

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
San Francisco Division

THC - ORANGE COUNTY INC.,  
Plaintiff,  
v.  
PABLO VALDEZ,  
Defendant.

Case No. [17-cv-01911-LB](#)  
**ORDER DENYING RENEWED  
MOTION FOR SERVICE BY  
PUBLICATION**  
Re: ECF No. 39

**INTRODUCTION**

Kindred Hospital<sup>1</sup> sued various Sutter Health Plan entities for reimbursement for care that Kindred provided to a patient who was a beneficiary of a Sutter ERISA health plan.<sup>2</sup> It also sued the patient’s husband, Pablo Valdez, on the ground that he and his wife agreed to pay Kindred for the patient’s care to the extent that the plan did not.<sup>3</sup> The Sutter defendants appeared and answered the complaint; Mr. Valdez did not.<sup>4</sup> Because a non-appearing defendant (such as Mr. Valdez)

<sup>1</sup> The plaintiff’s full name is THC – Orange County, Inc., d/b/a Kindred Hospital San Francisco – Bay Area.

<sup>2</sup> See generally Compl. – ECF No. 1. Record citations refer to material in the Electronic Case File (“ECF”); pinpoint citations are to the ECF-generated page numbers at the top of documents.

<sup>3</sup> Id. ¶¶ 60–70.

<sup>4</sup> See Case No. 3:16-cv-07386-LB, ECF Nos. 7–10, 15.

1 implicates the undersigned’s jurisdiction, the parties stipulated to sever Mr. Valdez from the  
2 original case, which the court did.<sup>5</sup> Kindred previously moved to serve Mr. Valdez by publication  
3 in the Bay Area Spanish-language newspaper *Visión Hispana*; the court denied the motion without  
4 prejudice, and Kindred renewed the motion.<sup>6</sup>

5 The court can decide the matter without oral argument and vacates the August 3, 2017,  
6 hearing. Civil L.R. 7-1(b). The court denies Kindred’s renewed motion without prejudice because  
7 Kindred has not shown “reasonable diligence” in its attempts to serve Mr. Valdez or that a “cause  
8 of action exists against [him].” See Cal. Civ. Proc. Code § 415.50(a).

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10 **STATEMENT**

11 Kindred treated Mr. Valdez’s wife from August 2014 until January 4, 2016, when she died.<sup>7</sup>  
12 Kathryn Canete, who is the Senior Regional Director of Patient Accounting, submitted an affidavit  
13 verifying the dates of treatment and stating that the patient and her husband executed an  
14 Admission Agreement that obligated them to pay Kindred the charges for any services not covered  
15 by insurance.<sup>8</sup> The Admission Agreement, attached as an exhibit to her declaration, is in Spanish.<sup>9</sup>  
16 Kindred submitted its bills to the Sutter plan, which denied coverage from October 21, 2014  
17 forward; Kindred appealed (unsuccessfully).<sup>10</sup> On December 15, 2015, the claims administrator  
18 for the insurance plan advised Kindred that the patient’s “coverage terminated retroactively as of  
19 September 30, 2015.”<sup>11</sup> Kindred is still trying to convince the plan to pay for the patient’s care and  
20 treatment.<sup>12</sup> Kindred asserts that Mr. Valdez is responsible for the bills, totaling more than \$3  
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23 <sup>5</sup> Case No. 3:16-cv-07386-LB, ECF Nos. 25, 30.

24 <sup>6</sup> Initial Motion – ECF No. 33; Order – ECF No. 34; Renewed Motion – ECF No. 39.

25 <sup>7</sup> Canete Decl. – ECF No. 39-2, ¶ 2.

26 <sup>8</sup> Id. ¶¶ 2–3.

27 <sup>9</sup> Id. & Ex. 1.

28 <sup>10</sup> Id. ¶ 4.

<sup>11</sup> Id.

<sup>12</sup> Id.

