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7 UNITED STATES DISTRICT COURT  
8 SOUTHERN DISTRICT OF CALIFORNIA  
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10 ESTATE OF TIMOTHY GENE SMITH,  
11 by his successor in interest, JANIE  
12 RICHELLE SANDERS; JANIE  
13 RICHELLE SANDERS; SANDY LYNN  
14 SIMMONS; and WYATT ALLEN  
15 GUNNER SMITH as individuals,

16 Plaintiffs,

17 v.

18 CITY OF SAN DIEGO; SCOTT  
19 HOLSLAG; DAVID BRECHT;  
20 NATALIE ANN MACEY d/b/a MACEY  
21 BAIL BONDS, as an individual; LEGAL  
22 SERVICE BUREAU, INC. d/b/a  
23 GLOBAL FUGITIVE RECOVERY, a  
24 California domestic corporation; DAN  
25 ESCAMILLA, as an individual and on  
26 behalf of LEGAL SERVICE BUREAU,  
27 INC.; and ISMAEL SOTO, as an  
28 individual,

Defendants.

Case No.: 16-cv-2989-WQH-MSB

**ORDER**

HAYES, Judge:

The matter before the Court is Plaintiffs' Ex Parte Motion for Service of Summons by Publication for Defendant Ismael Soto. (ECF No. 179).

1       **I.     Background**

2           On December 8, 2016, Plaintiffs initiated this action by filing a complaint. (ECF  
3 No. 1). The complaint was amended on December 29, 2016 (ECF No. 7), on March 9,  
4 2018 (ECF No. 96), and on March 1, 2019 (ECF No. 162). The March 1, 2019 Third  
5 Amended Complaint added Ismael Soto as a named defendant and is the operative  
6 complaint in this matter. On March 4, 2019, summonses were issued. (ECF No. 163). On  
7 June 3, 2019, Plaintiff filed the Ex Parte Motion for Service of Summons by Publication  
8 for Defendant Ismael Soto. (ECF No. 179). In the Ex Parte Motion, Plaintiffs request that  
9 the Court permit Plaintiffs to serve Defendant Ismael Soto in San Diego County by  
10 publication in the San Diego Union-Tribune and in Riverside County by publication in The  
11 Press-Enterprise. (ECF No. 179 at 2).

12       **II.    Legal Standard**

13           Rule 4(e)(1) of the Federal Rules of Civil Procedure allows service by any means  
14 permitted by the law of the state in which the case is pending, or the state in which the  
15 Defendant resides. *See* Fed. R. Civ. P. 4(e)(1). Under California Code of Civil Procedure  
16 Section 415.50:

17           (a) A summons may be served by publication if upon affidavit it appears to  
18 the satisfaction of the court in which the action is pending that the party to be  
19 served cannot with reasonable diligence be served in another manner specified  
20 in this article and that either: (1) A cause of action exists against the party  
21 upon whom service is to be made or he or she is a necessary or proper party  
22 to the action. (2) The party to be served has or claims an interest in real or  
23 personal property in this state that is subject to the jurisdiction of the court or  
24 the relief demanded in the action consists wholly or in part in excluding the  
25 party from any interest in the property.

26 Cal. Civ. Proc. Code § 415.50.

27           California courts impose a high standard of diligence before approving use of  
28 publication and strictly construe the statutory provisions for service by publication. *See*  
*Olvera v. Olvera*, 283 Cal. Rptr. 271, 277 (Ct. App. 1991) (“When substituted or  
constructive service is attempted, strict compliance with the letter and spirit of the statutes

1 is required.”). “Before allowing a plaintiff to resort to service by publication, the courts  
2 necessarily require him to show exhaustive attempts to locate the defendant, for it is  
3 generally recognized that service by publication rarely results in actual notice.” *Watts v.*  
4 *Crawford*, 896 P.2d 807, 811 n.5 (Cal. 1995). “The term ‘reasonable diligence’ . . . denotes  
5 a thorough, systematic investigation and inquiry conducted in good faith by the party or  
6 his agent or attorney.” *Kott v. Super. Ct.*, 53 Cal. Rptr. 2d 215, 221 (Ct. App. 1996).  
7 Because of due process concerns, service by publication is permissible only “as a last  
8 resort.” *Donel, Inc. v. Badalian*, 150 Cal. Rptr. 855, 858 (Ct. App. 1978).

