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United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CARRIE GOFRON, et al.,
Plaintiffs,
v.
PICSEL TECHNOLOGIES, INC., et al.,
Defendants.

No. C 09-04041 CW
ORDER CONCERNING
PLAINTIFFS'
AFFIDAVIT IN
SUPPORT OF
REQUEST FOR ORDER
PERMITTING
SERVICE ON
SECRETARY OF
STATE

Plaintiffs Carrie Gofron, et al., have represented that they intend to serve Defendant Picstel Technologies, Inc. (PTI) pursuant to California Corporations Code section 1702(a). This section permits service on a corporation through the California Secretary of State if "an agent for the purpose of service of process has resigned and has not been replaced." Cal. Corp. Code § 1702(a). For parties to avail themselves of this section, they must first obtain a court order authorizing such service, which will issue only if it is established, through an affidavit, "that process against a domestic corporation cannot be served with reasonable diligence" under several enumerated sections of the California Code of Civil Procedure. In this case, Plaintiffs need only make a

1 showing that they attempted service pursuant to California Code of
2 Civil Procedure sections 416.10(a) and (b); the other sections
3 listed in section 1702(a) either do not apply or have already been
4 addressed by Plaintiffs.

5 Pursuant to the Court's Order of October 29, 2010, Plaintiffs
6 filed a timely affidavit. Their affidavit establishes that they
7 attempted service, as provided under section 416.10(a), on the
8 person designated as agent for service of process before he
9 resigned. However, their affidavit does not address section
10 416.10(b), which provides that service on a corporation can be
11 effected by "delivering a copy of the summons and the
12 complaint . . . [t]o the president, chief executive officer, or
13 other head of the corporation, a vice president, a secretary or
14 assistant secretary, a treasurer or assistant treasurer, a
15 controller or chief financial officer, a general manager, or a
16 person authorized by the corporation to receive service of
17 process." Although PTI may have "closed its doors for business,"
18 PTI remains an active California corporation. Affidavit ¶ 2. The
19 affidavit does not establish that these officers cannot be served
20 with reasonable diligence.

21 Accordingly, Plaintiffs' request for an order permitting
22 service on PTI through the California Secretary of State is DENIED
23 without prejudice. Within four days of the date of this Order,
24 Plaintiffs shall file an affidavit that establishes that PTI cannot
25 be served with reasonable diligence under California Civil Code
26 section 416.10(b). In the alternative, they may decline to effect
27 service pursuant to California Corporations Code section 1702(a)

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1 and attempt to serve PTI in another fashion, so long as they serve
2 PTI by December 13, 2010, the deadline provided in the Court's
3 October 12, 2010 Order.

4 IT IS SO ORDERED.

5 Dated: November 19, 2010



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CLAUDIA WILKEN
United States District Judge

