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6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF WASHINGTON  
8

9 SAVAGE LOGISTICS, LLC, a  
10 Washington limited liability company,

11 Plaintiff,

12 v.

13 SAVAGE COMPANIES, a Utah  
14 Corporation, SAVAGE SERVICES  
15 CORP., a Utah Corporation,  
16 Defendants.  
17

No. 4:15-cv-05015-SAB

**ORDER GRANTING  
DEFENDANTS' MOTION TO  
DISMISS, IN PART**

18 Before the Court are Defendant's Motion to Dismiss Second Amended  
19 Complaint, or, in the Alternative, to Transfer, ECF No. 60; Defendant's Request  
20 for Judicial Notice and Notice by Incorporation, ECF No. 63; and Plaintiff's  
21 Request for Judicial Notice and Notice of Incorporation, ECF No. 67. A hearing  
22 on the motions was held on June 1, 2016, in Richland, Washington. Plaintiff was  
23 represented by Bruce P. Babbitt; and Defendants were represented by Steven E.  
24 Klein.

25 Previously, Judge Shea granted Defendant Savage Services Corporation's  
26 Motion to Dismiss Plaintiff's First Amended Complaint. ECF No. 49. Judge Shea  
27 noted that Plaintiff had conceded that the FAC's factual allegations were  
28 insufficient to support a finding of personal jurisdiction against Defendant.

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1 Plaintiff did not oppose the dismissal of the FAC so long as it was permitted to file  
2 its proposed Second Amended Complaint. Id. Judge Shea granted Plaintiff leave to  
3 file a Second Amended Complaint. Id.

4 In the SAC, Plaintiff added Savage Companies as a Defendant and asserted  
5 facts that it believed supported personal jurisdiction over both companies—  
6 Savage Services Corporation and Savage Companies. It is seeking declaratory  
7 judgment of non-infringement of trademark. Plaintiff is also asking the Court to  
8 instruct the Commissioner of Patents and Trademarks to refuse Defendants’  
9 Trademark Application, in which they seek to register the mark “SAVAGE  
10 LOGISTICS,” and is asserting a claim for False Description, Dilution, and  
11 Cyberpiracy under 15 U.S.C. § 1125. Finally, Plaintiff is bringing state law claims  
12 under Wash. Rev. Code § 19.77.010 (trademark registration – threatening to  
13 imitate registered trademark) and Wash. Rev. Code § 19.86.010 (unfair trade  
14 practices – taking actions to wrongfully appropriate Plaintiff’s trademark).

15 Defendants now move to dismiss the SAC, or in the alternative, transfer the  
16 case to the District of Utah, for lack of personal jurisdiction over them and move  
17 to dismiss Plaintiff’s claim under 15 U.S.C. § 1125 and the state law claims for  
18 failure to state a claim. In addition, both parties ask the Court to take judicial  
19 notice and notice by incorporation of certain documents submitted in support and  
20 in response to the Motion to Dismiss.

## 21 MOTIONS STANDARD

### 22 1. Request for Judicial Notice and Notice by Incorporation

23 Fed. R. Evid. 201 permits a court to judicially notice a fact that is not  
24 subject to reasonable dispute where it: (1) is generally known within the trial  
25 court’s territorial jurisdiction; or (2) can be accurately and readily determined from  
26 sources whose accuracy cannot reasonably be questioned.

27 A district court may, but is not required to, incorporate documents by  
28 reference. *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d 1152, 1159 (9th Cir.

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1 2012). Under the “incorporation by reference” doctrine, a court may look beyond  
2 the pleadings without converting the Rule 12(b)(6) motion into one for summary  
3 judgment. *Id.* at 1160. Specifically, courts may consider “documents whose  
4 contents are alleged in a complaint and whose authenticity no party questions, but  
5 which are not physically attached to the plaintiff’s pleadings.” *Id.* (citations  
6 omitted). A court “may treat such a document as part of the complaint, and thus  
7 may assume that its contents are true for purposes of a motion to dismiss under  
8 Rule 12(b)(6).” *Id.* (citation omitted).

