

1 Peng and Tongxin with notice of the pendency of this action. Dkt. 16. Having reviewed the
2 motion and and supplemental evidence, the Court **GRANTS** Plaintiffs’ *ex parte* renewed motion
3 for alternative service via email and via personal service on the registration of defendant Peng’s
4 Colorado corporation. Dkt. 19.

5 **DISCUSSION**

6 Federal Rule of Civil Procedure 4(f)(3) permits service of process on individuals in
7 foreign countries by “other means not prohibited by international agreement, as the court
8 orders.” To obtain a court order under Rule 4(f)(3), a plaintiff must “demonstrate that the facts
9 and circumstances of the present case necessitated the district court’s intervention.” *Rio Props.,*
10 *Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1016 (9th Cir. 2002). “[A] method of service of process
11 must also comport with constitutional notions of due process.” *Rio*, 284 F.3d at 1016. “To meet
12 this requirement, the method of service crafted by the district court must be ‘reasonably
13 calculated, under all the circumstances, to apprise interested parties of the pendency of the action
14 and afford them an opportunity to present their objections.’” *Id.* at 1016 (quoting *Mullane v.*
15 *Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)).

16 Plaintiffs request Court intervention because “Peng and Tongxin are located at unknown
17 locations in China, and Plaintiffs have been unable to serve Peng and Tongxin by conventional
18 means despite diligent efforts.” Dkt. 19, at 2. Plaintiffs unsuccessfully sought to locate Peng and
19 his company Tongxin at the physical addresses in China that Tongxin provided to Amazon when
20 Defendants registered the Elvicto Selling Account (owned by Tongxin), and at the Pittsburgh
21 address Defendants used as a removal address for the Elvicto Selling Account. Dkt. 21
22 (hereinafter “Commerson Decl.”), at 2. Plaintiffs’ investigator did not locate Peng at the address

1 listed in his People’s Republic of China identity card that was provided to Amazon through his
2 Elvicto Selling Account. *Id.* Personnel in the building’s management office informed the
3 investigator that Peng had moved out over a year ago and did not provide a forwarding address.
4 *Id.* Nonetheless, plaintiffs have a valid address in China for Defendant Peng Chuangxing, which
5 lists Peng as the company’s “legal representative” in China’s National Enterprise Credit
6 Information Publicity System, as well as for Defendant Rictron, implicated in selling smoke
7 detectors with counterfeit marks, and Defendant Haiyongtao, the company used to register the
8 Vitowell Selling Account. Dkt. 19, at 4.

9 In its earlier order denying alternative service by email, the Court expressed concern that
10 Plaintiffs had failed to provide evidence that Defendants had used the email addresses in
11 question since the selling accounts had been opened in 2017, had not specified how Plaintiffs had
12 communicated with Defendants since the suspension of their selling accounts, and had blocked
13 the selling accounts such that the email addresses might not have been capable of ongoing
14 monitoring and use. Dkt. 16, at 7–9. Plaintiffs have responded to the Court’s concerns by
15 providing evidence, including email logs, that show: (1) the operators of the selling accounts
16 (**tonexin@163.com** for **Elvicto** and **haiyongtao@outlook.com** for **Vitowell**) registered their
17 accounts in 2017 and each sent hundreds of emails to Amazon using the email addresses in
18 question during the operation of the selling accounts, Dkt. 20 (hereinafter “Haskel Decl.”), at 3–
19 4; (2) between April 23, 2022 and June 17, 2022, Defendants sent at least eight emails from the
20 tonexin@163.com email address regarding their appeal of Amazon’s decision to block the
21 Elvicto Selling Account, Haskel Decl. at 3–4 & Exh. A; (3) between May 5, 2022 and June 11,
22 2022, Defendants sent at least thirteen emails from the haiyongtao@outlook.com email address

1 regarding their appeal of Amazon’s decision to block the Vitowell Selling Account, Haskel Decl.
2 at 4 & Exh. B; (4) even after a selling account is blocked, sellers may communicate with
3 Amazon through their Seller Central Account or via email, Haskel Decl. at 3; (4) the final
4 communication between Amazon and one of the selling accounts was an email from Amazon to
5 Vitowell on March 29, 2023, Dkt. 14 (hereinafter “July Haskel Decl.”), at 3; and (5) in July and
6 November of 2023, Plaintiffs sent test emails informing Defendants of the lawsuit to the email
7 addresses in question and received no error notices, bounce back messages, or other indications
8 that the messages to either email address failed to deliver. Commerson Decl. at 5–6; Dkt. 15
9 (hereinafter “July Commerson Decl.”), at 4–5. In sum, Plaintiffs indicate that alternative service
10 by email is reasonably calculated to inform Defendants of this lawsuit given email has been the
11 primary form of communication between Amazon and the selling accounts; Defendants actively
12 used their selling account email addresses continuously from 2017 to June 2022; Defendants
13 retained access to their selling accounts for communications even after the accounts were
14 blocked and used their email addresses to appeal the block placed on those accounts; and nothing
15 indicates that the email address have ceased being functional or monitored given neither
16 Amazon’s email communication of March 2023, nor test messages of July and November 2023
17 regarding the litigation, bounced back.

