

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

FEDERAL TRADE COMMISSION; and
UTAH DIVISION OF CONSUMER
PROTECTION,

Plaintiffs,

vs.

ZURIXX, LLC, a Utah limited liability
company; CARLSON DEVELOPMENT
GROUP, LLC, a Utah limited liability
company; CJ SEMINAR HOLDINGS, LLC, a
Utah limited liability company; ZURIXX
FINANCIAL, LLC, a Utah limited liability
company; CHRISTOPHER A. CANNON,
individually and as an officer of ZURIXX,
LLC; JAMES M. CARLSON, individually and
as an officer of ZURIXX, LLC; and JEFFREY
D. SPANGLER, individually and as an officer
of ZURIXX, LLC,

Defendants.

**ORDER GRANTING PLAINTIFFS’
MOTION FOR ALTERNATIVE SERVICE
OF RULE 45 DOCUMENT SUBPOENA
ON BRET EHLERS (DOC. NO. 207)**

Case No. 2:19-cv-00713-DAK-DAO

Judge Dale A. Kimball

Magistrate Judge Daphne A. Oberg

Before the court is Plaintiffs Federal Trade Commission and Utah Division of Consumer Protection’s Motion for Alternative Service of Rule 45 Document Subpoena on Bret Ehlers (“Mot,” Doc. No. 207). Plaintiffs seek leave to serve a subpoena for production of documents upon nonparty Bret Ehlers by alternative means, including email, certified mail to his residential address, and by leaving a copy of the subpoena at the same address. As set forth in the motion and supporting declarations and exhibits, Plaintiffs’ process server attempted to serve Mr. Ehlers at his residential address in Cottonwood Heights, Utah, on thirteen occasions over a three-month period. (Mot. 1–2, Doc. No 207; Ex. 2 to Mot., Shiller Aff. ¶¶ 4, 6, Doc. No. 207-2.) The United States Postal Service confirmed this as the address where Mr. Ehlers receives mail. (Ex.

2 to Mot., Shiller Aff. ¶ 5, Doc. No. 207-2; Ex. 6 to Mot., Letter from Diana Shiller, Investigator, Fed. Trade Comm’n, to Postmaster, U.S. Post Office (Oct. 15, 2020), Doc. No. 207-6.) On several occasions, the process server observed someone inside the home, but no one answered the door. (Ex. 4 to Mot., Culliton Aff., Doc. No. 207-4.) A process server also attempted to serve Mr. Ehlers at his office but was informed he works from home. (Ex. 5 to Mot., Robins Aff., Doc. No. 207-5.) Plaintiffs’ counsel then emailed Mr. Ehlers to request that he accept service of the subpoena, but Mr. Ehlers did not respond. Plaintiff’s counsel sent this request to an email address obtained in initial disclosures, and which Mr. Ehlers identified as his own on August 28, 2020. (Ex. 1 to Mot., Email from Josh Doan (Sept. 24, 2020), Doc. No. 207-1; Ex. 2 to Mot., Shiller Aff. ¶ 3, Doc. No. 207-2; Ex. 7 to Mot., “Text Message Thread,” Doc. No. 207-7.)

Rule 45 of the Federal Rules of Civil Procedure provides that “[s]erving a subpoena requires delivering a copy to the named person.” Fed. R. Civ. P. 45(b)(1). Several district courts in this circuit have interpreted this rule as allowing service by means other than personal service under Rule 4 of the Federal Rules of Civil Procedure. *See, e.g., Ross v. Jenkins*, No. 17-2547, 2019 U.S. Dist. LEXIS 127518, at *2–3 (D. Kan. July 31, 2019) (unpublished) (noting Rule 45 service “can include methods of service other than direct, hand-over-hand personal service”); *E.A. Renfroe & Co. v. Moran*, No. 08-cv-00733, 2008 U.S. Dist. LEXIS 123018, at *4, 19–20 (D. Colo. Apr. 21, 2008) (unpublished) (holding that “effective service under Rule 45 is not limited to hand-to-hand personal service in every case” and finding that leaving the subpoena at the recipient’s home after his wife refused to accept service was adequate under Rule 45); *Yost v. K. Truck Lines, Inc.*, No. 03-2086, 2006 WL 8440101, at *2 (D. Kan. Jan. 11, 2006) (unpublished) (finding Rule 45 does not mandate personal delivery or prohibit alternative service

and requires only that “service be made in a manner that reasonably insures actual receipt of the subpoena by the trial witness,” including certified mail). Even if personal service under Rule 4 were required, courts may authorize service by alternative means as permitted under applicable state law. *See* Fed. R. Civ. P. 4(e)(1) (providing that service of an individual may be completed by “following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made”); Utah R. Civ. P. 4(d)(5)(A) (permitting service by alternative means “if there is good cause to believe that the person to be served is avoiding service”).

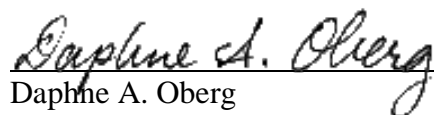
Plaintiffs have made diligent attempts to personally serve Mr. Ehlers at his residential address. The evidence submitted by Plaintiffs provides good cause to believe Mr. Ehlers is avoiding service. Moreover, the multiple means of service proposed by Plaintiffs—email, certified mail to Mr. Ehlers’ residential address, and leaving a copy of the subpoena at the same address—are reasonably calculated to ensure actual receipt of the subpoena. Accordingly, the court GRANTS Plaintiffs’ motion and ORDERS that the subpoena may be served upon Mr. Ehlers by completing the following:

1. Emailing the subpoena to the email address referenced in paragraph 3 of the Shiller affidavit (Doc. No. 207-2), three times per week for two consecutive weeks, not more often than once every other day (unless a written response is received from Mr. Ehlers acknowledging receipt of service);
2. Mailing the subpoena via certified mail to Mr. Ehler’s Cottonwood Heights address; and
3. Hand delivering the subpoena to Mr. Ehler’s Cottonwood Heights address.

A copy of this order shall be served with the subpoena. Service shall be effective upon completion of all of the steps set forth above.

DATED this 21st day of December, 2020.

BY THE COURT:



Daphne A. Oberg
United States Magistrate Judge