1 million, under the Admission Agreement.<sup>13</sup>

2 Kindred filed its complaint on December 29, 2016 against the insurance plan and related Sutter  
3 parties, and it also sued Mr. Valdez based on his agreement at admission to pay Kindred for his  
4 wife's care if the plan did not.<sup>14</sup>

5 Kindred tried to serve Mr. Valdez. A paralegal at the law firm representing Kindred reviewed  
6 the hospital files, including the August 22, 2014 Admission Face Sheet, which identified the  
7 address for Mr. Valdez and his wife as 1207 95th Street, Oakland, California.<sup>15</sup> The paralegal  
8 subsequently determined that the address is actually 1207 95th Avenue, Oakland, California.<sup>16</sup> On  
9 September 3, 2015, she pulled Alameda County Property Tax Assessor's records for that property  
10 from the County's website for fiscal year 2014–2015 (July 1, 2014 to June 30, 2015); they reflect  
11 that the property owners filed a homeowners' exemption.<sup>17</sup> That same day, she contacted the  
12 Assessor's office, which told her that the owners of the property (since 1989) were Pablo V.  
13 Uriarte and his wife.<sup>18</sup> The paralegal then searched public records and found a sale of a property in  
14 1989 to Pablo V. Uriarte and his wife.<sup>19</sup> She concluded that Mr. Valdez also is known by the name  
15 Pablo Uriarte.<sup>20</sup>

16 On August 9, 2016, a lawyer at the firm pulled an Accurant report; the paralegal reviewed it  
17 and concluded that "it appeared that Mr. Valdez was still living at the Valdez Address."<sup>21</sup> On  
18 May 18, 2017, the paralegal pulled the tax bill for the tax year July 1, 2016 to June 30, 2017, and  
19 then called the Alameda County Assessor's Office, which confirmed that the property owners  
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22 <sup>13</sup> Id. ¶ 5.

23 <sup>14</sup> Compl – ECF No. 1.

24 <sup>15</sup> Clayton Decl. – ECF No. 39-2, ¶ 3.

25 <sup>16</sup> Id., Exs. 2–9.

26 <sup>17</sup> Id. ¶ 5 & Ex. 2.

27 <sup>18</sup> Id. ¶ 6.

28 <sup>19</sup> Id. ¶ 7.

<sup>20</sup> Id. ¶ 8.

<sup>21</sup> Id. ¶ 9.

1 were still Pablo Uriarte and his wife.<sup>22</sup> She searched online databases — Pipl and Whitepages —  
2 which listed Pablo Uriarte and Pablo Valdez at the address.<sup>23</sup>

3 Kindred tried to serve Mr. Valdez at that address four times through a process server,  
4 Interceptor Legal Support.<sup>24</sup> On February 16, 2017, at 8:38 p.m., the process server observed the  
5 address was gated, locked, dark, quiet, and had a “For Sale” sign (with a telephone number for  
6 Realty Experts).<sup>25</sup> A van was parked in the back of the residence, and a truck was parked in the  
7 front.<sup>26</sup> The process server tried again the next day at 4:29 p.m, but the address remained gated and  
8 locked; the server honked his horn but no one answered.<sup>27</sup> On February 18, 2017, at 7:28 a.m., the  
9 residence was gated and locked, and the truck was gone; the process server yelled, but no one  
10 answered.<sup>28</sup> On February 21, 2017, at 8:01 a.m., the residence was gated and locked; the server  
11 yelled and honked his horn, but no one answered; he tried talking to the neighbors, but they did  
12 not want to provide information.<sup>29</sup>

13 Kindred’s attorney wrote Mr. Valdez a letter transmitting the complaint, summons, other  
14 pleadings, and a waiver of service; she had it translated into Spanish (because Kindred’s records  
15 showed the need for an interpreter).<sup>30</sup> On March 16, 2017, she sent it to the Oakland address by  
16 U.S. Priority Mail Express 1-Day service; it was delivered on March 17 but she received no  
17 response.<sup>31</sup>

18 On May 19, 2017, the paralegal pulled an online real-estate listing for the property from  
19 Zillow, showing a purchase order pending on the property; she called and left a message for the  
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21 <sup>22</sup> Id. ¶¶ 10–11 & Ex. 5.

22 <sup>23</sup> Id. ¶ 12 & Ex. 7.

23 <sup>24</sup> Simon Decl. – ECF No. 39-1, ¶ 3.

24 <sup>25</sup> Id.

25 <sup>26</sup> Id.

26 <sup>27</sup> Id.

27 <sup>28</sup> Id.

