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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

MOSES HEREDIA, and
HEREDIA BOXING
MANAGEMENT, INC.,

Plaintiffs,

v.

MTK GLOBAL SPORTS
MANAGEMENT, LLC;
GOLDEN BOY PRODUCTIONS,
INC.;
VGC, LLP;
PAUL D. GIBSON;
DANIEL KINAHAN;
GOLDEN BOY PROMOTIONS,
INC.; and
MTK GLOBAL USA, LLC,

Defendants.

Case No. 5:20-cv-02618-JWH-KKx

**ORDER GRANTING MOTIONS
TO SET ASIDE ENTRIES OF
DEFAULT [ECF Nos. 71 & 73]**

1 Before the Court are two motions:

- 2 • the motion of Defendant MTK Global Sports Management, LLC to set
- 3 aside the entry of default against it;¹ and
- 4 • the motion of Defendant Daniel Kinahan likewise to set aside the entry of
- 5 default against it.²

6 The Court finds these matters appropriate for resolution without a hearing. *See*
 7 Fed. R. Civ. P. 78; L.R. 7-15. After considering the papers filed in support and in
 8 opposition,³ the Court orders that both Motions are **GRANTED**, as set forth
 9 herein.

10 I. BACKGROUND⁴

11 This case involves a dispute between a boxing manager and several
 12 entities and individuals who are accused of interfering with the manager's
 13 relationships with his fighters.⁵ Because the Court need rule on only the narrow
 14 issue of the propriety of MTK Global and Kinahan remaining in default, the
 15 Court need not recount the factual allegations, with which the parties are now
 16 quite familiar.⁶

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 18 ¹ Def.'s Mot. to Set Aside Entry of Default (the "MTK Motion") [ECF
 No. 71].

19 ² Def.'s Mot. to Set Aside Entry of Default (the "Kinahan Motion") [ECF
 No. 73].

20 ³ The Court considered the following papers: (1) the MTK Motion (and its
 21 attachments); (2) Pl.'s Opp'n to the MTK Motion (the "MTK Opposition")
 (including its attachments) [ECF No. 76]; (3) Def.'s Reply in Supp. of the MTK
 22 Motion (the "MTK Reply") [ECF No. 79]; (4) the Kinahan Motion (and its
 23 attachments); (5) Pl.'s Opp'n to the Kinahan Motion (the "Kinahan
 Opposition") (including its attachments) [ECF No. 80]; and (6) Def.'s Reply in
 Supp. of the Kinahan Motion (the "Kinahan Reply") [ECF No. 81].

24 ⁴ Kinahan filed a number of evidentiary objections to the Kinahan
 25 Opposition. *See* Def.'s Objs. (the "Objections") [ECF No. 82]. The Court
 does not rely on the evidence to which Kinahan objects. Accordingly, the
 26 objections are **OVERRULED** as moot.

27 ⁵ *See generally* Second Am. Compl. (the "Second Amended Complaint")
 [ECF No. 43].

28 ⁶ *See* Order Re: Mots. to Dismiss & Mot. to Compel Arbitration [ECF
 No. 83].

1 appropriate only in extreme circumstances; a case should, whenever possible, be
2 decided on the merits.” *Id.* (quotation and citations omitted).

3 III. DISCUSSION

4 A. Proper Service

5 MTK Global and Kinahan both argue that Heredia failed to serve them
6 properly. “It is axiomatic that a federal court does not have jurisdiction over a
7 defendant if the defendant is not properly served.” *Gaboratory, Inc. v.*
8 *Gaboratory Int’l, Inc.*, 2008 WL 11406072, at *2 (C.D. Cal. Nov. 10, 2008)
9 (citing cases). “[A]ny default entered following defective service of process
10 *must be vacated.*” *Id.* (emphasis added) (citing *Peralta v. Heights Med. Ctr., Inc.*,
11 485 U.S. 80, 84-86 (1988)). Once a defendant asserts that it was not served
12 properly, “plaintiffs bear the burden of establishing that it was valid under
13 Rule 4.” *Id.* (citing *Brockmeyer v. May*, 383 F.3d 798, 801 (9th Cir. 2004)).
14 Because Heredia fails to satisfy that burden with respect to either MTK Global
15 or Kinahan, the Court discusses only the issue of proper service.

16 1. The MTK Motion

17 MTK Global is located in Dubai, United Arab Emirates.⁹ “The UAE is
18 not a party to the Hague Convention and the parties agree that no other
19 internationally agreed upon means of service exist between the United States
20 and the UAE.” *Smallwood v. Allied Pickfords, LLC*, 2009 WL 3247180, at *12
21 (S.D. Cal. Sept. 29, 2009), *on reconsideration in part*, 2010 WL 11508273
22 (S.D. Cal. Feb. 5, 2010), and *aff’d sub nom. Smallwood v. Allied Van Lines, Inc.*,
23 660 F.3d 1115 (9th Cir. 2011).

