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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 COOK PRODUCTIONS, LLC,

9 Plaintiff,

10 v.

11 THOMAS SWANICKE, et al.,

12 Defendants.

C16-1884 TSZ

MINUTE ORDER

13 The following Minute Order is made by direction of the Court, the Honorable  
14 Thomas S. Zilly, United States District Judge:

15 (1) Having reviewed plaintiff's Response to the Order to Show Cause, docket  
16 no. 57, the Court construes plaintiff's response as a motion for extension of time to serve  
17 the Amended Complaint on defendant Steven Austin and a renewed motion for leave to  
18 permit service by mail. The Court is satisfied an additional extension of time to serve is  
19 warranted and EXTENDS the deadline to effect service to September 25, 2017.

20 (2) With regard to plaintiff's request to serve by mail, the Court rules as  
21 follows. The Federal Rules of Civil Procedure authorize service in any manner provided  
22 by the law of the state in which the court sits. Fed. R. Civ. P. 4(e)(1). RCW 4.28.080  
23 sets forth the methods by which personal service can be effected under Washington law.  
Washington permits substitute service by mail where the plaintiff "sets forth the  
following facts: (1) that the defendant could not be found in Washington after a diligent  
search, (2) that the defendant was a resident of Washington, and (3) that the defendant  
had either left the state or concealed himself within it, with the intent to defraud creditors  
or avoid service of process. *Pascua v. Heil*, 126 Wn. App. 520, 526 (2005) (citing RCW  
4.28.100(2)); *see also* Washington Civil Rule 4(d)(4) (authorizing substitute service by  
mail "[i]n circumstances justifying service by publication"). Proof of intent to avoid  
service is not required, but a plaintiff must set forth facts sufficient for the court to infer

1 that plaintiff has been unable to effect service because the defendant is intentionally  
avoiding it. *See Boes v. Bisiar*, 122 Wn. App. 569, 577 (2004). RCW 4.28.100(2) does  
2 not authorize substitute service merely because the plaintiff has been unable to locate the  
defendant despite diligent efforts. *Id.* (quoting *Bruff v. Main*, 87 Wn. App. 609, 611  
3 (1997)). Although plaintiff has unsuccessfully attempted to serve defendant Austin on  
14 occasions—six times between April 27, 2017, and May 8, 2017, and 8 times between  
4 June 1, 2017 and June 10, 2017—the facts set forth in the Affidavits of Service, docket  
nos. 33, 42, are insufficient to give rise to an inference that plaintiff’s inability to effect  
5 service was due to defendant Austin’s intentional avoidance. Mere failure to come to the  
door does not constitute evasion of service. *Weiss v. Glemp*, 127 Wn.2d 726, 734 (1995).  
6 There is no indication that defendant Austin is aware of this lawsuit such that the  
unsuccessful attempts at service could be construed as intentional avoidance, nor is there  
7 evidence that the process servers were “turned away” or “denied access” as plaintiff  
suggests. In fact, there is no evidence that defendant Austin was present at the residence  
8 during any of the unsuccessful attempts at service.<sup>1</sup> Neither of the process servers  
observed anyone on the property and neither heard any noise from inside the house other  
9 than barking dogs. Affidavits of Service, docket nos. 33, 42. On this record, the Court  
remains unsatisfied that defendant Austin is intentionally avoiding service and  
10 accordingly, plaintiff’s renewed motion for alternative service by mail is DENIED.

11 (3) The Clerk is directed to send a copy of this Minute Order to all counsel of  
record.

12 Dated this 27th day of July, 2017.

13  
14 William M. McCool  
Clerk

15 s/Karen Dews  
16 Deputy Clerk

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22 <sup>1</sup> Although on two occasions one of the process servers noted a grey Dodge pickup truck  
not previously observed on the property, Affidavit of Service, docket no. 42, there is no evidence  
23 linking that vehicle to defendant Austin.