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	UNITED STATES DISTRICT COURT	
8	DISTRICT OF NEVADA	
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10	LAWRENCE D. EVANS,) Core No. 2.15 or 01885 ADC NIV
11	Plaintiff,) Case No. 2:15-cv-01885-APG-NJK
12	vs.) ORDER GRANTING MOTION TO) SERVE BY PUBLICATION
13	BOARD OF PRISON COMMISSIONERS, et al.,) (Docket No. 13)
14 15	Defendants.)
16	Pending before the Court is Plaintiff's motion for leave to serve Defendant Arthur Lindsey by	
17	publication. Docket No. 13. The Court finds the motion properly resolved without oral argument. See	
18	Local Rule 78-2. For the reasons discussed below, the motion is hereby GRANTED .	
19	Service by publication implicates a defendant's fundamental due process rights. See, e.g.,	
20	Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314-15 (1950); Price v. Dunn, 787 P.2d	
21	785, 787 (Nev. 1990). As a result, service by publication is generally disfavored. See, e.g., Trustees of	
22	the Nev. Resort AssocInt'l Alliance of Theatrical Stage Employees & Moving Picture Machine	
23	Operators v. Alumifax, Inc., 2013 U.S. Dist. Lexis. 106456, *2 (D. Nev. July 29, 2013).	
24	Federal Rule of Civil Procedure 4(e)(1) provides for service "pursuant to the law of the state in	
25	which the district court is located, or in which service is effected." Under Nevada Rule of Civil	
26	Procedure ("NRCP") 4, parties are required to personally serve summons and the complaint upon	
27	defendants. When personal service proves impossible, however, NRCP 4(e)(1)(i) provides that a party	
28	may file a motion for service by publication when the opposing party "resides out of the state, or has	

departed from the state, or cannot, after due diligence be found within the state, or by concealment seeks
 to avoid the service of summons." When service of the summons is made by publication, the summons
 shall, in addition to any special statutory requirements, also contain a brief statement of the object of the
 action. N.R.C.P. 4(b).

A party moving for service by publication must seek leave of court by filing an affidavit
demonstrating he diligently attempted to serve the defendant. There are several factors courts consider
to evaluate a party's due diligence, including the number of attempts made to serve the defendant at his
residence and other methods of locating defendants, such as consulting public directories and family
members. *See Price*, 787 P.2d at 786-87; *Abreu v. Gilmer*, 985 P.2d 746, 747 (Nev. 1999); *McNair v. Rivera*, 874 P.2d 1240, 1241 (Nev. 1994).

Here, the Court finds that Plaintiff has diligently attempted to locate Defendant to enable service. *See, e.g.*, Docket No. 13 at 2, 6-9. For example, Plaintiff hired a process server who has attempted to serve Defendant on numerous occasions. The process server attempted to serve Defendant at work, conducted checks to determine his address, and attempted to serve him at more than one address several times. Moreover, the process server spoke with Defendant's sister, who would not reveal his whereabouts, but took a message for him. Defendant telephoned the process server, and stated that he will not accept service. The Court will therefore permit Plaintiff to serve Defendant by publication.

18 Accordingly, the Court **GRANTS** the motion for service by publication. Plaintiff shall comply
19 with the requirements of Nevada Rule of Civil Procedure 4 and shall:

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(a) Serve Defendant Arthur Lindssey by publication in a newspaper of general circulation in the State of Nevada on a weekly basis for a period of four weeks.

- (b) After publication is complete, Plaintiff shall file an Affidavit of Publication from the Nevada newspaper.
- 24 IT IS SO ORDERED.
 - DATED: January 5, 2016.

NANCY J. KOPPE

United States Magistrate Judge

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