24 The Federal Rules of Civil Procedure provide that a foreign corporation,
25 partnership, or association must be served “in any manner prescribed by
26 Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C)(i).”

27 _____
28 ⁹ See Decl. of Quentin Richard Reynolds in Supp. of the MTK Motion (the
“Reynolds Declaration”) [ECF No. 71-2] ¶ 2.

1 Fed. R. Civ. P. 4(h)(2). When no internationally agreed upon means of service
2 exists—as is the case here—Rule 4(f)(2) applies. *See* Fed. R. Civ. P. 4(f)(2).

3 Under Rule 4(f)(2), the method of service must be reasonably calculated to give
4 notice:

5 (A) as prescribed by the foreign country’s law for service in that
6 country in an action in its courts of general jurisdiction;

7 (B) as the foreign authority directs in response to a letter rogatory or
8 letter of request; or

9 (C) unless prohibited by the foreign country’s law, by . . .

10 (ii) using any form of mail that the clerk addresses and sends
11 to the individual and that requires a signed receipt

12 *Id.*

13 Heredia contends that it served MTK Global properly.¹⁰ Indeed, Heredia
14 avers that he served MTK Global in three different ways, each of which
15 supposedly suffices under UAE law.¹¹ However, based upon Heredia’s own
16 description of UAE law—provided through his process server, who is a UAE
17 lawyer—none of those attempts at service suffices.

18 First, Heredia attempted to serve MTK Global via publication.¹²

19 According to Heredia’s process server, service through publication is permitted
20 in the UAE only if the party “has no domicile, residence, place of business, fax,
21 email or a postal address”¹³ Here, MTK Global has a place of business,
22 email, and postal address in the UAE.¹⁴

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25 ¹⁰ MTK Opposition 2:11-12.

26 ¹¹ Decl. of Jouslin Chibli Khairallah (the “Khairallah Declaration”) [ECF
26 No. 62] ¶¶ 6-8.

27 ¹² *Id.* at ¶ 7.

28 ¹³ *Id.*

¹⁴ *See* Reynolds Declaration ¶ 6.

1 Second, Heredia claims to have served MTK Global via courier.¹⁵
 2 Quentin Richard Reynolds, MTK Global’s Head of Global Operations, declared
 3 under oath that “MTK global never received such documents at its registered
 4 office. Based on our investigation, it appears that the documents were delivered
 5 to the MTK Global DMCC branch office, which (although it shares the MTK
 6 name) is not legally connected to MTK Global.”¹⁶ Heredia provides no
 7 substantive rebuttal to Reynolds’ claim that service was made to the wrong
 8 address; Heredia simply says that he “does not concede” the issue.¹⁷ In the
 9 absence of any meaningful opposition, the Reynolds Declaration is dispositive.

10 Third, Heredia claims to have served MTK Global in October 2021 via
 11 email.¹⁸ Heredia’s process server did not, however, attach any October 2021
 12 emails as exhibits to her declaration.¹⁹ Instead, she attached as exhibits two
 13 emails that appear to have been sent in March 2021—five months before the
 14 summons was issued.²⁰ Reynolds, for his part, has been unable to locate any
 15 emails transmitting the summons.²¹ In his MTK Opposition, Heredia attaches
 16 copies of emails that were purportedly transmitted in October 2021,²² but he
 17 fails to authenticate them, so the Court does not consider them. *See*
 18 Fed. R. Evid. 901 & 902.

19 Heredia argues that the sworn declaration of his process server, a UAE
 20 lawyer, “stating that she emailed the summons on three different dates, should
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23 ¹⁵ Khairallah Declaration ¶ 8.

24 ¹⁶ Reynolds Declaration ¶ 7.

25 ¹⁷ MTK Opposition 3:10.

26 ¹⁸ Khairallah Declaration ¶ 8.

27 ¹⁹ *See* Khairallah Declaration.

28 ²⁰ *See* Khairallah Declaration, Ex. A [ECF No. 62-1].

²¹ Reynolds Declaration ¶ 8.

²² *See* MTK Opposition, Exs. B, C, & D.

1 be conclusive proof that those emails actually were sent.”²³ The Court is not
2 convinced. Heredia had two opportunities to submit *proof* that he caused those
3 emails to be transmitted in a timely manner. On both occasions, he failed to do
4 so. In light of that failure, and considering the conflicting sworn declarations of
5 Reynolds and Khairallah, the Court finds that Heredia does not satisfy his
6 burden of proving that he served MTK properly. Accordingly, the MTK
7 Motion is **GRANTED**.

