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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

SCOTT JOHNSON,

Plaintiff,

v.

KARL VUONG; DIANA CERPAS; and  
DOES 1-10.

Defendants.

No. 2:14-cv-00709-KJM-DAD

ORDER

I. INTRODUCTION

The claims in this case arise out of plaintiff's allegations that defendants' commercial property, *inter alia*, is inaccessible to wheelchair users and has no handicapped parking space. (Compl. ¶¶ 1-2, 8-9.) Plaintiff filed his complaint on March 18, 2014. (ECF No. 1.) On May 16, 2014, plaintiff moved for the entry of default against one of the defendants, Diana Cerpas (ECF No. 5), and the court clerk entered a default on May 20, 2014 (ECF No. 6). On July 21, 2014, plaintiff applied for an order allowing service of the summons by publication on the other named defendant, Karl Vuong. (ECF No. 8.) As explained below, the court GRANTS plaintiff's application.

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1 II. ANALYSIS

2 Under Federal Rule of Civil Procedure 4(e), an individual may be served by:

3 (1) following state law for serving a summons . . . ; or

4 (2) doing any of the following:

5 (A) delivering a copy of the summons and of the complaint to  
6 the individual personally;

7 (B) leaving a copy of each at the individual’s dwelling or usual  
8 place of abode with someone of suitable age and discretion  
9 who resides there; or

10 (C) delivering a copy of each to an agent authorized by  
11 appointment or by law to receive service of process.

12 In California, the final method of service permitted is by publication of summons  
13 in a newspaper of general circulation. CAL. CIV. PROC. CODE § 415.50. Specifically, the  
14 California Code of Civil Procedure provides:

15 (a) A summons may be served by publication if upon affidavit it  
16 appears to the satisfaction of the court in which the action is  
17 pending that the party to be served cannot with reasonable  
18 diligence be served in another manner specified . . . and that . . .

19 (1) A cause of action exists against the party upon whom  
20 service is to be made or he or she is a necessary or proper  
21 party to the action.

22 CAL. CIV. PROC. CODE § 425.50.

23 However, service by publication should “be utilized only as a last resort,” *Watts v.*  
24 *Crawford*, 10 Cal. 4th 743, 749 n.5 (1995), because “notice by publication [is] not reasonably  
25 calculated to provide actual notice of the pending proceeding and [is] therefore inadequate to  
26 inform those who could be notified by more effective means such as personal service or mailed  
27 notice[.]” *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 795 (1983). Hence, “[b]efore  
28 allowing a plaintiff to resort to service by publication, the courts necessarily require [a plaintiff]  
to show exhaustive attempts to locate the defendant . . . .” *Watts*, 10 Cal. 4th at 749 n.5 (internal  
quotation marks omitted). A plaintiff has the burden to establish “reasonable diligence” in

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1 attempting service by other methods. *Olvera v. Olvera*, 232 Cal. App. 3d 32, 42 (1991).

2 “Reasonable diligence” in attempting to serve by other methods connotes:

3 [A] thorough, systematic investigation and inquiry conducted in  
4 good faith . . . . A number of honest attempts to learn defendant’s  
5 whereabouts or address by inquiry of relatives, friends, and  
6 acquaintances, or of an employer, and by investigation of  
7 appropriate city and telephone directories, the voters’ register, and  
8 the real and personal property index in the assessor’s office, near  
9 the defendant’s last known location, are generally sufficient. These  
are likely sources of information, and consequently must be  
searched before resorting to service by publication. However, the  
showing of diligence in a given case must rest on its own facts and  
no single formula nor mode of search can be said to constitute due  
diligence in every case.

10 *Kott v. Superior Court*, 45 Cal. App. 4th 1126, 1137-38 (1996) (internal citations and quotations  
11 omitted).

12 Here, the court finds plaintiff has met his burden in establishing “reasonable  
13 diligence.” Specifically, plaintiff’s counsel has searched various databases and learned that  
14 defendant Vuong “had only one listed possible current mailing addresses [sic]”: 2911 Atlas Ave.,  
15 Sacramento, CA 95820-4638. (Ballister Decl. ¶¶ 2-3, ECF 8-1.) Plaintiff’s agent for service,  
16 Armada Prime, LLC, has provided information about ten unsuccessful attempts to serve  
17 defendant Vuong at that address. (See ECF 8-3.) In addition, plaintiff has mailed a notice and  
18 acknowledgment receipt of summons and complaint to the same address. (See ECF 8-4.) Finally,  
19 plaintiff’s counsel declares he “has been unable to locate any additional addresses for . . .  
20 [d]efendant.” (Ballister Decl. ¶ 9.) Under these circumstances, plaintiff has satisfied the  
21 “reasonable diligence” requirement. See *Bd. of Trustees of the Leland Stanford Junior Univ. v.*  
22 *Ham*, 216 Cal. App. 4th 330, 336 (stating that two or three attempts to serve at a proper place  
23 generally satisfied the reasonable diligence standard). Accordingly, the court GRANTS  
24 plaintiff’s application for an order for publication of summons.

25 Plaintiff is directed to serve defendant Karl Vuong by publication in *The*  
26 *Sacramento Bee*. See CAL. CIV. CODE § 415.50(b). Plaintiff is further directed to mail a copy of  
27 the summons, the complaint, and the order for publication to defendant Vuong at all addresses  
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1 available for him. Finally, plaintiff shall comply with California Government Code section 6064,  
2 which provides that the publication in the newspaper must occur once a week for four successive  
3 weeks.

4 IT IS SO ORDERED.

5 DATED: August 4, 2014.

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9 UNITED STATES DISTRICT JUDGE  
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