

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Russell Elliott and Nelly Elliott v. SPE Terra Nova Villas and
Apartment Owners, LLC, et al.

Elliott v. SPE Terra Nova Villas · No. 24-cv-0447-BAS-JLB · Decided June 11, 2025

SUMMARY

The United States District Court for the Southern District of California denied Plaintiffs Russell and Nelly Elliott’s motion for substituted service on Defendant Victoria Orr. The Court held that Plaintiffs had not shown service at a proper location or reasonable diligence under Federal Rule of Civil Procedure 4 and California law. The Court renewed its order to show cause and required Plaintiffs to show cause by July 2, 2025, why the claims against Orr should not be dismissed without prejudice for lack of service.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Cynthia Bashant
JURISDICTION	United States District Court for the Southern District of California
DECIDED	June 11, 2025
DOCKET	24-cv-0447-BAS-JLB
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiffs moved for an order authorizing substituted or alternative service on Defendant Victoria Orr after unsuccessful service attempts. The court denied the motion and renewed its order to show cause why the claims against Orr should not be dismissed under Federal Rule of Civil Procedure 4(m).
PRECEDENTIAL VALUE	unpublished district court order

TOPICS

- service of process
- civil procedure

PRACTICE AREAS

- civil procedure
- civil rights
- housing discrimination

QUESTIONS PRESENTED

1. Whether Plaintiffs demonstrated the reasonable diligence and proper location required for substituted service under California law.
2. Whether the court should authorize service on a law firm allegedly representing Defendant Orr in a separate state-court case.
3. Whether Plaintiffs should receive additional time to complete service under Federal Rule of Civil Procedure 4(m).

HOLDINGS

1. Plaintiffs did not establish that they attempted service at a proper place or exercised reasonable diligence sufficient to permit substituted service under California law.
2. The court declined to authorize the requested alternative form of substituted service because Plaintiffs had not shown that such service was necessary or that they had first attempted personal service at Orr's residence or current place of employment.
3. The court renewed the order to show cause and allowed Plaintiffs until July 2, 2025, to demonstrate service or explain why the claims against Orr should not be dismissed without prejudice.

KEY QUOTATIONS

“To be constitutionally sound the form of substituted service must be reasonably calculated to give an interested party actual notice of the proceedings and an opportunity to be heard in order that the traditional notions of fair play and substantial justice implicit in due process are satisfied.” (2)

FACTUAL BACKGROUND

Plaintiffs attempted to serve Victoria Orr, allegedly a former community manager of their apartment complex, at the complex's address. A process server left the summons and complaint with an assistant supervisor after being told on multiple occasions that Orr was not present, while Orr's alleged employer acknowledged that she had previously been the community manager at that address. Plaintiffs did not show that they had attempted personal service at Orr's residence or current place of employment.

PROCEDURAL HISTORY

Plaintiffs filed a housing-discrimination action and had not served Defendant Orr within the applicable ninety-day period. After the court issued an order to show cause, Plaintiffs missed the response deadline but later moved for substituted service based on attempts to serve Orr at the apartment complex where Plaintiffs had resided. The court denied the motion, gave Plaintiffs additional time to complete service, and ordered them to show cause by July 2, 2025, why the claims against Orr should not be dismissed without prejudice.

DISPOSITION

other

CASES CITED

- Espindola v. Nunez, 199 Cal. App. 3d 1389, 1392 (1988)
- Bein v. Brechtel-Jochim Group, Inc., 6 Cal. App. 4th 1387, 1392 (1992)

OPINION

1 2 3 4 5 6 7 8 9 UNITED STATES DISTRICT COURT 10 SOUTHERN DISTRICT OF
CALIFORNIA 11 RUSSELL ELLIOTT; NELLY Case No. 24-cv-0447-BAS-JLB 12 ELLIOTT, et
al., ORDER: 13 Plaintiffs, (1) DENYING MOTION FOR 14 v. SUBSTITUTED SERVICE (ECF
No. 33); 15 SPE TERRA NOVA VILLAS AND APARTMENT OWNERS, LLC, et al., (2)
RENEWING ORDER TO SHOW 16 CAUSE (ECF No. 12) Defendants.

17 18 19 20 Plaintiffs Russell Elliott and Nelly Elliott (“the Elliotts”) are self-represented. They 21
filed this case seeking relief for alleged housing discrimination. (Complaint, ECF No. 1.) 22 One
of the Defendants is Victoria Orr. (Id.) Defendant Orr allegedly worked as the 23 community
manager for the apartment complex where Plaintiffs resided. (Id.)

24 Rule 4(m) of the Federal Rules of Civil Procedure provides that if the defendant is 25 not
served within ninety days after the complaint is filed, the court must dismiss the action 26 against
the defendant or order that service be made within a specific time.

Although the 27 summons was issued in September 2024, Plaintiffs had not served Defendant Orr
by 1 January 2025. (ECF No. 11.) The Court ordered Plaintiffs to show cause as to why the 2 case
against Defendant Orr should not be dismissed under Rule 4(m). (ECF No. 12.) 3 Plaintiffs missed
the Court’s deadline to show cause. Nevertheless, Plaintiffs have 4 filed a Motion for Substituted
Service.

