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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHEPARD JOHNSON,

Plaintiff,

No. CIV S-10-1968 GEB GGH PS

vs.

CHESTER MITCHELL, et al.,

Defendants.

ORDER

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On March 2, 2012, this court ordered plaintiff to complete service on all defendants within 60 days. (Dkt. No. 169.) Subsequently, on March 20, 2012, plaintiff filed a motion for leave to serve defendant Kim Parsons with process by publication pursuant to Fed. R. Civ. P. 4(e)(1) and Cal. Civ. Proc. Code § 415.50. (Dkt. No. 173.)

A plaintiff may serve an individual 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.” Fed. R. Civ. P. 4(e)(1). In California, “[a] summons may be served by publication if upon affidavit it appears to the satisfaction of the court in which the action is pending that the party to be served cannot with reasonable diligence be served in another manner specified in this article and that either: (1) A cause of action exists against the party upon whom

1 service is to be made or he or she is a necessary or proper party to the action....” Cal. Civ. Proc.  
2 Code § 415.50(a).

3 California’s service by publication statute further provides that:

4 The court shall order the summons to be published in a named  
5 newspaper, published in this state, that is most likely to give actual  
6 notice to the party to be served. If the party to be served resides or  
7 is located out of this state, the court may also order the summons to  
8 be published in a named newspaper outside this state that is most  
9 likely to give actual notice to that party. The order shall direct that  
10 a copy of the summons, complaint, and the order for publication be  
forthwith mailed to the party if his or her address is ascertained  
before expiration of the time prescribed for publication of the  
summons. Except as otherwise provided by statute, the publication  
shall be made as provided by Section 6064 of the Government  
Code unless the court, in its discretion, orders publication for a  
longer period.

11 Cal. Civ. Proc. Code § 415.50(b). “Service of a summons in this manner is deemed complete as  
12 provided in Section 6064 of the Government Code.” Cal. Civ. Proc. Code § 415.50(c). Section  
13 6064 of California’s Government Code, in turn, provides that: “[p]ublication of notice pursuant  
14 to this section shall be once a week for four successive weeks. Four publications in a newspaper  
15 regularly published once a week or oftener, with at least five days intervening between the  
16 respective publication dates not counting such publication dates, are sufficient. That period of  
17 notice commences with the first day of publication and terminates at the end of the twenty-eighth  
18 day, including therein the first day.” Cal. Gov’t Code § 6064.

19 The court finds that service by publication is appropriate for defendant Kim  
20 Parsons. Plaintiff’s declaration demonstrates that he has attempted to serve defendant Parsons  
21 several times by U.S. mail and personal service. The process server’s declaration of diligence,  
22 attached to plaintiff’s declaration, confirms that several attempts were made to serve defendant  
23 Parsons personally at a known address. Furthermore, plaintiff sent copies of the process papers  
24 to defendant Parsons via e-mail at her various known e-mail addresses and left telephone  
25 messages at each of her known phone numbers. Thus far, all plaintiff’s service attempts have  
26 been unsuccessful. (See Dkt. No. 173.)

