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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 DR. RACQUEL S. BOVIER, c/o  
12 EPIPHANY ONEPOINTE  
13 TELETHERAPY & ASSOC., LLC,  
14 Plaintiff,

15 v.

16 BRIDGEPOINT  
17 EDUCATION/ASHFORD  
18 UNIVERSITY, BRIDGEPOINT  
19 UNIVERSITY GOVERNING BOARD  
20 OF REGENTS, DR. CRAIG MAXWELL,  
21 DR. ANTHONY "TONY" FARRELL,  
22 DR. DENISE MAXWELL, MR. JOHN  
23 GOODISON, DR. IRIS LAFFERTY, DR.  
24 TAMECCA FITZPATRICK, DR. JUDY  
25 DONOVAN, DR. JACKIE KYGER, MS.  
26 HEATHER MASON, DR. ALAN  
27 BELCHER, MR. ARMONDO  
28 DOMINGUEZ & ASSOC.,

Defendants.

Case No.: 3:17-cv-01052-GPC-JMA

**ORDER:**

**(1) GRANTING DEFENDANTS'  
MOTION TO QUASH SERVICE OF  
SUMMONS**

**(2) DENYING PLAINTIFF'S  
MOTION FOR DEFAULT  
JUDGMENT**

**[ECF Nos. 7, 14.]**

1 Before the Court are: (1) Defendants’ Motion to Quash Service of Summons and  
2 (2) Plaintiff’s Motion for Default Judgment. On August 24, 2017, Defendants  
3 Bridgepoint Education, Inc., Anthony Farrell, Denise Maxwell, Iris Lafferty, Tamecca  
4 Fitzpatrick, Judy Donovan, Jackie Kyger, Heather Mason, Alan Belcher, and Armando  
5 Dominguez (collectively “Defendants”) filed a Motion to Quash Service of Summons  
6 and First Amended Complaint. Dkt. No. 7. On September 11, 2017, Plaintiff Dr.  
7 Racquel S. Bovier (“Plaintiff”), filed a “Motion for Default Judgment to Proceed for Full  
8 Relief in Lieu of Forfeiture [sic] for Failure to Timely Reply Original Complaint,” which  
9 the Court construed as a Response to Defendants’ Motion to Quash. Dkt. Nos. 9-10. On  
10 September 21, 2017, Plaintiff filed a “Court Response Memo: Notice of Opposition &  
11 Rejection to Defendant’s Quash With Request of Dismissal of Hearing With Enclosed  
12 Formal Motion to Vacate Quash,” which the Court construed as a supplemental  
13 opposition to Defendants’ Motion to Quash. Dkt Nos. 11-12. Finally, Plaintiff further  
14 filed a “Motion for Default Judgment to Proceed for Full Relief in Lieu of Forfeiture [sic]  
15 for Failure to Timely Reply Original Complaint” which the Court construed as a Motion  
16 for Default Judgment. Dkt Nos. 13-14. On October 4, 2017, Defendants filed a reply to  
17 the motion to quash that also serves as their opposition to the motion for default  
18 judgment. Dkt. No. 17.

19 Having reviewed the moving papers, and the applicable law, the Court will  
20 **GRANT** Defendants’ Motion to Quash for Service of Summons and **DENY** Plaintiff’s  
21 Motion for Default Judgment. Further, the Court hereby **VACATES** the hearing  
22 scheduled for this matter on November 9, 2017 at 1:30 PM.

### 23 **I. Motion to Quash for Service of Summons**

24 A Rule 12(b)(5) motion is the proper vehicle for challenging the “insufficiency of  
25 service of process.” *See* Fed. R. Civ. Pro. 12(b)(5). This serves to challenge the validity  
26 of the actual method or manner of service of process. Objections to the validity of  
27 service of process must be specific and must point out in what manner the plaintiff has  
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1 failed to satisfy the requirements for proper service. *See O'Brien v. R.J. O'Brien &*  
2 *Assocs.*, 998 F.2d 1394, 1400 (7th Cir.1993).

