

UNITED STATES DISTRICT COURT
DISTRICT OF NORTH DAKOTA
WESTERN DIVISION

ENERGY TRANSFER EQUITY, L.P., and
ENERGY TRANSFER PARTNERS, L.P.,

Plaintiffs,

vs.

GREENPEACE INTERNATIONAL (aka
“STICHTING GREENPEACE COUNCIL”);
GREENPEACE, INC.; GREENPEACE FUND,
INC.; BANKTRACK (aka “STICHTING
BANKTRACK”); EARTH FIRST!; and JOHN
AND JANE DOES 1-20,

Defendants.

Case No.: 17-CV-00173-DLH-CSM

**MEMORANDUM IN SUPPORT OF PLAINTIFFS’ MOTION FOR
DECLARATION OF EFFECTIVE SERVICE ON DEFENDANT EARTH FIRST!**

Plaintiffs Energy Transfer Equity, L.P. and Energy Transfer Partners, L.P. (collectively “Energy Transfer”) hereby file this Memorandum in Support of Plaintiff’s Motion for Declaration of Effective Service on Defendant Earth First! or, in the alternative, for additional time to serve Earth First! through alternative service, and in support thereof, state as follows:

PRELIMINARY STATEMENT

This case involves a network of putative not-for-profits and eco-terrorists who employed a pattern of criminal activity designed to emotionalize consumers and counterparties and induce them to cease doing business with Energy Transfer through false claims about environmental harm, desecration of ancient burial sites, and human rights abuses purportedly arising from the construction of the Dakota Access Pipeline. The malicious dissemination of false statements also intentionally incited violence, terrorism, and other clashes with law enforcement. These

public spectacles were then used by the defendants to further justify their campaign against Energy Transfer. Ultimately, the campaign inflicted hundreds of millions of dollars in damage to the plaintiffs.

Defendant Earth First! is a rogue eco-terrorist group, and an instrumental participant in the campaign that perpetrated the scheme that harmed plaintiffs. But Earth First! also purports to be an unincorporated association, thus, according to its own assertions, it cannot be held accountable for its conduct. Earth First! and its surrogates have taken the position that plaintiffs have not effected service, despite plaintiffs' diligent efforts to effect service since the complaint was filed on August 22, 2017, personally through known participants in the Earth First! movement and through the North Dakota Secretary of State. At minimum, there is no dispute that Earth First!'s "sister" organization, Earth First! Journal -- an entity that publishes Earth First!'s manual, instructing members on how to engage in precisely the type of conduct at issue in this action -- has been notified of this lawsuit and the allegations against Earth First! and has responded on Earth First!'s behalf.

Accordingly, plaintiffs respectfully request that the Court declare that Earth First! has been served and order Earth First! to respond to the complaint within twenty-one days from the Order. In the alternative, plaintiffs respectfully request that the Court grant plaintiffs additional time to serve Earth First! through an alternative means of service.

BACKGROUND FACTS

Plaintiffs filed the complaint on August 22, 2017 [ECF No. 1]. The complaint alleges, among other things, that Earth First! gave \$500,000 to a group of violent eco-terrorist infiltrators who formed a rogue group known as the "Red Warrior Camp" and drove many of the protests that took place between August 2016 and February 2017 near the site of construction of the Dakota Access Pipeline at and around the Lake Oahe crossing on the Missouri River in North

Dakota. (See Complaint, at ¶¶ 13, 38(m), 91, 319.) Agents and affiliates of Red Warrior Camp, funded by Earth First!, refused to work with and undermined the Standing Rock Sioux Tribe in managing the protest site, sold drugs bought with donated money to other protestors at the site, and initiated violent conflict and acts of terrorism, destroying both private and federal property. (*Id.* at ¶¶ 13-14, 20; see also ¶ 38(1) (describing the Earth First! organization since its inception in 1980, including its active promotion of vandalism and training in property destruction designed to stop energy infrastructure development, including slashing tires, pouring sand into machinery gas tanks, and otherwise disabling construction equipment).)

