

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PRECEDENTIAL VALUE	unpublished district court order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)

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