

Ruiz v. Wexler, 17CV-0422

Hearing: Motion to Quash Service

Date: November 16, 2017

On August 7, 2017, Plaintiff Daniel Charles Ruiz (“Plaintiff”) filed his Personal Injury Complaint (“Complaint”) against Defendants Alix Wexler (“Wexler”), Jessica Rocha, and Donald Ruiz (collectively “Defendants”). On August 10, 2017, Plaintiff filed a proof of service showing mail service of the Complaint and summons on Wexler. On September 15, 2017, Plaintiff filed a proof of service showing personal service of the Complaint and summons on Wexler, allegedly occurring on August 10, 2017, at 6:45 p.m. On October 5, 2017, Wexler filed this Motion to Quash Service (“Motion”) on the grounds that she was improperly served with the Complaint and summons via mail and was not personally served. On October 10, 2017, Plaintiff opposed the Motion by filing a Motion to Strike the Motion. On October 18, 2017, Plaintiff filed his First Amended Complaint (“FAC”) against Defendants. Wexler to date has not made a general appearance in this action.

An amended complaint supersedes the original and becomes the operative complaint.¹ (*State Comp. Ins. Fund v. Superior Court* (201) 184 Cal.App.4th 1124, 1130.) Because Wexler has not made a general appearance in the action, service of the FAC on Wexler in the method of an original complaint (i.e., personal service) is required. (*Engbretson & Co. v. Harrison* (1981) 125 Cal.App.3d 436, 442; Weil & Brown, *Cal. Prac. Guide Civ. Pro. Before Trial* (The Rutter Group 2017) ¶6:684.) The Court has no proof of service in its file showing that the Amended Complaint was served on Wexler. Until such service has been made, this Court has no jurisdiction over Wexler. Wexler’s Motion is moot.

¹ Plaintiff argues that default was entered against Wexler on the Complaint, however, the Court’s file shows no entry of default entered against Wexler. Plaintiff’s September 28, 2017, Request for Entry of Default only requests that default be entered against Donald Charles Ruiz. Even if default had been entered against Wexler, unless judgment was entered the FAC opens the default. (Weil & Brown, *Cal. Prac. Guide Civ. Pro. Before Trial* (The Rutter Group, 2017) ¶6:698.)