

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Block v. Brar

No. 1:22-cv-01317-SAB (E.D. Cal. Mar. 16, 2023) · No. 1:22-cv-01317-SAB · Decided March 16, 2023

SUMMARY

This is a decision from a U.S. Magistrate Judge in the Eastern District of California recommending denial of a plaintiff's motion for default judgment in an ADA accessibility case against a liquor store. The denial is based on the court's finding that the defendant was not properly served with process under California and federal rules. The court also vacates a scheduled hearing and orders the case to be randomly assigned to a district judge.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Stanley A. Boone, United States Magistrate Judge
JURISDICTION	U.S. District Court, Eastern District of California
DECIDED	March 16, 2023
DOCKET	1:22-cv-01317-SAB
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved for default judgment after the Clerk entered default. The magistrate judge vacated the hearing and issued findings and recommendations recommending denial of the motion without prejudice because service of the summons and complaint was inadequate.
STANDARD OF REVIEW	The decision whether to enter default judgment is discretionary. Before considering the Eitel factors, the court must determine that service of process was adequate and that it has personal jurisdiction over the defendant. Findings and recommendations were subject to district-judge review under 28 U.S.C. § 636(b)(1)(C) and Local Rule 304.
PRECEDENTIAL VALUE	Nonprecedential magistrate-judge findings and recommendations; persuasive only and subject to district-judge review.

PARTIES

Hendrik Block v. Jaskirat Kaur Brar, individually and doing business as Mega Liquor

TOPICS

default judgment

service of process

personal jurisdiction

subject matter jurisdiction

ada / disability

PRACTICE AREAS

civil procedure

disability discrimination

default judgment

service of process

QUESTIONS PRESENTED

1. Whether the court could consider the motion for default judgment without first determining that service of the summons and complaint was adequate.
2. Whether substituted service on an unidentified Jane Doe at the Rall Avenue address satisfied Federal Rule of Civil Procedure 4 or California Code of Civil Procedure section 415.20(b) as to Brar individually.
3. Whether the purported service was valid as to Mega Liquor, including whether Doe was an officer, managing or general agent, designated agent, or other authorized agent for service.
4. Whether the motion for default judgment should be denied without prejudice because adequate service was not established.

HOLDINGS

1. A court must determine that service of process was adequate before evaluating the merits of a motion for default judgment.
2. The purported substituted service on Brar was inadequate because the record did not establish the reasonable diligence required before substituted service and did not sufficiently show that Jane Doe was a qualifying member of Brar's household at Brar's current usual place of abode.
3. The purported service was also inadequate as to Mega Liquor because the record did not show that Jane Doe was an officer, qualifying agent, designated agent, or other person authorized to receive service for the business entity, and service was not shown to have occurred at the business address.
4. The motion for default judgment should be denied without prejudice because service of the summons and complaint was inadequate.

KEY QUOTATIONS

“Our starting point is the general rule that default judgments are ordinarily disfavored” (at 6)

“A federal court does not have jurisdiction over a defendant unless the defendant has been served properly under Fed. R. Civ. P. 4.” (at 7)

“However, “without substantial compliance with Rule 4, ‘neither actual notice nor simply naming the defendant in the complaint will provide personal jurisdiction.’ ” ” (at 8)

“Because the process server was unable to so much as ascertain Doe’s identity, it remains unclear how the process server was able to confirm other information critical to effecting substitute service” (at 13)

“At bottom, had Brar been adequately served, it is possible she could have answered and potentially raised a meritorious defense.” (at 13)

FACTUAL BACKGROUND

Block alleged that he has mobility limitations and encountered architectural and access barriers when he visited Mega Liquor in Clovis, California. He asserted claims under the Americans with Disabilities Act, California's Unruh Civil Rights Act, and California Health and Safety Code provisions, and sought injunctive relief, statutory damages, attorney fees, and costs. The proof of service stated that a process server left the summons and complaint with an unidentified Jane Doe at an address on Rall Avenue and later mailed copies to that address. The record did not establish reasonable diligence before substituted service, Doe's relationship to Brar or authority to accept service for Mega Liquor, or that the Rall Avenue address remained Brar's current residence when service occurred.

PROCEDURAL HISTORY

Block filed the action on October 14, 2022. He purportedly served Brar by substituted service at a Clovis residential address on November 9, 2022, requested entry of default on December 22, 2022, and obtained entry of default on December 23, 2022. Block moved for default judgment on February 8, 2023. The magistrate judge determined that service was not adequately established as to Brar individually or Mega Liquor, vacated the scheduled hearing, directed random assignment of a district judge, and recommended denial of default judgment without prejudice. The recommendation was subject to objections and review by the assigned district judge.

DISPOSITION

other

REMAND INSTRUCTIONS

The Clerk was directed to randomly assign a district judge. Plaintiff was ordered to mail a copy of the findings and recommendations to Defendant at Defendant's last known address. The motion for default judgment was recommended to be denied without prejudice. Any party could file objections within fourteen days, after which the assigned district judge would review the recommendations.