Earth First! is purportedly an unincorporated association. According to individuals affiliated with Earth First!, “Earth First! has no structure or leadership, and Earth First! Media is a public organization that publicizes activities of activists and protesters who support an ‘international radical environmental movement.’” (Exhibit A (Rob Chaney, *Sabotage Group Promotes Wolf-Hunt Disruption*, MISSOULIAN, Aug. 13, 2013 (quoting Grayson Flory), http://missoulian.com/news/local/sabotage-group-promotes-wolf-hunt-disruption/article_58c380dc-0394-11e3-bc65-001a4bcf887a.html).¹) Several of the individuals associated with the Earth First! movement use the name Earth First! in association with other entities and efforts which do the work of Earth First!.

Prior to filing the complaint, plaintiffs identified members or affiliates of Earth First! through whom service could be effected, including Marion De Jong, Grayson Bauer Flory, and Peter Evangelos Tsolkas. Beginning on August 31, Plaintiffs made the following five attempts to serve personally members or affiliates of Earth First!:

¹ See Declaration of Jennifer S. Recine (“Recine Decl.”), at ¶ 3. Citation herein to “Exhibits” refer to the exhibits to the Recine Decl.

- On August 31, 2017, plaintiffs attempted to serve Marion De Jong at 1307 Central Terrace, Lake Worth, Florida 33460. After “due search, careful inquiry and diligent attempts,” plaintiffs’ hired process server was unable to serve Ms. De Jong at this location. (*See* Exhibit B (Due Diligence Affidavit of Mario Corleto, dated October 25, 2017).) On the first attempt, the building at 1307 Central Terrace was closed and locked with no lights on, and the building had no signage. (*See* Recine Decl., ¶ 4.) During a second attempt later that day, when the building was open, a person who answered the door reported that it was an office of cremation services, and had been since 2013, and did not accept service for Earth First!. (*See* Exhibit B.) Ms. De Jong is affiliated with Defendant Earth First! through her role as the president of The Night Heron Grassroots Activist Center, Inc., which operates under the tradestyle, “Earth First Journal.” (*See* Exhibit C, (Lexis Nexis Business Records Report for the Night Heron Grassroots Activist Center).)²
- On September 12, 2017, plaintiffs attempted to serve Grayson Bauer Flory at 701 S. F Street, Lake Worth, Florida 33460. The property was vacant, unkempt and overgrown with vegetation, the house appeared to be empty, and service could not be effected. (*See* Exhibit B.) Mr. Flory is affiliated with Earth First! through his role as vice president of Daily Planet Publishing, Inc., which operates under the tradestyle, “Earth First Journal,” and lists its principal place of business as 701 S. F Street, Lake Worth, Florida. (*See* Exhibit E (2017 Florida Not for Profit Corporation Annual Report of Daily Planet Publishing, dated March 23, 2017 (listing Mr. Flory as the vice president)).) Mr. Flory has been arrested for his illegal obstruction of energy infrastructure construction under the Earth First! banner. (*See* Exhibit F (Earth First! Newswire, *Roundup of Actions Against Fossil Fuel Infrastructure in Vermont and NY*, earthfirstjournal.org, July 7, 2015 (“Grayson Flory, 28, of Los Angeles was also arrested after refusing to leave the site”), available at <http://earthfirstjournal.org/newswire/2015/07/07/roundup-of-actions-against-fossil-fuel-infrastructure-in-vermont-and-ny-photos/>)).)
- Plaintiffs also attempted to serve Ms. De Jong on September 12 at the alternate address of 1224 16th Avenue, N., Lake Worth, Florida 33460. A woman who did not identify herself answered the door and stated that Ms. De Jong’s name was associated with the previous resident but that Ms. De Jong did not live there and that no current residents were associated with Ms. De Jong and, thus, service was not effected. (*See* Exhibit B.) This address is listed as the mailing address for Everglades Earth First, a fictitious name owned by Peter Evangelos Tsolkas (aka Pangioti Tsolkas), among others. (*See* Exhibit G (Application for Renewal of Fictitious Name, dated June 26, 2013 (changing address from 822 N. C Street, Lake Worth, Florida 33460 to 1224 16th Avenue, N., Lake Worth, Florida 33460)).)
- On September 19, 2017, plaintiffs attempted to serve Peter Tsolkas at 822 N. C Street, Lake Worth, Florida 33460. A woman who did not identify herself came to the door, but would not open it, and stated that she did not know Mr. Tsolkas and that she resides at the

