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5 UNITED STATES DISTRICT COURT
6 SOUTHERN DISTRICT OF CALIFORNIA
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8 ESTATE OF TIMOTHY GENE
9 SMITH, by his successor in
10 interest, WYATT ALLEN
11 GUNNER SMITH; SANDY LYNN
12 SIMMONS; and WYATT ALLEN
13 GUNNER SMITH,

14 Plaintiffs,

15 v.

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

28 Defendants.

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

ORDER

HAYES, Judge:

The matter before the Court is Plaintiffs' Ex Parte Motion for Alternative Service of Summons as to Defendant Ismael Soto. (ECF No. 189).

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1 **I. Background**

2 On December 8, 2016, Plaintiffs¹ initiated this action by filing a Complaint. (ECF
3 No. 1). Plaintiffs amended the Complaint on December 29, 2016 (ECF No. 7), on March
4 9, 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, summons were issued. (ECF No. 163).

7 On June 3, 2019, Plaintiffs filed an Ex Parte Motion for Service of Summons by
8 Publication for Defendant Ismael Soto (the “June 3rd Motion”). (ECF No. 179). On June
9 11, 2019, the Court denied Plaintiffs’ June 3rd Motion, finding:

10 Plaintiffs have not included sufficient information regarding Mr. Jaramillo’s
11 public records searches to demonstrate that California Civil Procedure Code
12 Section 415.50(a) has been satisfied. The Court finds Plaintiffs have not
13 satisfied the high standard of diligence required for service by publication.

14 (ECF No. 181 at 4-5). On July 3, 2019, Plaintiffs filed an Ex Parte Motion for Extension
15 of Time for Service of Process as to Defendant Ismael Soto (the “July 3rd Motion”). (ECF
16 No. 186). On July 8, 2019, the Court granted Plaintiffs’ July 3rd Motion, ordering Plaintiffs
17 to serve Ismael Soto by September 2, 2019. (ECF No. 187).

18 On August 30, 2019, Plaintiffs filed the Ex Parte Motion for Alternative Service of
19 Summons as to Defendant Ismael Soto (the “August 30th Motion”). (ECF No. 189). In the
20 August 30th Motion, Plaintiffs request the Court permit Plaintiffs to serve Ismael Soto in
21 San Diego County by publication in The San Diego Union-Tribune and in Riverside
22 County by publication in The Press-Enterprise. (ECF No. 189-1 at 12).

23 **II. Legal Standard**

24 Rule 4(e)(1) of the Federal Rules of Civil Procedure allows service by any means
25 permitted by the law of the state in which the case is pending or the law of the state in
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28 ¹ The original Complaint included Janie Richelle Sanders as a plaintiff. (ECF No. 1). Ms. Sanders is no longer a party to this action.

1 which the defendant resides. Fed. R. Civ. P. 4(e)(1). Under California Code of Civil
2 Procedure Section 415.50:

3 (a) A summons may be served by publication if upon affidavit it appears . . .
4 that the party to be served cannot with reasonable diligence be served in
5 another manner specified in this article and that either: (1) A cause of action
6 exists against the party upon whom service is to be made or he or she is a
7 necessary or proper party to the action. (2) The party to be served has or claims
8 an interest in real or personal property in this state that is subject to the
jurisdiction of the court or the relief demanded in the action consists wholly
or in part in excluding the party from any interest in the property.

9 California courts impose a high standard of diligence before approving service by
10 publication and strictly construe the statutory provisions for service by publication. *See*
11 *Olvera v. Olvera*, 232 Cal. Rptr. 271, 277 (Ct. App. 1991) (“When substituted or
12 constructive service is attempted, strict compliance with the letter and spirit of the statutes
13 is required.”). “Before allowing a plaintiff to resort to service by publication, the courts
14 necessarily require him to show exhaustive attempts to locate the defendant, for it is
15 generally recognized that service by publication rarely results in actual notice.” *Watts v.*
16 *Crawford*, 896 P.2d 807, 811 n.5 (Cal. 1995). “The term ‘reasonable diligence’ . . . denotes
17 a thorough, systematic investigation and inquiry conducted in good faith by the party or
18 his agent or attorney.” *Kott v. Superior Court*, 53 Cal. Rptr. 2d 215, 221 (Ct. App. 1996).
19 Because of due process concerns, service by publication is permissible “only as a last
20 resort.” *Donel, Inc. v. Badalian*, 150 Cal. Rptr. 855, 858 (Ct. App. 1978).

