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

STEVE MCCURRY STUDIOS, LLC,

Plaintiff,

No. C 13-80246 WHA

v.

WEB2WEB MARKETING, INC., d/b/a
ACTEVA.COM,

Defendant.

**ORDER GRANTING
MOTION FOR SERVICE
BY ALTERNATIVE MEANS;
AND VACATING HEARING**

INTRODUCTION

This action concerns a foreign default judgment now registered for enforcement in the Northern District of California. Plaintiff moves for service of subpoenas and all future documents in this action by e-mail, and if necessary, by publication. To the extent stated, the motion is **GRANTED**. The hearing set for May 22, 2014, is **VACATED**.

STATEMENT

In October 2013, plaintiff Steve McCurry Studios, LLC obtained a default judgment in the District of Delaware against defendant Web2Web Marketing, Inc. Among other items, the default judgment awarded plaintiff compensatory damages and an accounting, while also permitting plaintiff “to move for a reassessment” of the damages based “on a showing of good cause” (Dkt. No. 1). To date, defendant has not appeared in this action.

1 Plaintiff has since registered the default judgment in the Northern District of California
2 so that it could enforce the judgment against defendant’s assets in this district. In that
3 connection, plaintiff mailed and e-mailed deposition notices and requests for document
4 production to defendant’s president and CEO, Pankaj Gupta. Despite several informal
5 agreements with plaintiff’s counsel, Gupta neither attended deposition nor produced documents.

6 As such, plaintiff moved to compel Gupta’s attendance at deposition and document
7 production. An order dated March 18, 2014, denied the motion, “having been premised on Rule
8 5 methods of notice” (Dkt. No. 18). The order then stated:

9 [T]his order is without prejudice to an application for a form of
10 substitute service, such as by publication and/or e-mail, upon a
showing of evasion of Rule 4 service.

11 Now, plaintiff moves to serve defendant and Gupta — either by e-mail, and if necessary,
12 by publication — with subpoenas to compel testimony and document production. Plaintiff also
13 requests that these alternative methods of service apply to all future documents to be served on
14 defendant and Gupta in this action. This comes after plaintiff (unsuccessfully) attempted to
15 personally serve subpoenas on defendant and Gupta, as described below. Although a copy of
16 this motion was mailed to defendant’s corporate address in Delaware as well as Gupta’s last-
17 known address, no opposition has been received.

18 ANALYSIS

19 Federal Rule of Civil Procedure 4(e)(1) provides the applicable authority:

20 **Serving an Individual Within a Judicial District of the**
21 **United States.** Unless federal law provides otherwise, an
22 individual — other than a minor, an incompetent person, or a
person whose waiver has been filed — may be served in a
judicial district of the United States by:

23 (1) following state law for serving a summons in an action
24 brought in courts of general jurisdiction in the state where the
district court is located or where service is made

25 This order therefore turns to California law to identify permissible methods of service.
26 To that end, Section 413.30 of the California Code of Civil Procedure states (emphasis added):

27 Where no provision is made in this chapter or other law for the
28 service of summons, the court in which the action is pending
may direct that summons be served *in a manner which is*
reasonably calculated to give actual notice to the party to be

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served and that proof of such service be made as prescribed by the court.

In certain circumstances, service by e-mail is permitted under Rule 4(e)(1) and Section 413.30. For example, in *United Health Services, Inc. v. Meyer*, C 12-6197 CW, 2013 WL 843698, at *1 (N.D. Cal. Mar. 6, 2013) (Judge Claudia Wilken), a plaintiff offered evidence that it tried to serve the defendant in a number of ways, including having a process server find the defendant at her address of record as well as her home address, retaining a private investigator to locate and serve the defendant, mailing a copy of the summons and complaint with a notice of acknowledgment of receipt for the defendant to return, and e-mailing the defendant about the pending action on multiple occasions. None of these attempts were fruitful. *Meyer* thus granted the plaintiff’s motion to serve the defendant by e-mail, in light of other evidence that the defendant had used her e-mail address to send thirty-five messages to the plaintiff, including communications concerning their litigation. *Id.* at *2.

Likewise in *Aevoe Corporation v. Pace*, C 11-3215 MEJ, 2011 WL 3904133, at *2 (N.D. Cal. Sept. 6, 2011) (Magistrate Judge Maria-Elena James), e-mail service was allowed where the plaintiff had made “reasonable” attempts to serve the defendant. These attempts included the plaintiff calling the defendant’s phone numbers, e-mailing the defendant, mailing the complaint to the defendant’s known addresses, attempting to personally serve the defendant, and retaining a private investigator to track the defendant down.

So too here. Plaintiff has submitted evidence of their efforts to personally serve defendant and Gupta with the subpoenas. Specifically, plaintiff retained a process server who made eight separate attempts to serve the subpoenas at Gupta’s last-known address (Galdamez Decl. ¶ 1; Exh. A). Moreover, on April 16, 2014, plaintiff’s counsel e-mailed Gupta, asking for an updated address as well as a convenient time and place for the process server to meet Gupta for the service of the subpoenas (Pulliam Decl. ¶ 6; Exh. E). No response has been received from Gupta. Given that defendant no longer has a registered agent for service in California, or any offices or business locations left (according to plaintiff), this order finds that the above constitutes a reasonable effort to personally serve defendant and Gupta (Pulliam Exh. F; Br. 5 n.2).