CASES CITED

- NewGen, LLC v. Safe Cig, LLC, 840 F.3d 606, 616 (9th Cir. 2016)
- Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986)
- PepsiCo, Inc. v. Cal. Sec. Cans, 238 F. Supp. 2d 1172, 1174 (C.D. Cal. 2002)
- TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987)
- Garamendi v. Henin, 683 F.3d 1069, 1080 (9th Cir. 2012)
- Geddes v. United Fin. Grp., 559 F.2d 557, 560 (9th Cir. 1977)

- Microsoft Corp. v. Nop, 549 F. Supp. 2d 1233, 1236 (E.D. Cal. 2008)
- Cripps v. Life Ins. Co. of N. Am., 980 F.2d 1261, 1267 (9th Cir. 1992)
- United States v. Sumner, 226 F.3d 1005, 1009 (9th Cir. 2000)
- Republican Party of Guam v. Gutierrez, 277 F.3d 1086, 1088-89 (9th Cir. 2002)
- Franchise Tax Bd. v. Constr. Laborers Vacation Tr., 463 U.S. 1, 8-9 (1983)
- J & J Sports Prods., Inc. v. Singh, No. 1:13-cv-1453-LJO-BAM, 2014 WL 1665014, at *2 (E.D. Cal. Apr. 23, 2014)
- Penpower Tech. Ltd. v. S.P.C. Tech., 627 F. Supp. 2d 1083, 1088 (N.D. Cal. 2008)
- Mason v. Genisco Tech. Corp., 960 F.2d 849, 851 (9th Cir. 1992)
- Mississippi Publishing Corp. v. Murphree, 326 U.S. 438, 444-45 (1946)
- Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc., 840 F.2d 685, 688 (9th Cir. 1988)
- United Food & Commercial Workers Union v. Alpha Beta Co., 736 F.2d 1371, 1382 (9th Cir. 1984)
- Benny v. Pipes, 799 F.2d 489, 492 (9th Cir. 1986)
- Brockmeyer v. May, 383 F.3d 798, 801 (9th Cir. 2004)
- SEC v. Internet Solutions for Business, Inc., 509 F.3d 1161, 1163 (9th Cir. 2007)
- Evartt v. Superior Court, 89 Cal. App. 3d 795, 801 (Cal. Ct. App. 1979)
- Johnson v. Bozorghadad, No. 17-cv-06536-HSG, 2020 WL 1245122, at *3 (N.D. Cal. Mar. 16, 2020)
- Johnson v. Bozorghadad, No. 17-cv-06536-SVK, 2020 WL 963377, at *4 (N.D. Cal. Feb. 28, 2020)
- Bakersfield Hacienda, Inc. v. Superior Court in & for Kern County, 199 Cal. App. 2d 798, 803-05 (Ct. App. 1962)
- Schagene v. Northrop Grumman, No. 11 CV 1642 AJB NLS, 2012 WL 216531, at *2-3 (S.D. Cal. Jan. 24, 2012)
- TMX Logistics, Inc. v. FF Trucking, Inc., No. CV 14-00873 PSG (ASx), 2014 WL 12691618, at *1-2 (C.D. Cal. Sept. 5, 2014)
- Produce v. Cal. Harvest Healthy Foods Ranch Mkt., No. C-11-04814 DMR, 2012 WL 259575, at *3 (N.D. Cal. Jan. 27, 2012)
- Folkmanis, Inc. v. Uptown Toys LLC, No. 18-cv-00955-EMC, 2018 WL 4361140, at *2 (N.D. Cal. Sept. 13, 2018)
- Coach Inc. v. Envy, No. 1:11-cv-1029 LJO GSA, 2012 WL 78238, at *2-3 (E.D. Cal. Jan. 10, 2012)
- Floyd v. Saratoga Diagnostics, Inc., No. 20-cv-01520-LHK, 2020 WL 3035799, at *3 (N.D. Cal. June 5, 2020)
- Dytych v. Bermudez, No. 17-cv-02714-EMC, 2018 WL 2230945, at *3 n.2 (N.D. Cal. May 16, 2018)
- Bouyer v. 603 San Fernando Rd., LLC, No. CV-20-3853-MWF (PVCx), 2020 WL 7711840, at *2 (C.D. Cal. Nov. 2, 2020)
- Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 2014)
- Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 HENDRIK BLOCK, Case No. 1:22-cv-01317-SAB 12 Plaintiff, ORDER
VACATING MARCH 29, 2023 HEARING 13 v. ORDER DIRECTING CLERK OF COURT 14
JASKIRAT KAUR BRAR, individually and TO RANDOMLY ASSIGN A DISTRICT JUDGE TO
THIS ACTION doing business as Mega Liquor, 15 FINDINGS AND RECOMMENDATIONS
Defendant.

16 RECOMMENDING DENYING PLAINTIFF'S MOTION FOR DEFAULT 17 JUDGMENT
18 (ECF No. 8) 19 FOURTEEN DAY DEADLINE 20 21 Currently before the Court is Plaintiff
Hendrik Block's motion for default judgment, filed 22 on February 8, 2023. (ECF No. 8.) No
oppositions were filed and the deadline to do so has now 23 expired.