² 1307 Central Terrace is also the address for Daily Planet Publishing, Inc., another entity that uses “Earth First Journal” as a tradestyle. (*See* Exhibit D (Application for Renewal of Fictitious Name, dated August 19, 2016 (showing Daily Planet Publishing, Inc. as the owner of the fictitious name, “Earth First Journal”)).)

address alone. Accordingly, service was not effected. (*See* Exhibit B.) Mr. Tsoikas is affiliated with Earth First! through his role as the initial registered agent for Daily Planet Publishing, Inc., which, as noted above, operates under the fictitious name, “Earth First Journal.” (*See* Exhibit H (Florida Certificate of Domestication and Articles of Incorporation for Daily Planet Publishing, Inc., dated December 27, 2010 (providing the email address collective@earthfirstjournal.org and listing “Peter (Pangioti) Tsoikas” as its registered agent)); *see also* Exhibit E (listing Peter Tsoikas as an officer of Daily Planet Publishing, Inc., located at 822 N. C. Street, Lake Worth, Florida 33460); Exhibit I (Application for Registration of Fictitious Name, dated January 10, 2011 (registering “Earth First Journal” as the fictitious name for Daily Planet Publishing, signed by Peter Tsoikas)); Exhibit G (listing Peter Evangelos Tsoikas and Pangioti Tsoikas as owners of the fictitious name, “Everglades Earth First,” and listing 822 N. C Street, Lake Worth, Florida 33460 as Mr. Tsoikas’ address).)

- Also on September 19, 2017, plaintiffs attempted to serve Mr. Flory at 1509 Elm Avenue, Manhattan Beach, California 90266, an address listed publicly for Mr. Flory. Plaintiffs enlisted First Legal Investigations to attempt service on Earth First!. Leon Moore, a registered California process server, unsuccessfully attempted to serve Mr. Flory at that address. The residents of 1509 Elm Avenue stated that they began to reside there in February 2017 and that they did not know Mr. Flory. (*See* Exhibit J (Affidavit of Leon Moore, dated September 25, 2017).)

On September 29, 2017, after these efforts to personally serve individual agents or affiliates of Earth First! failed, plaintiffs served Earth First! with the summons and complaint by letter to the North Dakota Secretary of State. (*See* Exhibit K, Letter from Robert Stock to Secretary of State of North Dakota, dated September 29, 2017.) Two days later, the North Dakota Secretary of State acknowledged and admitted service on behalf of Earth First!. (*See* State of North Dakota Secretary of State, Admission of Service, dated October 2, 2017 [ECF Nos. 15, 16]; Exhibit L, Letter from Darcy Hurley, Secretary of State Business Information Unit Lead, to Robert Stock, dated October 2, 2017.)

On October 20, 2017, plaintiffs’ counsel sent a letter notifying Earth First! of the lawsuit and its duty to maintain and preserve documents, materials, and information that may be relevant to the subject matter of the lawsuit. (*See* Exhibit M, Letter from Michael Bowe to Earth First!,

dated October 20, 2017.) The letter was sent to Earth First! by mail and email.³ (See Exhibit N Tracking Receipt for U.S. Postal Service Priority Express Mail, dated October 23, 2017; Exhibit O, Email from Jonathan Kinney to collective@earthfirstjournal.org and webmaster@earthfirst.org, dated October 20, 2017.)

