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11 UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 DWIGHT BLUEFORD,

Case No. 08-03749 WHA

14 Plaintiff,

**REQUEST AND ~~(PROPOSED)~~ ORDER
AUTHORIZING SERVICE OF SUMMONS
BY PUBLICATION**

15 vs.

16 CHRIS HARPER, individually and in his
17 capacity as a police officer for the CONTRA
18 COSTA COMMUNITY COLLEGE DISTRICT
19 POLICE DEPARTMENT; and, Contra Costa
20 Community College District police officers
21 DOES 1-10, inclusive,

22 Defendants.

23 REQUEST OR SERVICE BY PUBLICATION; MEMORANDUM OF POINTS AND
24 AUTHORITIES

25 Plaintiff hereby respectfully requests that the Court issue an Order authorizing service of the
26 summons in the above-noted action upon Defendant CHRIS HARPER by publication, since
27 Defendant HARPER is not able to be located despite diligent efforts by Plaintiff's counsel.

28 Since the date of the subject-incident, Defendant CHRIS HARPER ceased working for the
Contra Costa Community College District Police Department. Plaintiff became aware that Mr.
Harper no longer worked at the Department when the Department refused to accept service of process

1 of the Summons and Complaint in the above-noted matter and informed Ralph Hernandez, the private
2 investigator retained by Plaintiff to serve the subpoena, that Defendant HARPER was no longer
3 employed with Contra Costa Community College District Police Department. Mr. Hernandez made
4 at least two attempts to serve the Summons and Complaint upon Defendant HARPER at the
5 Department (in early November and late November), then conducted an investigation to locate
6 Defendant HARPER with as much information as Plaintiff's counsel possesses: That Defendant
7 HARPER's first name is "Chris" and a description of a white male, about 5'11", less than 200
8 pounds. Unfortunately, Mr. Hernandez's investigation revealed numerous people named "Chris
9 Harper," such that he was unable to identify the Defendant amongst each such person. Plaintiff's
10 counsel then contacted a second private investigator, Steve Gore, to locate the Defendant. Mr. Gore
11 informed Plaintiff's counsel up front that he would need, at a minimum, either
12 Defendant HARPER's middle name or his birthdate in order to locate the Defendant. Plaintiff and
13 Plaintiff's counsel possesses only the information previously described.

14 Subsequently, Plaintiff's counsel contacted Susan Sedillo, who is the administrative assistant
15 to the Chief of Police for the CONTRA COSTA COMMUNITY COLLEGE DISTRICT POLICE
16 DEPARTMENT in attempt to obtain either a birthdate or middle name of the Defendant. Ms. Sedillo
17 referred Plaintiff's counsel to the human resources department. An employee there, Sandy McCray,
18 refused to provide any of the requested information to Plaintiff's counsel.

19 Then, after receiving no cooperation, on December 19, 2008, Plaintiff's counsel served a
20 subpoena upon the Contra Costa Community College District, which included a notice to consumer
21 attached to the subpoena (Attached as Exhibit A to Declaration of Benjamin Nisenbaum). In
22 response to the subpoena, Plaintiff's counsel received correspondence from Maureen L. Sacks dated
23 January 5, 2009, which objected to the subpoena on a variety of grounds (Exhibit B to Nisenbaum
24 Declaration). Ms. Sacks letter identified a single error in Plaintiff Notice to Consumer (the case
25 name was improperly entitled "Dwight Blueford v. City of Oakland"). Ms. Sack's correspondence
26 indicated that the District would not release records because no notice had been provided to the City
27 of Oakland. In spite of Plaintiff's counsel's error on the notice to consumer, it is clear that the
28 subpoena itself is accurate and correctly describes the parties, case name and number, and the

1 materials sought by Plaintiff's counsel. It is also clear from Ms. Sacks January 5, 2009 letter that the
2 District did in fact have notice of the subpoena. In addition, Ms. Sacks refused to accept service of
3 process on behalf of the Defendant, CHRIS HARPER.