Accordingly, the Court finds this matter suitable for decision without oral argument. 24 See Local
Rule 230(g). Thus, the hearing set for March 29, 2023, will be vacated and the parties 25 will not
be required to appear at that time.

Having considered the moving papers, the declarations 26 and exhibits attached thereto,
supplemental briefing, as well as the Court's file, the Court issues 27 the following findings and
recommendations recommending Plaintiff's motion for default 28 judgment be DENIED for
inadequate service of the summons and complaint. 1 I. 2 BACKGROUND 3 A. Procedural
History 4 On October 14, 2022, Plaintiff filed this action against Defendant Jaskirat Kaur Brar 5
("Brar"), individually and doing business as Mega Liquor.

(ECF No. 1.) 6 The proof of service for Brar indicates Plaintiff served Defendant with the
summons and 7 complaint by substituted service at 2568 Rall Ave., Clovis, California 93611, on
November 9, 8 2022, by serving a "Jane Doe," described as "a competent member of the
household (at least 18 9 years of age) at the dwelling house of usual place of abode of the person
served." (ECF No. 4.)

10 Defendant did not respond to the complaint, and Plaintiff requested default be entered 11
against Brar, individually and dba Mega Liquor, on December 22, 2022. (ECF No. 5.) The Clerk
12 of Court entered default against Brar on December 23, 2022. (ECF No. 6.) 13 Plaintiff filed the
instant motion against Defendant on February 8, 2023. (ECF No. 8.) A 14 hearing on the motion is
currently set for March 29, 2023.

No opposition to Plaintiff's motion 15 has been filed. 16 B. Plaintiff's Allegations 17 The
complaint asserts claims for violations of the Americans with Disabilities Act 18 ("ADA"),
California's Unruh Civil Rights Act (the "Unruh Act"), and denial of full and equal 19 access to
public facilities pursuant to California Health and Safety Code §§ 19953 et seq. against 20
Defendant, the purported owner/operator/leaser of the facility Mega Liquor at 777 West Ashlan 21
Avenue, Clovis, California 93612.

(ECF No. 1 at 1, 4–8.) Plaintiff alleges Mega Liquor is a 22 store open to the public, intended for non-residential use, its operation affects commerce, and it is 23 a “public accommodation” as defined by 42 U.S.C. § 12181(7)(F). (Id. at 2.) 24 Plaintiff alleges he is substantially limited in his ability to walk, and must use a cane, 25 walker, wheelchair or electric scooter for mobility.

(Id.) Plaintiff regularly travels to the area 26 where Mega Liquor is located for weekly shopping and to attend church nearby. (Id.) He visited 27 the facility on June 20, 2022, to purchase a soda and a hat. (Id.) During the visit, Plaintiff alleges 28 he encountered barriers that interfered with and denied his ability to use and enjoy the goods, 1 services, privileges, and accommodations offered at the facility.

(Id.) More specifically, Plaintiff 2 identifies the following barriers: 3 a) Lack of []properly configured ramp leading to Facility entrance 4 The route of travel from the designated parking stall to the 5 Facility entrance contained a curb ramp with a dome plate that was warped and damaged, that created an excessive vertical 6 change in level. Plaintiff struggled to overcome the height change in his wheelchair....

7 b) Lack of accessible route from parking to Facility entrance 8 Plaintiff encountered difficulties with the walkway between the 9 curb ramp and the Facility entrance that was excessively cross-sloped toward the parking lot.

The excessive cross-slope 10 caused Plaintiff’s wheelchair to veer to the side as he made his way toward the entrance. Plaintiff found it difficult to control 11 his wheelchair so that he did not roll off the sidewalk.... 12 c) Lack of accessible transaction counter 13 The transaction counter was not accessible to Plaintiff because it was obstructed with merchandise that made it difficult for 14 Plaintiff to pay for his purchase as he had to reach over the obstructions to the counter.

15 16 (Id. at 3; ECF No. 8-1 at 4–5.) Plaintiff asserts the described barriers constitute noncompliance 17 with the 1991 ADA Accessibility Guidelines (“1991 Standards”) and/or the 2010 ADA Standards 18 for Accessible Design (“ADAAG”), as well as California Civil Code § 51 and Health and Safety 19 Code §§ 19955(a) and 19959. (ECF No. 1 at 7–8; ECF No. 8-1 at 4–5.)

Plaintiff further alleges 20 Defendant knew or should have known of the barriers, and that Defendant has the financial means 21 to remove them but refuses to do so. (ECF No. 1 at 3–4.) Plaintiff claims the obviousness of the 22 barriers is sufficient to establish discriminatory intent. (Id. at 4.) 23 As a result of the aforementioned barriers, Plaintiff contends Mega Liquor’s goods, 24 services, facilities, privileges, advantages, and accommodations were unavailable to him due to 25 his physical disabilities and Plaintiff will return to Mega Liquor once the barriers are removed.