28 <sup>29</sup> Id.

<sup>30</sup> Id. ¶ 5 & Exs. 2–3.

<sup>31</sup> Id. ¶ 6 & Ex. 4.

1 listing realtor, Francisco Acosta.<sup>32</sup> On May 22, 2017, she spoke with Mr. Acosta, who said that as  
2 far as he knew, Mr. Valdez was still living at the house and that he should be able to receive  
3 documents there.<sup>33</sup> She asked for an email address for Mr. Valdez; Mr. Acosta said that he did not  
4 have one and offered to deliver the documents.<sup>34</sup> The paralegal responded that she would let the  
5 realtor know.<sup>35</sup>

6 In June, the process server (Interceptor Legal Support) conducted two four-hour stakeouts at  
7 the address, one in the morning and one at night.<sup>36</sup> The first stakeout was on June 8, 2017, from  
8 5:00 a.m. to 9:00 a.m.<sup>37</sup> The house was gated and locked, and there were two trucks parked, one  
9 inside the fence and one outside the fence.<sup>38</sup> (The declaration does not say whether either truck  
10 was the same as the truck seen previously.) At 5:33 a.m., the server heard the front door close but  
11 did not see anyone come out of the house.<sup>39</sup> At 9:00 a.m, the server went to the gate and called out  
12 the subject's name, but there was no response and the shades remained closed.<sup>40</sup> The second  
13 stakeout was on June 13, 2017, from 6:00 p.m. to 10:00 p.m. The curtains were closed, no cars  
14 were present, the house was dark, and there was no sign of activity.<sup>41</sup>

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16 **GOVERNING LAW**

17 Under Federal Rule of Civil Procedure 4(e), a plaintiff may serve an individual defendant  
18 using any method permitted by the law of the state in which the district court is located or in  
19 which service is affected. Fed. R. Civ. P. 4(e)(1). California law allows for five basic methods of  
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<sup>32</sup> Id. ¶ 14 & Ex. 9.

22 <sup>33</sup> Simon Decl. – ECF No. 39-1, ¶ 15.

23 <sup>34</sup> Id.

24 <sup>35</sup> Id.

25 <sup>36</sup> Id. ¶ 8.

26 <sup>37</sup> Id., Ex. 5.

27 <sup>38</sup> Id.

28 <sup>39</sup> Id.

<sup>40</sup> Id.

<sup>41</sup> Id.

1 service: (1) personal delivery to the party, see Cal. Civ. Proc. Code § 415.10; (2) delivery to  
2 someone else at the party’s usual residence or place of business with mailing after (known as  
3 “substitute service”), see id. § 415.20; (3) service by mail with acknowledgment of receipt, see id.  
4 § 415.30; (4) service on persons outside the state by certified or registered mail with a return  
5 receipt requested, see id. § 415.40; and (5) service by publication, see id. § 415.50.

6 California Code of Civil Procedure § 413.30 also provides that a court “may direct that  
7 summons be served in a manner which is reasonably calculated to give actual notice to the party  
8 served.” To comport with due process, the method of service must be “reasonably calculated,  
9 under all the circumstances, to apprise interested parties of the pendency of the action and afford  
10 them an opportunity to present their objections.” *Rio Props., Inc. v. Rio Intern. Interlink*, 284 F.3d  
11 1007, 1016 (9th Cir. 2002) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306,  
12 314 (1950)). Under section 413.30 (in Article 4), courts in this district have authorized service by  
13 email. See *Facebook, Inc. v. Banana Ads, LLC*, No. 11-CV-3619 YGR, 2012 WL 1038752, at \*3  
14 (N.D. Cal. Mar. 27, 2012); *Balsam v. Angeles Tech. Inc.*, No. 06-CV-04114-JF (HRL), 2007 WL  
15 2070297, at \*4 (N.D. Cal. July 17, 2007).

