

**NO. 2022-83673**

**WESTDALE CAPITAL INVESTORS 3, L.P.S**

**IN THE DISTRICT COURT**

**Plaintiff,**

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

**v.**

**129th JUDICIAL DISTRICT**

**MICHAEL KAFROUNI, MICHAEL  
EISENBERG, BRYAN UPTON, AND  
TASO MOUGOURIS,**

**Defendants.**

**HARRIS COUNTY, TEXAS**

**PLAINTIFF'S MOTION FOR RULE 106 SUBSTITUTED SERVICE ON DEFENDANT**

**TO THE HONORABLE JUDGE OF SAID COURT:**

Plaintiff Westdale Capital Investors 3, L.P. requests this Court to enter an Order authorizing Substituted Service of Citation upon Defendant Bryan Upton, and for grounds therefore would respectfully show the Court as follows:

1. According to the records of the Texas Department of Public Safety, 2929 Wesleyan Street, #1103, Houston, Texas is Defendant's current home address. Declaration of Michael Jones. On December 29, 2022, the Court issued citation directed to Defendant at his home address, 2929 Wesleyan Street, #1103, Houston, Texas. Declaration of Michael Jones. The Citation was forwarded to Malone Process Service, LLC for service. Declaration of Michael Jones. A process server made several attempts to serve the Citation on Defendant at his home address but was unsuccessful. Affidavit in Support of Substitute Service. Although persistent, diligent, and repeated efforts were made to serve Defendant with Citation service was unsuccessful. Affidavit in Support of Substitute Service.

2. Defendant lives in a high-rise apartment building. Affidavit in Support of Substitute

Service. The process server was prevented from going to Defendant's apartment. Affidavit in Support of Substitute Service. The front desk called Defendant on two separate while the process server was present, but Defendant did not answer or return the call. Affidavit in Support of Substitute Service. The process server left his card with the front desk to be forwarded to Defendant. Affidavit in Support of Substitute Service. Defendant has not contacted the process server. Affidavit in Support of Substitute Service. Based upon the foregoing, Plaintiff believes that Defendant is avoiding service.

3. Plaintiff requests that pursuant to Texas Rule of Civil Procedure 106 (b)(2) the Court enter an Order authorizing service of Citation and Plaintiff's Original petition by delivering a copy of the Citation and Plaintiff's Original Petition to the person present at the front desk of Defendant's high-rise apartment complex, which will be reasonably effective to give Defendant notice of this suit.

**WHEREFORE, PREMISES CONSIDERED,** Plaintiff moves this Court grant this Motion and enter an Order accordingly, and for such other and further relief as is just and proper.

Respectfully Submitted,

/s/ Michael L. Jones

Michael L. Jones

State Bar No. 10929460

[mj@michaeljoneslegal.com](mailto:mj@michaeljoneslegal.com)

**LAW OFFICE OF MICHAEL JONES, PLLC**

16901 Dallas Parkway, Suite 202

Addison, Texas 75001

(214) 954-9704

**ATTORNEYS FOR PLAINTIFF**

**NOTICE OF SUBMISSION**

Plaintiff's Motion for Rule 106 Substituted Service on Defendant will be heard by written submission before the 129<sup>th</sup> District Court, Harris County, Texas at 8:00 a.m. on January 23, 2023.

/s/ Michael L. Jones

Michael L. Jones

WESTDALE CAPITAL INVESTORS 3, L.P

Plaintiff,

v.

MICHAEL KAFROUNI, MICHAEL  
EISENBERG, BRYAN UPTON, AND  
TASO MOUGOURIS,

Defendants.

§  
§  
§  
§  
§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT

129th JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

**DECLARATION OF MICHAEL L. JONES**

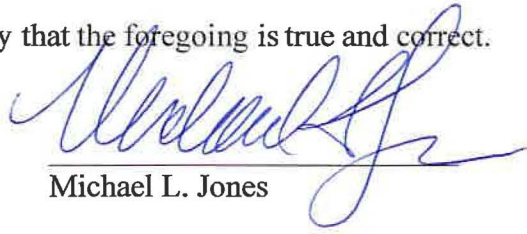
I, Michael L. Jones, declare under penalty of perjury as follows:

1. I am over the age of eighteen years. I have never been convicted of a felony, nor any crime involving moral turpitude. I am duly qualified, competent and authorized to make this Declaration and the facts stated herein are within my personal knowledge and are true and correct.