## 9 **2. Motion to Dismiss for Lack of Personal Jurisdiction**

10 Fed. Rule Civ. P. 12(b)(2) governs the dismissal of an action based on lack  
11 of personal jurisdiction. When a defendant moves to dismiss a complaint for lack  
12 of personal jurisdiction, the plaintiff bears the burden of demonstrating that  
13 jurisdiction is appropriate. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d  
14 797, 799 (9th Cir. 2004). In ruling on a 12(b)(2) motion, the court may, in its  
15 discretion, order discovery, hold an evidentiary hearing, or rely only on the written  
16 submissions. *Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001). If the  
17 motion is based on written materials rather than an evidentiary hearing, “the  
18 plaintiff need only make a prima facie showing of jurisdictional facts.” *Id.* A prima  
19 facie showing means the plaintiff has produced admissible evidence, which if  
20 believed, is sufficient to establish the existence of personal jurisdiction. *Ballard v.*  
21 *Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995).

22 Although the plaintiff cannot “simply rest on the bare allegations of its  
23 complaint and must come forward with facts, by affidavit or otherwise, supporting  
24 personal jurisdiction, uncontroverted allegations in the complaint must be taken as  
25 true.” *Amba Marketing Sys. Inc. v. Jobar Int’l, Inc.*, 551 F.2d 784, 787 (9th Cir.  
26 1977). Conflicts between parties over statements contained in affidavits must be  
27 resolved in the plaintiff’s favor. *Id.*

28 Assertions of jurisdiction over out-of-state corporations must comply with

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1 due process and “traditional notes of fair play and substantial justice.”  
2 *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945). Where there is  
3 no applicable federal statute governing personal jurisdiction, the district court  
4 applies the law of the state in which the district court sits. *Daimler AG v. Bauman*,  
5 \_\_\_ U.S. \_\_\_, 134 S.Ct. 746, 753 (2014). Washington’s long-arm statute authorizes  
6 personal jurisdiction over out-of-state defendants to the broadest reach that the  
7 United States Constitution permits. *Byron Nelson Co. v. Orchard Mgmt. Corp.*, 95  
8 Wash.App. 462, 465 (1999). Thus, the question is whether this court’s exercise of  
9 jurisdiction over Defendants “comports with the limits imposed by federal due  
10 process.” *Daimler AG*, 134 S.Ct. at 753.

11 Case law has differentiated between general or all-purpose jurisdiction, and  
12 specific or case-linked jurisdiction. *Goodyear Dunlop Tires Operations, S.A. v.*  
13 *Brown*, 564 U.S. 915, 919 (2011).

14 **a. General or All-Purpose Jurisdiction**

15 A court may assert general jurisdiction over an out-of-state corporation  
16 when the corporations’ “affiliations with the State are so ‘continuous and  
17 systematic’ as to render them essentially at home in the forum State.” *Id.* General  
18 jurisdiction is present in “instances in which the continuous corporate operations  
19 with a state [are] so substantial and of such a nature as to justify suit against it on  
20 causes of action arising from dealing entirely distinct from those activities.”

21 *International Shoe Co.*, 326 U.S. at 317.

22 This is an exacting standard, because, as the Ninth Circuit explains, “a  
23 finding of general jurisdiction permits a defendant to be haled into court in the  
24 forum state to answer for any of its activities anywhere in the world.” *Brand v.*  
25 *Menlove Dodge*, 796 F.2d 1070, 1073 (9th Cir. 1986) (citation omitted). *Domile*,  
26 place of incorporation and principal place of business are paradigm bases for the  
27 exercise of general jurisdiction. *Goodyear*, 564 U.S. at 924. “Only in an  
28 ‘exceptional case’ will general jurisdiction be available anywhere else.” *Ranza v.*

1 Nike, Inc., 793 F.3d 1059, 1069 (9th Cir. 2015) (quoting *Martinez v. Aero*  
2 *Caribbean*, 764 F.3d 1062, 1070 (9th Cir. 2014)).