### 9 **III. Discussion**

10 Eugene G. Iredale, Counsel for Plaintiffs, submitted a declaration in support of  
11 Plaintiffs’ Ex Parte Motion for Service of Summons by Publication for Defendant Ismael  
12 Soto. (ECF No. 179-1). In the declaration, Iredale states, “[m]y firm hired Sonny Jaramillo  
13 to complete service of process on Defendant Ismael Soto.” *Id.* ¶ 8. “On April 4, 2019, at  
14 approximately 1:40 p.m., Mr. Jaramillo completed service of process on ‘Ismael Soto’ at  
15 the 3662 42nd Street, San Diego, CA 92105-3304 location.” *Id.* ¶ 9. “On April 12, 2019,  
16 Ismael Soto sent a letter to my office indicating he was not the interested party to [t]his  
17 action.” *Id.* ¶ 10.

18 Sonny Jaramillo, an employee of San Diego Legal Source hired by Iredale to serve  
19 Defendant Ismael Soto, submitted a declaration in support of Plaintiffs’ Ex Parte Motion  
20 for Service of Summons by Publication for Defendant Ismael Soto. (ECF No. 179-2).  
21 Jaramillo states,

22 On March 27, 2019, I conducted a preliminary public records search for the  
23 name Ismael Soto. Preliminary results indicated that Mr. Soto owned a 2001  
24 Mercedes Benz with a California license plate number. This is consistent with  
25 recorded phone calls between Mr. Soto and San Diego police dispatch where  
26 Mr. Soto gives his license number and states he drives a 2001 Mercedes Benz.  
27 Given Mr. Soto’s employment as a bounty hunter and/or bail bonds agent, I  
28 conducted a search for professional license in Riverside county. Mr. Soto was  
not registered in Riverside county for a bail bonds, private investigator, or  
security guard professional license. Mr. Soto is not registered as a sole  
proprietorship in Riverside county. A physical description of Mr. Soto is

1 unknown.

2 *Id.* ¶ 3.

3 On March 28, 2019, I discovered Mr. Soto’s Bureau of Security and  
4 Investigative Services license issued in October of 2018. Mr. Soto listed a San  
5 Diego address on his application for the security guard license. Given my  
6 experience, I concluded that Mr. Soto most likely resided at the San Diego  
7 address due to Mr. Soto’s employment as a bail bonds agent and the status of  
8 his Bureau of Security and Investigative Services Licensing. The primary  
9 status of license is listed as “current” with an expiration date of October 31,  
10 2020.

11 *Id.* ¶ 4. From March 28, 2019 through April 3, 2019, Mr. Jaramillo attempted to serve  
12 Ismael Soto at the San Diego address associated with the security guard license application  
13 submitted by Ismael Soto. *Id.* ¶¶ 5–13. On April 4, 2019, Mr. Jaramillo served “Kevin  
14 M.,” a roommate of Ismael Soto. *Id.* ¶ 14. On April 12, 2019, Mr. Iredale learned that the  
15 “Ismael Soto” Mr. Jaramillo served was not Defendant Ismael Soto. (ECF No. 179-1 ¶  
16 10).

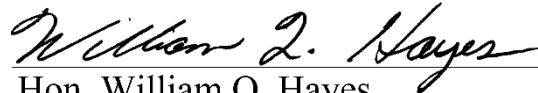
17 Mr. Jaramillo’s declaration states that he performed a “preliminary public records  
18 search for the name Ismael Soto.” (ECF No. 179-2 ¶ 3). Mr. Jaramillo’s declaration does  
19 not indicate the public records searched. The Court is unable to determine from the  
20 declarations accompanying Plaintiff’s Ex Parte Motion whether the public records search  
21 included databases, such as the local telephone directory, the voters’ register, and the  
22 personal property index of the assessor’s office near the Defendant’s last known location.  
23 *See Kott*, 53 Cal. Rptr. 2d at 221 (“A number of honest attempts to learn defendant’s  
24 whereabouts or his address by inquiry of relatives, friends, and acquaintances, or of his  
25 employer, and by investigation of appropriate city and telephone directories, the voters’  
26 register, and the real and personal property index of the assessor’s office, near the  
27 defendant’s last known location are generally sufficient. These are likely sources of  
28 information and consequently must be searched before resorting to service by  
publication.”). Plaintiffs have not included sufficient information regarding Mr.  
Jaramillo’s public records searches to demonstrate that California Civil Procedure Code

1 Section 415.50(a) has been satisfied. The Court finds that Plaintiffs have not satisfied the  
2 high standard of diligence required for service by publication.

3 **IV. Conclusion**

4 IT IS HEREBY ORDERED that Plaintiffs' Ex Parte Motion for Service of Summons  
5 by Publication for Defendant Ismael Soto (ECF No. 179) is DENIED.

6 Dated: June 11, 2019



7 Hon. William Q. Hayes

8 United States District Court

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