8 2. The Kinahan Motion

9 Heredia does not contest that Kinahan is located in the UAE.
10 Accordingly, service is governed by Rule 4(f). *See* Fed. R. Civ. P. 4(f). Heredia
11 claims to have served Kinahan properly via publication, courier, and email.²⁴
12 However, Heredia’s attempts to serve Kinahan fail for essentially the same
13 reasons that his attempts to serve MTK Global fail.

14 First, based upon Heredia’s process server’s description of UAE law,
15 Heredia’s attempt to serve Kinahan via publication fails. According to the
16 process server, service via publication is not allowed when the defendant has a
17 domicile or residence in the UAE.²⁵ While it is not clear that Kinahan does have
18 a domicile or residence in the UAE, Kinahan does purport to be a UAE
19 resident.²⁶ Because the burden is on Heredia to prove that service was proper,
20 *see Brockmeyer* 383 F.3d at 801, and because Heredia makes no attempt to prove
21 that Kinahan lacks a UAE residence or domicile, the Court finds that Heredia
22 has failed to establish that service via publication was proper.

23 ²³ MTK Opposition 4:13-15.

24 ²⁴ Kinahan Opposition 2:25-3:1.

25 ²⁵ Khairallah Declaration ¶ 7.

26 ²⁶ Decl. of Daniel Kinahan in Supp. of the Kinahan Motion (the “Kinahan
28 Declaration”) [ECF No. 73-1] ¶ 2.

1 Second, Heredia avers that he served Kinahan via courier service to a
 2 UAE P.O. Box.²⁷ Kinahan declares that he has never used the P.O. Box at issue,
 3 nor has that mail receptacle ever been associated with him.²⁸ In the Kinahan
 4 Opposition, Heredia provides no evidence that the P.O. Box was associated with
 5 Kinahan beyond quoting his process server, who refers to the P.O. Box as
 6 Kinahan's "last known address."²⁹ Heredia fails to offer any support for his
 7 process server's conclusory statement.

8 Finally, Heredia's argument that he served Kinahan via email fails for the
 9 same reason that it fails with respect to MTK: Heredia's process server
 10 declares that she served Kinahan in October 2021, but the emails that she
 11 attaches to her declaration are from March 2021.³⁰ The process server
 12 submitted a separate declaration in support of the Kinahan Opposition, but, in
 13 that declaration, she does not mention any email.³¹

14 The Court finds that Heredia has failed to meet his burden of showing
 15 that Kinahan was served properly. Accordingly, the Kinahan Motion is
 16 **GRANTED.**

17 **B. The Amended Complaint**

18 "The filing of an amended complaint supersedes the original complaint,
 19 which is treated thereafter as non-existent." *Liberty Media Holdings, LLC v.*
 20 *Hawaii Members of Swarm of Nov. 15, 2010 to Jan. 27, 2011, Sharing Hash File*
 21 *AE340D0560129AFEE8D78CE07F2394C7B5BC9C05*, 2012 WL 1377003, at *1
 22 (D. Haw. Mar. 27, 2012), *report and recommendation adopted*, 2012 WL 1377000
 23 (D. Haw. Apr. 18, 2012) (quotation omitted). The Clerk entered default with

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 25 ²⁷ Kinahan Opposition 3:1.

26 ²⁸ Kinahan Declaration ¶ 4.

27 ²⁹ Kinahan Opposition 3:21.

28 ³⁰ Compare Khairallah Declaration ¶ 8 with Khairallah Declaration, Ex. A.

³¹ See Decl. of Jouslin Chibli Khairallah in Supp. of Kinahan Opposition
 [ECF No. 80-1].

1 respect to Heredia’s Second Amended Complaint. “Because [Heredia’s
2 Second Amended Complaint] no longer performs any function, a default based
3 on [that pleading] must also be rendered ineffectual and non-existent.”
4 *ThermoLife Int’l, LLC v. Sechel Holdings, Inc.*, 2015 WL 1521779, at *1 (D. Ariz.
5 Apr. 3, 2015). Thus, even if the instant MTK Motion and Kinahan Motions
6 lacked merit, the Clerk’s entries of default would still be set aside.

7 **IV. CONCLUSION**

8 For the foregoing reasons, the Court hereby **ORDERS** as follows:

- 9 1. The MTK Motion is **GRANTED**. The default entered against
10 MTK Global on February 2, 2022, is hereby **SET ASIDE**.
11 2. The Objections are **OVERRULED** as moot.
12 3. The Kinahan Motion is **GRANTED**. The default entered against
13 Kinahan on February 2, 2022, is hereby **SET ASIDE**.

14 **IT IS SO ORDERED.**

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16 Dated: May 10, 2022



17 John W. Holcomb
18 UNITED STATES DISTRICT JUDGE
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