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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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INTERNATIONAL RAELIAN
MOVEMENT, a Foreign
Corporation,

NO. CIV. S-08-687 FCD/DAD

Plaintiff,

v.

MEMORANDUM AND ORDER

ABDULLAH HASHEM, JOSEPH
MCGOWEN, DRAGONSLAYER
PRODUCTIONS, HASHEM(S) FILMS,
MUSLIMS UNITED TV and DOES I-
XX,

Defendants.

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This matter is before the court on a motion permitting
alternative service of process under Federal Rule of Civil
Procedure 4(f)(3) ("FRCP 4(f)(3)"), or alternatively seeking a
nunc pro tunc order, validating the service of process on
defendant Abdullah Hashem ("defendant" or "Hashem") and his
alleged business Hashem(s) Films (sometimes collectively,
"defendants") pursuant to FRCP 4(f)(3), filed by plaintiff
International Raelian Movement ("plaintiff" or "IRM"). By this
motion, plaintiff asks the court to order, *nunc pro tunc*, that

1 defendants have been served, or if the court finds any
2 deficiencies with the service, that it permit plaintiff to
3 correct those deficiencies, or issue any other appropriate order
4 permitting plaintiff to serve defendants by alternative means.

5 For the reasons set forth below, plaintiff's motion is
6 DENIED in part and GRANTED in part. According to its plain
7 language, service under FRCP 4(f)(3) must be (1) directed by the
8 court, and (2) not prohibited by international agreement.
9 Because the court may not retroactively validate alternative
10 means of service, plaintiff's motion for an order allowing
11 alternative service of process under FRCP 4(f)(3) *nunc pro tunc*
12 must be DENIED. Nevertheless, the court GRANTS plaintiff's
13 motion for an order allowing alternative service of process under
14 FRCP 4(f)(3) and gives plaintiff a sixty day extension to serve
15 defendant Hashem and his alleged business Hashem(s) Films.¹

16 **BACKGROUND²**

17 This action concerns an alleged scheme of racketeering,
18 fraud, blackmail, and extortion perpetrated against IRM and
19 others by defendants Hashem and Joseph McGowen³ using three false
20

21 ¹ Because oral argument will not be of material
22 assistance, the court orders this matter submitted on the briefs.
E.D. Cal. L.R. 78-230(h).

23 ² Because no opposition to plaintiff's motion has been
24 submitted, the court draws the facts from the complaint and
plaintiff's motion to permit alternative service.

25 ³ Service was made upon Joseph McGowen on or about April
26 4, 2008, according to the declaration of plaintiff's attorney
27 Thomas Easton, which was subsequently confirmed by Magistrate
28 Judge Drozd. (Sched. Order, filed March 23, 2009 [Docket # 25],
2.) McGowen, representing himself, submitted a declaration to
the court in response to the documents sent by Easton. (Decl.,
filed June 4, 2008 [Docket # 7].)

1 front media companies, Dragonslayer Productions, Hashem(s) Films,
2 and Muslims United TV, to obtain property through fraud,
3 disparagement, threats, extortion, blackmail, damage, and
4 conversion of property of plaintiff, and to file false
5 allegations of criminality against plaintiff for profit. (Compl.
6 at 1-2.) Plaintiff contends that defendants posed as a
7 legitimate media partnership, obtained film footage of
8 plaintiff's operations and members, and used this footage to
9 blackmail plaintiff with threats of violence, disparagement,
10 allegations of criminality, and impugn plaintiff's reputation.
11 (Id. at 2.) Plaintiff contends that as a result of defendants'
12 actions plaintiff suffered direct damages to its operations in
13 excess of \$75,000, including adverse publicity and damage to its
14 reputation, legal fees, conversion of its property, and
15 unauthorized use of its officers' and members' likenesses. (Id.)
16 Plaintiff seeks replevin of film footage in defendants'
17 possession.

