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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

PAUL DENHAM,	)	Civil No. 09-1505-JLS(WVG)
	)	
Plaintiff,	)	ORDER DENYING MOTION FOR ORDER
	)	FOR CDCR TO PROVIDE FULL LEGAL
v.	)	NAMES OF ARANDA AND BENVIN AND
	)	ORDER THE USDC CLERK TO SERVE
ARANDA, et al.,	)	DEFENDANTS ARANDA AND BENVIN
	)	BY PUBLICATION
Defendants.	)	
	)	(DOC. # 61)
_____	)	

Plaintiff Paul Denham (hereafter "Plaintiff") seeks an order of the Court for the California Department of Corrections to provide him with the full legal names of unserved Defendants Aranda and Benvin and to order the Clerk of this Court to serve these Defendants by publication. The Court, having reviewed Plaintiff's Motion and the applicable authority, and GOOD CAUSE APPEARING, hereby DENIES Plaintiff's Motion.

Procedural History

On July 10, 2009, Plaintiff filed a Complaint Under The Civil Rights Act, 42 U.S.C. §1983. On August 31, 2009, the Court granted

1 Plaintiff's Motion to Proceed *in forma pauperis*, and directed the  
2 United States Marshal to effect service of summons and complaint on  
3 Defendants. On October 27, 2009, the summonses served on Defendants  
4 Aranda and Benvin were returned unexecuted.<sup>1/</sup>

5 On December 4, 2009, Defendants served and filed a Motion to  
6 Dismiss Plaintiff's Complaint. On May 3, 2010, this Court filed a  
7 Report and Recommendation Granting Defendants' Motion to Dismiss. On  
8 June 21, 2010, the District Judge assigned to this case adopted the  
9 Report and Recommendation and allowed Plaintiff to file a First  
10 Amended Complaint. On July 30, 2010, Plaintiff filed a First Amended  
11 Complaint.

12 On August 12, 2010, Defendants filed a Motion to Dismiss  
13 Plaintiff's First Amended Complaint. On December 30, 2010, this  
14 Court filed a Report and Recommendation Granting in part and Denying  
15 in part Defendants' Motion to Dismiss. On February 4, 2011, the  
16 District Judge assigned to this case adopted the Report and  
17 Recommendation.

18 On March 16, 2011, Plaintiff filed a Motion for Court Order  
19 for Substituted Service on the Secretary of State for Defendants  
20 Aranda and Benvin. On March 21, 2011, Plaintiff filed Motions for  
21 Leave of Court for Enlargement of Time To Complete Service on  
22 Defendants, and for a Court Order For Substituted Service on the  
23 Attorney General and/or the Secretary of State or the California  
24 Department of Corrections and/or Litigation Coordinator at Donovan  
25 State Prison.

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28 <sup>1/</sup> On October 27, 2009, the summons served on Defendant Silvia Garcia  
also was returned unexecuted. On May 16, 2011, Ms. Garcia's attorney  
waived the service of summons on her behalf.

1           On March 25, 2011, the Court granted in part the motions  
2 noted in the preceding paragraph. The March 25, 2011 Order directed  
3 Defendants' counsel to provide the last known addresses of Defen-  
4 dants Aranda and Benvin to the United States Marshal in a confiden-  
5 tial memorandum and for the United States Marshal to serve those  
6 Defendants at their last known addresses, as contained in the  
7 confidential memorandum, with summonses and Plaintiff's First  
8 Amended Complaint. On April 28 and May 2, 2011 respectively, the  
9 summonses for Aranda and Benvin were returned unexecuted.

10           Now, Plaintiff seeks the full legal names of Defendants  
11 Aranda and Benvin so that they can be served by publication.

12 Discussion

13           Plaintiff cites Fed. R. Civ. Pro. 4(e)(1) and California Code  
14 of Civil Procedure §415.50 to support his argument that he is  
15 entitled to serve Defendants Aranda and Benvin by publication.

16           Fed. R. Civ. Pro 4(e)(1) states in pertinent part:

17           (e) Unless federal law provides otherwise, an individ-  
18 ual... may be served in a judicial district of the  
United States by:

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

21           California Code of Civil Procedure § 415.50 states in  
22 pertinent part:

23           (a) A summons may be served by publication if upon  
24 affidavit it appears to the satisfaction of the court  
in which the action is pending that the party to be  
25 served cannot with reasonable diligence be served in  
another manner specified in this article and that  
either:

26           (1) a cause of action exists against the party upon  
whom service is to be made or he or she is a necessary  
27 or proper party to the action...

28           (b) The court shall order the summons to be published  
in a *named newspaper, published in the state, that is  
most likely to give actual notice to the party to be*

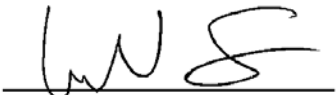
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*served. If the party to be served resides or is located out of this state, the court may also order the summons to be published in a named newspaper outside the state that is most likely to give actual notice to that party...*  
(emphasis added)

Here, Plaintiff requests that the Court order that the summonses to Defendants Aranda and Benvin be served by publication in a named newspaper in California. However, Plaintiff does not specify in what California-published newspaper the summonses should appear. In fact, neither he, nor the Court, could so specify, because he, and the Court, do not know if Defendants Aranda and Benvin reside or are located in California or any other place in the United States. Therefore, without more, the Court can not conclude that publication of the summons in a California-published newspaper is likely to give Defendants Aranda and Benvin actual notice of the summonses. As a result, Plaintiff's Motion is DENIED.

IT IS SO ORDERED.

DATED: May 16, 2011

  
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Hon. William V. Gallo  
U.S. Magistrate Judge