3 **b. Specific or Case-Linked Jurisdiction**

4 A court may assert specific or case-linked jurisdiction over an out-of-state  
5 corporation if the plaintiff can show that (1) the non-resident defendant  
6 purposefully directed its activities or consummated some transaction with the  
7 forum or resident thereof; or performed some act by which it purposefully availed  
8 itself of the privilege of conducting activities in the forum, thereby invoking the  
9 benefits and protections of its laws; (2) the claim arises out of or relates to the  
10 defendant’s forum-related activities; and (3) the exercise of jurisdiction comports  
11 with fair play and substantial justice, i.e. it must be reasonable.<sup>1</sup> *Picot v. Weston*,  
12 780 F.3d 1206, 1211 (9th Cir. 2015). [S]pecific jurisdiction is confined to  
13 adjudication of “issues deriving from, or connected with, the very controversy that  
14 established jurisdiction.” *Goodyear*, 564 U.S. at 919. Stated another way, specific  
15 jurisdiction is present when the suit “aris[es] out of or relate[s] to the defendant’s  
16 contacts with the forum.” *Helicopteros v. Hall*, 466 U.S. 408, 414, n.8 (1984). It is  
17 “specific” to the case before the Court. *Ranza*, 793 F.3d at 1068.

18 “[M]ere injury to a forum resident is not a sufficient connection to the  
19 forum. Regardless of where a plaintiff lives or works, an injury is jurisdictionally  
20 relevant only insofar as it shows that the defendant has formed a contact with the  
21 forum State. The proper question is not where the plaintiff experienced a particular  
22 injury or effect but whether the defendant’s conduct connects him to the forum in  
23 a meaningful way.” *Walden v. Fiore*, \_\_\_ U.S. \_\_\_, 134 S.Ct. 1115, 1125 (2014).

24 \_\_\_\_\_  
25 <sup>1</sup> If the plaintiff satisfies the first two prongs, then the defendant must come  
26 forward with a “a compelling case” that the exercise of jurisdiction would not be  
27 reasonable. *CollegeSource, Inc. v. AcademyOne, Inc.*, 653 F.3d 1066, 1076 (9th  
28 Cir. 2011).

1 “When a plaintiff relies on specific jurisdiction, he must establish that  
2 jurisdiction is proper for each claim asserted against a defendant.” Picot, 780 F.3d  
3 at 1212. “If personal jurisdiction exists over one claim, but not others, the district  
4 court may exercise pendent personal jurisdiction over any remaining claims that  
5 arise out of the same “common nucleus of operative facts” as the claim for which  
6 jurisdiction exists.” Id.

### 7 **BACKGROUND FACTS**

8 The following facts are taken from Plaintiff’s complaint, as well as from  
9 judicial noticeable documents and documents incorporated by reference:

10 Plaintiff Savage Logistics is a Washington limited liability company with its  
11 headquarters in Richland, Washington. Plaintiff specializes in transporting and  
12 trucking hazardous and radioactive materials, and remedial services. The  
13 company’s trucking fleet operates throughout the continental United States and  
14 Canada. On March 15, 2007, Plaintiff registered the domain name  
15 savagelogistics.com.

16 Defendant Savage Services, Corp. (“SS”) is a Utah corporation with its  
17 headquarters in Midvale, Utah. SS is a wholly owned subsidiary of Savage  
18 Companies (“SC”), also a Utah corporation with its headquarters in Midvale,  
19 Utah. Defendant SS specializes in environmental material transport trucking  
20 services, as well as general cargo categories, such as building materials and  
21 oilfield equipment.

22 On October 28, 2014, counsel for Defendant SC sent Plaintiff a letter that  
23 identified certain trademark registrations; asserted that Plaintiff’s use of the marks  
24 “SAVAGE” and “SAVAGE LOGISTICS” constitutes trademark infringement and  
25 a violation of Section 43(a) of the Lanham Act; and demanded that Plaintiff  
26 immediately cease all use of the mark and anything else that is confusingly similar.  
27 SC demanded that Plaintiff remove its logo from its entire fleet of trucks, as well  
28 as its business signs, letter head, website, and social medial sites and cease the use

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1 of the domain name savagelogistics.com. It indicated that unless Plaintiff  
2 complied with its demands, it would pursue all available legal remedies.

