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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Estate of TIMOTHY GENE SMITH,
deceased, by his successor in interest
JANIE RICHELLE SANDERS;
JANIE RICHELLE SANDERS, as an
individual; SANDY LYNN
SIMMONS; and WYATT ALLEN
GUNNER SMITH,

Plaintiffs,

v.

CITY OF SAN DIEGO; SHELLEY
ZIMMERMAN AND SCOTT
HOLSLAG, as individuals and
employees of City of San Diego;
NATALIE ANN MACEY, as an
individual doing business as Macey
Bail Bonds; LEGAL SERVICE
BUREAU, Inc., a California domestic
corporation doing business as Global
Fugitive Recovery; DAN
ESCAMILLA, as an individual and on
behalf of Legal Service Bureau, Inc.;
LELAND CHAPMAN BAIL BOND
CO. INC., a Colorado corporation;
LBC, Inc., a Hawaii corporation;
KAMA AINA BAIL BONDS, INC., a
Hawaii corporation; LELAND B.
CHAPMAN, as an individual and on
behalf of Leland Chapman Bail Bond
Co. Inc., LBC, Inc., and Kama Aina
Bail Bonds, Inc.,

Defendants.

CASE NO. 16cv2989-WQH-MDD
ORDER

HAYES, Judge:

The matter before the Court is the Ex Parte Motion for Alternative Service of
Summons filed by Plaintiffs Estate of Timothy Gene Smith, by his successor in interest

1 Janie Richelle Sanders; Janie Richelle Sanders; Sandy Lynn Simmons; and Wyatt Allen
2 Gunner Smith (“Plaintiffs”). (ECF No. 31).

3 **I. Background**

4 On December 8, 2016, Plaintiffs initiated this action by filing a complaint. (ECF
5 No. 1). On December 29, 2016, Plaintiffs filed the First Amended Complaint, which
6 is the operative complaint in this matter. (ECF No. 7). The First Amended Complaint
7 asserts four causes of action against Defendants LBC Inc., Kama Aina Bail Bonds, Inc.,
8 and Leland B. Chapman: conspiracy to violate civil rights; intentional infliction of
9 emotional distress; defamation; and false light. *Id.* at 20-26. On March 10, 2017, the
10 Court granted Plaintiffs’ ex parte motion to extend time to serve the complaint, and
11 ordered that “Plaintiffs shall have 60 days from the date of this order to serve and file
12 proof of service of summons of the complaint on the remaining defendants to be
13 served.” (ECF No. 27 at 2).

14 On April 4, 2017, Plaintiffs filed the Ex Parte Motion for Alternative Service of
15 Summons. (ECF No. 31).

16 **II. Contentions of the Plaintiffs**

17 Plaintiffs contend that good cause exists for this Court to issue an order
18 permitting Plaintiffs to complete alternative service of Defendants LBC Inc., Kama
19 Aina Bail Bonds, Inc., and Leland B. Chapman by methods permitted by the Hawaii
20 Rules of Civil Procedure and by Hawaii state law. Plaintiffs request that the Court issue
21 an order permitting service by certified mail, return receipt requested and for an order
22 permitting service by publication. Plaintiffs contend they have acted diligently in
23 attempting to personally serve Defendants LBC Inc., Kama Aina Bail Bonds, Inc. and
24 Leland B. Chapman, including “fourteen attempts . . . to personally effectuate service
25 on Leland Chapman and his entities in Hawaii at three different addresses, to no avail”
26 and attempts to communicate with Defendants by phone and text message. (ECF No.
27 31-1 at 8-9). Plaintiffs contend that they have demonstrated good cause by including
28 a “chronology of service attempts” and a “Non-Service Report from plaintiffs’ process

1 server confirming each of these attempts” in their Ex Parte Motion for Alternative
2 Service of Summons. (ECF Nos. 31-1 at 4-6; 31-7 at 1-2).

3 **III. Applicable Law**

4 Federal Rule of Civil Procedure 4(e) states that an individual “may be served in
5 a judicial district of the United States by . . . following state law for serving a summons
6 in an action brought in courts of general jurisdiction in the state where the district court
7 is located or where service is made.” Fed. R. Civ. P. 4(e)(1).

8 Hawaii Rule of Civil Procedure 4(e) states,

9 Whenever a statute or an order of court requires or permits service by
10 publication of a summons, or of a notice, or of an order in lieu of
11 summons, any publication pursuant thereto shall be made under the
12 circumstances and in the manner prescribed by the statute or order.

13 Haw. R. Civ. P. 4(e). Haw. Rev. Stat. § 634-35(b) states that,

14 Service of process upon any person who is subject to the jurisdiction of the
15 courts of this State, as provided in this section, may be made as provided
16 by section 634-36, if the person cannot be found in the State, with the
17 same force and effect as though summons had been personally served
18 within this State.

