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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

DOROTHY WHITE,  
  
Plaintiff,  
  
v.  
  
JOHN R. WARREN, Trustee of the John  
and Laura Warren Trust u/t/d August 24,  
1995, et al.,  
  
Defendants.

Case No.: 17-cv-1059-AJB (NLS)

**ORDER DENYING PLAINTIFF’S EX  
PARTE APPLICATION FOR  
PUBLICATION OF SUMMONS**  
  
(Doc. No. 3)

Presently before the Court is Plaintiff Dorothy White’s<sup>1</sup> (“Plaintiff”) ex parte application for an order that the summons in this action be served on Defendants John and Laura Warren, Trustees of the John and Laura Warren Trust u/t/d August 24, 1995 (collectively referred to as “Defendants”) by publication. (Doc. No. 3.) Based on Judge Battaglia’s Civil Case Procedures, the Court reviews and decides the motion without a

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<sup>1</sup> The Court notes that Plaintiff’s moving papers state that Plaintiff is Martin Vogel. (Doc. No. 3 at 1.) However, the complaint states that Plaintiff is Dorothy White. (Doc. No. 1; Doc. No. 1-1.) The Court believes that this misstatement was made in error by Plaintiff’s counsel. Thus, the Court will assume that Plaintiff is Dorothy White for the remainder of this Order.

1 hearing. As explained more fully below, the Court **DENIES** Plaintiff's ex parte application  
2 for publication of summons.

### 3 BACKGROUND

4 On May 23, 2017, Plaintiff filed a civil rights action against Defendants for  
5 discrimination at the building, structure, and facility known as Top Syle Salon ("the  
6 Salon") located in Oceanside, California. (Doc. No. 1 at 2.) Plaintiff alleges that while  
7 visiting the Salon that she encountered barriers that interfered with her ability to use and  
8 enjoy the good and services of the facility. (*Id.* at 3.) Plaintiff's complaint seeks injunctive  
9 and declaratory relief, statutory minimum damages, and attorney's fees and costs of suit.  
10 (*Id.* at 11.) On July 26, 2017, almost two months after the summons was issued, (Doc. No.  
11 2), Plaintiff filed the present motion, her ex parte motion for order for publication of  
12 summons, (Doc. No. 3).

### 13 LEGAL STANDARD

14 Rule 4 of the Federal Rules of Civil Procedure provides that proper service can be  
15 made by "following state law for serving a summons in an action brought in courts of  
16 general jurisdiction in the state where the district court is located or where service is  
17 made[.]" Fed. R. Civ. P. 4(e)(1). Therefore, California's statute for service by publication  
18 will govern whether such service is proper in this action.

19 California Code of Civil Procedure § 415.50(a)(1) provides that:

20 A summons may be served by publication if upon affidavit it  
21 appears to the satisfaction of the court in which the action is  
22 pending that the party to be served cannot with reasonable  
23 diligence be served in another manner specified in this article and  
24 that either: (1) A cause of action exists against the party upon  
whom service is to be made or he or she is a necessary or proper  
party to the action . . . .

25  
26 Service by publication is appropriate only where after reasonable diligence, the defendant's  
27 whereabouts and his dwelling place or usual place of abode cannot be ascertained. *Watts*  
28 *v. Crawford*, 10 Cal. 4th 743, 749 n.5 (1995). However, service by publication is a "last

1 resort,” so the courts require a plaintiff “to show exhaustive attempts to locate the  
2 defendant.” *Id.* “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 his employer, and by investigation of  
7 appropriate city and telephone directories, the voters’ register,  
8 and the real and personal property index in the assessor’s office,  
9 near the defendant’s last known location, are generally sufficient.  
10 These are likely sources of information, and consequently must  
11 be searched before resorting to service by publication. However,  
12 the showing of diligence in a given case must rest on its own  
13 facts and no single formula nor mode of search can be said to  
14 constitute due diligence in every case.

15 *Kott v. Superior Court*, 45 Cal. App. 4th 1126, 1137–38 (1996) (internal citations and  
16 quotations omitted).

## 17 DISCUSSION<sup>2</sup>

18 Plaintiff seeks to serve Defendants by publication of the summons in the Palos  
19 Verdes Peninsula News, which is a newspaper of general circulation in this state and is  
20 most likely to give Defendants notice as their last known address was in Palos Verdes  
21 Estates, Los Angeles County, California. (Doc. No. 3 at 1.)

### 22 A. Plaintiff Has Not Met Her Burden to Show a Valid Cause of Action

23 One of the requirements that has to be satisfied before service by publication is  
24 ordered is that an affidavit must provide facts that prove that “[a] cause of action exists  
25 against the party upon whom service is to be made or he or she is a necessary or proper  
26 party to the action.” Cal. Code Civ. P. § 415.50(a)(1). Here, the Court finds Plaintiff’s  
27 counsel’s declaration to be insufficient.  
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<sup>2</sup> The Court notes that Plaintiff did not first contact the law clerk before filing this motion pursuant to Judge Battaglia’s Civil Case Procedures.

