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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JERRY GILLIAM,
Plaintiff,
v.
MA ELIZA CANGGAS GILLIAM, et al.,
Defendants.

No. 2:14-cv-02454-MCE-AC

ORDER

This matter is before the undersigned pursuant to Local Rule 302(c)(21). Currently before the court is plaintiff’s motion for service by publication upon defendant Ma Eliza Canggih Gilliam (“Defendant Canggih”) pursuant to California Civil Procedural Code § 415.50. ECF No. 8.

The Federal Rules of Civil Procedure allow service upon individuals located within the United States according to the law for serving a summons “in the state where the district court is located.” Fed. R. Civ. P. 4(e). However, when serving an individual in a foreign country an individual must be served by an “internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents.” *Id.* at 4(f)(1). “[I]f there is no internationally agreed means, or if an international agreement allows but does not specify other means,” then an individual in a foreign country may be served “by [any] method that is reasonably calculated to give notice.” *Id.* at 4(f)(2).

1 Plaintiff does not allege facts showing that Defendant Canggih is an individual currently
2 in the United States. As noted above, reliance on state law for a method of service is appropriate
3 only when an individual is located within the United States. Fed. R. Civ. P. 4(e)(1). Plaintiff
4 does allege that he has attempted to effect personal service upon Defendant Canggih at her
5 address, 7056 Lyndale Circle, Elk Grove, California 95758 (“the Property”). ECF No. 8, Exh. A
6 at 2. However, it is unclear whether plaintiff is alleging that Defendant Canggih currently resides
7 at the Property. For example, it is impossible to discern from plaintiff’s motion whether those
8 who attempted to serve Defendant Canggih had any contact with her at the Property. See id.
9 Further, in a December 9, 2014 motion, plaintiff alleged in no uncertain terms that Defendant
10 Canggih currently resides in the Philippines. ECF No. 6 at 2. Based on these facts the court finds
11 that plaintiff has not established that Defendant Canggih is an individual in the United States.
12 Accordingly, service pursuant to Cal. Code Civ. P. § 415.50 is not appropriate.

13 If Defendant Canggih currently resides in the Philippines, then service following state law
14 is not permitted and plaintiff must comply with Fed. R. Civ. P. 4(f).

15 Accordingly, THE COURT HEREBY DENIES plaintiff’s motion for service by
16 publication (ECF No. 8) without prejudice.¹

17 DATED: January 6, 2015

18 
19 ALLISON CLAIRE
20 UNITED STATES MAGISTRATE JUDGE

21 ¹ Even if plaintiff had clearly alleged that Defendant Canggih was an individual in the United States, the court could
22 not grant his motion. “Service by publication is permissible ‘only as a last resort.’” Faegin v. LivingSocial, Inc., No.
23 14CV00418-WQH-KSC, 2014 WL 5390331, at *1 (S.D. Cal. Oct. 22, 2014) (quoting Donel, Inc. v. Badalian, 150
24 Cal. Rptr. 855, 858 (Ct. App. 1978)). Under California law, “[a] summons may be served by publication if upon
25 affidavit it appears to the satisfaction of the court in which the action is pending that the party to be served cannot
26 with reasonable diligence be served in another manner specified in this article.” Cal. Civ. Proc. Code § 415.50
27 (emphasis added). Plaintiff does not sufficiently allege that he has exercised reasonable diligence in effecting service
28 by all other means. See Sanford v. Smith, 90 Cal. Rptr. 256, 262–63 (Ct. App. 1970) (approving the standards of
diligence required by the local rules of Los Angeles Superior Court: recent inquiries of all relatives, friends, and other
persons likely to know defendant’s whereabouts; searches of city directories, telephone directories, tax rolls, and
register of voters; and inquiries made of occupants of all real estate involved in the litigation). For example, plaintiff
alleges that every time he has attempted to serve Defendant Canggih at her residence she has refused to answer her
door. ECF No. 9, Exh. A at 2. However, it is impossible to tell from plaintiff’s allegations whether (1) Defendant
Canggih was present at the time; (2) anyone else was present at the time; or (3) Defendant Canggih had any contact
with the process servers. Further, plaintiff does not allege that he attempted to contact her family, friends, or anyone
else who knows her whereabouts to confirm her location. See Kott v. Superior Court, 53 Cal. Rptr. 2d 215, 221
(1996).