18 In a pretrial scheduling order, Magistrate Judge Drozd left
19 the question open as to whether service of process had been
20 effected on defendants Hashem and Hashem(s) Films. (Pl.'s Mot.
21 for Alt. Serv. ["PMAS"] at 2.)⁴ Plaintiff submits the following
22 as evidence that proper service has been accomplished upon
23 defendants:

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26 ⁴ In his Order, Judge Drozd specifically stated: "Counsel
27 for plaintiff reports that defendant Abdullah Hashem has been
28 properly served. The court expresses no opinion on whether such
service has been properly completed. If necessary, that issue
will be the subject of further proceedings at the appropriate
time." (Sched. Order, filed March 23, 2009 [Docket # 25], at 2.)

1 (1) The November 5, 2008 Affidavit by Laila Saleh of TCM
2 Egypt, which states: "Abdullah Hashem was traced to American
3 University in Cairo (AUC). Hashem's status as a student was
4 initially confirmed by AUC. We learned from AUC on November 3,
5 2008, that Abdullah Hashem was no longer a student there. AUC
6 provided a forwarding phone number for Hashem in the United
7 States." (Id.)

8 (2) The November 6, 2008 Affidavit of Due Diligence by
9 process server Donn Altmann of Hy Tech Response Inc., stating
10 that Altmann checked Hashem's whereabouts with known Hashem
11 associates McGowen and Danielson, Hashem's former landlord in
12 Indiana, at Hashem's parents' former address, made extensive
13 database searches and unsuccessfully attempted to serve Hashem at
14 his last known address in Indiana. (Id.)

15 (3) The February 2009 Affidavit by Laila Saleh of TCM Egypt,
16 which states: "We learned on January 12, 2009 that Hashem had
17 returned to American University Cairo, and has presented his
18 student identification card #900/08/9603 and retrieved the
19 package containing the summons, complaint, and other documents
20 from the University mailroom. In my professional opinion, Mr.
21 Hashem now has notice of the US legal proceedings against him in
22 a manner consistent with local custom and procedure." (Id.)

23 (4) The February 25, 2009 declaration by process server Donn
24 Altmann of Hy Tech Response Inc., which states that email
25 messages with the court documents⁵ attached were sent to and

26
27 ⁵ According to the declaration of process server Donn
28 Altmann, these papers consisted of: the Notice of Commencement of
Action, Cover Sheet, Complaint, and Complaint Exhibits attached
as PDF Files. (Dec. Of Serv., filed March 2, 2009 [Docket # 26],

1 received by Hashem's personal email account and Hashem's email
2 account at www.hashemsfilms.com. (Id. at 3.) Additionally, four
3 identical email messages were successfully sent to all
4 administrative email addresses associated with the domain
5 www.hashemsfilms.com. (Id.) On November 10, 2008, first class
6 mail copies of the court documents were mailed to Hashem's
7 official mail forwarding address with the U.S. Postal Service.
8 (Id.) On January 16, 2009 the same information was published in
9 the *Court & Commercial Record* newspaper of Indianapolis, Indiana.
10 (Id.) Service by certified mail was had upon the domain
11 www.hashemsfilms.com on January 20, 2009 via its domain server's
12 address and on its web host server on February 19, 2009. (Id.)
13 Altmann further stated that a full copy of the complaint was
14 visible on the www.hashemsfilms.com website in April-May 2008.
15 (Id.)

16 ANALYSIS

17 Plaintiff moves for a court order establishing (1) defendant
18 Hashem has been served, (2) defendant entity Hashem(s) Films,
19 www.hashemsfilms.com, has been served, (3) that if any further
20 remedy is required to effect service, the court permit plaintiff
21 to correct such deficiencies via a *nunc pro tunc* order under FRCP
22 4(f)(3), or (4) the court issue any other appropriate order
23 permitting alternative service on Hashem and Hashem(s) Films.
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28 at 1-2.)

1 **A. Alternative Service of Process**

2 **1. Applicability of FRCP 4(f)(3)⁶**

3 Because plaintiff's motion for alternative service depends
4 on the applicability of FRCP 4(f)(3), the court addresses this
5 issue first.

