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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

JOHN DURANT d/b/a JOHN
DURANT PHOTOGRAPHER,

Plaintiff,

v.

JONES FIRE PROTECTION, INC., a
California Corporation,

Defendant.

CASE NO. 16cv2243-GPC(NLS)

**ORDER GRANTING PLAINTIFF'S
SECOND EX PARTE
APPLICATION FOR AN ORDER
DIRECTING THAT SERVICE BE
MADE ON THE CALIFORNIA
SECRETARY OF STATE**

[Dkt. No. 5.]

Before the Court is Plaintiff's second ex parte application for an order directing that service of summons be made on Defendant by personal delivery to the California Secretary of State as provided under California Corporations Code section 1702.

Background

On September 6, 2016, Plaintiff filed a complaint against Defendant for copyright infringement and violation of the Digital Millenium Copyright Act. (Dkt. No. 1., Compl.) On September 8, 9, 10, 11, and 12, 2016¹, Plaintiff attempted to personally service the Summons and Complaint on Defendant's designated agent for service of process in California, David Severson. (Dkt. No. 5-3, Thompson Decl., Ex.

¹As the Court noted in its prior order, the Thompson declaration again contains a typographical error stating that service was attempted on August 8, 9, 10, 11 and 12, 2016. (Dkt. No. 5-3, Thompson Decl. ¶ 4; *id.*, Ex. 2.)

1 2.) After a few attempts, a note was left on the door to advise of the attempted service
2 and when the process server returned, the note was gone, the lights were on, but no one
3 answered the door. (Id. ¶ 5.)

4 On September 22, 2016, Plaintiff attempted to serve Defendant through its
5 registered agent for service of process, Douglas E. Jones, in Hawaii on three occasions
6 on the same day. (Id. ¶ 6; id., Ex. 3.) Then on September 28, 2016 and September 29,
7 2016, the process server attempted personal service again and learned from a neighbor
8 that the occupant is typically gone for weeks at a time and no one was seen at the
9 property the week of September 26, 2016. (Id. ¶ 8.)

10 On October 12, 2016, Plaintiff filed an ex parte motion seeking to serve
11 Defendant by way of personal delivery to the Secretary of State of California. (Dkt.
12 No. 3.) On November 2, 2016, the Court denied Plaintiff's ex parte application and
13 allowed Plaintiff to refile it after he made reasonable diligent attempts to serve a
14 corporate officer of Defendant. (Dkt. No. 4.)

15 On November 8, 2016, after further research, it was discovered an address on
16 141 Quail Drive in Encinitas, CA associated with Jones. (Dkt. No. 5-3, Thompson
17 Decl. ¶¶ 12, 13; id., Ex. 8.) On November 9, 2016, Plaintiff attempted to personally
18 serve Defendant at the Quail Drive address at two different times but no one answered
19 the door even though the lights were on. (Id. ¶ 14.) On November 10, 2016, the
20 process server returned in the evening but no one answered, and on November 12,
21 2016, the occupant answered the door and reported that Jones was the previous owner.
22 (Id. ¶ 15; id., Ex. 9.) The records from the Hawaii Department of Commerce and
23 Consumer Affairs, and the California Secretary of state show that Douglas E. Jones is
24 the sole corporate officer of Defendant. (Id. ¶¶ 16-18.) On October 20, 2016, Plaintiff
25 received a returned Fed Ex package sent to Defendant at 1170 San Dieguito Drive,
26 Encinitas, CA 92024 containing the prior ex parte application. (Id. ¶ 19; id., Ex. 10.)
27 On November 7, 2016, a woman left a message and informed Plaintiff that Jones no
28 longer lived at the address on San Dieguito Drive which was confirmed when the tax

1 records were pulled. (Id. ¶ 20; id., Ex. 11.)

