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**\*E-FILED 11-18-2010\***

NOT FOR CITATION  
IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

JANET L. SAVAGE,

No. C10-04216 HRL

Plaintiff,

**ORDER DENYING WITHOUT  
PREJUDICE PLAINTIFF'S MOTION  
FOR AN ORDER ALLOWING SERVICE  
BY PUBLICATION**

v.

MTF RELOCATION, INC. dba BEST LOCAL  
RELOCATION, dba BEST WEEK  
RELOCATION, dba ADVANCED  
RELOCATION dba ASAP RELOCATION, dba  
MTF RELOCATION MOVING AND  
STORAGE,

[Re: Docket No. 14]

Defendants.

Plaintiff Janet Savage sues for alleged violations of the Carmack Amendment (49 U.S.C. § 14704), RICO violations, and fraud. Her claims stem from her relocation from California to Oklahoma. She claims that, after defendants packed up her things, they illegally inflated the original price estimate for the move and then kept her possessions when she could not pay the money demanded.

Plaintiff was given leave to proceed *in forma pauperis*. The initial summons was returned unexecuted because the business was unknown at the address provided. Several weeks ago, the Clerk's Office reissued the summons with a different address in Santa Clara, California, which plaintiff says she obtained from the business record on file with the California Secretary of State. Because service of that summons has not yet been effected, plaintiff now

1 moves for leave to serve defendants by publication.

2 Service upon an individual defendant may be effected in any judicial district of the  
3 United States pursuant to the law of the state in which the district court is located or in which  
4 service is effected. *See* FED. R. CIV. P. 4(e)(1). Service by publication is permitted under  
5 California law in certain circumstances:

6 (a) A summons may be served by publication if upon affidavit it  
7 appears to the satisfaction of the court in which the action is pending that  
8 the party to be served cannot with reasonable diligence be served in another  
manner specified in this article and that . . .

9 (1) A cause of action exists against the party upon whom service is  
to be made or he or she is a necessary or proper party to the action.

10 CAL. CODE CIV. PROC. § 415.50(a)(1).

11 Even assuming, without deciding, that plaintiff’s complaint states a viable claim for  
12 relief, the court does not find that service of publication is appropriate, at least at this juncture.  
13 “Because of due process concerns, service by publication must be allowed only as a last resort.”  
14 *Duarte v. Freeland*, No. C05-2780EMC, 2008 WL 683427 \*1 (N.D. Cal., Mar. 7, 2008)  
15 (internal quotations and citations omitted). Due process of law generally requires “notice,  
16 reasonably calculated, under all the circumstances, to appraise interested parties of pendency of  
17 the action and afford them an opportunity to present their objections.” *Mullane v. Central*  
18 *Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 94 L.Ed. 865 (1950). Although  
19 extraordinary efforts are not required, a plaintiff must make reasonably diligent efforts to locate  
20 a defendant. *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 798 n. 4, 103 S. Ct. 2706, 77  
21 L.Ed.2d 180 (1983). “The fact that a plaintiff has taken one or a few reasonable steps does not  
22 necessarily mean that ‘all myriad . . . avenues’ have been properly exhausted to warrant service  
23 by publication.” *Duarte*, 2008 WL 683427 at \*1 (quoting *Donel, Inc. v. Badalian*, 87  
24 Cal.App.3d 327, 333, 150 Cal.Rptr. 855 (1978)).

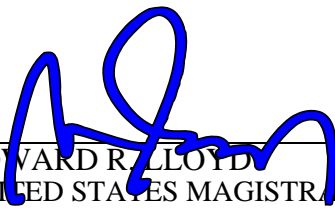
25 Here, there is no indication that service has been attempted at the new address provided  
26 by plaintiff. Plaintiff asserts that defendants cannot be served in any other manner. On the  
27 record presented, however, it is not apparent that she has made a reasonably diligent search  
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which would warrant the last-resort measure of service by publication. Accordingly, plaintiff's motion is denied without prejudice.

SO ORDERED.

Dated: November 18, 2010

  
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HOWARD R. LLOYD  
UNITED STATES MAGISTRATE JUDGE

**United States District Court**  
For the Northern District of California

1 5:10-cv-04216-HRL Notice mailed to:

2 Janet L. Savage  
3 P.O. Box 524  
4 Lawton, OK 73502-0524

5 Pro Se Plaintiff  
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