6 FRCP 4(f)(3) reads, in pertinent part:

7 (f) Serving an Individual in a Foreign Country. Unless
8 federal law provides otherwise, an individual—other
9 than a minor, an incompetent person, or a person whose
waiver has been filed—may be served at a place not
within any judicial district of the United States:

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

11 Fed. R. Civ. P. 4(f)(3).

12 According to its plain language, service under FRCP 4(f)(3)
13 must be (1) directed by the court, and (2) not prohibited by
14 international agreement. Rio Props., Inc. v. Rio Int'l
15 Interlink, 284 F.3d 1007, 1014 (9th Cir. 2002). "No other
16 limitations are evident from the text." Id. Court-directed
17 service under FRCP 4(f)(3) is as favored as service available
18 under FRCP 4(f)(1)⁷ or FRCP 4(f)(2).⁸ Id. at 1015. No language

20 ⁶ The court declines to address plaintiff's argument that
21 service has been made upon Hashem and Hashem(s) Films pursuant to
22 FRCP 4(f)(2), which is only applicable if there is "no
23 internationally agreed means of service." Fed. R. Civ. P.
24 4(f)(2) (emphasis added). The fact that the Hague Convention is
25 inapplicable to the present case because Hashem's address is
26 unknown does not mean there is "no internationally agreed means
of service;" rather, plaintiff can instead seek service under
FRCP 4(f)(3). See BP Prods. N. Am., Inc. v. Dagra, No. CIV.A.
3:04CV445, 232 F.R.D. 263 (E.D. Va. Nov. 8, 2005) (finding that
if the address of the foreign party to be served is unknown, the
Hague Convention does not apply and thus a plaintiff may seek
service under FRCP 4(f)(3)).

27 ⁷ FRCP 4(f)(1) states: "(1) by any internationally agreed
28 means of service that is reasonably calculated to give notice,
such as those authorized by the Hague Convention on the Service

1 in FRCP 4(f)(1) or 4(f)(2) indicates their primacy, and FRCP
2 4(f)(3) includes no qualifiers or limitations which indicate its
3 availability only after attempting service of process by other
4 means. Id. Thus, FRCP 4(f)(3) is merely one means among several
5 which enables service of process on an international defendant.
6 Id. “[T]rial courts have authorized a wide variety of
7 alternative methods of service including publication, ordinary
8 mail, mail to the defendant’s last known address, delivery to the
9 defendant’s attorney, telex, and most recently, email.” Id. at
10 1016. However, in effectuating service of process under FRCP
11 4(f)(3), a plaintiff is required to obtain *prior* court approval
12 for the alternative method of service. Brockmeyer v. May, 383
13 F.3d 798, 806 (9th Cir. 2004); see also Jenkins v. Pooke, No. C
14 07-03112, 2009 WL 412987, slip op. at 4 (N.D. Cal. Feb. 17, 2009)
15 (stating that under the plain language of FRCP 4(f)(3), a
16 plaintiff must obtain a court order to effectuate service in the
17 desired fashion).⁹

18
19 Abroad of Judicial and Extrajudicial Documents.” Fed. R. Civ. P.
4(f)(1).

20 ⁸ FRCP 4(f)(2) states: “(2) if there is no
21 internationally agreed means, or if an international agreement
22 allows but does not specify other means, by a method that is
23 reasonably calculated to give notice: (A) as prescribed by the
24 foreign country’s law for service in that country in an action in
25 its courts of general jurisdiction; (B) as the foreign authority
26 directs in response to a letter rogatory or letter of request; or
(C) unless prohibited by the foreign country’s law, by: (i)
delivering a copy of the summons and of the complaint to the
individual personally; or (ii) using any form of mail that the
clerk addresses and sends to the individual and that requires a
signed receipt.” Fed. R. Civ. P. 4(f)(2).