2. I am counsel of record for Plaintiff, Westdale Capital Investors 3, L.P.

3. 2929 Wesleyan Street, #1103, Houston, Texas is listed as Defendant's home address by the Texas Department of Public Safety. A process server made several attempts to serve the Citation on Defendant at his home address but was unsuccessful because Defendant lives in a high-rise apartment building and the person at the front desk will not allow the process server access to Defendant's apartment. I believe that service of Citation and Plaintiff's Original petition by delivering a copy of the Citation and Plaintiff's Original Petition to the person present at the front desk of Defendant's high-rise apartment complex, which will be reasonably effective to give Defendant notice of this suit.

I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in blue ink, appearing to read "Michael L. Jones", written over a horizontal line.

Michael L. Jones

CAUSE NO. 202283673

WESTDALE CAPITAL INVESTORS 3 L P

§

IN THE COURT OF

§

Plaintiff,

§

VS.

§

HARRIS COUNTY,

§

MICHAEL KAFROUNI

§

Defendant.

§

129TH JUDICIAL DISTRICT

AFFIDAVIT IN SUPPORT OF SUBSTITUTE SERVICE

On this day personally appeared Harold Williams who, being by me duly sworn, deposed and said:

"The following came to hand on Dec 30, 2022, 9:03 am,

CITATION AND PLAINTIFF'S ORIGINAL PETITION

For delivery to BYRAN UPTON

1) Unsuccessful Attempt: Jan 7, 2023, 11:02 am CST at 2929 Wesleyan St #4103, Houston, TX 77027  
Highrise apartment, not allowed to knock on the door, front desk attempted to call subject 2 times, but there was no answer, I left my card with her to forward to him.

2) Unsuccessful Attempt: Jan 9, 2023, 9:47 am CST at 2929 Wesleyan St #4103, Houston, TX 77027  
Front desk attempted to call Mr. Upton and he did not answer or return the call.

I have made diligent efforts to deliver said papers to BYRAN UPTON. I have made numerous attempts at their residence address as described above and have posted my information to the front door of their residence. I believe an efficient way to effect service is by leaving a copy with anyone over 16 years of age or by securely attaching the Citation, with Plaintiff's Original Petition attached, with tape to the front door of BYRAN UPTON's residence, where it is sure to be seen by someone at the residence, or in any other manner the affidavit or evidence before the court shows will be reasonably effective to give the defendant notice of the suit.

I am a person over eighteen (18) years of age and I am competent to make this affidavit. I am a resident of the State of Texas. I am familiar with the Texas Rules of Civil Procedure as they apply to service of Process. I am not a party to this suit nor related or affiliated with any herein, and have no interest in the outcome of the suit. I have never been convicted of a felony or of a misdemeanor involving moral turpitude. I have personal knowledge of the facts stated herein and they are true and correct."

*Harold Williams*

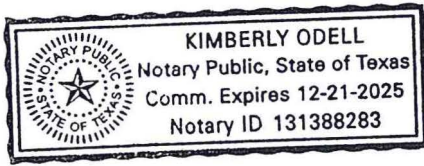
Harold Williams  
Certification Number: 20119  
Certification Expiration: 9/30/2023

BEFORE ME, a Notary Public, on this day personally appeared **Harold Williams**, known to me to be the person whose name is subscribed to the foregoing document and, being by me first duly sworn, declared that the statements therein contained are within his or her personal knowledge and are true and correct.

SUBSCRIBED AND SWORN TO ME ON 11/10/23

*Kimberly Odell*

Notary Public, State of Texas



### Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Michael Jones on behalf of Michael Jones  
Bar No. 10929460  
mj@michaeljoneslegal.com  
Envelope ID: 71699598  
Status as of 1/11/2023 2:13 PM CST

#### Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Michael Jones		mj@michaeljoneslegal.com	1/11/2023 1:20:02 PM	SENT
Michael Jones		mj@michaeljoneslegal.com	1/11/2023 1:20:02 PM	SENT