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

ACCOR FRANCHISING  
NORTH AMERICA, LLC,

Plaintiff,

No. 2:12-cv-0762 GEB CKD

vs.

ELOHIM ENT. INC., et al.,

Defendants.

ORDER

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Plaintiff's motion for default judgment is pending before the court.<sup>1</sup> By order filed July 10, 2012, the District Judge assigned to this matter granted plaintiff's request for service of summons by publication and ordered publication in the U-T San Diego for eight consecutive weeks. Dkt. no. 10. The proof of service indicates that publication occurred only for four consecutive weeks. Dkt. no. 11. Although publication for only four weeks is allowed under the incorporated state service rules, in this case, publication was ordered for eight weeks. See Fed. R. Civ. P. 4; Cal. Code Civ. P. § 415.50 (b) (court may order publication for longer period);

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<sup>1</sup> The motion was not noticed for hearing and was not served on defendants. As discussed below, the court will deny the motion for default judgment without prejudice. If the motion is refiled, the matter should be noticed for hearing and must be accompanied by a proof of service indicating service of the motion on defendants at their last known address.

1 Cal. Gov't Code § 6064 (standard publication is four weeks). Plaintiff's service by publication is  
2 therefore defective and the defaults were erroneously entered.

3 Accordingly, IT IS HEREBY ORDERED that:

- 4 1. The Clerk's entry of defaults (dkt. nos. 13, 15) are vacated; and  
5 2. Plaintiff's motion for default judgment (dkt. no. 19) is denied without  
6 prejudice.

7 Dated: December 19, 2012

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9 CAROLYN K. DELANEY  
10 UNITED STATES MAGISTRATE JUDGE

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