

1 **II. Motion for Leave to Serve by Publication**

2 SFR seeks leave to serve Henry Diaz and Corina Diaz by publication. Service by publication
3 implicates a defendant’s fundamental due process rights. *See, e.g., Mullane v. Central Hanover Bank*
4 *& Trust Co.*, 339 U.S. 306, 314-15 (1950); *Price v. Dunn*, 787 P.2d 785, 787 (Nev. 1990). As a result,
5 service by publication is generally disfavored. *See, e.g., Trustees of the Nev. Resort Assoc.–Int’l*
6 *Alliance of Theatrical Stage Employees & Moving Picture Machine Operators v. Alumifax, Inc.*, 2013
7 U.S. Dist. Lexis. 106456, *2 (D. Nev. July 29, 2013).

8 The Federal Rules of Civil Procedure provide for service pursuant to the law of the state in which
9 the district court is located, or in which service is made. *See, e.g., Fed. R. Civ. P. 4(e)(1)*. Pursuant to
10 Rule 4 of the Nevada Rules of Civil Procedure, parties are generally required to personally serve
11 summons and the complaint upon defendants. Nevada law also permits a party to obtain leave for
12 service by publication when the opposing party, *inter alia* “cannot, after due diligence be found within
13 the state, or by concealment seeks to avoid the service of summons.” Nev. R. Civ. P. 4(e)(1). There are
14 several factors courts consider to evaluate a party’s due diligence, including the number of attempts
15 made to serve the defendant at his residence and other methods of locating defendants, such as
16 consulting public directories and family members. *See Price*, 787 P.2d at 786-87; *Abreu v. Gilmer*, 985
17 P.2d 746, 747 (Nev. 1999); *McNair v. Rivera*, 874 P.2d 1240, 1241 (Nev. 1994).

18 In this case, SFR has attempted to determine the whereabouts of Henry Diaz and Corina Diaz
19 through, *inter alia*, public records searches, local and state directories, a national search engine, the
20 Postal Service, and motor vehicle records. *See* Docket No. 46-1. SFR also attempted to reach Henry
21 Diaz and Corina Diaz by telephone. *See id.* SFR has also attempted to serve Henry Diaz and Corina
22 Diaz in both California and Nevada. *See id.* The Court finds these efforts sufficient to establish
23 diligence, and permits service by publication.

24 **III. Conclusion**

25 Accordingly, the Court **GRANTS** the motions to lift the stay, to extend the deadline to effectuate
26 service, and for service by publication. The stay in this case is lifted for the sole purpose of serving
27 Henry Diaz and Corina Diaz. The deadline to serve Henry Diaz and Corina Diaz by publication is
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1 extended by 60 days. SFR shall comply with the requirements of Nevada Rule of Civil Procedure 4 and
2 shall:

- 3 (a) Serve Henry Diaz and Corina Diaz by publication in a newspaper of general
4 circulation in the State of Nevada on a weekly basis for a period of four weeks.
- 5 (b) Serve Henry Diaz and Corina Diaz by publication in a newspaper of general
6 circulation in the State of California on a weekly basis for a period of four weeks.
- 7 (c) After publication is complete, SFR shall file an Affidavit of Publication.

8 IT IS SO ORDERED.

9 DATED: September 13, 2016

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13 NANCY J. KOPPE
14 United States Magistrate Judge
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