3       Once service of process is properly challenged, “the party on whose behalf  
4 [service] is made must bear the burden of establishing its validity.” *Aetna Business*  
5 *Credit, Inc. v. Universal Decor & Interior Design, Inc.*, 635 F.2d 434, 435 (5th  
6 Cir.1981); *see Brockmeyer v. May*, 383 F.3d 798, 801 (9th Cir. 2004). While a district  
7 court should indeed give the service requirements of Rule 4 a liberal and flexible  
8 construction, a district court also has broad discretion to either dismiss an action entirely  
9 for failure to effect service or to quash the defective service and permit re-  
10 service. *See Duran v. Macias-Price*, No. 07-cv-01209-AWI-SMS, 2007 WL 4554390, at  
11 \*1 (E.D. Cal. Dec. 20, 2007); *Jones v. Automobile Club of Southern California*, 26 Fed.  
12 App’x. 740, 742 n.7 (9th Cir. 2002).

13       Federal Rule of Civil Procedure 4(e) applies with regard to the defendants in this  
14 case. Rule 4(e) states in relevant part that service may be effected (1) “pursuant to the  
15 law of the state in which the district court is located . . .;” or (2) by delivering a copy of  
16 the summons and of the complaint to the individual personally. California law, the law  
17 of the state in which this Court sits, allows a plaintiff to serve a defendant by, among  
18 other means, mailing a copy of the summons and complaint “together with two copies of  
19 the notice and acknowledgment provided for in subdivision (b) and a return envelope,  
20 postage prepaid, addressed to the sender.” Cal. Code Civ. P. § 415.30.

21       Defendants argue that Plaintiff did not serve them through means permitted by  
22 federal law (personal or substitute service)<sup>1</sup> or through California law (service by mail).  
23 Here, Plaintiff served Defendants by overnight mail. Murillo Decl. ¶¶ 3,5. Defendants  
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25 <sup>1</sup> Plaintiff asserts that Bridgepoint made legal process “illegally challenging” by disallowing service by  
26 “manual process service” of summons because Bridgepoint’s employed corporate security allegedly  
27 would not accept service. Dkt No. 14 at 3. Defendants assert that there is no evidence that Plaintiff’s  
28 process server ever attempted personal service on Defendants at the Bridgepoint office. *See Rico Decl.*,  
¶ 3. As Plaintiff has presented no evidence that she attempted personal service, the Court will deny  
Plaintiff’s request to accept Plaintiff’s deficient service of process on this basis.

1 contend that Plaintiff failed to comply with the rules of California Code of Civil  
2 Procedure Section 415.30 by omitting a copy of the summons and complaint *with* two  
3 copies of the notice and acknowledgment form and a return envelope. *See* Murillo Decl.  
4 ¶ 6. Nothing in plaintiff’s oppositions or motion for default judgment demonstrates  
5 compliance with the state statute. For example, Plaintiff appears to assert that a  
6 “certifying acceptance official, W. Felton” signed postal return receipts. Dkt. No. 10 at 3.  
7 A postal return receipt is not a substitute for an executed acknowledgment of return of  
8 summons. *Shaw v. Specialized Loan Servicing, LLC*, No. CV14-00783MMMMRWx,  
9 2014 WL 12587033, at\*2 (C.D. Cal. May 16, 2014). Accordingly, the Court will quash  
10 Plaintiff’s service of summons for failure to strictly comply with the notice and  
11 acknowledgment and return envelope requirements of Section 415.30. *See Duran*, 2007  
12 WL 4554390, at \*1. The Court will afford Plaintiff another opportunity to serve  
13 defendants correctly.

14 Defendants further contend that service was insufficient because Plaintiff did not  
15 serve a copy of the summons and first amended complaint on an appropriate individual  
16 on behalf of the corporation pursuant to Section 416.10 of the California Code of Civil  
17 Procedure. Under California law, when service is made on a corporation, the documents  
18 must be delivered to the person designated as the agent for service of process or the  
19 “president, chief executive officer, or other head of the corporation, a vice president, a  
20 secretary or assistant secretary, a treasurer or assistant treasurer, a controller or chief  
21 financial officer, a general manager, or a person authorized by the corporation to receive  
22 service of process.” Section 415.30 requires that the documents be mailed to the “person  
23 to be served.” Cal Civ. Proc Code § 415.30(a). California courts have stated in reference  
24 to analogous provisions that “person to be served” are words of precision. *See Ramos v.*  
25 *Homeward Residential, Inc.*, 223 Cal. App. 4th 1434, 1442 (2002). Where a summons  
26 fails to identify the individual to be served, service is defective. *Id.* The Court concludes  
27 that Defendants’ service was also deficient because: (1) the individual defendants do not  
28 appear to be authorized by statute or by Bridgepoint Education to accept service of

1 process; (2) the individual Defendants’ roles do not qualify them to accept service of  
2 process under section 416.10. *See* Murrillo Decl. ¶¶ 7, 8.

