

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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ARDIS HEALTH, LLC; CURB YOUR CRAVINGS, LLC
And USA HERBALS, LLC,

Index No. 11 Civ 5013

Plaintiff,

DECLARATION of
ASHLEIGH
NANKIVELL

- against -

ASHLEIGH NANKIVELL,

Defendant.

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I, Ashleigh Nankivell, pursuant to 28 U.S.C. § 1746, declare that:

1. I am the defendant in the above captioned action and I submit this declaration in support of the Motion to Dismiss the Summons and Complaint for insufficient service.
2. I reside at 114 Troutman Street, Apt. 428, Brooklyn, NY 11206.
3. I have never been employed by Plaintiff Ardis Health, LLC and I have not been employed by Plaintiff Curb Your Cravings since 2009.
4. I have reviewed the Affidavit of Attempted Service of Joseph Sanchez ("Sanchez Affidavit") dated August 4, 2011 submitted by Plaintiffs as evidence of proof of attempted service of the Summons and Complaint upon me and the contents thereof contain false statements.
5. The Sanchez Affidavit states that on July 29, 2011, at approximately 9:05 p.m., Joseph Sanchez ("Sanchez") attempted to serve me with the Summons and

Complaint and other papers upon me by ringing the bell for apartment # 428 but did not receive an answer. However, he did not ring the bell for my apartment as I was home at this time and my boyfriend was home and no one rang my bell or attempted to serve me in any manner.

6. The Sanchez Affidavit further states that on July 30, 2011 at approximately 4:39 p.m., Sanchez attempted to serve a copy of the Summons and Complaint by ringing the bell for my apartment and briefly spoke to a woman over the intercom. I did not speak to anyone who called me on the intercom on July 30, 2011.
7. The Sanchez Affidavit further claims that Sanchez told the woman over the intercom that he had a delivery for Ashleigh Nankivell and that she buzzed him into the building. I did not buzz him into the apartment building. If someone from another apartment buzzed him in, it was not me.
8. The Sanchez Affidavit further claims that when Sanchez went to the apartment door she would not open the door or even answer him. On that same date, a stranger came to my door and refused to identify himself other than to say that he had a delivery. All deliveries go to the package room except for food deliveries, and I knew I had not ordered in food. There had recently been about 4 burglaries in my apartment building so without further information, I did not open my door.
9. I have reviewed the Affidavit of Service of Randy Barona (“Barona Affidavit”) dated August 4, 2011 submitted by Plaintiff as evidence of proof of service of the Summons and Complaint upon me and the contents thereof contain false statements.

10. The Barona Affidavit states that on 8/2/11, at approximately 7:17 p.m., Randy Barona (“Barona”) attempted to serve me with the Summons and Complaint by ringing the bell for the apartment but did not receive an answer. However, he did not ring the bell for my apartment as my boyfriend was home at that time and he has informed me that no one rang my apartment bell on that evening.
11. The Barona Affidavit further states that on August 3, 2011 at approximately 11:10 a.m., Barona attempted to serve a copy of the Summons and Complaint by ringing the bell for my apartment and later knocked on my door but did not receive an answer. However, he did not ring the bell for my apartment, and I was working at home at this time doing some freelance work and no one rang my bell except for two food deliverymen; moreover, no one knocked on the door.
12. The Barona Affidavit further states that on August 3, 2011 at approximately 11:10 a.m. Barona personally affixed a copy of the Summons; Complaint and other papers to the door of apartment # 428. However, nothing was affixed to the door of my apartment, nor did I observe tape, glue, nails, staples, Velcro or any other material that would or could be used to affix the papers to the door of my apartment.
13. Plaintiffs Curb Your Cravings and USA Herbals, along with Jordan Finger, who upon information and belief is the owner of both of these plaintiffs, have engaged in a pattern and practice of false claims, including misleading claims of “free trials” of products. A copy of the Better Business Bureau (“BBB”) report of these two businesses, which the BBB has linked together and have been given a grade of “F” on a scale of A+ to F, is attached hereto as Exhibit 1.

14. If plaintiffs are permitted to flaunt the rules regarding service of process through such false statements, they would not only be rewarded for doing so by this Court which would be contrary to public policy, but it would also reinforce their continuation of false claims throughout this lawsuit.

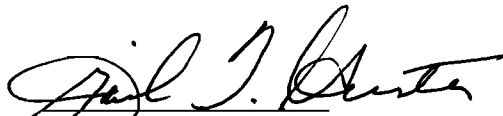
For the foregoing reasons, I respectfully request that this Court dismiss plaintiff's Summons and Complaint for insufficient service of process.

Dated: New York, NY
August 24, 2011



ASHLEIGH NANKIVELL

Sworn to this 24th day
of August, 2004.



Notary

GAIL I. AUSTER
Notary Public, State of New York
No. 02AU6143461
Qualified in New York County
Commission Expires April 10, 2014