

1 **WO**

2  
3  
4  
5  
6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Hydentra HLP INT. Limited, et al.,

No. CV-16-01494-PHX-DGC

10 Plaintiffs,

**ORDER**

11 v.

12 Sagan Limited, MXN Limited, Netmedia  
13 Services Incorporated, and David Koonar,

14 Defendants.

15  
16 Plaintiffs Hydentra HLP INT. Limited and Hydentra, L.P. HLP General Partner,  
17 Inc. (“Hydentra” or “Plaintiffs”) filed an *ex parte* motion for alternative service on  
18 Defendants Sagan Limited, MXN Limited (now known as “Cyberweb”), Netmedia  
19 Services, Inc., and David Koonar. Doc. 12. Defendants responded while specifically  
20 reserving their right to object to personal jurisdiction once properly served. Doc. 15 at 2.  
21 Plaintiffs replied. Doc. 18. No party has requested oral argument. The Court will grant  
22 Plaintiffs’ motion for leave to conduct alternative service.

23 **II. Legal Standard.**

24 Federal Rule of Civil Procedure 4(h)(2) authorizes service of process on a  
25 foreign business entity in the manner prescribed by Rule 4(f) for individuals. Rule 4(f)  
26 provides three methods by which a plaintiff may serve an international defendant:

- 27 (1) by an internationally agreed means of service that is reasonably  
28 calculated to give notice, such as those authorized by the Hague  
Convention on Service Abroad of Judicial and Extra Judicial  
Documents;

1 (2) if there is no internationally agreed means, or if an international  
2 agreement allows but does not specify other means, by a method that  
is reasonably calculated to give notice:

3 \* \* \*

4 (3) by other means not prohibited by international agreement, as the  
5 court orders.

6 Fed. R. Civ. P. 4(f)(1)-(3).

7 Service under Rule 4(f)(3) must be (1) directed by the court and (2) not prohibited  
8 by international agreement. Fed. R. Civ. P. 4(f)(3). “No other limitations are evident  
9 from the text [of Rule 4(f)(3)]. In fact, as long as court-directed and not prohibited by an  
10 international agreement, service of process under Rule 4(f)(3) may be accomplished in  
11 contravention of the laws of the foreign country.” *Rio Properties, Inc. v. Rio Int’l*  
12 *Interlink*, 284 F.3d 1007, 1014 (9th Cir. 2002). Service of process under Rule 4(f)(3) is  
13 neither a “last resort” nor “extraordinary relief,” but “is merely one means among several  
14 which enables service of process on an international defendant.” *Id.*

15 To pass constitutional muster, a method of service must be “reasonably calculated,  
16 under all the circumstances, to apprise interested parties of the pendency of the action and  
17 afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank*  
18 *& Trust Co.*, 339 U.S. 306, 314 (1950). Applying this construction of Rule 4(f)(3) and  
19 the standard articulated in *Mullane*, courts have authorized a wide variety of alternative  
20 methods of service. *See SEC v. Tome*, 833 F.2d 1086, 1094 (2d Cir. 1987) (service of  
21 process by publication); *Int’l Controls Corp. v. Vesco*, 593 F.2d 166, 176-78 (2d Cir.  
22 1979) (service by mail to last known address); *New Eng. Merchs. Nat’l Bank v. Iran*  
23 *Power Generation & Transmission Co.*, 495 F. Supp. 73, 80 (S.D.N.Y. 1980) (service by  
24 telex for Iranian defendants); *Levin v. Ruby Trading Corp.*, 248 F. Supp. 537, 541-44  
25 (S.D.N.Y. 1965) (service by ordinary mail); *Forum Fin. Group, LLC v. President &*  
26 *Fellows of Harvard Coll.*, 199 F.R.D. 22, 23-24 (D. Me. 2001) (service on defendant’s  
27 attorney); *In re Int’l Telemedia Assoc.*, 245 B.R. 713, 719-20 (Bankr. N.D. Ga. 2000)  
28 (service by email).

