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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 SOPHIA NORIEGA,

12 Plaintiff,

13 v.

14 SMA MEDICAL, INC.; MJG
15 NETWORK, LLC; MANUEL PALMA;
16 and DOES 1 to 10, inclusive,

17 Defendants.

Case No.: 24-CV-989 JLS (DEB)

**ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO SERVE
PROCESS OUTSIDE 90-DAY
PERIOD**

(ECF No. 19)

18 On October 24, 2024, the Court ordered Plaintiff Sophia Noriega ("Plaintiff") to
19 show cause as to why Defendants MJG Network, LLC ("MJG") and Manuel Palma ("Mr.
20 Palma") should not be dismissed from the case for failure to serve ("OSC," ECF No. 17).
21 Specifically, the Court stated it would dismiss claims against Defendants MJG and Mr.
22 Palma within thirty (30) days unless Plaintiff filed either (1) proof that service of the
23 summons and Complaint was timely effectuated; or (2) a declaration under penalty of
24 perjury showing good cause for failure to timely effect service upon MJG and Mr. Palma
25 accompanied by a motion for leave to serve process outside the 90-day period. OSC at 1–2.

26 On November 19, 2024, the Court received Plaintiff's Motion for Leave to Serve
27 Process Outside the 90-Day Period ("Mot.," ECF No. 19), as well as counsel for Plaintiff,
28 Mazen Khatib's ("Mr. Khatib"), Declaration ("Khatib Decl.," ECF No. 19-1). The Court

1 also received an Affidavit of Service demonstrating service on Defendant MJG. *See* ECF
2 No. 18.

3 Mr. Khatib represents in his Declaration the following. First, he asserts Defendant
4 MJG has now been served. Khatib Decl. ¶ 3. He also explains when Plaintiff filed this
5 matter, she did not know whether Mr. Palma still worked for and performed professional
6 activities for SMA Medical, Inc. (“SMA”), nor did she know Mr. Palma’s whereabouts,
7 the nature of MJG’s relationship with SMA, or MJG’s direct involvement in the unlawful
8 actions taken against Plaintiff. *Id.* ¶ 4. Plaintiff was only aware that MJG purportedly
9 employed Mr. Palma, and Plaintiff intended to promptly take discovery as to all these
10 issues and serve MJG and Mr. Palma once it discovered MJG’s role in the events specified
11 in the Complaint and upon learning Mr. Palma’s address. *Id.* Mr. Khatib states SMA
12 removed the matter on June 5, 2024, and the removal papers included a declaration from
13 Mr. Palma indicating he lived in Mexico. *Id.* ¶ 5. In her Motion, Plaintiff indicates this
14 caused her to “reasonably believe that Rule 4(m) did not apply to Mr. Palma and that
15 Plaintiff instead may have to make efforts to serve Mr. Palma through internationally
16 agreed means.” Mot. at 2 (citing Fed. R. Civ. Proc. 4(f)).

17 Mr. Khatib then represents that subsequently, on September 4, 2024, SMA issued
18 disclosures specifying a business address for Mr. Palma, “the Doctor’s office and
19 laboratory located at 2061 Ross Ave., El Centro, CA 92243.” Khatib Decl. ¶ 6. During
20 September and October, Plaintiff made six attempts to personally serve Mr. Palma at that
21 address, including two instances where the process server conducted a stakeout, to no avail.
22 *Id.* ¶ 7. On November 18, 2024, the process server attempted to complete substitute service
23 upon Mr. Palma at this address and was prevented from doing so by Dr. Theodore Affue,
24 who the process server described as “infuriated” at her. *Id.*

25 In reviewing SMA’s document production, Mr. Khatib asserts Plaintiff discovered a
26 residential address where Mr. Palma indicated he lived in 2022, and diligently made efforts
27 to serve Mr. Palma at this address, but the efforts were unsuccessful as the process server
28 received no response at this address despite three attempts in early November of 2024. *Id.*

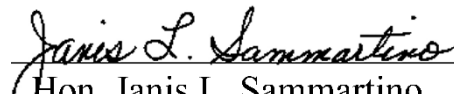
1 ¶ 8. Based on the above, Mr. Khatib indicates it appears possible, if not likely, that Mr.
2 Palma was engaged in deliberate efforts to evade service. *Id.* ¶ 9.

3 Under the circumstances, including Plaintiff’s initial lack of information regarding
4 both MJG’s involvement and Mr. Palma’s whereabouts, Plaintiff’s subsequent service of
5 MJG, and Plaintiff’s good faith efforts to serve Mr. Palma and allegations of potential
6 evasion of service, the Court finds good cause exists for Plaintiff’s delay in serving
7 Defendants MJG and Mr. Palma. Accordingly, the Court **GRANTS** Plaintiff’s Motion for
8 Leave to Serve Process Outside the 90-Day Period (ECF No. 19). As indicated above,
9 Defendant MJG has already been served. With respect to Mr. Palma, who does not appear
10 to have yet been served, the Court finds that additional time is warranted based on
11 Plaintiff’s good faith efforts. *See Cadles of W. Virginia, LLC v. Alvarez*, No. 20-CV-2534
12 TWR (WVG), 2021 WL 2156187 (S.D. Cal. May 27, 2021) (granting additional time to
13 serve where the plaintiff claimed it tried to serve the remaining defendants many times to
14 no avail, and alleged defendants evaded service).

15 As Plaintiff does not specify the additional time she requests to do so, the Court finds
16 Plaintiff **will have thirty (30) days** from the date of this Order to complete service on Mr.
17 Palma.

18 **IT IS SO ORDERED.**

19 Dated: November 25, 2024


20 Hon. Janis L. Sammartino
21 United States District Judge
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