4 Subsequently, Plaintiff's counsel spoke with Ms. Sacks by telephone, on January 28, 2008.
5 That conversation is memorialized in Plaintiff's counsel's correspondence dated January 28, 2008, to
6 Ms. Sacks following the conversation, addressing the various concerns raised during the telephone
7 conversation (Exhibit C to Nisenbaum Declaration). Ms. Sacks again refused to comply with the
8 subpoena for a variety of reasons, which she set forth in correspondence sent the following day,
9 January 29, 2009 (Exhibit D to Nisenbaum Declaration). Plaintiff's counsel promptly responded to
10 the correspondence, by pointing out that the main concern raised by Defendants was the failure to
11 provide notice to the Defendant, CHRIS HARPER, of the subpoena, which is virtually impossible
12 under these circumstances (Exhibit E to Nisenbaum Declaration). Ms. Sacks replied by
13 correspondence that Plaintiff's seek more information than necessary to serve the Defendant, and
14 reiterated once again that the District will not records without a court order, and that such records
15 could only be released after the defendant's location was verified, he was provided with proper
16 notice, and a possible motion to quash was brought by the Defendant.

17 However, as is clear from the subpoena and Plaintiff's correspondence, all that Plaintiff is
18 seeking is a way of locating Defendant HARPER to serve him with the summons. Since it is clear
19 that this cannot be done under any reasonable circumstances, Plaintiff requests leave of the Court to
20 allow service of Defendant CHRIS HARPER by publication.

21 Federal Rule of Civil Procedure 4(e)1 specifically allows service of a summons upon a party
22 by "following state law for serving a summons in an action brought in courts of general jurisdiction
23 in the state where the district court is located or where service is made". Here, since personal service
24 and service by an authorized agent has proven impracticable, if not impossible, Plaintiff seeks to use
25 an method of service authorized by California state law. Pursuant to California Code of Civil
26 Procedure section 415.50(a), a summons my be served by publication if upon affidavit it appears to
27 the satisfaction of the Court that the party to be served cannot with reasonable diligence be served in
28

1 another specified manner and that either: (1) A cause of action exists against the party upon whom
2 service is to be made or he or she is a necessary or proper party to the action.

3 Or:

4 (2) The party to be served has or claims an interest in real or personal property in this state that is
5 subject to the jurisdiction of the court or the relief demanded in the action consists wholly or in part
6 in excluding the party from any interest in the property.

7 In this case, it is clear that Plaintiff has alleged several causes of action against CHRIS
8 HARPER, who is the Defendant sought to be served. Furthermore, Plaintiff's counsel has exhausted
9 all other diligent means of serving Defendant HARPER, with no success, and no cooperation by any
10 agency that could assist in the service of the summons upon Defendant HARPER. Plaintiff has
11 satisfied the requirements of CCP section 415.50, and service by publication is appropriate.

12 Pursuant to Civil Code section 415.50(b), the Court should order the summons to be published
13 in the Contra Costa Times, since the subject-incident occurred in the County of Contra Costa, and the
14 Defendant was employed at the time in the County of Contra Costa by the Contra Costa Community
15 College District Police Department. Such publication is most appropriately calculated to provide
16 notice to Defendant HARPER of Plaintiff's litigation against him.

17 In the meantime, should counsel for Defendant HARPER agree to accept service of process
18 on his behalf, such an Order will be unnecessary. As the Court is aware, service of process is to be
19 completed by February 12, 2009, upon pain of dismissal of Plaintiff's action.

22 Respectfully submitted,

24 Dated: January 29, 2009

25 /s/ [Signature]
Benjamin Nisenbaum
Attorney for Plaintiff
26 DWIGHT BLUEFORD
27
28

~~(PROPOSED)~~ ORDER

GOOD CAUSE APPEARING, based on the failure to serve Defendant CHRIS HARPER in spite of diligent efforts by Plaintiff's counsel, the Court hereby orders that Plaintiff may serve Defendant HARPER by publication in the Contra Costa County Times pursuant to California Code of Civil Procedure section 415.50

Dated: February 5, 2009

