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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

NATIONWIDE LIFE INSURANCE CO., *et al.*,)
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 Plaintiffs,)
)
 vs.)
)
 CARL MILLBERG, *et al.*,)
)
 Defendants.)
 _____)

Case No. 2:14-cv-01586-APG-CWH
ORDER

This matter is before the Court on Plaintiffs Nationwide Life Insurance Co. and Nationwide Life Annuity Insurance Co.’s (“plaintiffs”) Second Motion for Service by Publication (doc. # 44), filed March 19, 2015.

BACKGROUND

Plaintiffs renewed motion seeks an order permitting service by publication of Defendant Melvin Williams (“defendant”) under Federal Rule of Civil Procedure (“FRCP”) 4(e)(1) and Nevada Rule of Civil Procedure (“NRCP”) 4(e)(1)(i). Plaintiffs represent they have made “several diligent efforts to locate and serve” defendant. Doc. # 44-1 at 4. These efforts include hiring a private investigator, along with a third-party process server, to ascertain defendant’s address and attempt service.

DISCUSSION

FRCP 4(e)(1) provides that service may be accomplished on an individual, other than a minor, by “following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located and where service is made.” In Nevada, Rule 4 of the NRCP governs

1 service of parties under state law. It generally requires personal service of the summons and complaint upon
2 individual defendants. Alternatively, service may be accomplished by leaving the summons and complaint
3 at the defendant’s dwelling house or usual place of abode with a person of suitable age and discretion
4 residing therein, or by delivering the summons and complaint to an agent authorized to receive service.
5 Nev. R. Civ. P. 4(d)(6). When personal service proves impossible, NRCP 4(e)(1)(i) provides that a party
6 may move for service by publication when the opposing party “resides out of the state, or has departed from
7 the state, or cannot, after due diligence be found within the state, or conceals himself to avoid the service
8 of summons.”

9 A party seeking service by publication must seek leave of court by filing an affidavit demonstrating
10 due diligence in attempting to personally serve the defendant. In evaluating due diligence, courts look to
11 several factors. See Price v. Dunn, 787 P.2d 785, 786-87 (Nev. 1990); Abreu v. Gilmer, 985 P.2d 746, 747
12 (Nev. 1999); McNair v. Rivera, 874 P.2d 1240, 1241 (Nev. 1994). There is no “objective, formulaic
13 standard” for determining due diligence, but the Nevada Supreme Court has characterized the analysis as
14 one measured by the quality of service efforts. Abreu, 985 P.2d at 749 (“Despite our previous decisions on
15 this issue, we note that there is no objective, formulaic standard for determining what is, or what is not, due
16 diligence. The due diligence requirement is not quantifiable by reference to the number of service attempts
17 or inquiries into public records. Instead, due diligence is measured by the qualitative efforts of a specific
18 plaintiff seeking to locate and serve a specific defendant.”).

19 The Court has reviewed the record and finds that plaintiffs have demonstrated due diligence in their
20 efforts to serve defendant. The retained private investigator made diligent efforts to verify defendant’s
21 residence and to locate defendant for service. The retained third-party server also displayed diligent efforts
22 to serve defendant by speaking with a resident located near defendant’s last known address, and making
23 multiple attempts at service. Consequently, the request to serve by publication will be granted.

24 **CONCLUSION AND ORDER**

25 Accordingly, **IT IS HEREBY ORDERED** that plaintiffs’ Second Motion for Service by Publication
26 (doc. # 44) is **granted**.

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