2 **Discussion**

3 Federal Rule of Civil Procedure 4(h)(1)(A) provides that a corporation may be
4 serviced “in the manner prescribed by Rule 4(e)(1).” Fed. R. Civ. P. 4(h)(1)(A). Rule
5 4(e)(1) states that service may be made by “following state law for serving a summons
6 in an action brought in courts of general jurisdiction in the state where the district court
7 is located or where service is made.” Fed. R. Civ. P. 4(e)(1).

8 In California, a corporation may be served through four categories of
9 individuals: “(1) a designated agent for service of process, (2) enumerated officers and
10 other authorized agents of the corporation; (3) a cashier or assistant cashier of a
11 banking corporation; and (4) where the party attempting service cannot with reasonable
12 diligence serve an individual in any other category, the Secretary of State as provided
13 by Corporations Code Section 1702.” Gibble v. Car-Lane Research, Inc., 67 Cal. App.
14 4th 295, 303 (1998) (citing Cal. Code of Civ. Proc. § 416.10). Prior to seeking an order
15 for service upon the Secretary of State, a plaintiff must demonstrate that “the
16 corporation cannot be served with the exercise of due diligence in any other manner
17 provided by law.” Verizon California Inc. v. OnlineNIC Inc., No. C08-2832 JF(RS),
18 2008 WL 4279709, at *2 (N.D. Cal. Sept. 16, 2008) (quoting Viewtech, Inc. v. Skytech
19 USA, Inc., No. 07-CV-541-L, 2007 WL 1429903, at *1 (C.D. Cal. May 14, 2007)).

20 In the Court’s prior order, it found that Plaintiff had demonstrated, by affidavit,
21 that it made reasonable efforts and attempted service on the person designated as agent
22 for service of process in California and Hawaii. (Dkt. No. 4 at 3.) However, Plaintiff
23 had not shown it attempted to effect service by “delivering a copy of the summons and
24 the complaint . . . [t]o the president, chief executive officer, or other head of the
25 corporation, a vice president, a secretary or assistant secretary, a treasurer or assistant
26 treasurer, a controller or chief financial officer, a general manager, or a person
27 authorized by the corporation to receive service of process.” Id. (quoting Cal. Code
28 Civ. Proc. § 416.10(b) and citing Gofron v. Picsel Techs., Inc., No. C09-4041 CW,

1 2010 WL 4807096, at *1 (N.D. Cal. 2010) (denying plaintiffs' request for an order
2 permitting service on corporation through California Secretary of State because
3 plaintiffs failed to provide an affidavit that service was attempted on the officers of the
4 corporation); Verizon California Inc., 2008 WL 4279709, at *2 (denying plaintiffs' ex
5 parte application for an order authorizing service on the defendant because they did not
6 make reasonably diligent attempts to locate and serve a corporate officer)).

7 In his second ex parte application, Plaintiff has demonstrated, by affidavit and
8 supporting documents, that the agent for service of process in Hawaii, Douglas E.
9 Jones, is also the sole corporate officer of Defendant. Diligent efforts were made to
10 serve Douglas Jones in Hawaii in September 2016. In addition, additional attempts to
11 serve were made at a couple of addresses mentioned in corporate records in San Diego
12 County but without success. Despite diligent efforts, Plaintiff is unable to serve Jones
13 Fire Protection, Inc.

14 Conclusion

15 Based on the above, the Court GRANTS Plaintiff's second *ex parte* request for
16 an order permitting service by personal delivery to the California Secretary of State.


17 IT IS ORDERED that service on Defendant Jones Fire Protection, Inc. be made
18 by personal delivery to the Secretary of State of California, or to an assistant or deputy
19 secretary of state, of three copies of the Summons and Complaint, together with three
20 copies of this order, consistent with Corporations Code section 1702.

21 IT IS FURTHER ORDERED that the Secretary of State of California, Alex
22 Padilla, serve this Order and the Summons and Complaint on Jones Fire's last known
23 designated agent for service of process, David E. Severson at the following address:

24 1. 4433 Via Sepulveda, Unit 4, San Diego, CA 92122.

25 IT IS SO ORDERED.

26 DATED: December 15, 2016

27 
28 HON. GONZALO P. CURIEL
United States District Judge