16 California law permits service by publication “if upon affidavit it appears to the satisfaction of  
17 the court in which the action is pending that the party to be served cannot with reasonable  
18 diligence be served in another manner” specified in Article 3 of the California Code of Civil  
19 Procedure. Cal. Civ. Proc. Code § 415.50(a). In determining whether a plaintiff has exercised  
20 “reasonable diligence,” the court examines the affidavit to see whether the plaintiff “took those  
21 steps a reasonable person who truly desired to give notice would have taken under the  
22 circumstances.” *Donel, Inc. v. Badalian*, 87 Cal. App. 3d 327, 333 (1978). The “reasonable  
23 diligence” requirement “denotes a thorough, systematic investigation and inquiry conducted in  
24 good faith by the party or his agent or attorney.” *Kott v. Super. Ct.*, 45 Cal. App. 4th 1126, 1137  
25 (1996). “Before allowing a plaintiff to resort to service by publication, the courts necessarily  
26 require him to show exhaustive attempts to locate the defendant, for it is generally recognized that  
27 service by publication rarely results in actual notice.” *Watts v. Crawford*, 10 Cal. 4th 743, 749 n.5  
28 (1995) (internal quotations and citations omitted). And because of due process concerns, service

1 by publication should be allowed only “as a last resort.” Donel, 87 Cal. App. 3d at 333.

2 Taking a few reasonable steps to serve a defendant does not necessarily mean that all “myriad  
3 . . . avenues” have been properly exhausted to warrant service by publication. Id. But a plaintiff  
4 will generally satisfy its burden through “[a] number of honest attempts to learn [a] defendant’s  
5 whereabouts or his address” by asking his relatives, friends, acquaintances, or employers, and by  
6 investigating “appropriate city and telephone directories, the voters’ register, and the real and  
7 personal property index in the assessor’s office, near the defendant’s last known location.” Kott,  
8 45 Cal. App. 4th at 1137 (internal quotations omitted). “These are likely sources of information,  
9 and consequently must be searched before resorting to service by publication.” Id. The reasonable-  
10 diligence inquiry is fact and case specific. Id. at 1137–38 (“[T]he showing of diligence in a given  
11 case must rest on its own facts and no single formula or mode of search can be said to constitute  
12 due diligence in every case.”).

13 In addition to the reasonable-diligence requirement, a plaintiff requesting service by  
14 publication must show, by affidavit, that “[a] cause of action exists against the party upon whom  
15 service is to be made or he or she is a necessary or proper party to the action.” Cal. Civ. Proc.  
16 Code § 415.50(a)(1). The plaintiff “must offer ‘independent evidentiary support, in the form of a  
17 sworn statement of facts, for the existence of a cause of action against the defendant.’” Cummings  
18 v. Hale, No. 15-CV-04723-JCS, 2016 WL 4762208, at \*2 (N.D. Cal. Sept. 13, 2016) (quoting  
19 McNamara v. Sher, No. 11-CV-1344-BEN (WVG), 2012 WL 760531, at \*4 (S.D. Cal. Mar. 8,  
20 2012)); see also Zhang v. Tse, Nos. 07-CV-4946-JSW, 05-CV-2641-JSW, 2012 WL 3583036, at  
21 \*3 (N.D. Cal. Aug. 20, 2012) (collecting cases). The declaration must be signed by someone with  
22 personal knowledge of the essential facts. Cummings, 2016 WL 4762208 at \*3 (denying the  
23 plaintiff’s request for service by publication because the submitted declaration “d[id] not purport  
24 to be an affidavit, [was] not sworn, and d[id] not demonstrate counsel’s personal knowledge of the  
25 facts at issue”).

26 **ANALYSIS**

27 **1. Reasonable Diligence**

28 The first issue is whether Kindred exercised reasonable diligence in its attempts to serve Mr.

1 Valdez. Because Kindred did not make “exhaustive attempts to locate” Mr. Valdez, it has not met  
2 its burden. *Watts*, 10 Cal. 4th at 749 n.5.

