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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiffs,

v.

DAVID J. EDWARDS,
CENTRAL CINEMA, LP
MARCIA DOERR (Trustee of LAP Trust),
and STATE OF CALIFORNIA
FRANCHISE TAX BOARD,
Defendants.

Case No. 1:17-CV-01105-AWI-SKO

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
APPLICATION TO EXTEND TIME TO
SERVE DEFENDANT MARCIA DOERR
AND TO SERVE BY PUBLICATION**

(Doc. 7)

INTRODUCTION

Before the Court is an *ex parte* application (the "Application") filed by Plaintiff United States of America ("Plaintiff") for an order extending the time to serve process on Defendant Marcia Doerr ("Defendant Doerr") and permitting such service by publication. (Doc. 7.) For the reasons set forth below, Defendant's Application is GRANTED in part and DENIED in part.

BACKGROUND

On August 16, 2017, Plaintiff filed this action seeking to reduce federal income tax assessments incurred by Defendant David J. Edwards ("Defendant Edwards") to a judgment, pursuant to 26 U.S.C. §§ 7401 and 7403, and foreclose federal tax liens on real property owned by

1 affidavit it appears to the satisfaction of the court in which the action is pending that the party to
2 be served cannot with reasonable diligence be served in another manner specified in this article
3 and that . . . [a] cause of action exists against the party upon whom service is to be made or he or
4 she is a necessary or proper party to the action.”

5 “For the purposes of service by publication, the existence of a cause of action is a
6 jurisdictional fact.” *Sananikone v. U.S.*, 2:07-cv-01434-MCE-EFB, 2009 WL 796544, at *2 (E.D.
7 Cal. Feb. 25, 2009) (quoting *Harris v. Cavasso*, 68 Cal. App. 3d 723, 726 (3d Dist. 1977)).
8 Additionally, a party seeking leave to serve process by publication must establish that “reasonable
9 diligence” has been exercised to serve process in another manner permitted by California law. *Id.*
10 (quoting *Watts v. Crawford*, 10 Cal. 4th 743, 749 n.5 (1995)). “The term ‘reasonable diligence’ . .
11 . denotes a thorough, systematic investigation and inquiry conducted in good faith by the party or
12 his agent or attorney.” *Id.* Before permitting service by publication, the Court necessarily
13 requires that the plaintiff “show exhaustive attempts to locate the defendant,” because “service by
14 publication rarely results in actual notice.” *Id.* Accordingly, a plaintiff that fails to take
15 exhaustive measures to locate a party to be served cannot establish reasonable diligence. *Id.*

16 **B. Analysis**

17 **1. Plaintiff Has Established the Existence of a Valid Cause of Action.**

18 The declaration of Aaron M. Bailey, Esq., submitted with Plaintiff’s Application contains
19 sufficient allegations demonstrating that a valid cause of action exists against Defendant Doerr.
20 Mr. Bailey declared under penalty of perjury that this action was brought against Defendant Doerr,
21 among others, pursuant to 26 U.S.C. §§ 7401 and 7403. (Doc. 7-3, ¶ 3.) These provisions provide
22 enforcement for a tax lien against real property located in Fresno County, California, and
23 purportedly used by Defendant Edwards in a criminal tax evasion scheme for which Defendant
24 Edwards was convicted. (Doc. 7-3, ¶ 3; Doc. 7-1, 1:23-2:5.) Mr. Bailey further declared that
25 Defendant Doerr is the “Trustee of ‘LAP Trust,’ an entity which currently holds putative title to
26 the property located at 451 Burl Avenue, Clovis California and is therefore a necessary party to
27 the suit under 26 U.S.C. § 7403(b).” (Doc. 7-3, ¶ 4.) Based on these allegations, as well as
28 supporting Exhibit 1, an affidavit of successor trustee for LAP Trust purportedly executed by

1 Defendant Doerr, Plaintiff has satisfied its burden of alleging that a valid cause of action exists
2 against Defendant Doerr.

3 **2. Plaintiff Has Not Established the Requisite Diligence.**

4 To prevail on its Application, Plaintiff must also establish that in searching for Defendant
5 Doerr, it completed a thorough and systematic investigation and inquiry. *Sananikone*, 2009 WL
6 796544, at *3 (quotation and citation omitted). Plaintiff has failed to meet this burden.

7 In *Sananikone*, 2009 WL 796544, the Court determined that the U.S. Government failed to
8 establish reasonable diligence justifying service by publication. The Government’s only act of
9 diligence in searching for a missing defendant involved searches conducted through Westlaw and
10 Google. *Id.* at *1. The Court stated that, while those efforts “are somewhat indicative of
11 reasonableness . . . [they] do not alone rise to the requisite level of both thorough and systematic.
12 *Id.* at *3. The Court further found that the Government failed to “exhaust[] the myriad of other
13 avenues available to locate [the defendant],” including contacting the defendant’s known relatives,
14 counsel for the other defendant, or, “the most obvious source of information ... his co-
15 defendants.” *Id.* at *4.

16 Despite Plaintiff’s efforts to locate Defendant Doerr, the Court cannot grant leave to serve
17 by publication here. Plaintiff generally references searches conducted through Westlaw, Lexis,
18 Accurint for Law Enforcement, Thomson Reuters CLEAR database, and TransUnion’s TLOxp for
19 Law Enforcement, and Plaintiff attempted to serve Defendant Doerr at potentially associated
20 addresses—all of which is reasonable. However, those efforts do not meet the burden of showing
21 thorough and systematic investigation and inquiry. *See, e.g., Donel, Inc. v. Badalian*, 87 Cal. App.
22 3d 327 (2d Dist. 1978) (finding no reasonable diligence where plaintiff only searched telephone
23 directories); *Kott v. Superior Court*, 45 Cal. App. 4th 1126, 1138 (2d 1996) (finding no reasonable
24 diligence where plaintiff failed to ask defendant’s counsel for defendant’s new address or to serve
25 interrogatories on the co-defendants); *cf., e.g., Vorburg v. Vorburg*, 18 Cal. 2d 794 (1941) (finding
26 reasonable diligence, and therefore permitting service by publication, where plaintiff examined
27 city directories and telephone directories, contacted the local district attorney’s office, and, most
28 importantly, spoke with defendant’s previous attorney).