3 In a letter dated November 6, 2014, Plaintiff contested Defendant's  
4 allegations of infringement because, among other things, (1) Savage Logistics  
5 does not and has not used the word "SAVAGE" alone as a brand or source  
6 identifier on its trucks, marketing materials, or elsewhere; (2) Savage Logistics'  
7 use of "SAVAGE LOGISTICS" or "SAVAGE LOGISTICS LLC" is not likely to  
8 cause confusion; and (3) there has been at least seven years of concurrent use of  
9 "SAVAGE LOGISTICS" and "SAVAGE LOGISTICS, LLC" where SC and SS  
10 did not seek to enforce its rights.

11 Shortly before sending the letter, Defendant SC attempted to register the  
12 name Savage Logistics with the Patent and Trademark Office and Defendant SS  
13 registered the domain name savagelogistics.net.

#### 14 ANALYSIS

15 Plaintiff is asserting claims against two separate entities: Savage Company  
16 (SC) and Savage Services Corporation (SS). Plaintiff maintains that because both  
17 SC and SS are present and doing business in the State of Washington, it is fair that  
18 they respond to a suit brought in this state.

19 Plaintiff's theory is that Defendants created intentional acts directed at  
20 Washington citizens and "expressly aimed" its demands at Plaintiff, known to be a  
21 resident of Washington State. ECF No. 50, ¶ 37, 40. Defendants knew that the  
22 effect of its demands contained in the cease and desist letter would be to damage  
23 Plaintiff in its trade and business and to misappropriate the licenses, permits,  
24 certifications, approvals and goodwill that Plaintiff had established. ¶ 40.  
25 Defendants' demands would cause Plaintiff to have to physically re-label and re-  
26 brand all its equipment (over 100 motor vehicles and trailers), apparel, advertising,  
27 marketing, business cards, pamphlets and handouts, trade show displays, and  
28 building signs at great cost. ¶ 42. Defendant's demands impact various permits,

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1 authorization, and certifications acquired from numerous State and Federal  
2 agencies and organizations. ¶ 41. In addition, Defendants’ demands would force  
3 Plaintiff to obtain new email addresses and business listings. ¶ 42. Plaintiff alleges  
4 that the act of registering savagelogistics.net was part of a pattern and practice and  
5 conduct by SC and SS of attempting to prevent Savage Logistics from using its  
6 established trademark, of attempting to disrupt the business of Savage Logistics,  
7 and to attract for commercial gain internet users to its website and create  
8 confusion with Plaintiff’s mark. ¶ 35.

9 In its SAC, Plaintiff asserts the following factual allegations in support of  
10 personal jurisdiction:

11 **A. Savage Companies**

12 1. SC has, as a sponsor of a joint venture with Tesoro Refining and  
13 Marking Company, pursued permitting and construction of a 360,000  
14 barrel per day, \$75 Million Dollar crude oil uploading facility in  
15 Vancouver, Washington. ¶ 21.

16 2. SC has filed with the Washington Secretary of State and has  
17 appointed CT Corp. Sys., located in Olympia, Washington, as its  
18 registered agent for service within the state. ¶ 21.

19 3. SC wrote and sent a “Cease and Desist Letter” that demanded that  
20 Plaintiff take immediate action in Washington State to account for  
21 income from 2007 through 2014, repaint its equipment and to  
22 surrender its domain name, as well as threaten to sue if these steps  
23 were not implemented. ¶ 30.

24 4. The Cease and Desist Letter was a sham demand because SC had  
25 not in the past brought actions against claimed infringers and SC had  
26 no good faith objection to others using the name Savage. ¶ 31.

27 5. On October 8, 2014, SC attempted to register Savage Logistics  
28 with the Patent and Trademark Office. ¶ 43.

6. SC began using the domain name savagelogistics.net and have  
advertised on the web as Savage Logistics, which has confused and



1 diluted Plaintiff's web presence. ¶ 44.

2 **B. Savage Services Corporation**

3  
4 1. SS regularly and systematically does business with residents of the  
5 state of Washington and has appointed CT Corp. Sys., located in  
6 Olympia, Washington, as its registered agent for service within the  
7 state. ¶ 22.

8  
9 2. SS knew the cease and desist letter was a sham demand. ¶ 31.