1     **III. Analysis.**

2             Plaintiffs request that the Court permit them to serve Defendants by alternative  
3 means pursuant to Rule 4(f)(3). Doc. 12 at 1. Plaintiffs allege that Defendants are a  
4 group of inter-related business entities with actual notice of this lawsuit. *Id.* In response,  
5 Defendants argue that Plaintiffs should be required “to first attempt service on the  
6 Defendants through the Hague Convention.” Doc. 15 at 4. Plaintiffs aver that “Service  
7 of Process has been sent through the Hague, [but] service has not yet been successful”  
8 (Doc. 12 at 2), and, “due to the length of time to serve through the Hague, service could  
9 continue unnecessary delay” (Doc. 18 at 4).

10            Plaintiffs argue that they seek alternative service “[b]ased on experience with the  
11 Defendants [and] their purposeful evading of service,” which has already resulted in this  
12 Court granting leave for alternative service in another case involving the same  
13 Defendants as parties and the same lawyer as plaintiff’s counsel. *See AMA Multimedia,*  
14 *LLC v. Sagan, Ltd., et. al.*, No. 2:16-cv-1269-PHX-DGC, Dkts. 22, 23, 26, 35. In that  
15 case, the Court granted leave for alternative service on Defendant Koonar, where a  
16 qualified process server appeared at his business location four times only to be refused  
17 entry. *Id.* Likewise, the Court granted leave for alternative service on Defendant  
18 Cyberweb/MXN, LTD. after service through the Hague Convention failed. *Id.* at  
19 Dkt. 54. Plaintiffs contend that “Defendants remain unchanged. . . . [and] it is safe to  
20 anticipate that process servers will again be refused entrance to the building.” Doc. 18 at  
21 3-4.

22            The Court will permit alternative service. Defendants clearly know of this action  
23 as shown by their retention of counsel and their filing of an objection to Plaintiffs’  
24 motion. Defendants have sought to evade service in the past. *See AMA Multimedia, LLC*  
25 *v. Sagan, Ltd., et. al.*, No. 2:16-cv-1269-PHX-DGC, Dkts. 22, 23, 26, 35. Moreover, as  
26 Plaintiffs note, Defendants have even engaged in settlement talks with Plaintiffs on this  
27 case. Permitting alternative service will save time and impose no disadvantage to  
28 Defendants.

1 The Court concludes that Plaintiffs have made the requisite showing under  
2 Rule 4(f)(3) and *Mullane* to justify alternative service. Allowing Plaintiffs to serve  
3 Defendants by email clearly will apprise Defendants of the pendency of this action and  
4 afford them an opportunity to appear and defend. *See Mullane*, 339 U.S. at 314. Plaintiffs  
5 may complete service by sending the pleadings to Defendants' counsel by email within  
6 ten days of this order.<sup>1</sup>

7 **IT IS ORDERED:**

- 8 1. Plaintiffs' motion for alternative service (Doc. 12) is **granted**.
- 9 2. Defendants' motion to file a sur-reply (Doc. 19) is **granted**. The Clerk  
10 shall accept for filing the sur-reply lodged on the Court's docket as  
11 Doc. 20.
- 12 3. Plaintiffs' motion to strike (Doc. 21) is **denied**.

13 Dated this 7th day of February, 2017.

14  
15  
16 

---

17 David G. Campbell  
18 United States District Judge

19  
20  
21  
22 <sup>1</sup> Defendants argue that allowing alternative service on their counsel "is not  
23 permitted in the Countries where the Defendants are located and [is] not permitted under  
24 the Hague Convention." Doc. 19-1 at 2. As already noted, "service of process under  
25 Rule 4(f)(3) may be accomplished in contravention of the laws of the foreign country."  
26 *Rio Properties*, 284 F.3d at 1014. But that does not appear necessary in this case.  
27 Ontario Civil Rule of Procedure 16.06(2) states that "[i]f parties do not consent to the  
28 service of a document by e-mail, the court may, on motion, make an order directing that  
the document be served by e-mail, on such terms as are just." O. Reg. 170/14, s. 6.  
Barbados Rule of Civil Procedure Rule 5.14 (1) states that "[t]he court may direct that a  
claim form may be served by a method specified in the court's order." Available at  
<http://www.barbadoslawcourts.gov.bb/supreme-court-civil-procedure-rules>. Seychelles  
Code of Civil Procedure Rule 35 states that service on an agent of the defendant is  
sufficient. In this case, the Court will direct service on Defendants' attorney as their  
agent.