

1 David Vedad Jafari, California Bar #207881  
2 JAFARI LAW GROUP, INC.  
3 120 Vantis Drive, Suite 430  
4 Aliso Viejo, California, 92656  
5 Telephone: (949) 362-0100  
6 Facsimile: (949) 362-0101  
7 djafari@jafarilawgroup.com

8 Attorney for Plaintiff  
9 COMPOSITE INDUSTRIE S.A.

10 **THE UNITED STATES DISTRICT COURT**  
11 **DISTRICT OF ARIZONA**

12 COMPOSITE INDUSTRIE S.A.,  
13 Plaintiff,

14 vs.

15 VISION AIR AMERICA, INC.;  
16 ARTUR NIEWIADOWSKI,  
17 Defendants.

Case No.: CV-13-01984-PHX-JAT

**PLAINTIFF’S MOTION FOR LEAVE  
TO SERVE SUMMONS AND  
COMPLAINT BY ALTERNATIVE OR  
SUBSTITUTED SERVICE;  
DECLARATION OF DAVID JAFARI;  
CERTIFICATE OF SERVICE**

[FRCP 4]

**Honorable James A. Teilborg**

18  
19  
20  
21  
22  
23  
24 Plaintiff Composite Industrie S.A. hereby moves this Court, pursuant to Fed. R.  
25 Civ. P. 4 (e)(1) and Arizona Rules of Civil Procedure, Rule 4.1(k), for leave to serve the  
26 summons and complaint in this action on defendant Artur Niewiadowski by alternative or  
27 substitute method.  
28

**MEMORANDUM OF POINTS AND AUTHORITIES**

1  
2 On September 30, 2013, Plaintiff commenced this civil action against defendants  
3 for breach of contract. (Doc #1) Defendant Artur Niewiadowski is the president of  
4 defendant Vision Air America, Inc. (Jafari Decl. #3 attached) On October, 10, 2013,  
5 Plaintiff served defendant Vision Air America, Inc. by personal service at its place of  
6 business in Tolleson, Arizona . (Doc #9) Plaintiff was however unable to serve defendant  
7 Artur Niewiadowski. (Doc #10) As the declaration of Carl Dalrymple on file shows,  
8 defendant Artur Niewiadowski is evading service of process. (Doc #10). On October 31,  
9 2013, Plaintiff mailed to defendant Artur Niewiadowski a ‘Notice of Lawsuit and  
10 Request For Waiver of Service of Summons’. (Jafari Decl. #4 attached) Over sixty days  
11 has passed since said mailing, but defendant Artur Niewiadowski has failed to return the  
12 ‘Waiver of Service of Summons’ request. (Jafari Decl. #4 attached) Accordingly,  
13 Plaintiff is filing this motion for leave to serve defendant Artur Niewiadowski by the  
14 following alternative or substitute method: 1) posting a copy of the summons, complaint  
15 and related papers on his residence door along with a copy of this Court’s order allowing  
16 for substitute or alternative method of service on defendant Artur Niewiadowski last  
17 known residence address and 2) mailing a copy of said papers to the same address.  
18  
19  
20  
21  
22  
23  
24

**LAW AND ARGUMENT**

25 Pursuant to Fed. R. Civ. P. 4 (e)(1), an individual—other than a minor or  
26 incompetent person—may be served by “following state law for serving a summons in an  
27  
28

1 action brought in courts of general jurisdiction in the state where the district court is  
2 located or where service is made.” [see *LSJ Inv. Co., Inc. v. O.L.D., Inc.* (6th Cir. 1999)  
3 167 F3d 320, 322–323;] Since this Court sits in the State of Arizona, this Court may look  
4 to Arizona laws in determining if a method of service is proper. Arizona Rules of Civil  
5 Procedure, Rule 4.1(k) provides as follows:  
6

7  
8 If service by one of the means set forth in the preceding paragraphs of this  
9 Rule 4.1 proves impracticable, then service may be accomplished in such  
10 manner, other than by publication, as the court, upon motion and without  
11 notice, may direct. Whenever the court allows an alternate or substitute form  
12 of service pursuant to this subpart, reasonable efforts shall be undertaken  
13 by the party making service to assure that actual notice of the  
14 commencement of the action is provided to the person to be served and, in  
15 any event, the summons and the pleading to be served, as well as any order  
16 of the court authorizing an alternative method of service, shall be mailed to  
17 the last known business or residence address of the person to be served.  
18 Service by publication may be employed only under the circumstances, and  
19 in accordance with the procedures, specified in Rules 4.1(l), 4.1(m), 4.2(f)  
20 and 4.2(g) of these Rules.

21 As shown by the declaration of Carl Dalrymple, defendant Artur Niewiadowski is  
22 evading service of summon in this action. Plaintiff has attempted to serve Artur  
23 Niewiadowski on three different dates at both his residence and his work. (Doc #9)  
24 Several facts alleged in Dalrymple declaration suggest that Artur Niewiadowski is  
25 intentionally evading service of summons. (Doc #9) Accordingly, this Court is justified  
26 to direct service of summons by alternative or substitute methods.

27  
28  
**CONCLUSION**

1 Plaintiff requests this Court for leave to serve defendant Artur Niewiadowski by  
2 the following method: 1) posting a copy of the summons, complaint and related papers on  
3 his residence door along with a copy of this Court's order allowing for substitute or  
4 alternative method of service on defendant Artur Niewiadowski last known residence  
5 address and 2) mailing a copy of said papers to the same address.  
6

7  
8 **RESPECTFULLY SUBMITTED this 22<sup>nd</sup> day of January, 2014**

9 JAFARI LAW GROUP, INC.

10 /s/ David Jafari

11 DAVID JAFARI, Attorney for plaintiff  
12 120 Vantis, Suite 430  
13 Aliso Viejo, CA 92656  
14 djafari@jafarilawgroup.com  
15 (949)362-0100 Phone  
16 (949) 362-0101 Fax  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**DECLARATION OF DAVID JAFARI**

I, DAVID JAFARI, make the following declarations under penalty of perjury of the laws of United States:

1. I am a member of the Jafari Law Group law firm and am the attorney responsible for the conduct of the above-captioned lawsuit on behalf of Plaintiff.

2. I am an attorney in good standing, licensed to practice law in the State of California and admitted pro hoc vic for this case. I declare the following based on personal knowledge unless otherwise noted.

3. Based on information that I obtained from the internet, including Arizona Secretary of State’s online records, Defendant Artur Newiadowski is the president of defendant Vision Air America, Inc.

4. On October 31, 2013, my office mailed to defendant Artur Niewiadowski the ‘Notice of Lawsuit and Request For Waiver of Service of Summons’. Over sixty days has passed since said mailing, but defendant Artur Niewiadowski has failed to return the ‘Waiver of Service of Summons’ request.

FURTHER DECLARANT SAYETH NAUGHT.

I declare under the penalty of perjury under the laws of United States that the foregoing is true and correct. Executed this 22 day of January 2013.

/s/ David Jafari  
DAVID JAFARI

**CERTIFICATE OF SERVICE**

I hereby certify that on January 22, 201, a copy of the foregoing **“PLAINTIFF’S  
MOTION FOR LEAVE TO SERVE SUMMONS AND COMPLAINT BY  
ALTERNATIVE OR SUBSTITUTED SERVICE; DECLARATION OF DAVID  
JAFARI; CERTIFICATE OF SERVICE**

” was electronically filed. Notice of this filing will be sent by operation of the Court’s  
electronic filing system to all parties indicated on the electronic filing receipt.

/s/ David Jafari