10  
11 3. Representatives of SS, acting for and authorized by SC, on several  
12 occasions called to confer with Plaintiff's representatives whom they  
13 knew to be located in Washington. ¶ 32.

14  
15 4. SS registered the domain name savagelogistics.net as a domain  
16 name. SS falsely certified that savagelogistics.net would not infringe  
17 upon what it knew were Plaintiff's rights. ¶ 34.

18  
19 In determining whether it has personal jurisdiction over Defendants, the  
20 Court does not consider the merits of Plaintiff's claims. Rather, it focuses solely  
21 on whether the Court's exercise of personal jurisdiction over Defendants in this  
22 case comports with due process. After carefully reviewing the pleadings and  
23 attachments, as well as recent Supreme Court jurisprudence on this issue, the  
24 Court concludes it does not have personal jurisdiction over Defendants.

25  
26 As an initial matter, it is clear that general jurisdiction does not exist over  
27 either Defendant. See Ranza, 793 F.3d at 1070. While it appears that Defendants  
28 send employees and provides services into Washington and engages in  
commercial transactions here, such business activity is not so pervasive as to  
render it "essentially at home" in Washington. Notably, Washington is neither  
Defendants' place of incorporation nor their principal place of business.

Plaintiff asserts the Court has specific jurisdiction over both Defendants. In  
conducting this analysis, the Court must look at the alleged conduct underlying the  
claims to determine whether this conduct was directed at Washington. See Walden,

1 134 S.Ct. at 1121. (“The inquiry whether a forum State may assert specific  
2 jurisdiction over a nonresident defendant ‘focuses on the relationship among the  
3 defendant, the forum, and the litigation.’ For a State to exercise jurisdiction  
4 consistent with due process, the defendant’s suit-related conduct must create a  
5 substantial connection with the forum State.”)(citations omitted).

6 In its briefing, Plaintiff attempts to establish personal jurisdiction by relying  
7 on the potential harm that it faces as a result of Defendant SC and SS’s actions to  
8 establish personal jurisdiction. This is not the correct analysis. See *id.* at 1122.  
9 Rather, the focus must be on the contacts that the “defendant himself” creates with  
10 the forum State. *Id.* (emphasis in original). And it does not include the defendant’s  
11 contacts with persons who reside there. *Id.* Thus, even though Plaintiff’s contacts  
12 with Washington state are significant, those contacts do not factor in when  
13 determining whether the defendant’s due process rights are violated. *Id.* Plaintiff  
14 cannot be the only link between the defendant and the forum. *Id.* Consequently,  
15 Plaintiff’s reliance on the harms that it will experience in Washington state are  
16 misplaced. See *id.* (noting that mere injury to a forum resident is not a sufficient  
17 connection to the forum).

18 Here, Plaintiff alleges only two actions taken by Defendants that were  
19 directed at Washington State:<sup>2</sup> (1) SC’s activities in relation to the joint venture on  
20 the west side of the state<sup>3</sup>; and (2) the sending of the cease and desist letter and  
21 subsequent phone calls to Plaintiff, who is located in Washington state. None of  
22 these actions are sufficient to establish personal jurisdiction. As Walden explained,  
23

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24 <sup>2</sup> While Defendants’ actions in registering the trademark Savage Logistics, and  
25 registering the domain name savagelogistic.net may expose them to potential  
26 liability, this conduct did not take place in Washington state.

27 <sup>3</sup> In its briefing, Defendants clarified that it is Savage Services Corporation that  
28 conducts business in Washington State.

1 a defendant's actions, taken in the non-forum state, do not create sufficient  
2 contacts with the forum simply because it allegedly directed its conduct at the  
3 plaintiff who it knew had connections in the forum state. *Id.* at 1125. While  
4 conducting commercial activities in Washington state is conduct that is directed at  
5 Washington state, this conduct is not related or linked to Plaintiff's claims. The  
6 remaining alleged actions do not have anything to do with state of Washington  
7 itself. *Id.*