18 Furthermore, Defendants contend that any due process concerns regarding whether
19 alternative service via email would be reasonably calculated to apprise Defendants Peng and
20 Tongxin of the pendency of the action are alleviated by also (a) serving the registered agent for
21 Defendant Peng’s U.S. company Lecoolife and (b) serving process via the Hague Convention
22 Defendant company Peng Chuangxing for which Defendant Peng serves as legal representative.

1 First, Defendant Peng appears to be the sole owner of Lecoolife, which appears to exist solely to
2 license the Lecoolife trademark for use on smoke detectors sold in the Amazon Store.

3 Commerson Decl. at 4 & Exhs. E, F, G. In the assignment of the Lecoolife Mark from Peng to
4 Lecoolife, Peng is the signatory for Lecoolife; Peng filed the corporate documents with the
5 Colorado Secretary of State, is the incorporator, and was formerly its registered agent. *Id.*

6 Defendant Tongxin is similarly closely related to Peng such that service upon Lecoolife would
7 also likely provide actual notice to Tongxin. Peng registered the Elvicto Selling Account under
8 Tongxin's name; the packages that the Elvicto Selling Account removed from Amazon
9 fulfilment centers bore Peng's name; the Letter of Authorization allowing the Elvicto to use the
10 Lecoolife Mark was signed by Peng; and the appeal of Amazon's decision to block the Elvicto
11 Selling Account included a photograph of Peng's identification card. Haskel Decl. at 3–4.

12 Second, Defendants Peng and Tongxin are also likely to receive notice when Defendant Peng
13 Chuangxing is served via the Hague Convention. Defendant Peng is the legal representative of
14 Peng Chuangxing. Commerson Decl. at 5.

15 The Court finds that Plaintiffs have demonstrated that the facts and circumstances
16 necessitate service by alternative means pursuant to Federal Rule of Civil Procedure 4(f)(3).
17 Despite diligent effort and investigation, Plaintiffs have been unable to locate Defendants Peng
18 and his company Tongxin at unknown locations in China in order to apprise them of this suit
19 alleging unlawful sale of smoke detectors bearing counterfeit UL Solutions certification marks
20 on the Amazon Store. The Court also finds the proposed means of alternative service comport
21 with constitutional notions of due process: email to tonexin@163.com and
22 haiyongtao@outlook.com, the primary means of communication between Amazon and the

1 Elvicto and Vitowell selling accounts for five years; service to the registered agent the U.S.
2 company Lecoolife that appears to be owned by Peng; and service via the Hague Convention to
3 the Chinese company Peng Chuangxing for which Peng serves as the legal representative. Ten
4 months prior to the filing of this lawsuit, Defendants Peng and Tongxin used the email addresses
5 to contest the blocking of their selling accounts. In March 2023, a month before this lawsuit was
6 filed, Defendants Peng and Tongxin continued to have access to these accounts when the
7 Amazon sent its last formal correspondence to the Vitowell account, and in July 2023 and
8 November 2023 email messages sent to the email addresses in question showed no sign of failing
9 to reach their destinations. In addition, service via RPost should, according to Plaintiffs’
10 representations to the Court, provide evidence as to whether service by email was, in fact,
11 received. This offers reassurance that if the email addresses are not, in fact, being monitored and
12 used, then service will not be erroneously deemed completed. Moreover, when service on those
13 email addresses is coupled with service on Peng’s U.S.-based company as well as via the Hague
14 Convention on the Chinese entity controlled by Peng, the proposed methods of service
15 considered in their totality are “reasonably calculated to provide actual notice” to both Peng and
16 Tongxin. *See Rio*, 284 F.3d at 1016.

17 CONCLUSION

18 The Court **GRANTS** Plaintiffs’ *ex parte* renewed motion for alternative service on
19 Defendants Cao Peng and his company Shenzhen Tongxin Technology Co., Ltd. The Court
20 authorizes Plaintiffs to serve Peng and Tongxin through the following concurrent means:

- 21 1. By personal service on the registered agent of Peng’s company, Lecoolife, Inc.,
22 Registered Agents Inc., 1942 Broadway Street, STE 314C, Boulder, CO 80302; and

1 2. Using an online service for service of process, RPost (www.rpost.com) that provides
2 proof of authorship, content, delivery, and receipt to the following email addresses
3 controlled by Defendants that were registered with their Amazon Selling Accounts:
4 tonexin@163.com; haiyongtao@outlook.com.

5 The Court **ORDERS** Plaintiffs either to file proof service on Peng and Tongxin or to move for
6 additional time by **February 12, 2024**.

7 DATED this 14th day of November, 2023.

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BRIAN A. TSUCHIDA
United States Magistrate Judge