



1 The proof of service says that substitute service was made on a “co-tenant,” Valerie  
2 Levine, who is Duchacova’s daughter and Levine’s estranged wife. According to Ms. Levine,  
3 her mother does not speak, read, or write English and has lived in Belgium since 1983. Ms.  
4 Levine lists her mother’s address as: 10 A Rue Du Bois, Jumet, Charleroi, Belgium 6040.  
5 Further, Ms. Levine says that the address where service was attempted is a one-room guest  
6 house that she rents and lives in with her infant daughter. Duchacova, according to Ms.  
7 Levine, has never resided at the La Jolla address, nor has she ever received mail there.

8 Duchacova argues service at the La Jolla address was improper under both federal  
9 and California law. Additionally, she moves to dismiss the case for lack of personal  
10 jurisdiction.

11 **II. Legal Standard**

12 Rule 4(e) of the Federal Rules of Civil Procedure governs service on individual  
13 defendants. It provides:

14 an individual . . . may be served in a judicial district of the United States by . . . doing  
15 any of the following: (A) delivering a copy of the summons and of the complaint to the  
16 individual personally; (B) leaving a copy of each at the individual’s dwelling or usual  
17 place of abode with someone of suitable age and discretion who resides there; or (C)  
18 delivering a copy of each to an agent authorized by appointment or by law to receive  
19 service of process.

20 Fed. R. Civ. P. 4(e)(2). “Defendants must be served in accordance with [Rule 4], or there  
21 is no personal jurisdiction.” *Jackson v. Hayakawa*, 682 F.2d 1344, 1347 (9th Cir. 1982)  
22 (citation omitted). “Neither actual notice, nor simply naming the person in the caption of the  
23 complain, will subject defendants to personal jurisdiction if service was not made in  
24 substantial compliance with Rule 4.” *Id.*

25 Rule 4(e) also provides that an individual may be served by “following state law for  
26 serving a summons in an action brought in courts of general jurisdiction in a state where the  
27 district court is located or where service is made.” Fed. R. Civ. P. 4(e)(1). In California,  
28 substitute service on an individual defendant is governed by Cal. Code Civ. P. § 415.20(b),  
which provides:

1 [A] summons may be served by leaving a copy of the summons and complaint at the  
2 person's dwelling house, usual place of abode, usual place of business, or usual  
mailing address other than a United States Postal Service post office box.

3 Here, the issue is whether the La Jolla address qualifies as Defendant's dwelling or  
4 usual place of abode under either Rule 4(e)(2)(B) or Cal. Code. Civ. P. § 415.20.

5 **III. Discussion**

6 The Court analyzes Levine's attempted service of Duchacova under both federal and  
7 California law, and it finds that service hasn't been effected under either.

8 **A. Federal Law**

9 Rule 4(e) allows for service by "leaving a copy [of the summons and complaint] at the  
10 individual's dwelling or usual place of abode with someone of suitable age and discretion  
11 who resides there." Fed. R. Civ. P. 4(e)(2)(B). While a person can have more than one  
12 dwelling house or usual place of abode for purposes of Rule 4(e), each must contain  
13 "sufficient indicia of permanence." *Stars' Desert Inn Hotel & Country Club, Inc.*, 105 F.3d  
14 521, 524 (9th Cir. 1997).

15 The fact that relatives of the defendant live at the address where service is attempted  
16 is insufficient, even where the defendant has been known to visit or vacation at that address.  
17 See *Agricola ABC, S.A. de C.V. v. Chiquita Fresh North America, LLC*, 2010 WL 2985500,  
18 at \*4 (S.D. Cal. 2010). In *Agricola*, substitute service on two defendants who were citizens  
19 of Mexico was attempted at a family vacation home in Coronado, California. *Id.* The court  
20 determined that service was invalid, noting, "aside from the fact Defendants' wife and  
21 mother, respectively, lives at the property, there is no other evidence indicating either  
22 Defendant usually stays at the Coronado home such that it could be considered his 'usual  
23 place of abode.'" *Id.*

24 Here, Duchacova's only connections with the La Jolla residence are her daughter and  
25 granddaughter's presence there, and a document from the post office<sup>1</sup> that could indicate  
26 that at some point in the past, she listed the La Jolla address as her own. On the other

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27 <sup>1</sup> An individual's "usual mailing address" is not an acceptable means of substitute  
28 service under Fed. R. Civ. P. 4(e), but it is under Cal. Code. Civ. P. 415(b). The postal form  
will therefore be addressed in the section discussing California law.

1 hand, Levine acknowledges that Duchacova has resided in Belgium for several years, and  
2 Duchacova's daughter stated that her mother has never received mail at the La Jolla  
3 residence. Thus, there are insufficient connections to establish that the La Jolla residence  
4 is Duchacova's dwelling house or usual place of abode under Rule 4(e). Levine has failed  
5 to effect service under federal law.

6 **B. California Law**

7 In California, service can be effectuated by leaving a copy of the summons and  
8 complaint "at the person's dwelling house, usual place of abode, usual place of  
9 business . . . or usual mailing address other than a United States Postal Service post office  
10 box. . . ." Cal. Code Civ. P. § 415.20(b). For service to be proper, however, "a connection  
11 [must] be shown between the address at which substitute service is effectuated and the party  
12 alleged to be served." *Corcoran v. Arouh*, 24 Cal.App.4th 310, 315 (1994).

13 Levine argues that the La Jolla address, even if it isn't Duchacova's dwelling house  
14 or usual place of abode, is her mailing address. For support, Levine relies upon the  
15 declaration of the process server who attempted service at the La Jolla address. This  
16 declaration is not helpful. The process server said he attempted personal service at the La  
17 Jolla address on four separate occasions. Although on one occasion he claims to have seen  
18 a "frail-looking older woman," he admitted she "did not look at all like [a photograph of  
19 Duchacova]." The process server then had the U.S. Postal Service complete a form entitled  
20 "Request for Change of Address or Boxholder Information Needed for Service of Process."  
21 On that form, the process server provided Duchacova's name and the La Jolla address, and  
22 the postal service returned the form to the process server with an "X" next to "Good as  
23 Addressed above."

24 However, even if this form indicates that Duchacova may have given the La Jolla  
25 address as her own at some point *in the past*, it does not show that the La Jolla address is  
26 the *usual* mailing address for Duchacova, which it must be in order for service to be valid  
27 under Cal. Code Civ. P. 415.20(b). In addition, California law only permits substitute service  
28 if "a copy of the summons and complaint cannot with reasonable diligence be personally

1 delivered to the person to be served.” Cal. Code Civ. P. 415.20(b). Here, Levine stated in  
2 his complaint that Duchacova “is a citizen of and has lived for many years in Belgium.” It is  
3 not clear how Levine used reasonable diligence in effectuating personal service on  
4 Duchacova by repeatedly attempting service at the La Jolla residence.

5 **IV. Conclusion**

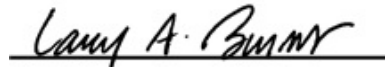
6 Duchacova’s motion to dismiss for insufficient service of process is **GRANTED**. If  
7 Levine cannot serve her by either personal or substitute service, he should follow the  
8 relevant procedures for international service of process. Because personal jurisdiction is not  
9 possible without proper service, Duchacova’s motion to dismiss for lack of personal  
10 jurisdiction is also **GRANTED**. This case is dismissed without prejudice.

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12 **IT IS SO ORDERED.**

13 DATED: November 24, 2010

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**HONORABLE LARRY ALAN BURNS**  
United States District Judge

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