3 Accordingly, the Court will **GRANT** Defendants’ Motion to Quash. Plaintiff is  
4 directed to re-serve Defendants and in particular should heed the statutory guidelines  
5 requiring (1) two copies of the notice and acknowledgment form and a prepaid envelope  
6 pursuant to California Code of Civil Procedure Section 415.30 and (2) service to an  
7 appropriate individual at Bridgepoint Education pursuant to California Code of Civil  
8 Procedure Section 416.10.

## 9 **II. Motion for Default Judgment**

10 Plaintiff requests that the Court enter default judgment and impose sanctions  
11 against Defendants for an alleged untimely response.<sup>2</sup> Dkt. No. 14. Under Federal Rule  
12 of Civil Procedure 55 before the court may enter default judgment, the clerk must first  
13 enter a default against Defendants. An entry of default is appropriate “[w]hen a party  
14 against whom a judgment for affirmative relief is sought has failed to plead or otherwise  
15 defend, and that failure is shown by affidavit or otherwise.” Fed. R. Civ. P. 55(a).

16 Here, no entry of default has been entered, nor is an entry of default warranted  
17 because Defendants have timely defended their case. Under Rule 12, a defendant must  
18 serve an answer “within 21 days of being served with a summons and complaint” or may  
19 file a motion under Rule 12(b) in lieu of an Answer. Defendants received the first  
20 amended complaint and summons on August 3, 2017, and accordingly—assuming they  
21 had been properly served—had until August 24, 2017 to file a responsive answer or Rule  
22 12(b) motion. *See* Murrillo Decl. ¶ 3. Defendants filed their motion to quash on August  
23 24, 2017, thereby timely responding to Plaintiff’s summons. Dkt No. 7.

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27 <sup>2</sup> Plaintiff appears to rely on the Civil Local Rules of the United States District Court for the Central  
28 District of California to make her request. As this Court is located in the Southern District, the Civil  
Local Rules of the Southern District of California govern. Furthermore, the operative issue—a motion  
for default judgment—is governed by Federal Rule of Civil Procedure Rule 55.

1 Plaintiff further argues based on Central District Local Rule 7-13 that Defendants  
2 be sanctioned for their late filing. Dkt No. 14 at 3. Because there is no late filing, there is  
3 accordingly no basis for any sanctions under any rule.<sup>3</sup>

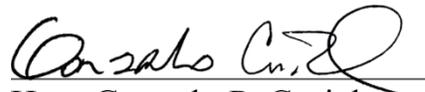
4 Accordingly, the Court **DENIES** Plaintiff's Motion for Default Judgment and  
5 **DENIES** Plaintiff's request for sanctions.

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7 **CONCLUSION**

8 For the reasons set forth above, the Court will **GRANT** Defendants' Motion to  
9 Quash Service of Summons. Plaintiff is directed to properly serve Defendants within 30  
10 days after this order is docketed. Plaintiff is directed to take note that failure to properly  
11 serve the Defendants by the Court's deadline may result in dismissal of her lawsuit for  
12 failure to prosecute. *See* Fed. R. Civ. P. 4(m). Further, the Court will **DENY** Plaintiff's  
13 Motion for Default Judgment. The Court hereby **VACATES** the hearing scheduled for  
14 this matter on November 9, 2017 at 1:30 PM.

15 **IT IS SO ORDERED.**

16 Dated: October 30, 2017

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18 Hon. Gonzalo P. Curiel  
19 United States District Judge  
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28 <sup>3</sup> The Court also **DENIES** Plaintiff's request for a Court-Ordered mediation conference as Defendants  
have not yet been properly served with a summons and first amended complaint.