21 **III. Discussion**

22 Eugene G. Iredale, counsel for Plaintiffs, submitted a Declaration in support of
23 Plaintiffs’ August 30th Motion (Iredale’s “August 29th Declaration”). (ECF No. 189-2). In
24 Iredale’s August 29th Declaration, he states his firm hired Sonny Jaramillo “to locate and
25 serve Mr. Soto.” *Id.* ¶ 8. Jaramillo, an employee of San Diego Legal Source, submitted a
26 Declaration in support of Plaintiffs’ June 3rd Motion (Jaramillo’s “June 3rd Declaration”).
27 (ECF No. 189-3). Jaramillo submitted a second Declaration in support of Plaintiffs’ July
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1 3rd Motion (Jaramillo’s “July 2nd Declaration”). (ECF No. 189-6). Jaramillo states in his
2 June 3rd Declaration:

3 On March 27, 2019, I conducted a preliminary public records search for the
4 name Ismael Soto. Preliminary results indicated that Mr. Soto owned a 2001
5 Mercedes Benz with a California license plate number. This is consistent with
6 recorded phone calls between Mr. Soto and San Diego Police dispatch

7 (ECF No. 189-3 ¶ 3). Jaramillo states in his July 2nd Declaration that on March 27, 2019,
8 he searched the following databases for “Ismael Soto:” 1) “the[] ARCC (‘Accessor,
9 Recorded, and County Clerk’) Riverside County, California Database . . . for a business
10 license and/or professional certificate registration” (ECF No. 189-6 ¶ 6); 2) “the ARCC
11 San Diego County, California Database . . . for a business license and/or professional
12 certificate registration” (*id.* ¶ 7); 3) the “California Department of Insurance (CDI),
13 Bail Bonds, Individual Bail and Active Bail Licensees” (*id.* ¶ 8); and 4) “the Nexis database
14 . . . in both Riverside County and San Diego County . . . includ[ing] the Assessor’s Office
15 Records, Tax Assessor’s Office, Voter’s Registrar, Real and Personal Property Index,
16 Marriage licenses, and Fictitious Business Name Records.” *Id.* ¶ 9.

17 The only database that produced a result for “Ismael Soto” was the “Nexis database.”
18 *Id.* ¶¶ 6-9. Jaramillo states that he “followed a lead and conducted an Assessment Record
19 search for 24195 Falconer Drive, Murietta, CA 92562-4621. The owner of the home was
20 an ‘Anna Gomez Pereda,’ aka ‘Ana Gomez Soto,’ the mother of Ismael Soto.” *Id.* ¶ 9.

21 Jaramillo states in his July 2nd Declaration that on March 28, 2019, he “searched the
22 Department of Consumer Affairs (DCA) license database for a California Private
23 Investigator License and/or Security Guard License associated with ‘Ismael Soto.’” *Id.* ¶
24 10. The search produced a “Bureau of Security and Investigative Services Licensing
25 report” stating that “Ismael Soto” has a California Security Guard License, number
26 6403320, issued on October 23, 2018, and valid through October 31, 2020. *Id.* The report
27 stated that the “Licensee address” was 3662 42nd Street, San Diego, CA 92105-3304. *Id.*
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1 From March 29, 2019, through April 3, 2019, Jaramillo attempted to serve Ismael
2 Soto at the San Diego address associated with his security guard license. *Id.* ¶¶ 12-16. On
3 April 4, 2019, Jaramillo served “Kevin M.,” who identified himself as Ismael Soto’s
4 roommate. *Id.* ¶ 17. On April 12, 2019, Iredale learned Jaramillo did not serve Defendant
5 Ismael Soto. (ECF No. 189-2 ¶ 10; ECF No. 189-4 at 2).