1           Within the declaration, Plaintiff’s counsel concisely states that “[a] cause of action  
2 exists against the parties on whom service is to be made, and they are a necessary or proper  
3 party to the action, as they are the owners of real property located at 3805 — 3815 Mission  
4 Avenue, Oceanside, California, the property which is the subject of this action.” (Doc. No.  
5 3-1 at 2.) This statement, on its own, fails to satisfy section 415.50(a)(1)’s requirement that  
6 plaintiff provide “independent evidentiary support, in the form of a sworn statement of  
7 facts . . . .” *Nhia Kao Vang v. Decker*, No. 2:12-cv-01226-MCE-EFB, 2012 WL 5906890,  
8 at \*5 (E.D. Cal. Nov. 26, 2012). Moreover, the declaration does not “demonstrate counsel’s  
9 personal knowledge of the facts at issue.” *Cummings v. Hale*, Case No. 15-cv-04723-JCS,  
10 2016 WL 4762208, at \*3 (N.D. Cal. Sept. 13, 2016). Based on this, Plaintiff’s failure in  
11 this respect precludes the Court from finding that service by publication is appropriate at  
12 this time. *See McNamara v. Sher*, No. 11-cv-1344-BEN (WVG), 2012 WL 760531, at \*4  
13 (S.D. Cal. Mar. 8, 2012) (“Section 415.50 requires the plaintiff to provide independent  
14 evidentiary support, in the form of a sworn statement of facts, for the existence of a cause  
15 of action against the defendant.”) (citing *Harris v. Cavasso*, 68 Cal. App. 3d 723, 726  
16 (1977)).

17 B. Plaintiff has not Demonstrated Due Diligence

18           Next, based on the declarations of Plaintiff’s counsel, the Court finds that though  
19 Plaintiff has demonstrated that she has taken reasonable steps to effect service on  
20 Defendants, she has failed to show that she “took those steps a reasonable person who truly  
21 desired to give notice would have taken under the circumstances.” *Donel, Inc. v. Badalian*,  
22 87 Cal. App. 3d 327, 333 (1978).

23           In this case, the declaration states that Plaintiff’s counsel searched public records to  
24 find Defendants’ mailing address. (Doc. No. 3-1 at 2.) Based on this information, a  
25 registered process server, Ronald A. Kofler, attempted service on Defendants on two  
26 different occasions—June 4, 2017, and June 30, 2017. (*Id.*) Both of these attempts were  
27 unsuccessful as there was no answer at the door. (*Id.*) Consequently, on June 5, 2017,  
28 Plaintiff’s counsel sent the Notice forms to Defendants via U.S. Mail and certified U.S.

1 mail. (*Id.*) As of the date of Plaintiff’s declaration, Defendants have not responded. (*Id.* at  
2 3.)

3 The Court recognizes that Plaintiff has taken steps to effectuate service. However,  
4 Plaintiff has not exhausted the myriad of other avenues available to make contact with  
5 Defendants including searching telephone directories or the internet. *See Dunmore v.*  
6 *Dunmore*, No. 2:11-cv-2867 MCE GGH PS, 2012 WL 4364454, at \*2 (E.D. Cal. Sept. 20,  
7 2012) (finding publication appropriate where plaintiffs’ amended declaration demonstrated  
8 that they had attempted to serve individual defendants several times and had also searched  
9 telephone directories, the internet, and real property records); *see also Bd. of Trustees v.*  
10 *Debruin Constr., Inc.*, Case No. 12-cv-05477-JCS, 2014 WL 3362460, at \*4 (N.D. Cal.  
11 June 25, 2014) (granting plaintiff’s ex parte application to serve summons by publication  
12 as plaintiffs had searched city and telephone directories, provided the qualifications of their  
13 field agents, and attempted service by mail); *Duarte v. Freeland*, No. C-05-2780 EMC,  
14 2008 WL 683427, at \*2 (N.D. Cal. Mar. 7, 2008) (denying publication of summons as  
15 plaintiff failed to search any city or telephone directories); *Watts*, 10 Cal. 4th at 749 n.5  
16 (noting that “likely sources of information” such as telephone directories and voter  
17 registries “must be searched before resorting to service by publication”).

18 “It should not need be said that ex parte applications to serve process by publication,  
19 because of claimed inability to locate a defendant, should be carefully scrutinized by the  
20 court.” *Sanford v. Smith*, 11 Cal. App. 3d 991, 1001 (1970). Based on these considerations,  
21 and the foregoing analysis of Plaintiff’s counsel’s declaration, the Court finds that  
22 Plaintiff’s declaration has failed to satisfy the elements that make service by publication  
23 permissible under California law. *See Donel, Inc.*, 87 Cal. App. 3d at 333 (holding that  
24 “[n]o single formula nor mode of search can be said to constitute due diligence in every  
25 case”). Thus, Plaintiff’s ex parte application is **DENIED**.


### 26 CONCLUSION

27 For the foregoing reasons, the Court **DENIES** Plaintiff’s ex parte application for an  
28 order for publication of summons. (Doc. No. 3.) The denial is **WITHOUT PREJUDICE**.

1 If Plaintiff decides to ask the Court a second time for service of publication, then he must  
2 demonstrate that he has performed additional searches to demonstrate reasonable diligence.  
3 Such a search might include, but is not limited to, an examination of city or telephone  
4 directories, internet searches or attempting to contact relatives.

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6 **IT IS SO ORDERED.**

7 Dated: August 4, 2017

  
8 Hon. Anthony J. Battaglia  
9 United States District Judge

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