8 Generally, "[a] cease and desist letter is not in and of itself sufficient to  
9 establish personal jurisdiction over the sender of the letter."<sup>4</sup> *Yahoo! v. La Ligue*  
10 *Contre Le Racisme Et L'Antisemitisme*, 433 F.3d 1199, 1208 (9th Cir. 2006)  
11 (citing *Red Wing Shoe Co. v. Hockerson-Halberstadt, Inc.*, 148 F.3d 1355, 1361  
12 (Fed. Cir. 1998). Courts have recognized an exception where the letter was  
13 abusive, tortious or otherwise wrongful. *Id.* Although Plaintiff maintains the letter  
14 sent by Defendants meets this exception, the Court is not convinced. In the letter  
15 sent to Plaintiff, Defendant SC indicated it was willing to discuss an amicable  
16 resolution, but also indicated that if certain steps were not taken, it may pursue all  
17 available legal remedies. ECF No. 12, Ex. 3. While Plaintiff disagrees with  
18 Defendants regarding the contents of the letter, there is nothing in the letter that  
19 rises to the level of being abusive, tortious, or otherwise wrongful, as  
20 contemplated by the Ninth Circuit. Notably, in *Bancroft & Masters v. Augusta*  
21 *Nat'l, Inc.*, 223 F.3d 1082 (9th Cir. 2000), one of the letters at issue in that case

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22  
23 <sup>4</sup> As the Red Wing Shoe court noted:

24 There are strong policy reasons to encourage cease and desist letters. They  
25 are normally used to warn of an alleged rights infringer that its conduct, if  
26 continued, will be challenged in a legal proceeding, and to facilitate  
27 resolution of a dispute without resort to litigation. If the price of sending a  
28 cease and desist letter is that the sender thereby subjects itself to jurisdiction  
in the forum of the alleged rights infringer, the rights holder will be strongly  
encouraged to file suit in its home forum without attempting first to resolve  
the dispute informally by means of a letter." *Id.*

1 was sent to a company who was the sole registrar of domain names. Id. at 1088.  
2 The Circuit concluded that the letters were intended to trigger the dispute  
3 resolution procedures, which caused the plaintiff to choose between bringing suit  
4 or losing the use of its website. Id. at 1088.

5 Plaintiff also asserts that Defendants have advertised on the web as Savage  
6 Logistics, which has confused and diluted Plaintiff's web presence. This is not  
7 enough to establish personal jurisdiction over Defendants. See *Cybersell, Inc. v*  
8 *Cybersell, Inc.*, 130 F.3d 414, 415 (9th Cir. 1997) (holding that it would not  
9 comport with "traditional notions of fair play and substantial justice" for Arizona  
10 to exercise personal jurisdiction over an allegedly infringing Florida web site  
11 advertiser who has no contacts with Arizona other than maintaining a home page  
12 that is accessible to Arizonans, and everyone else, over the Internet"). A passive  
13 website that does little more than make information available to those who are  
14 interested in it is not enough to establish personal jurisdiction over the website  
15 owner.

16 Plaintiff cannot meet the requirements for establishing personal jurisdiction  
17 over Defendants. Defendants' actions, i.e. sending the letter, filing the trademark  
18 application, registering the website, and advertising on the web, did not connect  
19 them with Washington in a way sufficient to support the assertion of personal  
20 jurisdiction.

21 Because the Court has concluded that Plaintiff has not established personal  
22 jurisdiction over either Defendant, it is not necessary to address its argument that  
23 Savage Services Company is the agent or alter ego of Savage Company, or vice  
24 versa. That said, the SAC does not plead sufficient facts to satisfy the alter ego  
25 test. See *Ranza*, 793 F.3d at 1070-75.<sup>5</sup>

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27 <sup>5</sup> The *Ranza* court explained that the existence of a parent-subsidary relationship  
28 is insufficient, on its own, to justify imputing one entity's contacts with a forum

1                   **REQUEST FOR JUDICIAL NOTICE AND NOTICE BY INCORPORATION**

2           Judge Shea, in his prior order, took judicial notice of the public-record  
3 trademark registration numbers and applications and the public administrative  
4 records from the U.S. Department of Commerce and the Utah Department of  
5 Commerce. He also considered, under the incorporation-by-reference doctrine, a  
6 letter from Stole Rives LLP, as this letter was referenced in the complaint and in  
7 the response to the complaint, and neither party challenged its authenticity. Judge  
8 Shea declined to take judicial notice of a press release regarding Savage  
9 Companies because it is not a public record and the contents could be subject to  
10 dispute. The Court adopts Judge Shea’s reasoning.

