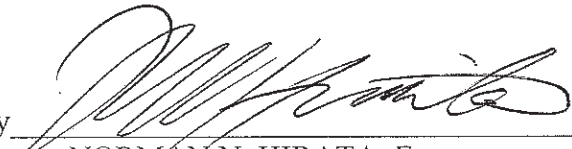
hereby designated as the newspaper most likely to give notice of the pendency of this action to said Defendant, MATT FOSTER; that said publication be made for a period of four consecutive weeks, and at least once each week for said period.

Dated this 5th day of November, 2010.


UNITED STATES MAGISTRATE JUDGE

Respectfully submitted:

AMESBURY LAW OFFICE

By 
NORMAN N. HIRATA, Esq.
Nevada Bar No. 9419
703 South Eighth Street
Las Vegas, NV 89101
Attorneys for Plaintiff