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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Nikola Corporation,

10 Plaintiff,

11 v.

12 Trevor R Milton,

13 Defendant.
14

No. CV-24-00563-PHX-DJH

ORDER

15 On March 19, 2024, the Court ordered Plaintiff Nikola Corporation (“Nikola”) to
16 serve Defendant Trevor R. Milton (“Milton”) with the Summons (Doc. 2), Complaint
17 (Doc. 1) and the Application for a Temporary Restraining Order (“TRO Application”)
18 (Doc. 5) by March 20, 2024, at 12:00 p.m. (Doc. 10). At the noon deadline, Nikola filed
19 a Motion for Alternative Service (Doc. 11), seeking to effect service via email and Federal
20 Express under Federal Rule of Civil Procedure 4(e)(1) and Arizona Rule of Civil Procedure
21 4.1(k). The Court will grant Nikola’s Motion because there is evidence that traditional
22 means of service is impractical.

23 Federal Rule 4(e)(1) permits service by “following state law for serving a summons
24 in an action brought in courts of general jurisdiction in the state where the district court is
25 located or where service is made[.]” Fed. R. Civ. P. 4(e)(1). In turn, Arizona Rule 4.1(k)
26 authorizes alternative means of service ‘within Arizona’ and provides the following
27 procedure:

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1 (1) [] If a party shows that the means of service provided in Rule 4.1(c)
2 through Rule 4.1(j) are *impracticable*, the court may on motion and
3 without notice to the person to be served order that service may be
4 accomplished in another manner.

5 (2) Notice and Mailing. If the court allows an alternative means of
6 service, the serving party must make a reasonable effort to provide the
7 person being served with actual notice of the action's commencement.
8 In any event, the serving party must mail the summons, the pleading
9 being served, and any court order authorizing an alternative means of
10 service to the last-known business or residential address of the person
11 being served.

12 Ariz. R. Civ. P. 4.1(k)(1)–(2) (emphasis added). The impracticable standard “does not
13 mean impossible, but rather that service would be ‘extremely difficult or inconvenient.’
14 This standard requires something less than the ‘due diligence’ showing required before
15 service by publication may be utilized.” *Bank of N.Y. Mellon v. Dodev*, 433 P.3d 549, 558
16 (Ariz. Ct. App. 2018) (internal citations omitted) (finding alternative service was warranted
17 when the plaintiff experienced five failed attempts at physical service).

18 Here, Nikola's Counsel represents she has undergone extensive efforts to effect
19 service on Milton within the last 24 hours:

- 20 - Nikola's Counsel emailed the service documents to attorneys who are
21 representing Milton in a related proceeding before this Court, *Nikola
22 Corporation v. Milton*, 2:23-cv-02635-DJH (D. Ariz. Dec. 18, 2023)
23 (the “Related Action”), and inquired if they would accept service on
24 Milton's behalf. (Docs. 11-1; 11-2). The attorneys have not
25 responded.
- 26 - Nikola's Counsel spoke on the phone with an attorney who is
27 representing Milton in the Related Action to inquire about service,
28 and the attorney declined to accept service.
- Nikola's Counsel sent the service documents via Federal Express to
the New York office of the attorneys who are representing Milton in
the Related Action, which was delivered.
- Nikola's Counsel attempted to serve Milton via an Arizona process
server at Milton's Phoenix address, but Milton was not home.

1 - Nikola’s Counsel attempted to serve Milton at his Utah and Wyoming
2 addresses but was advised that service would not be timely due to the
3 remoteness of the addresses.

4 (Doc. 11 at 2–4).

5 In light of the facts that Nikola has successfully served Milton in the Related Action,
6 *see Nikola Corporation v. Milton*, 2:23-cv-02635-DJH, ECF No. 17 (D. Ariz. Jan. 8, 2024),
7 Nikola is familiar with the attorneys representing Milton in the Related Action, those
8 attorneys have actual notice of present matter, and at least one of those attorneys are in the
9 process of preparing applications to be admitted *pro hac vice* in this matter
10 (Doc. 11 at 2 n.1), the Court finds alternative service is warranted. *See* Ariz. R. Civ. P.
11 4.1(k)(2). The Court further finds service via email and mail to the attorneys who are
12 currently representing Milton in the Related Action constitutes reasonable efforts to
13 provide Milton with actual notice of this action.¹ *See* Ariz. R. Civ. P. 4.1(k)(2); *see also*
14 *e.g., Uber Techs. Inc. v. Davis*, 2023 WL 4535095, *2 (D. Ariz. June 12, 2023) (finding
15 alternative service by mail and email to the defendant’s counsel in a related arbitration
16 matter was reasonably calculated because “evidence [of] an ongoing attorney-client
17 relationship with [the defendant] and would be most likely to apprise [the defendant] of the
18 action) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)); *see*
19 *also Rio Properties, Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1018 (9th Cir. 2002) (finding
20 that due process requires “nothing more” than service of process by email when that “may
21 be the only means of effecting service of process”). However, the Court will also require,
22 Nikola to mail the service documents to Milton’s last-known business or residential address
23 in accordance with Ariz. R. Civ. P. 4.1(k)(2), to the extent it has not already.

24 Accordingly,

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27 ¹ To comport with constitutional notions of due process “service crafted by the district
28 court must be ‘reasonably calculated, under all the circumstances, to apprise interested
parties of the pendency of the action and afford them an opportunity to present their
objections.’” *Rio Properties, Inc. v. Rio Int’l Interlink*, 284 F.3d 1007 (9th Cir. 2002)
(quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)).