26 (Id. at 3.) Plaintiff seeks injunctive relief, statutory damages, attorneys’ fees, and costs. (Id. at 8; 27 ECF No. 23-1 at 2.) 28 /// 1 II. 2 LEGAL STANDARD 3 “Our starting point is the general rule that default judgments are ordinarily disfavored,” as 4 “[c]ases should be decided upon their

merits whenever reasonably possible.” *NewGen, LLC v. 5 Safe Cig, LLC*, 840 F.3d 606, 616 (9th Cir.

2016) (quoting *Eitel v. McCool*, 782 F.2d 1470, 1472 6 (9th Cir. 1986)). Pursuant to Federal Rule of Civil Procedure (“Rule”) 55, obtaining a default 7 judgment is a two-step process. Entry of default is appropriate as to any party against whom a 8 judgment for affirmative relief is sought that has failed to plead or otherwise defend as provided 9 by the Federal Rules of Civil Procedure and where that fact is made to appear by affidavit or 10 otherwise.

Fed. R. Civ. P. 55(a). After entry of default, a plaintiff can seek entry of default 11 judgment. Fed. R. Civ. P. 55(b). Rule 55(b)(2) provides the framework for the Court to enter a 12 default judgment: 13 (b) Entering a Default Judgment. 14 (2) By the Court.

In all other cases, the party must apply to the court for a default judgment. A default judgment may be entered 15 against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has 16 appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its 17 representative must be served with written notice of the application at least 7 days before the hearing.

The court may conduct hearings 18 or make referrals--preserving any federal statutory right to a jury trial--when, to enter or effectuate judgment, it needs to: 19 (A) conduct an accounting; 20 (B) determine the amount of damages; 21 (C) establish the truth of any allegation by evidence; or 22 (D) investigate any other matter. 23 24 *Id.* 25 The decision to grant a motion for entry of default judgment is within the discretion of the 26 court.

PepsiCo, Inc. v. Cal. Sec. Cans, 238 F. Supp. 2d 1172, 1174 (C.D. Cal. 2002); see also 27 *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987) (“Rule 55 gives the court 28 considerable leeway as to what it may require as a prerequisite to the entry of a default 1 judgment.”).

The Ninth Circuit has set forth the following seven factors (the “Eitel factors”) that 2 the Court may consider in exercising its discretion: (1) the possibility of prejudice to the plaintiff; 3 (2) the merits of the plaintiff’s substantive claim; (3) the sufficiency of the complaint; (4) the sum 4 of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6) 5 whether the default was due to excusable neglect; and (7) the strong policy underlying the Federal 6 Rules of Civil Procedure favoring decisions on the merits.

Eitel, 782 F.2d at 1471–72. 7 Generally, once default has been entered, “the factual allegations of the complaint, except 8 those relating to damages, will be taken as true.” *Garamendi v. Henin*, 683 F.3d 1069, 1080 (9th 9 Cir. 2012) (quoting *Geddes v. United Fin. Grp.*, 559 F.2d 557, 560 (9th Cir.

1977)); see also Fed. R. Civ. P. 8(b)(6) (“An allegation—other than one relating to the amount of damages—is admitted if a responsive pleading is required and the allegation is not denied.”).

Accordingly, the amount of damages must be proven at an evidentiary hearing or through other means. *Microsoft Corp. v. Nop*, 549 F. Supp. 2d 1233, 1236 (E.D. Cal. 2008). Additionally, “necessary facts not contained in the pleadings, and claims which are legally insufficient, are not established by default.” *Cripps v. Life Ins. Co. of N. Am.*, 980 F.2d 1261, 1267 (9th Cir.

1992) (internal citation omitted). The relief sought must not be different in kind or exceed the amount that is demanded in the pleadings. Fed. R. Civ. P. 54(c). III. DISCUSSION Before it may evaluate the Eitel factors to determine whether default judgment should be entered, the Court must first determine whether it properly has jurisdiction in this matter.

A. Subject Matter Jurisdiction Federal courts are courts of limited jurisdiction and their power to adjudicate is limited to that granted by Congress. *U.S. v. Sumner*, 226 F.3d 1005, 1009 (9th Cir. 2000). Pursuant to 28 U.S.C. § 1331, federal courts have original jurisdiction over “all civil actions arising under the Constitution, laws, or treaties of the United States.” “A case ‘arises under’ federal law either where federal law creates the cause of action or where the vindication of a right under state law necessarily turns on some construction of federal law.” *Republican Party of Guam v. Gutierrez*, 177 F.3d 1086, 1088 (9th Cir.

2002) (internal punctuation omitted) (quoting *Franchise Tax Bd. v. Constr. Laborers Vacation Tr.*, 463 U.S. 1, 8–9 (1983) (citations omitted)). “[T]he presence or absence of federal-question jurisdiction is governed by the ‘well-pleaded complaint rule,’ which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint.” *Republican Party of Guam*, 277 F.3d at 1089 6 (citations omitted).

