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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 Merchants Bonding Company (Mutual), an
9 Iowa corporation,

No. CV 12-501-PHX-JAT

10 Plaintiff,

ORDER

11 v.

12 U.S. Prefab, Inc., an Arizona corporation;
13 and Harry O. Woody, an unmarried man,

14 Defendants.

15 Pending before the Court is Plaintiff's Motion for Court Approval to Serve Certain
16 Defendants by Publication (Doc. 9). The Court now rules on the Motion.

17 **I. BACKGROUND**

18 Plaintiff filed a Complaint in this Court on March 9, 2012, asserting breach of
19 contract and fraud claims against Defendants. Plaintiff now seeks an order allowing it to
20 serve Defendants by publication pursuant to Federal Rule of Civil Procedure 4(e)(1) and
21 Arizona Rule of Civil Procedure 4.1(n).

22 **II. LEGAL STANDARD AND ANALYSIS**

23 Federal Rule of Civil Procedure 4(e)(1) provides, in relevant part that, "[u]nless
24 federal law provides otherwise, an individual . . . may be served in a judicial district of
25 the United States by: (1) following state law for serving a summons in an action brought
26 in courts of general jurisdiction in the state where the district court is located or where
27 service is made" Fed.R.Civ.P. 4(e)(1).

28 Arizona Rule of Civil Procedure 4.1(n) provides that service by publication may

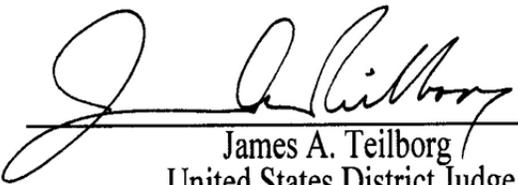
1 be permitted “[w]here the person to be served is one whose residence is unknown to the
2 party seeking service but whose last known address was within the state, or has avoided
3 service of process, and service by publication is the best means practicable under the
4 circumstances for providing notice of the institution of the action.” Ariz. R. Civ. P.
5 4.1(n). “The decision whether to pursue personal service or service by publication is that
6 of the plaintiff, not the court [and] [b]ecause the court does not preauthorize service by
7 publication, the determination whether publication constitutes adequate service is made
8 later in the case.” *Ritchie v. Salvatore Gatto Partners*, 222 P.3d 920, 923 n. 4 (Ariz. Ct.
9 App. 2010) (citing Ariz. R. Civ. P. 4.1(n) and *Roberts v. Robert*, 158 P.3d 899, 904 (Ariz.
10 Ct. App. 2007)). Because Plaintiff need not seek Court approval to effect service by
11 publication, Plaintiff’s motion for authorization of service by publication is denied.¹

12 **III. CONCLUSION**

13 Based on the foregoing,

14 **IT IS ORDERED** that Plaintiff’s Motion for Court Approval to Serve Certain
15 Defendants by Publication (Doc. 9) is denied as set forth herein.

16 Dated this 20th day of June, 2012.

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James A. Teilborg
United States District Judge

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¹ Once service by publication is completed, as authorized by Arizona Rule of Civil Procedure 4.1(n), and Plaintiff files (1) an affidavit showing the manner and dates of publication and mailing and the circumstances warranting the utilization of the procedure as authorized by 4.1(n) and (2) a printed copy of the publication(s), such affidavit will serve as prima facie evidence of compliance with 4.1(n). *See* Ariz. R. Civ. P. 4.1(n).