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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Victor Cordero,

10 Plaintiff,

11 v.

12 Countertop Creations Incorporated, et al.,

13 Defendants.

No. CV-14-00993-PHX-DGC

ORDER

14
15 Plaintiff asks the Court to permit alternate service on Defendants Countertop
16 Creations, Inc., Jeffrey Smith, and the spouse of Jeffrey Smith pursuant to Federal Rules
17 of Civil Procedure 4(e)(1) and 4(h)(1)(A). The Court will grant the motion.

18 Plaintiff asserts that its attempts to serve Defendant Countertop Creations at its
19 business address have been unsuccessful. Doc. 6 at 2. Process servers have been turned
20 away by receptionists at the business complex where Countertop Creations was
21 previously located. *Id.* The receptionists have stated that Countertop Creations “went
22 out of business a couple months ago.” *Id.* Because Defendant Countertop Creations’
23 website and voicemail service are still operational, Plaintiff believes that the company
24 can be contacted at the company’s email address, which is published on its website. *Id.*
25 Process servers have also advised Plaintiff that Defendant Jeffrey Smith appears to be
26 avoiding service, which poses a significant problem because Mr. Smith is the statutory
27 agent and the only listed officer and director of Defendant Countertop Creations. *Id.*

28 After Plaintiff was unable to serve process on Defendants at Countertop Creations’

1 business address, Plaintiff performed a “skip trace” to locate Defendant Jeffrey Smith’s
2 home address. *Id.* at 3. The “skip trace” revealed a residential address for Mr. Smith
3 with a corresponding address for Defendant Countertop Creations. *Id.* Attempts to serve
4 Defendants at the residential address have been unsuccessful. *Id.* Process servers noted,
5 however, that a pickup truck parked in the driveway at the residential address had
6 “Countertop Creations, Inc.” on its side. *Id.* Plaintiff believes that all Defendants could
7 be served at the residential address. *Id.*

8 In lieu of personal service on Defendants through traditional methods, Plaintiff
9 requests permission to serve the Summons and Complaint by the following methods:
10 (1) email copies of each Summons and Complaint to the email address published on
11 Defendant Countertop Creations’ website; (2) mail a copy of each Summons and
12 Complaint to Defendant Countertop Creations’ business address, which is also the listed
13 address for Defendant Jeffrey Smith in his capacity as the statutory agent; (3) mail a copy
14 of each Summons and Complaint to the residential address identified by the “skip trace”
15 where the pickup truck was parked.

16 Rule 4(h)(1)(A) authorizes service of process on a corporation in the manner
17 prescribed by Rule 4(e)(1) for serving an individual. Rule 4(e)(1) authorizes service of
18 process consistent with state law for serving a summons. When traditional methods of
19 serving process are ineffective, Arizona Rule of Civil Procedure 4.1(k) authorizes
20 alternative or substitute forms of service so long as reasonable efforts are taken to assure
21 that actual notice of the commencement of the action is provided.

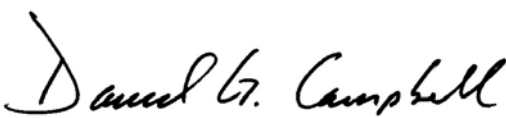
22 To pass constitutional muster, a method of service approved by a district court
23 must be “reasonably calculated, under all the circumstances, to apprise interested parties
24 to the pendency of the action and afford them an opportunity to present their objections.”
25 *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). The Court
26 concludes that Plaintiff’s three-pronged method of serving process on Defendants
27 satisfies *Mullane* and is authorized under federal and Arizona rules of civil procedure.

28 **IT IS ORDERED** that Plaintiff’s motion for alternate service (Doc. 6) is **granted**.

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Service by the methods proposed in the motion shall be completed within 30 days of this order. When providing the summons and complaint by these methods, Plaintiff shall include a copy of this order.

Dated this 9th day of July, 2014.



David G. Campbell
United States District Judge