Plaintiff brings this action alleging violations of the ADA of 1990, 42 U.S.C. §§ 12101, et seq. Therefore, the Court has original jurisdiction under 28 U.S.C. § 1331. In addition, the Court may exert supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, over Plaintiff’s related state law claims under the Unruh Act, California Civil Code §§ 51, et seq., and Cal. Health & Safety Code §§ 19953, et seq.

B. Jurisdiction Over Defendant Jaskirat Kaur Brar 1. Legal Standard for Service of Process As a general rule, the Court considers the adequacy of service of process before evaluating the merits of a motion for default judgment. See *J & J Sports Prods., Inc. v. Singh*, No. 1:13-cv-161453-LJO-BAM, 2014 WL 1665014, at *2 (E.D. Cal. Apr. 23, 2014); *Penpower Tech.*

Ltd. v. S.P.C. Tech., 627 F. Supp. 2d 1083, 1088 (N.D. Cal. 2008); *Mason v. Genisco Tech. Corp.*, 960 F.2d 849, 851 (9th Cir. 1992) (stating that if party “failed to serve [defendant] in the earlier action, the default judgment is void and has no res judicata effect in this action.”).

Service of the 20 summons and complaint is the procedure by which a court having venue and jurisdiction of the 21 subject matter of the suit obtains jurisdiction over the person being served.

Miss. Publ'g Corp. v. 22 Murphree, 326 U.S. 438, 444–45 (1946); see Direct Mail Specialists, Inc. v. Eclat Computerized 23 Techs., Inc. (Direct Mail), 840 F.2d 685, 688 (9th Cir. 1988) (“A federal court does not have 24 jurisdiction over a defendant unless the defendant has been served properly under Fed. R. Civ. P. 25 4.”). 26 Service of a complaint in federal court is governed by Rule 4.

Under Rule 4, an 27 individual may be served by: (1) delivering a copy of the summons and the complaint to that 28 person personally; (2) leaving a copy of each at the individual's dwelling or usual place of abode 1 with someone of suitable age and discretion who resides there; or (3) delivering a copy of each to 2 an agent authorized by appointment or by law to receive service of process.

Fed. R. Civ. P. 3 4(e)(2). 4 “Rule 4 is a flexible rule that should be liberally construed so long as a party receives 5 sufficient notice of the complaint.” Direct Mail, 840 F.2d at 688 (quoting United Food & Com. 6 Workers Union v. Alpha Beta Co., 736 F.2d 1371, 1382 (9th Cir. 1984)).

However, “without 7 substantial compliance with Rule 4, ‘neither actual notice nor simply naming the defendant in the 8 complaint will provide personal jurisdiction.’ ” Direct Mail, 840 F.2d at 688 (quoting Benny v. 9 Pipes, 799 F.2d 489, 492 (9th Cir. 1986)). “Once service is challenged, plaintiffs bear the burden 10 of establishing that service was valid under Rule 4.” Brockmeyer v. May, 383 F.3d 798, 801 (9th 11 Cir.

2004) (citations omitted). “[A] signed return of service constitutes prima facie evidence of 12 valid service which can be overcome only by strong and convincing evidence.” SEC v. Internet 13 Sols. for Bus., Inc., 509 F.3d 1161, 1163 (9th Cir. 2007). 14 Rule 4 also permits service on an individual in accordance with state law. Fed. R. Civ. P. 15 4(e)(1). California law permits substitute service by leaving a copy of the summons and 16 complaint at the defendant's usual place of abode (i.e., dwelling), usual place of business, or 17 usual mailing address (other than a U.S. Postal Service post office box).

Cal. Code Civ. Proc. § 18 415.20(b). Copies of the summons and complaint must be left “in the presence of a competent 19 member of the household or a person apparently in charge of [the defendant's] office, place of 20 business, or usual mailing address,” and copies must thereafter be mailed to the defendant at the 21 same address where the documents were left.

Id. Substitute service is permitted only “[i]f a copy 22 of the summons and complaint cannot with reasonable diligence be personally delivered to the 23 person to be served[.]” Id. 24 2. Analysis 25 As noted, the proof of service for Brar indicates Plaintiff served Brar with the summons 26 and complaint November 9, 2022, by substituted service on a co-occupant of Brar's residence.

27 (ECF No. 4 at 2.) The service affidavit indicates service was effected at 2568 Rall Ave., Clovis, 28 California 93611, “[b]y leaving the copies with or in the presence of Jane Doe (F, I, 45-55, 5’5-1 6’0, 160-190), a competent member of the household (at least 18 years of age) at the dwelling 2 house or usual place of abode of the person served.” (Id.)

The service affidavit further states “I 3 informed him/her of the general nature of the papers. I caused the copies to be mailed (if 4 applicable). A declaration of mailing is attached.” (Id.) The declaration of mailing indicates 5 copies of the summons and complaint documents were mailed to the same address on Rall Ave. 6 on November 17, 2022, “after substituted service under section CCP 415.20(a) or 415.20(b) or 7 FRPC 4(e)(2)(B) or FRCP 4(h)(1)(B) was made (if applicable)” (Id. at 3.)