19 Haw. Rev. Stat. § 634-35(b). Under Haw. Rev. Stat. § 634-36(a),

20 service shall be made by service upon the defendant personally by any
21 person authorized to serve process in the place in which the defendant may
22 be found or appointed by the court for the purpose, or sent by certified,
23 registered, or express mail, postage prepaid, with return receipt requested,
24 by the plaintiff or the plaintiff’s attorney to the defendant.

25 Haw. Rev. Stat. § 634-36(a). Under Haw. Rev. Stat. § 634-36(b), the Hawaii state
26 statute proscribing the rules for service by publication,

27 If the defendant cannot be found to serve or mail the summons and the
28 facts shall appear by affidavit or otherwise to the satisfaction of the court,
it may order that service be made by publication of summons in at least
one newspaper published in the State and having a general circulation in
the circuit in which the action has been instituted, in such manner and for
such time as the court may order, but not less than once each week in four
successive weeks, the last publication to be not less than twenty-one days
prior to the return date stated therein unless a different time is prescribed
by order of the court.

Haw. Rev. Stat. § 634-36(b). The Supreme Court of Hawaii stated that the service by
publication statute “sets forth three methods of service on defendants not found within

1 [the State of Hawaii]: (1) personal service; (2) service by mail; or (3) failing the first
2 two, service by publication.” *Eto v. Muranaka*, 57 P.3d 413, 420 (Haw. 2002); *see also*
3 *Shin v. McLaughlin*, 967 P.2d 1059, 1065 (Haw. 1998) (stating that the plaintiff “could
4 have served [the defendant] in person, by mail, or failing that, by publication.”) (citing
5 Haw. Rev. Stat. § 634-36); *Kukui Gardens Corp. v. Holco Capital Group, Inc.*, 664 F.
6 Supp.2d 1103, 1117 (D. Haw. 2008) (“Under Hawaii law, a defendant may be served
7 by publication once the Plaintiff has made a sufficient showing of a diligent, but
8 unfruitful effort to locate the defendant”).

9 For service by publication to comport with the requirements of due process, the
10 notice provided by publication must be “reasonably calculated, under all the
11 circumstances, to apprise interested parties of the pendency of the action and afford
12 them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank &*
13 *Trust Co.*, 339 U.S. 306, 314 (1950). The Supreme Court of Hawaii stated that, “Under
14 Hawai‘i law, while ‘such notice is disfavored[,]’ due process is not violated when notice
15 is made by publication, when, ‘in appropriate circumstances, notice by publication
16 alone might be the only “reasonabl[y] possible or practicable” warning.’” *Eto*, 57 P.3d
17 at 423 (quoting *Klinger. v. Kepano*, 635 P.2d 938, 942 (Haw. 1981); *Mullane*, 339 U.S.
18 at 317). Service by publication in the State of Hawaii “does not offend due process
19 requirements.” *Eto*, 57 P.3d at 423.

20 In *Mullane*, the Supreme Court described the limitations of service by
21 publication:

22 It would be idle to pretend that publication alone as prescribed here, is a
23 reliable means of acquainting interested parties of the fact that their rights
24 are before the courts. It is not an accident that the greater number of cases
25 reaching this Court on the question of adequacy of notice have been
26 concerned with actions founded on process constructively served through
27 local newspapers. Chance alone brings to the attention of even a local
resident an advertisement in small type inserted in the back pages of a
newspaper, and if he makes his home outside the area of the newspaper’s
normal circulation the odds that the information will never reach him are
large indeed. . . .

28 *Mullane*, 339 U.S. at 315. However, the Supreme Court concluded that “in the case of

1 persons missing or unknown, employment of an indirect and even a probably futile
2 means of notification is all that the situation permits and creates no constitutional bar
3 to a final decree foreclosing their rights.” *Id.* at 317.

4 **IV. Analysis**

5 In this case, the Court follows Hawaii state law setting the requirements for
6 service by publication. *See* Fed. R. Civ. P. 4(e)(1). Under Hawaii state law, service by
7 publication as to Defendants LBC Inc., Kama Aina Bail Bonds, Inc. and Leland B.
8 Chapman is permitted if those Defendants “cannot be found to serve or mail the
9 summons and the facts shall appear by affidavit or otherwise to the satisfaction of the
10 court[.]” Haw. Rev. Stat. § 634-36(b). In a declaration submitted in support of
11 Plaintiffs’ Ex Parte Motion for Alternative Service of Summons, counsel for Plaintiffs
12 Donald A. Green states that Plaintiffs have obtained a current physical address and P.O.
13 Box for Defendant Kama Aina Bail Bonds, Inc. from the Hawaii Department of
14 Commerce & Consumer Affairs – including that its agent for service of process is listed
15 as “Leland Chapman[.]” (ECF No. 31-2 at 2-3; Green Decl. at ¶ 6). Donald A. Green
16 states that Plaintiffs have obtained current address information for Defendant Leland
17 B. Chapman because Defendant Chapman is listed under the ‘Contact Us’ page of the
18 Kama Aina Bail Bonds, Inc. website. *Id.* Donald A. Green states that Plaintiffs have
19 obtained a P.O. Box for Defendant LBC, Inc. from the Hawaii Department of
20 Commerce & Consumer Affairs – including that its agent for service of process is listed
21 as “Leland Chapman[.]” (ECF No. 31-2 at 3; Green Decl. at ¶ 7).