In light of these efforts to notify Earth First! of the claims against it, and Earth First!’s material role in the unlawful conduct alleged in the complaint, Earth First! should not be permitted to hide behind its purported lack of a formal organizational structure and membership to evade service and avoid responding to the claims against it. Moreover, Earth First! is on notice of the complaint. On October 23, 2017, counsel for Earth First! Journal wrote a letter to plaintiffs’ counsel, asserting that Earth First! Journal is distinct from defendant Earth First! and that service of the summons and complaint at locations associated with Earth First! Journal was not effective service. (See Exhibit P (Letter from Rachel Meeropol to Robert Stock, dated October 23, 2017 (speaking on behalf of Earth First! while arguing that Earth First! Journal is not an entity that can accept service for Earth First!)); see also Exhibit Q (Letter from Pamela Spees to Darcy Hurley, dated October 24, 2017 (stating Earth First! Journal and Earth First! are separate entities)).) Yet, Earth First!’s website, and the websites of sister Earth First! chapters linked on Earth First!’s website, confirm that Earth First! Journal is the publication for the unincorporated association, Earth First!, and serves as its public face.⁴

³ This address is associated with several of the entities or individuals affiliated with Earth First! (See, e.g., Exhibit H (providing the email address collective@earthfirstjournal.org and listing PO Box 964, Lake Worth, Florida 33460 as the address for registered agent Peter Tsolkas); Exhibit D (showing Daily Planet Publishing, Inc. as the owner of the fictitious name, “Earth First Journal” and listing PO Box 964, Lake Worth, Florida 33460 as the current mailing address).)

⁴ (See, e.g. Exhibit R (Southwest Earth First! “About Us” Page, southwestearthfirst.wordpress.com (last visited Nov. 20, 2017) (bearing the Earth First! signature symbol of crossed wrench and stone tomahawk, summarizing the history of Earth First!, and linking to the “Earth First! Journal website”), available at <https://southwestearthfirst.wordpress.com/about/>); Exhibit S (Earth First! Netherlands Home Page, groenfront.nl/english (last visited Nov. 20, 2017) (bearing the Earth First! signature symbol of crossed wrench and stone tomahawk and stating: “GF! is not an organisation. To quote from the BVD (Dutch secret service) annual report 1998: ‘GF! is a ‘nom de guerre’ [loosely

ARGUMENT

I. Service On Earth First! Should Be Deemed Effective.

Rule 4(h) of the Federal Rules of Civil Procedure provide for service on an “unincorporated association that is subject to suit under a common name . . . in the manner prescribed by Rule 4(e)(1) for serving an individual [] or . . . delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process.” Fed. R. Civ. P. 4. Rule 4(e)(1) provides for service 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[] or . . . delivering a copy of the summons and of the complaint to the individual personally[,] leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there[,] or [] delivering a copy of each to an agent authorized by appointment or by law to receive service of process.” *Id.*

Courts in the Eighth Circuit hold that “[r]ule 4 is a flexible rule which is liberally construed to uphold service as long as defendant receives sufficient notice of the complaint.” *Med. Graphics Corp. v. Compumedics Sleep PTY, Ltd.*, No. 01-01617 (RHK/JMM), 2001 WL 1454026, at *2 (D. Minn. Nov. 15, 2001) (denying motion to dismiss for failure to name proper defendant) (internal quotations and citations omitted); *id.* at *2 n.4 (noting that, where Temple

translated: war cry] under which radical environmental activists in various compositions take up action. ‘GroenFront!/EarthFirst! is a convenient banner to use for nonviolent direct action. At the same time GF!/EF! has become a network of radical nature lovers and anarchist eco-saboteurs.’”), available at <https://www.groenfront.nl/english>; Exhibit T (Earth First! Journal Facebook Page (last visited Nov. 20, 2017) (stating that Earth First! Journal is “the voice of the ecological resistance movement,” and, as Earth First! Journal’s General Information, stating that “Earth First! formed in response to an increasingly corporate, compromising and ineffective environmental community. It is not an organization, but a movement. We believe in using all of the tools in the toolbox, from grassroots and legal organizing to civil disobedience and monkeywrenching. When the law won't fix the problem, we put our bodies on the line to stop the destruction.”), available at https://www.facebook.com/pg/efjournal/about/?ref=page_internal).