8 The Court is unpersuaded that Plaintiff has properly effected service on Defendant Brar. 9 As noted, substitute service is permitted only “[i]f a copy of the summons and complaint cannot 10 with reasonable diligence be personally delivered to the person to be served[.]” Cal. Code Civ. 11 Proc. § 415.20(b). “[T]he burden is upon the plaintiff to show reasonable diligence to effect 12 personal service and each case must be judged upon its own facts.” *Evartt v. Super.*

Ct., 89 Cal. 13 App. 3d 795, 801 (Cal. Ct. App. 1979). “Although there is no established formula for reasonable 14 diligence, two or three attempts to personally serve defendant at a ‘proper place’ ordinarily 15 qualifies as ‘reasonable diligence.’ ” *Johnson v. Bozorghadad*, No. 17-cv-06536-HSG, 2020 WL 16 1245122 (N.D. Cal. Mar. 16, 2020), at *3 (citation, internal quotation marks, and alteration 17 omitted).

Here, the Court cannot discern that the process server demonstrated reasonable 18 diligence in attempting to personally serve Brar before proceeding with substitute service. 19 Nothing in the service affidavit indicates the process server made any prior attempts to personally 20 serve Brar before she resorted to substituted service, nor does the affidavit assert any other facts 21 demonstrating reasonable diligence.

Thus, reasonable diligence is not established. Cal. Civ. 22 Proc. Code § 415.20(b); *Evartt*, 89 Cal. App. 3d at 801; *Johnson*, 2020 WL 1245122, at *3. 23 Relatedly, to the extent Plaintiff is attempting to serve the business entity Mega Liquor,¹ 24 California law, like Rule 4, requires service on a corporate entity to be effected on the person 25 designated as an agent for service of process, or the “president, chief executive officer, or other 26 head of the corporation, a vice president, a secretary or assistant secretary, a treasurer or assistant 27 1 The executed proof of service indicates service was effected on Jaskirat Kaur Brar, individually and dba Mega 28 Liquor.

(ECF No. 4 at 2 (emphasis added).) 1 treasurer, a controller or chief financial officer, a general manager, or a person authorized by the 2 corporation to receive service of process.” Cal. Civ. Proc. Code § 416.10(a)–(b); see also 3 *Johnson v. Bozorghadad*, No. 17-cv-06536-SVK, 2020 WL

963377, at *4 (N.D. Cal. Feb. 28, 4 2020) (rejecting service not effected at correct place of business); see also *Bakersfield Hacienda, 5 Inc. v. Superior Ct.*

In & For Kern Cnty., 199 Cal. App. 2d 798, 803–05 (Ct. App. 1962) (finding 6 “utter failure to show any diligence whatsoever in attempting to serve a corporate defendant by 7 personal service on one of [its] officers” where service was only attempted on the general 8 manager of the motel and not the general manager of the corporation). Jane Doe does not appear 9 to hold any of these positions with Mega Liquor, and there is no indication she is the designated 10 agent for service of process for Mega Liquor.

See, e.g., *Schagene v. Northrop Grumman*, No. 11 11 CV 1642 AJB NLS, 2012 WL 216531, at *2–3 (S.D. Cal. Jan. 24, 2012) (“Under Rule 12 4(h)(1)(B), valid service of process requires ‘delivering a copy of the summons and of the 13 complaint to an officer, a managing or general agent, or any other agent authorized by 14 appointment by law to receive service of process.’...

Even if Ms. Davis had been employed by 15 Defendant as of the date of the attempted service of process, she was not an officer, managing or 16 general agent, or an agent authorized by law to receive service of process on behalf of 17 Defendant.”); *TMX Logistics, Inc. v. FF Trucking, Inc.*, No. CV 14-00873 PSG (ASx), 2014 WL 18 12691618, at *1–2 (C.D. Cal. Sept.

5, 2014) (“However, neither the declaration nor the relevant 19 proof of service indicates that (1) Eduardo Fernandez, agent of FF Logistics, was personally 20 served; or that (2) Celeste Aguila is ‘an officer, a managing or general agent, or any other agent 21 authorized by appointment or by law to receive service of process’ on behalf of FF Logistics.”). 22 Plaintiff avers, through the declaration of counsel, that several documents were mailed to 23 Defendant “via its registered agent” (Moore Decl. ¶ 18, ECF No. 8-2 (citing ECF No. 5-2)); 24 however, the Court notes Mega Liquor is not registered as a corporation, LLC, or LP on the 25 business entity page of the California Secretary of State webpage, and therefore does not identify 26 any registered agent.

See UCC Search: Mega Liquor – Clovis, CA, 27 <https://bizfileonline.sos.ca.gov/search/ucc> (last visited Mar. 15, 2023).² Rather, the only address 28 2 Courts may take judicial notice of “a fact that is not subject to reasonable dispute because it ... can be accurately 1 provided on that webpage for Brar is the address at 777 W. Ashlan Ave., Clovis, California 2 93612.