22 Donald A. Green states that he mailed Federal Rule of Civil Procedure 4(d)
23 waivers of service of summons forms to Defendants LBC Inc., Kama Aina Bail Bonds,
24 Inc. and Leland B. Chapman, including two copies of the waiver form, a copy of the
25 complaint, and a pre-paid envelope for returning the form in accordance with Rule
26 4(d)(1), on December 12, 2016. (ECF No. 31-2 at 3; Green Decl. at ¶ 8). Donald A.
27 Green states that the waiver packages were successfully delivered on December 24,
28 2016, and to date none of the packages have been returned executed. (ECF No. 31-2

1 at 3; Green Decl. at ¶¶ 9-10).

2 Donald A. Green states that on February 2, 2017, after Plaintiffs had filed the
3 First Amended Complaint, he sent Federal Rule of Civil Procedure 4(d) waivers of
4 service of summons forms to a process server to effect personal service on Defendants
5 LBC Inc., Kama Aina Bail Bonds, Inc. and Leland B. Chapman. (ECF No. 31-2 at 3-4;
6 Green Decl. at ¶¶ 11-12). Donald A. Green states that his process server was “unable
7 to provide service on a P.O. Box” and instead the process server ran a “skip trace of
8 Leland Chapman” that “yielded a home address for Leland Chapman[.]” (ECF No. 31-
9 2 at 4; Green Decl. at ¶¶ 14-15). Donald A. Green states that “[t]he accuracy of this
10 address for Leland Chapman was confirmed” on March 1, 2017, when the process
11 server attempted to serve Leland B. Chapman at the address and spoke with an
12 individual who acknowledged that Leland B. Chapman is “here and there” at the
13 address. (ECF No. 31-2 at 4-5; Green Decl. at ¶ 15). In the declaration, Donald A.
14 Green lists approximately fourteen attempts by the process server to personally serve
15 Defendants LBC Inc., Kama Aina Bail Bonds, Inc. and Leland B. Chapman at the
16 physical address listed for Defendant Kama Aina Bail Bonds, Inc. and the physical
17 address for Leland B. Chapman obtained from the skip trace. (ECF No. 31-2 at 4-6).

18 The Court concludes that Plaintiffs have sufficiently demonstrated that
19 Defendants LBC Inc., Kama Aina Bail Bonds, Inc. and Leland B. Chapman “cannot be
20 found to serve or mail the summons and the facts shall appear by affidavit or otherwise
21 to the satisfaction of the court[.]” Haw. Rev. Stat. § 634-36. In their Ex Parte
22 Application, Plaintiffs have demonstrated sufficient “diligence in locating Defendant[s
23 LBC Inc., Kama Aina Bail Bonds, Inc. and Leland B. Chapman] before being allowed
24 to serve by publication[.]” *Eto*, 57 P.3d at 423.

25 **V. Conclusion**

26 IT IS HEREBY ORDERED that Plaintiffs’ Ex Parte Motion for Alternative
27 Service of Summons (ECF No. 31) is GRANTED. Plaintiffs shall be permitted to serve
28 the summons on Defendants LBC Inc., Kama Aina Bail Bonds, Inc. and Leland B.

1 Chapman by certified mail, return receipt requested, and service by publication.

2 Service by publication as to Defendants LBC Inc., Kama Aina Bail Bonds, Inc.
3 and Leland B. Chapman must be completed in the following newspaper of general
4 circulation in the state of Hawaii: West Hawaii Today; 75-5580 Kuakini Highway;
5 Kailua-Kona, HI 967645; Legal Advertising: (808) 930-8650. Pursuant to Haw. Rev.
6 Stat. § 634-36, publication of the summons must be made once each week in four
7 successive weeks.

8 IT IS FURTHER ORDERED that Plaintiffs shall have **ninety (90) days** from the
9 date of this order to serve and file proof of service of summons of the complaint on the
10 remaining defendants to be served.

11 DATED: May 4, 2017

12 
13 **WILLIAM Q. HAYES**
14 United States District Judge

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