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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Michael Gill, et al.,

10 Plaintiffs,

11 v.

12 Aramark Sports and Entertainment Services
13 LLC, et al.,

14 Defendants.

No. CV-20-08321-PCT-SMB

ORDER

15 By this order the Court takes up the issue of Plaintiff's service on the Defendant
16 United States of America. On December 1, 2020, Plaintiff brought this action against the
17 United States and against Aramark Sports and Entertainment Services LLC. (Doc. 1.) On
18 December 2, 2020, the Court issued an order directing the clerk of Court to terminate any
19 Defendants in the matter that were not served by March 1, 2021. (Doc. 7.) Pursuant to that
20 order, the Clerk of Court terminated the United States as a Defendant on March 3, 2021
21 because Plaintiff had not filed an affidavit of service. (Doc. 14.) Plaintiff immediately filed
22 a Motion for Reconsideration and to Reinstate Defendant USA, (Doc. 15), explaining that
23 an independent process servicer provider hired by the Plaintiff had served the United States
24 on December 7, 2020. (Doc. 15.) Plaintiff informed the Court that it was a simpler error
25 and oversight on their part which resulted in the affidavit of service not being filed. (*Id.*) The
26 Court then reinstated the United States as a Defendant. (Doc. 16.)

27 However, after reinstatement Plaintiff still never filed any notice of service with the
28 Court. The sole proof of service appears in an affidavit filed as an exhibit to Plaintiff's

1 Motion to Reconsider. (Doc. 15.) Further, even if the affidavit were filed with the Court,
2 service would still be incomplete. According to the affidavit, the only action taken by the
3 process server was to mail a copy of the summons and complaint to the Attorney General
4 of the United States in Washington D.C. (Doc. 15-1 at 2.) But as the Federal Rules of Civil
5 Procedure clearly state:

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7 [T]o serve the United States a party must:

8 (A)

9 (i) deliver a copy of the summons and of the complaint to the United
10 States attorney for the district where the action is brought—or to an
11 assistant United States attorney or clerical employee whom the United
12 States attorney designates in a writing filed with the court clerk—or

13 (ii) send a copy of each by registered or certified mail to the civil-
14 process clerk at the United States attorney’s office;

15 (B) send a copy of each by registered or certified mail to the Attorney General
16 of the United States at Washington, D.C.; and

17 C) if the action challenges an order of a nonparty agency or officer of the
18 United States, send a copy of each by registered or certified mail to the
19 agency or officer.

20 Fed. R. Civ. P. 4(i)(1). The rule’s use of “and” indicates the requirements of (A), (B), and
21 (C) form a conjunctive rather than a disjunctive list. *See, e.g., United States v. Lopez*, 998
22 F.3d 431 (9th Cir. 2021) (“not only is the plain meaning of ‘and’ conjunctive, but the
23 Senate’s own legislative drafting manual tells the court that ‘and’ is used as a
24 conjunctive.”); *United States v. Myers*, 878 F.2d 1142, 1144 (9th Cir. 1989). Here, while
25 the Plaintiff’s affidavit indicates they have “sent a copy...by registered or certified mail to
26 the Attorney General of the United States at Washington, D.C” as required by
27 Rule(4)(i)(1)(B), the affidavit does not indicate whether Plaintiff has “delivered a copy of
28 the summons and of the complaint to the United States attorney for the district where the
action is brought...” as required under Rule(4)(i)(1)(A). Because the Plaintiff must satisfy
both Rule(4)(i)(1)(B) and Rule(4)(i)(1)(A) in order to serve the United States, service has
not been shown by Plaintiff’s affidavit.

Accordingly,

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IT IS ORDERED that Defendant United States of America is dismissed from this action.

Dated this 3rd day of September, 2021.



Honorable Susan M. Brnovich
United States District Judge