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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

KERRY BOULTON, ANE MARIE LACY,  
WILLIAM GAMBA, LUCA ANGELUCCI,  
and JEREMY ANDREWS,

Plaintiffs,

v.

US TAX LIEN ASSOCIATION, LLC, a  
Nevada Limited Liability Company;  
SAEN HIGGINS, and STEVE  
CLEMENTS,

Defendants.

No. 2:15-cv-02384-MCE-AC

**ORDER**

US TAX LIEN ASSOCIATION, LLC, a  
Nevada Limited Liability Company; and  
SAEN HIGGINS

Third-Party Plaintiffs,

v.

AMERICAN TRANSFER SERVICES,  
INC., a Delaware corporation, and  
REUBEN SANCHEZ,

Third-Party Defendants.

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1 Through this action, individual foreign investors (“Plaintiffs”) seek to recover from  
2 Defendant US Tax Lien Association and its principal, Saen Higgins (collectively  
3 “USTLA”) and others for alleged misrepresentation and unfair business practices relating  
4 to the Plaintiffs’ investment in tax lien certificates. Plaintiffs allege that in reliance upon  
5 purported statements by USTLA, Plaintiffs transferred money to American Transfer  
6 Services, Inc. (“ATSI”), a third-party vendor, to facilitate Plaintiffs’ investment in the tax  
7 lien certificates. Plaintiffs allege that ATSI then essentially absconded with Plaintiffs’  
8 funds. Plaintiffs thereafter commenced this action against USTLA, and USTLA  
9 subsequently filed a third-party complaint against ATSI and its principal, Reuben  
10 Sanchez (“Sanchez”), for fraud, indemnity, and contribution arising out of the Plaintiffs’  
11 claims. USTLA has thus far been unable to effectuate service on Third-Party Defendant  
12 ATSI. Presently before the Court is USTLA’s unopposed motion to serve ATSI by  
13 publication (“Mot. for Service by Pub.”). For the reasons set forth below, that motion is  
14 GRANTED.<sup>1</sup>

15 Under Federal Rule of Civil Procedure 4(e), service upon an individual defendant  
16 may be effected in any judicial district of the United States pursuant to the law of the  
17 state in which the district court is located or in which service is effected. See Fed. R.  
18 Civ. P. 4(e)(1). Service by publication is permissible under California law in certain  
19 circumstances: “A summons may be served by publication if upon affidavit it appears to  
20 the satisfaction of the court in which the action is pending that the party to be served  
21 cannot with reasonable diligence be served in another manner specified in this article  
22 and that . . . A cause of action exists against the party upon whom service is to be made  
23 or he or she is a necessary or proper party to the action.” Cal. Code Civ. Proc.  
24 § 415.50(a).

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28 <sup>1</sup> Because oral argument would not be of material assistance, the Court ordered this matter submitted on the briefing. E.D. Cal. Local Rule 230(g).

1 “In determining whether a plaintiff has exercised ‘reasonable diligence’ for  
2 purposes of § 415.50(a), a court must examine the affidavit required by the statute to  
3 see whether the plaintiff ‘took those steps a reasonable person who truly desired to give  
4 notice would have taken under the circumstances.’” Duarte v. Freeland, C-05-2780  
5 EMC, 2008 WL 683427, at \*1 (N.D. Cal. Mar. 7, 2008) (quoting Donel, Inc. v. Badalian,  
6 87 Cal. App. 3d 327, 333 (1978)); see also Watts v. Crawford, 10 Cal. 4th 743, 749 n.5  
7 (1995) (“The term ‘reasonable diligence’ . . . denotes a thorough, systematic  
8 investigation and inquiry conducted in good faith by the party or his agent or attorney.”).  
9 Due process concerns mandate that service by publication is appropriate “only as a last  
10 resort.” Donel, Inc., 87 Cal. App. 3d at 327; see also Mullane v. Cent. Hanover Bank &  
11 Trust Co., 339 U.S. 306, 314 (1950) (discussing due process and notice to a party).  
12 “Before allowing a plaintiff to resort to service by publication, the courts necessarily  
13 require him to show exhaustive attempts to locate the defendant, for it is generally  
14 recognized that service by publication rarely results in actual notice.” Watts, 10 Cal. 4th  
15 at 749. “The fact that a plaintiff has taken one or a few reasonable steps does not  
16 necessarily mean that ‘all myriad . . . avenues’ have been properly exhausted to warrant  
17 service by publication.” Duarte, 2008 WL 683427, at \*1 (ellipsis in original) (quoting  
18 Donel, 87 Cal. App. 3d at 333). In Mullane, the Court noted that “in the case of persons  
19 missing or unknown, employment of an indirect and even a probably futile means of  
20 notification is all that the situation permits and creates no constitutional bar to a final  
21 decree foreclosing their rights.” 339 U.S. at 317.