11           Defendants ask the Court to incorporate by reference print-outs of pages  
12 from the website maintained by Plaintiff at [www.savagelogistics.com](http://www.savagelogistics.com). In *Knieval*  
13 *v. ESPN*, 393 F.3d 1068 (9th Cir. 2005), the Ninth Circuit applied the rationale of  
14 the “incorporation by reference” doctrine to internet pages. The Court grants  
15 Defendants’ request.

16           Plaintiff asks the Court to take judicial notice of Exhibit 2, which is a  
17 company snapshot for Savage Services maintained by the U.S. Department of  
18 Transportation and regulations of the Federal Motor Carrier Safety Administration  
19 indicating what must be displayed on self-propelled CMV’s operated by both  
20 Plaintiff and Savage Services; Exhibits A through AC described as official forms  
21  
22 state to another for the purpose of establishing personal jurisdiction. 793 F.3d at  
23 1070. Moreover, it recognized that the Supreme Court in *Daimler AG v. Bauman*,  
24 \_\_\_ U.S. \_\_\_, 134 S.Ct. 746, 759 (2014), invalidated the agency test previously used  
25 by the Ninth Circuit. *Id.* It also noted that to satisfy the alter ego test, a plaintiff  
26 must allege “(1) that there is such unity of interest and ownership that the separate  
27 personalities [of the two entities] no longer exist and (2) that failure to disregard  
28 [their separate identities] would result in fraud or injustice.” *Id.* at 1073.

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1 and certifications; Exhibit W, which is a worker's compensation official report  
2 showing that Defendants maintain regular offices in Washington State and employ  
3 between 76 and 100 workers in Washington State; Exhibit Y and A, which  
4 identify the domain name savagelogistics.com and savageservices.com; and  
5 Exhibits S, T, U, and V, which include publically accessible websites.

6 The Court declines Plaintiff's request. Rather than seek judicial notice,  
7 Plaintiff is asking the Court to accept as true the content contained in the  
8 documents. In essence, Plaintiff is asking the Court to incorporate by reference the  
9 listed documents. Moreover, it appears that the majority of the documents  
10 submitted by Plaintiff go to the merits of its case, rather than to the issue of  
11 whether the court should exercise personal jurisdiction over Defendants, as such,  
12 the Court did not consider the exhibits, except as set forth above in its recitation of  
13 the facts.

#### 14 **Motion to Dismiss for Failure to State a Claim**

15 Defendants ask the Court to dismiss Counts III, IV and V of the SAC for  
16 failure to state a cause of action. Because the Court does not have personal  
17 jurisdiction over Defendants, the Court declines to rule on Defendants' 12(b)(6)  
18 motion.

#### 19 **Leave to Amend / Transfer to District of Utah**

20 While Plaintiff has already been afforded leave to amend, the interests of  
21 justice will be served by permitting Plaintiff to proceed in one of two ways: (1) by  
22 filing an amended complaint that adequately sets forth facts that support personal  
23 jurisdiction over Defendants or (2) by agreeing to have this case transferred to the  
24 District of Utah.

25 Accordingly, **IT IS HEREBY ORDERED:**

- 26 1. Defendant's Motion to Dismiss Second Amended Complaint, or, in the  
27 Alternative, to Transfer, ECF No. 60, is **GRANTED**, in part.
- 28 2. Defendant's Request for Judicial Notice and Notice by Incorporation,

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ECF No. 63, is **GRANTED**.

3. Plaintiff's Request for Judicial Notice and Notice by Incorporation, ECF No. 67, is **GRANTED**, in part, and **DENIED**, in part.

4. On or before **July 14, 2016**, Plaintiff shall file a Third Amended Complaint, or notify the Court that it agrees to the transfer of the above-captioned case to the District of Utah.

**IT IS SO ORDERED.** The District Court Executive is hereby directed to file this Order and provide copies to counsel.

**DATED** this 14th day of June, 2016.



*Stanley A. Bastian*

Stanley A. Bastian  
United States District Judge