(ECF No. 33.) In the Motion, Plaintiffs explain 5 that they attempted to serve Defendant Orr “on
multiple occasions” at 440 E. H. St., Chula 6 Vista, CA 91910. (Id.) Exhibit 1 shows the process
server attempted service by leaving 7 the materials with “Roberto Gonzalez,” who is identified as
an “Assistant Supervisor” at 8 the address. (Id.) 9 Under Rule 4, a party can complete service by
“following state law for serving a 10 summons in an action brought in courts of general
jurisdiction in the state where the district 11 court is located or where service is made.” Fed.

R. Civ. P. 4(e)(1). Upon review, Plaintiffs 12 were attempting substituted service under California
state law. (Mot. 2 (citing Cal. Civ. 13 Proc. Code § 415.20).) 14 Personal service on an individual
requires “delivery of a copy of the summons and 15 of the complaint to the person to be served.”
Cal. Civ. Proc. Code § 415.10. An individual 16 may be served by substituted service if the
summons and complaint “cannot with 17 reasonable diligence be personally delivered to the
person to be served.” Id. § 415.20(b).

18 “Ordinarily,... two or three attempts at personal service at a proper place should fully 19 satisfy the requirement of reasonable diligence and allow substituted service to be made.” 20 *Espindola v. Nunez*, 199 Cal. App. 3d 1389, 1392 (1988). Substituted service then requires, 21 among other things, “leaving a copy of the summons and complaint at the person’s 22 dwelling house, usual place of abode, usual place of business, or usual mailing address.” 23 Cal. Civ.

Proc. Code § 415.20(b). 24 Here, Plaintiffs’ process server attempted to serve Defendant Orr at the apartment 25 complex where Plaintiffs resided. However, it appears that Defendant Orr no longer works 26 at the address for two reasons.

First, several other Defendants filed an Answer on February 27 21, 2025, including Defendant Orr’s alleged employer. (Answer, ECF No. 17.) In that filing, the “answering Defendants admit Victoria Orr was previously the Community 1 Manager of the property located at 440 East H Street, Chula Vista, CA 91910.” (Answer, 2 ECF No. 17.)

Second, the process server’s declaration notes the server was told on several 3 different days that Defendant Orr was “not in” at that address. (Mot. Ex. 1.) Therefore, 4 the Court is unpersuaded that Plaintiffs were attempting service at “a proper place.” See 5 *Espindola*, 199 Cal. App. 3d at 1392.

The Court is likewise unconvinced that Plaintiffs 6 have shown “reasonable diligence” that would allow substituted service under state law. 7 Plaintiffs appear to recognize as much. They therefore ask the Court to authorize a 8 different form of service. (Motion 3–4.) Plaintiffs request the Court to permit service on 9 a law firm that is purportedly representing Defendant Orr in a state court case.

(Id.) 10 The Court denies Plaintiffs’ request. Although California’s rules on substituted 11 service are liberally construed, there is no indication that Plaintiffs have attempted personal 12 service at Defendant Orr’s residence or current place of employment. If unsuccessful 13 despite reasonable diligence, substituted service would then be appropriate at Defendant 14 Orr’s “dwelling house, usual place of abode, usual place of business, or usual mailing 15 address....” See Cal. Civ.

Proc. Code § 415.20(b).1 Therefore, the Court finds this case 16 does not present the circumstances where authorizing an alternative form of substituted 17 service is necessary. See *Bein v. Brechtel-Jochim Grp., Inc.*, 6 Cal. App. 4th 1387, 1392 18 (1992) (“To be constitutionally sound the form of substituted service must be reasonably 19 calculated to give an interested party actual notice of the proceedings and an opportunity 20 to be heard in order that the traditional notions of fair play and substantial justice implicit 21 in due process are satisfied.” (citation modified)).

The Court will afford Plaintiffs 22 additional time to complete service in a manner allowed under Rule 4 or California state 23 law. 24 // 25 // 26 27 1 Alternatively, Plaintiffs’ process server could

attempt service under Rule 4(e)(2), which provides service may be accomplished by “leaving a copy of [the summons and complaint] at the individual’s 1 CONCLUSION 2 For the reasons described above, the Court DENIES Plaintiffs’ Motion for 3 || Substituted Service (ECF No. 33).

Plaintiffs have not demonstrated that an alternative 4 ||method of service is necessary in these circumstances. 5 The Court also renews its order to show cause under Rule 4(m). Plaintiffs must 6 Show cause as to why the case against Defendant Orr should not be dismissed for lack of 7 || service no later than July 2, 2025. Plaintiffs may show cause by filing proof of service on g docket.

The Court cautions Plaintiffs that a failure to show cause will result in the 9 || Court dismissing the case against Defendant Orr without prejudice. 10 IT IS SO ORDERED. 11 12 || DATED: June 11, 2025 14 Hon. Cynthia Bashant, Chief Judge United States District Court 15 16 17 18 19 20 21 22 23 24 25 26 27 28