Nowhere in the record, however, does Plaintiff indicate service was ever attempted at the 3 W. Ashlan address; rather, Plaintiff has only served documents at the address at 2568 Rall 4 Avenue, Clovis, California 93611. (See, e.g., ECF No. 4 at 2; ECF No. 5-2 at 2; ECF No. 8-7 at 5 2.)

On this basis, too, service on Mega Liquor was not properly effected via Doe at the Rall Ave. 6 address. See *Johnson*, 2020 WL 963377, at *4; *Bakersfield Hacienda, Inc.*, 199 Cal. App. 2d at 7 803–05; *TMX Logistics, Inc.*, 2014 WL 12691618, at *1–2. 8 Furthermore, the Court is unpersuaded that “Jane Doe” was the appropriate person for 9 substituted service of Brar. “For

substituted service to be reasonably calculated to give an interested party notice of the pendency of the action and an opportunity to be heard, service must be made upon a person whose relationship to the person to be served makes it more likely than not that they will deliver process to the named party.” *Produce v. Cal. Harvest Healthy Foods Ranch Mkt.*, No. C-11-04814 DMR, 2012 WL 259575, at *3 (N.D.

Cal. Jan. 27, 2012) (internal quotation marks, alteration, and citations omitted). “[I]f service [is] improper, that may well explain the failure of a defendant to appear in a lawsuit.” *Folkmanis, Inc. v. Uptown Toys LLC*, 16 No. 18-cv-00955-EMC, 2018 WL 4361140, at *2 (N.D. Cal. Sep. 13, 2018) (internal quotation marks and citation omitted).

Here, the service affidavit’s statement that Doe is “a competent member of [Brar’s] household” (ECF No. 4 at 2) is wholly conclusory (and appears boilerplate), as it does not include any facts to describe how substitute service was completed or describe facts to support the process server’s determination that Doe was a “member of the household” at 2568 Rall Ave., Clovis, California 93611; further, Plaintiff has provided no additional evidence in support of such a contention.

See *Coach Inc. v. Envy*, No. 1:11-cv-1029 LJO GSA, 2012 WL 23 78238, at *2–3 (E.D. Cal. Jan. 10, 2012) (“Here, the proof of service indicates that Envy was served by leaving the summons at Defendant’s place of business with ‘Ninehrah Babazade and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). Courts may take judicial notice of information displayed on government websites where neither party disputes the accuracy of the information contained therein.

Daniels-Hall v. Nat’l. Educ. Ass’n, 629 F.3d 992, 998-99 (9th Cir. 2010). Specifically, Courts routinely take judicial notice of information contained in the California Secretary of State’s website. See *No Cost Conf., Inc. v. Windstream Commc’ns, Inc.*, 940 F. Supp. 2d 1285, 1296 (S.D. Cal. 2013); *Gerritsen v. Warner Bros. Ent. Inc.*, 112 F. Supp. 3d 1011, 1034 (C.D.

Cal. 2015); *L’Garde, Inc. v. Raytheon Space & Airborne Sys.*, 805 F. Supp. 2d 932, 937 (C.D. Cal. 2011). 1 Ehsaralahn-store clerk (E IND., F., 21, BLK, 5'4 130 lbs).’... There is no indication that the store clerk is authorized to receive service under F. R. Civ. P. 4(h).”); *Floyd v. Saratoga Diagnostics, Inc.*, No. 20-cv-01520-LHK, 2020 WL 3035799, at *3 (N.D.

Cal. Jun. 5, 2020) (“John Doe refused to identify himself, and thus Plaintiff was unable to ascertain whether John Doe was ‘apparently in charge,’ as required for substitute service to be effective under Cal. Code Civ. Proc. § 415.20(a) [substitute service on natural person].”); *Dytch v. Bermudez*, No. 17-cv-02714- 7 EMC, 2018 WL 2230945, at *3 n.2 (N.D.

Cal. May 16, 2018) (“Rather than re-serve the complaint, Plaintiff filed a revised proof of service from the process server which recites, in a formulaic and conclusory fashion, that John

Doe was ‘apparently in charge.’ The affidavit lacks 10 factual detail. It does not identify the particular person served... Courts are also wary of proofs 11 of service that do not identify on whom service was made because ‘if no... receiving individual 12 is specified on the return of service, a movant [to set aside default judgment] has little or no basis 13 on which to challenge the alleged service of process.’ ”) (quoting *Homer v. Jones-Bey*, 415 F.3d 14 748, 754 (7th Cir.

2005)) (bracketed alteration in original). Because the process server was 15 unable to so much as ascertain Doe’s identity, it remains unclear how the process server was able 16 to confirm other information critical to effecting substitute service, such as whether Doe was a 17 co-occupant of the household—rather than, for example, a visitor—or whether Doe spoke 18 English, so as to be a “competent” member of the household.

19 For this same reason, the Court is not entirely persuaded that substitute service has been 20 effectuated through Doe, where the process server offers only boilerplate statements that service 21 was effected “[b]y leaving the copies with or in the presence of Jane Doe,” and “I informed 22 him/her of the general nature of the papers.”³ (ECF No. 4 at 2 (emphasis added).)

