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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

STEVEN G. DUNMORE, et al.,

Plaintiffs,

No. 2:11-cv-2867 MCE GGH PS

vs.

JEREMY A. DUNMORE, et al.,

Defendants.

ORDER

\_\_\_\_\_/

Defendant Sidney B. Dunmore’s motion to dismiss and to strike presently is calendared for hearing on June 21, 2012. Defendants Anthony Garcia, Canyon Falls Group, LLC, and Lynda Tremain have joined in the motion. Plaintiff has filed an opposition and “counter-motion to strike defendants’ motions.” Having reviewed the record, the court has determined that oral argument would not be of material assistance in determining the pending motion. Accordingly, the court will not entertain oral argument, and will determine the motion on the record, including the briefing in support of and in opposition to the pending motions. See E.D. Cal. L.R. 230(g).

On May 10, 2012, this court denied without prejudice plaintiff’s “ex parte application for order allowing service of summons by publication and by other means.” Further

1 review of the record indicates that service must be made on certain defendants before the case  
2 may proceed. Therefore, plaintiff shall renew his motion; however, his renewed motion must do  
3 more than merely state, for example, that service was attempted at the last known domicile of  
4 defendants. As stated in this court's previous order, in California, "[a] summons may be served  
5 by publication if upon affidavit it appears to the satisfaction of the court in which the action is  
6 pending that the party to be served cannot with reasonable diligence be served in another manner  
7 specified in this article and that either: (1) A cause of action exists against the party upon whom  
8 service is to be made or he or she is a necessary or proper party to the action...." Cal. Civ. Proc.  
9 Code § 415.50(a).

10           The declarations submitted in support of the previous motion for service by  
11 publication did not satisfy the reasonable diligence standard. Plaintiff must do more than merely  
12 attempt service at the last known address. Reasonable diligence requires that the plaintiff "took  
13 those steps which a reasonable person who truly desired to give notice would have taken under  
14 the circumstances." McNamara v. Sher, 2012 WL 760531, \*3 (S.D. Cal. Mar. 8, 2012) (citation  
15 omitted).

16           The term 'reasonable diligence' takes its meaning from the former  
17 law: it denotes a thorough, systematic investigation and inquiry  
18 conducted in good faith by the party or his agent or attorney. A  
19 number of honest attempts to learn defendant's whereabouts or his  
20 address by inquiry of relatives, friends, and acquaintances, or of his  
21 employer, and by investigation of appropriate city and telephone  
directories, the voters' register, and the real and personal property  
index in the assessor's office, near the defendant's last known  
location, are generally sufficient. These are likely sources of  
information, and consequently must be searched before resorting to  
service by publication."

22 McNamara v. Lee, 2011 WL 4635618, \*2 (S.D. Cal. Oct. 5, 2011) (*quoting* Kott v. Superior  
23 Court, 45 Cal.App.4th 1126, 1137, 53 Cal.Rptr.2d 215 (2d Dist.1996)). "Service by publication  
24 is disfavored and is permitted only 'as a last resort.'" Sher, 2012 WL 760531, at \*2. In this  
25 internet age, it should not be difficult to locate defendants who live in the same geographical area  
26 as plaintiff, especially since some of them are relatives. Plaintiff's renewed motion must set

1 forth his attempts to investigate and serve defendants in accordance with these guidelines.

2 Accordingly, IT IS ORDERED that:

3 1. The June 21, 2012 hearing on the motion to dismiss and to strike, filed May  
4 14, 2012, and the counter-motion to strike, filed May 29, 2012, is vacated;

5 2. The motions are submitted on the record; and

6 3. Within 28 days of this order, plaintiff shall file a renewed motion to serve by  
7 publication as instructed herein.

8 DATED: June 18, 2012

9 /s/ Gregory G. Hollows  
UNITED STATES MAGISTRATE JUDGE

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