22 The Court is satisfied that USTLA has diligently attempted to serve ATSI and  
23 Sanchez, and that such service has been all but impossible. USTLA filed its Answer and  
24 Third-Party Complaint (“TPC”) on October 19, 2016, ECF No. 26, and summons was  
25 issued the following day, ECF No. 27. From October 20, 2016 to the date on which  
26 USTLA filed the present motion, it attempted to effect service on ATSI and/or Sanchez  
27 many times at no fewer than six different business and residential addresses. See Decl.  
28 of Teri T. Pham ISO Mot. for Service by Publication, ¶¶ 3-9; Decl of James J. Passmore

1 ISO same, ¶¶ 3-9. Counsel’s declaration provides that USTLA has attempted to serve  
2 ATSI at the address listed as that of its registered agent on Delaware’s Secretary of  
3 State webpage, and by serving the Delaware Department of State, Division of  
4 Corporation. Id. at ¶¶ 4, 8-9. Neither attempt was successful. Id. USTLA also  
5 attempted to serve Sanchez at the business address associated with a domain name  
6 Sanchez had registered the month prior, at a second business address found online,  
7 and at a residence and yet another business address associated with Sanchez on the  
8 California Secretary of State website. Id. at ¶¶ 5-7. A declaration from the process  
9 server confirms these details and further provides that the process server made contact  
10 with individuals at many of the attempted service locations, none of whom could provide  
11 the location of Sanchez. See id. The Court is thus satisfied USTLA has exhausted its  
12 options and cannot with reasonable diligence effect service in any manner other than by  
13 publication.

14 Further, it appears that a legitimate cause of action exists against ATSI and  
15 Sanchez for fraud, indemnity, and contribution. See TPC. Moreover, these general  
16 allegations provide further support to USTLA’s theory that ATSI and Sanchez are  
17 evading service.

18 On these facts, service by publication is appropriate and USTLA’s motion is  
19 GRANTED.<sup>2</sup> USTLA shall publish the Summons in a newspaper in the State of  
20 California most likely to give actual notice to ATSI and Sanchez, Cal. Code. Civ. Proc.  
21 § 415.50(b). Publication shall be once a week for four successive weeks, Cal. Gov.  
22 Code § 6064, and shall begin not later than thirty (30) days from the date of electronic

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27 <sup>2</sup> USTLA’s related Request for Judicial Notice is DENIED as moot. The Court need not, and did  
28 not, rely on the docket or declaration in Case No. 3:15-cv-00462 (S.D. Cal.) in granting USTLA’s present  
motion for publication by service.

1 filing of this Order. A copy of the Summons, the Complaint, the TPC, and this Order  
2 shall be mailed to ATSI and/or Sanchez if a valid address is ascertained before  
3 expiration of the time prescribed above for publication of the summons.

4 IT IS SO ORDERED.

5 Dated: August 7, 2017

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7 MORRISON C. ENGLAND, JR.  
8 UNITED STATES DISTRICT JUDGE  
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