Mountain Ski Area, Inc. was owner of a relevant ski area at time of injury but Temple Mountain Ski Corp. was owner at the time of suit, “it is easy to see how confusion about who the appropriate party was could occur”); *Qwest Commc’ns Co. v. Aventure Commc’ns Tech., LLC*, 86 F. Supp. 3d 933, 994 (S.D. Iowa 2015), *reconsideration denied*, No. 07-00078-JEG, 2016 WL 7621350 (S.D. Iowa Sept. 2, 2016) (denying motion to dismiss for insufficient service of process and noting that Rule 4 “is a flexible rule that should be liberally construed to uphold service so long as a party receives sufficient notice of the complaint”). Moreover, “dismissal is not appropriate” even in the event of a technical infirmity, “unless the party has been prejudiced.” *Andersen Windows, Inc. v. Delmarva Sash & Door Co. of Maryland*, No. 02-00074 (DWF/AJB), 2002 WL 1424570, at *3 (D. Minn. June 28, 2002) (denying motion to dismiss on the basis that process was insufficient and stating: “Despite any . . . technical infirmity, [defendant] received constructive notice of the complaint [and] was aware of the litigation To argue that [defendant] suffered prejudice by the technical violation of the rule is disingenuous.”) (internal quotations and citations omitted).

Where, as here, plaintiffs have made every reasonable effort to serve an unincorporated association that deliberately eschews organizational structure in order to avoid accountability for their conduct, including in this instance service of process (and, thus, liability for its conduct), equity commands that service on Earth First! should be deemed effective. This is particularly so where counsel for Earth First! Journal, a sister organization of defendant Earth First! has responded to plaintiffs’ counsel by letter to assert arguments on behalf of Earth First!, demonstrating that Earth First! has notice of the complaint. Accordingly, because plaintiffs have exhaustively sought to serve Earth First! at several locations and through several individuals associated with Earth First!, which efforts have resulted in constructive notice to Earth First! and

caused it no prejudice, and because Earth First! has responded through its sister organization, Earth First! Journal, this Court should declare service on Earth First! effective and order Earth First! to respond to the complaint within twenty-one days.⁵

II. In The Alternative, Plaintiffs Should Be Granted Additional Time To Serve Earth First! By Alternative Means of Service.

Should the Court find plaintiffs' efforts to serve Earth First! insufficient, plaintiffs respectfully request that the Court grant plaintiffs additional time to serve Earth First! through alternative means of service. Here, given Earth First!'s deliberate efforts to avoid service and Earth First!'s relationship with Earth First! Journal, plaintiffs should be permitted to serve Earth First! by U.S. mail at the addresses listed on Earth First! Journal's website: PO Box 964, Lake Worth, Florida 33460, or through whatever other method the Court determines.

CONCLUSION

For the foregoing reasons, plaintiffs respectfully request that the Court enter an order granting Energy Transfer's Motion for Declaration of Effective Service on Defendant Earth First! in its entirety and ordering Earth First! to respond to the complaint within twenty-one days or, in the alternative, granting plaintiffs additional time to serve Earth First! by alternative means of service, and granting such further relief as the Court deems just and proper.

⁵ In addition, where, as here, an unincorporated association holds itself out as an entity functioning separately from its individual members, it should be estopped from evading liability on account of its technical status as a non-entity. *See Askew v. Joachim Mem'l Home*, 234 N.W.2d 226, 236 (N.D. 1975) ("an [unincorporated] association doing business as a legal entity may, if the facts and circumstances warrant, be estopped to deny its own existence").

Dated: November 20, 2017

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