3 In particular, by conducting the stakeouts, Kindred may have been pursuing service at a  
4 property that Mr. Valdez no longer owned. And Kindred could discover more information about  
5 the property and about Mr. Valdez. In February, there was a “For Sale” sign; by May, there was a  
6 contract pending. But the record is silent about whether the “For Sale” sign was there in May; if it  
7 was, perhaps it suggested that Mr. Valdez still owned the house and lived there. Trucks were seen  
8 there; was there any effort to follow up on DMV information for the plates? The real estate agent  
9 said that he had no email information; did he have a telephone number? When parties finalize real  
10 estate sales, money is transmitted to parties and their bank accounts. Mr. Valdez’s wife died.  
11 Usually legal process attaches to death, and the hospital records may reveal identifying  
12 information about the patient or Mr. Valdez (such as a driver’s license number, other financial  
13 information, or his work). The hospital records may reflect visitors (friends or relatives) or next of  
14 kin. The process server mentions uncooperative neighbors; it is not clear whether he could clarify  
15 from them whether Mr. Valdez still lived there or whether he could obtain contact information.  
16 Kindred pulled an Accurint report but reports only that “it appeared that Mr. Valdez was still  
17 living at the Valdez address.”<sup>42</sup> What else did it say? Mr. Valdez apparently goes by “Pablo V.  
18 Uriarte”; what investigation was conducted about that name (given that the property records are in  
19 that name)? These investigative avenues reasonably could lead to contact information for Mr.  
20 Valdez or information about his location.

21 In *Castillo-Antonio v. Azurdia*, for example, the court initially found the following steps  
22 insufficient to meet the plaintiff’s burden to show reasonable diligence: (1) counsel’s  
23 “investigation at the Contra Costa County Tax Assessor’s Office regarding the owner of the  
24 [defendant’s business’s] property,” (2) a process server’s four attempts to personally serve the  
25 defendant at that address, and (3) counsel’s attempt to mail “packages” to the same address.  
26 No. 13-CV-05709-DMR, 2014 WL 4060219, at \*2 (N.D. Cal. Aug. 14, 2014). As in *Castillo-*

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<sup>42</sup> Clayton Decl. – ECF No. 39-2, ¶ 9.



1 Antonio, the court is concerned that at the time of attempted service, Mr. Valdez may not have  
2 owned the property. Id. at \*3.

3 After the Castillo-Antonio court denied service by publication initially, the plaintiff researched  
4 California DMV records, confirmed a telephone number, made contact by telephone, and  
5 confirmed that the defendant still lived at the property. Id. The court held that the four subsequent  
6 attempts to serve were still not enough, given the ability to (1) contact the codefendant for contact  
7 information, (2) confirm current ownership of the property, and (3) contact relatives, friends, and  
8 neighbors. Id. at \*4. As in Castillo-Antonio, Kindred took additional steps (such as searching  
9 online directories – apparently in a limited way about the property, speaking with the realtor, and  
10 conducting two stakeouts). But these additional efforts did “not exhaust the myriad other options  
11 available” and were not “the ‘step[s] which patently appeared to hold the most promise for  
12 locating” Mr. Valdez. Id. at \*3 (citation omitted).

13 Kindred’s options include a more robust internet search (beyond the property), obtaining  
14 information from the realtor (such as sales information, information about funds disbursed, and  
15 Mr. Valdez’s telephone number), follow-up with neighbors, identifying family members and  
16 friends from the hospital records, and obtaining information through the Post Office, the DMV,  
17 any post-death legal process, and any accounts (such as telephone providers or bank accounts). See  
18 id.; accord Kott, 45 Cal. App. 4th at 1137–38 (A plaintiff satisfies his burden through “[a] number  
19 of honest attempts to learn [a] defendant’s whereabouts or his address” by asking his relatives,  
20 friends, acquaintances, or employers, and by investigating “appropriate city and telephone  
21 directories, the voters’ register, and the real and personal property index in the assessor’s office,  
22 near the defendant’s last known location.”).

23 Similarly, other courts have required more exhaustive efforts than Kindred’s efforts. Judge  
24 Lloyd granted permission for service by publication when the plaintiff conducted an Internet  
25 WHOIS search, hired a private investigator, and subpoenaed several internet companies to  
26 discover the defendants’ true identities. Combs v. Doe, No. 10-CV-01120-HRL, 2010 WL  
27 4065630, at \*1 (N.D. Cal. Oct. 15, 2010). Judge Chen denied permission when the plaintiff  
28 attempted personal service and conducted internet searches through Accurint.com, but did not

1 search any Bay Area city telephone directories or attempt service by mail. *Duarte v. Freeland*, No.  
2 05-CV-2780 EMC, 2008 WL 683427, at \*3 (N.D. Cal. Mar. 7, 2008). The undersigned granted  
3 service by publication after exhaustive efforts to identify addresses for the defaulting defendant.  
4 See *Alameda Cnty. Elec. Indus. Serv. Corp. v. Steward*, No. 11-CV-05676-LB, ECF No. 20; see  
5 also *Cummings*, 2016 WL 47622208, at \*2 (diligence shown by speaking to defendant’s daughter,  
6 using a paid investigative tool to locate a number of address, and having the U.S. Marshal visit the  
7 most promising addresses on multiple occasions without success).