6 Iredale also attempted to locate Defendant Ismael Soto. (ECF No. 189-2 ¶ 14).
7 Iredale states in his August 29th Declaration that he attempted to locate Ismael Soto using
8 his license plate number “to no avail.” *Id.* Iredale states:

9 I have been unable to obtain licensing information for the vehicle with the
10 license provided on tape by Mr. Soto because the California Department of
11 Motor Vehicles will not release information pursuant to an Attorney Request
12 Form if the vehicle is not ‘directly’ involved in the claims Further
13 attempts to identify the aforesaid vehicle through online sources, including
14 LexisNexis and Google have not yielded any results.

14 *Id.* Iredale states that he attempted to locate Ismael Soto through “reverse phone look-up
15 sources” on Google, Bing, and LexisNexis, but the results state that “the phone is not
16 registered to any name.” *Id.* Iredale also attempted to locate Ismael Soto by searching
17 LexisNexis public records. *Id.* The LexisNexis search “only resulted in a single instance of
18 Ismael Soto for Riverside County, California, but that result was only current as of 1998.”
19 *Id.* When Iredale expanded the geographic scope of his search, he retrieved “179 total
20 search results with information that was inadequate to further isolate the current person for
21 whom we are searching.” *Id.* Finally, Iredale states he “googled ‘Bureau of Security and
22 Investigative Services.’” *Id.* Iredale’s Google search produced information for 1) the
23 “Ismael Soto” who had already been mistakenly served; and 2) an “Ismael Carranza Soto”
24 living in Austin, Texas, with a civil engineer license that expired in 1998. *Id.*; ECF No.
25 189-8 at 2.

26 The Court concludes that Plaintiffs have not exhausted the avenues by which they
27 could discover the location of Defendant Ismael Soto and further attempt service of
28 process. *See Donel*, 150 Cal. Rptr. at 859 (holding diligence standard was not satisfied

1 when Plaintiff failed to “exhaust the myriad of other avenues”); *see also Kott*, 53 Cal. Rptr.
2 2d at 221 (“A number of honest attempts to learn defendant’s whereabouts or his address
3 by inquiry of relatives, friends, and acquaintances, or of his employer, and by investigation
4 of appropriate city and telephone directories, the voters’ register, and the real and personal
5 property index of the assessor’s office, near the defendant’s last known location are
6 generally sufficient. These are likely sources of information and consequently must be
7 searched before resorting to publication.”). Plaintiffs have not indicated that they made any
8 attempt to follow up on the assessment record result for Ismael Soto’s mother, Ana Gomez
9 Soto. *See In re Matthew S.*, 247 Cal. Rptr. 100, 102 (Ct. App. 1988) (finding reasonable
10 diligence standard satisfied when, among other things, inquiries were made through
11 appellant’s parents). Plaintiffs also have not indicated that they made any attempt to follow
12 up on the LexisNexis search result, current as of 1998, that there was an Ismael Soto living
13 in Riverside County. Finally, Plaintiffs have not explained how the search that resulted in
14 179 results on Ismael Soto was “inadequate” to narrow down the search for Defendant.
15 (ECF No. 189-2 ¶ 14). Finally, even though Plaintiffs allege Ismael Soto is Defendant Dan
16 Escamilla’s “partner, employee, and/or agent at [Defendant] Legal Services Bureau, Inc.,
17 d/b/a Global Fugitive Recovery,” (ECF No. 162 ¶ 19) Plaintiffs have not indicated they
18 made any inquiries of Escamilla or anyone else at Legal Services Bureau, Inc., about Ismael
19 Soto. The Court finds that Plaintiffs have not satisfied the high standard of diligence
20 required for service by publication.

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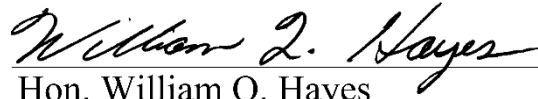
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1 **IV. Conclusion**

2 IT IS HEREBY ORDERED that Plaintiffs' Ex Parte Motion for Alternative Service
3 of Summons as to Defendant Ismael Soto (ECF No. 189) is denied without prejudice.
4 Plaintiffs' alternative request for additional time to attempt service on Ismael Soto (ECF
5 No. 189-2 ¶ 13) is granted. Plaintiffs shall serve Defendant Ismael Soto on or before
6 November 1, 2019.

7 Dated: September 4, 2019


8 Hon. William Q. Hayes
9 United States District Court