Notably, no 23 facts are proffered to demonstrate Doe actually understood the significance of the documents 24 being handed to her, or that she was required to forward the documents to Brar. Indeed, the Court 25 is skeptical that much of a conversation between the process server and Doe occurred, in light of 26 3 The Court also notes the boilerplate language that service was made pursuant to “section CCP 415.20(a) or 27 415.20(b) or FRPC 4(e)(2)(B) or FRCP 4(h)(1)(B) was made (if applicable)” (see ECF No. 4 at 2 (emphasis added)) does not actually identify which rule or statute was followed in order to establish that substitute service was, in fact, 28 in compliance with any of the aforementioned legal authorities.

1 the fact that the process server was unable to ascertain Doe’s name. Yet, “[t]his requirement is 2 critical because if [the person who is “apparently in charge”] did not know or understand the 3 significance of the documents that [the process server] handed him, the documents may have 4 ended up in a junk pile or recycling bin, rather than in [the defendant’s] hands.” *Bouyer v. 603 5 San Fernando Rd., LLC*, No. CV-20-3853-MWF (PVCx), 2020 WL 7711840, at *2 (C.D.

Cal. 6 Nov. 2, 2020). Thus, the substituted service does not appear sufficient for default judgment to be 7 entered against Brar. 8 Finally, the Court expresses its skepticism that service was effected on an appropriate 9 address for Brar.

To this point, the Court notes Plaintiff has not submitted sufficient evidence to 10 establish that Brar resides at the Rall Ave. address. None of the supporting declarations 11 submitted by Plaintiff describe how the Rall Ave. address was determined to be the correct 12 residential address for Brar.

For example, Plaintiff does not aver he discovered the address via a public records database search, or took other steps to verify the address before attempting substitute service at the Rall Ave. address. Instead, Plaintiff attaches copies of a real property grant deed and a liquor license with the California Department of Alcoholic Beverage Control.

(Ex. E, ECF No. 8-3 at 10–13; Ex. F, ECF No. 8-3 at 14–16.) The license information held by the Alcoholic Beverage Control, however, indicates only that Brar is the primary owner of Mega Liquor, which is located at 777 W. Ashlan Ave., Clovis, California, 93612. (ECF No. 8-3 at 15.) The liquor license does not identify the Rall Ave. address as Brar’s address.

Meanwhile, the grant deed, which indicates a parcel was deeded to Brar on January 9, 2019, confirms Brar’s mailing address at that time was 2568 Rall Avenue, Clovis, California, 93611-8936. (ECF No. 8- 22 3 at 11.)

However, this grant deed was recorded on May 2, 2019, and Plaintiff provides no averment or other evidence to demonstrate that the address identified therein remains current, or at the very least was current as of the date of service of process on November 9, 2022 (three and a half years after the deed was recorded).

To the contrary, an independent review of the UCC database on the California Secretary of State’s business entity webpage reveals Brar’s personal address, as of the filing date of October 3, 2019, is identified as 777 W. Ashlan Ave., Clovis, California 93612.

Thus, the Court cannot conclude Plaintiff’s substitute service of documents at the Rall Ave. address is sufficient for default judgment to be entered against Brar. At bottom, had Brar been adequately served, it is possible she could have answered and potentially raised a meritorious defense. See *Folkmanis, Inc.*, 2018 WL 4361140, at *2. Based on the foregoing, the Court finds service is not adequate as to Defendant Brar and recommends denying Plaintiff’s motion for default judgment without prejudice for inadequate service of the summons and complaint.

IV. ORDER AND RECOMMENDATIONS Based on the foregoing, it is HEREBY ORDERED that: 1. The hearing set for March 29, 2023, is VACATED; and 2. The Clerk of Court shall randomly assign a District Judge to this action. Furthermore, based on the foregoing, IT IS HEREBY RECOMMENDED that Plaintiff’s motion for default judgment (ECF No. 8) be DENIED for inadequate service of the summons and complaint.

Plaintiff is HEREBY ORDERED to mail a copy of these findings and recommendations to Defendant at Defendant’s last known address. These findings and recommendations are submitted to the district judge assigned to this action, pursuant to 28 U.S.C. § 636(b)(1)(B) and this Court’s Local Rule 304. Within fourteen (14) days of service of this recommendation, any party may file written objections to these findings and recommendations with the Court and serve a copy on all parties.

Such a document 21 should be captioned “Objections to Magistrate Judge’s Findings and Recommendations.” 22 /// 23 /// 24 /// 25 /// 26 /// 27 /// 28 /// 1 The district judge will review the magistrate judge’s findings and recommendations 2 | pursuant to 28 U.S.C. § 636(b)(1)(C).

The parties are advised that failure to file objections within 3 || the specified time may result in the waiver of the “right to challenge the magistrate’s factual 4 | findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v. 5 | Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)). 6 7 IT IS SO ORDERED. Zl Se g | Dated: _March 16, 2023 _ _PAA ee 9 UNITED STATES MAGISTRATE JUDGE 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 1A