8 There are reasonable measures that Kindred could take that might lead to Mr. Valdez’s contact  
9 information and a more reliable method of service (such as service by email), which is a method of  
10 service that is “reasonably calculated to give actual notice.” See, e.g., *Facebook, Inc.*, 2012 WL  
11 1038752, at \*3 (quoting Cal. Civ. Proc. Code § 413.30) (courts have permitted service by email  
12 when a plaintiff has not succeeded in serving a defendant at a physical address, has been unable to  
13 contact the defendant by mail or telephone, and has a functional email address for the defendant).  
14 Another possible outcome is identifying Mr. Valdez’s work address, which may allow for  
15 substitute service. See Cal. Civ. Proc. Code § 415.20(a).

16 **2. Affidavit Showing a Cause of Action Exists**

17 Kindred must also demonstrate, by affidavit, that a cause of action exists against Mr. Valdez.  
18 The complaint pleads two claims: (1) breach of contract (based on the Admission Agreement), and  
19 (2) an “open book account” claim for the amount due on the contract.<sup>43</sup>

20 “A cause of action for breach of contract requires pleading of a contract, plaintiff’s  
21 performance or excuse for failure to perform, defendant’s breach and damage to plaintiff resulting  
22 therefrom.” *McKell v. Washington. Mut., Inc.*, 142 Cal. App. 4th 1457, 1489 (2006). “A written  
23 contract may be pleaded either by its terms — set out verbatim in the complaint or a copy of the  
24 contract attached to the complaint and incorporated therein by reference — or by its legal effect.”  
25 *Haskins v. Symantec Corp.*, No. 13-CV-01834-JST, 2013 WL 6234610, at \*10 (N.D. Cal. Dec. 2,  
26 2013).

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<sup>43</sup> Compl. ¶¶ 60–70.

1 Here, the court cannot conclude from the submission by Kindred’s Senior Director of Patient  
2 Accounting that Mr. Valdez is personally obliged to pay anything under the contract. For one, the  
3 Admission Agreement is in Spanish and the court cannot tell what responsibility it assigns to the  
4 patient or to Mr. Valdez. Kindred’s counsel’s declaration does not change this outcome. It is  
5 nearly identical to the prior declaration that the court found inadequate and contains only  
6 information about service of process; it does not have a sworn statement of facts supporting the  
7 conclusion that a cause of action exists against Mr. Valdez.<sup>44</sup> Cummings, 2016 WL 476208, at \*2.

8 Kindred’s complaint cites Family Code § 914 and Probate Code § 13554 and alleges that they  
9 establish a surviving spouse’s personal liability for the deceased spouse’s debts. Family Code  
10 § 914 states a married person is personally liable for “a debt incurred for necessities of life of the  
11 person’s spouse,” and Probate Code § 13554 states that a debt “may be enforced against the  
12 surviving spouse in the same manner as it could have been enforced against the deceased spouse if  
13 the deceased spouse had not died.” These statutes generally support the proposition that a  
14 surviving spouse is personally liable for the debts of a deceased spouse, including hospital and  
15 medical bills. See Collection Bureau of San Jose v. Rumsey, 6 P.3d 713, 718 (Cal. 2000). That  
16 legal conclusion does not change the outcome here: the court cannot conclude anything about a  
17 cause of action based on this fact record.

18  
19 **CONCLUSION**

20 The court denies Kindred’s renewed motion for service by publication without prejudice.

21 **IT IS SO ORDERED.**

22 Dated: July 21, 2017



23 LAUREL BEELER  
24 United States Magistrate Judge

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28 <sup>44</sup> See Simon Decl. – ECF No. 39-1 at 1–2; Simon Decl. – ECF No. 33 at 6–7.