

United States District Court
For the Northern District of California

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E-Filed 10/23/09

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MARCO LAHORE, et al.,

No. C 09-04776 RS

Plaintiffs,

**ORDER AUTHORIZING SERVICE
BY DELIVERY TO THE SECRETARY
OF STATE**

v.

SCME MORTGAGE BANKERS, INC.,
et al.,

Defendants.

_____ /

On October 16, 2009, plaintiffs filed what they labeled as an “ex parte application” for an order permitting service to be made on defendant SCME Mortgage Bankers, Inc. by hand delivery of the summons and complaint to the office of the California Secretary of State. In this Court, an ex parte motion is one filed with no notice to other parties, and is permissible only where specifically authorized by statute, Federal Rule, local rule or Standing Order. Civil Local Rule 7-10. Where a party seeks a court order on less than the full 35 days notice ordinarily required, it must seek an order shortening time under Rule 6-2 or 6-3, unless the subject matter is such that a Motion For Administrative Relief under Rule 7-11 is appropriate.

1 Here, despite the “ex parte” label, Plaintiffs filed their motion through the ECF system,
2 thereby giving notice of it to all parties who have appeared in the action. Because the relief
3 plaintiffs seek is appropriate for treatment as a miscellaneous administrative matter, the motion will
4 be deemed as one brought under Rule 7-11.

5 Plaintiffs’ motion is GRANTED. Rule 4(h)(1)(A) of the Federal Rules of Civil Procedure
6 permits service on corporations to be made in any manner prescribed for serving an individual, and
7 Rule 4(e)(1) in turn provides that individuals may be served in any manner permitted under state
8 law. Under California Code of Civil Procedure §416.10(d) and California Corporations Code
9 §1702, where a corporate agent for service of process cannot be located through reasonable
10 diligence, the court may order service be made by hand delivery to the office of the secretary of
11 state. As Plaintiffs have adequately shown reasonable diligence in their unsuccessful attempts to
12 locate an agent for defendant SCME Mortgage Bankers, Inc., service on the secretary of state’s
13 office is warranted.

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15 IT IS SO ORDERED.

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17 Dated: October 23, 2009

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19 RICHARD SEEBORG
20 UNITED STATES MAGISTRATE JUDGE

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