27 ⁹ The court notes that other districts have found that
28 the court may issue an order pursuant to FRCP 4(f)(3) *nunc pro*
tunc, thereby retroactively approving alternative means of
service. Marks v. Alfa Group, No. 08-5651, 2009 WL 1312599 (E.D.

1 In Brockmeyer, the Ninth Circuit held that because the
2 plaintiffs did not seek prior approval of the district court for
3 alternative service under FRCP 4(f)(3), their attempted service
4 was therefore ineffective. Brockmeyer, 383 F.3d at 808-09. The
5 court held: “[c]ourts have authorized a variety of alternative
6 methods of service abroad under current Rule 4(f)(3)
7 [h]owever, in Rio (and in all the cases it cites as applying Rule
8 4(f)(3)), plaintiffs are required to take a step that the
9 plaintiffs in this case failed to take: They must obtain prior
10 court approval for the alternative method of serving process.”
11 Id. at 806. Accordingly, the Ninth Circuit found FRCP 4(f)(3)
12 inapplicable and refused to retroactively approve the plaintiffs’
13 alternative means of service. Id.

14 In this case, plaintiff attempted to serve Hashem and
15 Hashem(s) Films both by conventional means in the United States
16 and by alternative methods in the United States and abroad.
17 Plaintiff employed TCM Egypt to locate and serve Hashem in Egypt,
18 which found Hashem’s previous location to be the American
19 University in Cairo, to which he later returned and presumably
20 received the court papers left with the University. Plaintiff
21 also employed process server Donn Altmann to locate and serve
22 Hashem in the United States; Altmann checked Hashem’s whereabouts
23 with his known associates, former landlord, parents’ former
24 address, various databases, and last known address. Altmann

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26 Pa. May 11, 2009); Exp.-Imp. Bank of U.S. v. Asia Pulp & Paper
27 Co., Ltd., No. 03-8554, 2005 WL 1123755 at *4 (S.D.N.Y. May 11,
28 2005). Nevertheless, this court is bound by Ninth Circuit
precedent that explicitly requires prior court approval before
utilizing such alternative means.

1 further sent electronic copies of the court papers to various
2 email addresses associated with Hashem and his business domain
3 name, as well as sent hard copies of the court papers to the
4 physical address associated with Hashem's domain name. Altmann
5 also states that a full copy of the complaint was visible on the
6 www.hashemsfilms.com website in April-May 2008. However,
7 plaintiff did not follow proper protocol under FRCP 4(f)(3) by
8 obtaining a *prior* court order for its alternative methods of
9 service. Under controlling Ninth Circuit authority, this court
10 cannot retroactively approve of these methods *nunc pro tunc*. See
11 Brockmeyer, 383 F.3d at 806.

12 Because plaintiff did not follow the procedure described in
13 FRCP 4(f)(3) by seeking the approval of the court before
14 utilizing alternative means of service, the attempted service on
15 Hashem and Hashem(s) Films was therefore ineffective, and
16 plaintiff's motion for a *nunc pro tunc* order approving of these
17 methods is DENIED.

18 2. Reasonableness of Plaintiff's Methods of Service

19 Although plaintiff may not retroactively seek court approval
20 of its alternative methods to effect service upon defendants, the
21 court nevertheless considers the reasonableness of the methods
22 used by plaintiff in considering plaintiff's alternative motion
23 for a court order allowing alternative service of process under
24 FRCP 4(f)(3).¹⁰

25
26 ¹⁰ The court recognizes that the effect of granting this
27 motion will be to require plaintiff to undertake the redundant
28 act of re-serving defendants in the same manner already
undertaken. Nevertheless, such is the consequence of failing to
heed the plain language of FRCP 4(f)(3) and controlling Ninth
Circuit authority, requiring *prior* court approval of alternative

1 Even if facially permitted by FRCP 4(f)(3), "a method of
2 service of process must also comport with constitutional notions
3 of due process." Rio, 284 F.3d at 1016. "To meet this
4 requirement, the method of service crafted by the district court
5 must be 'reasonably calculated, under all the circumstances, to
6 apprise interested parties of the pendency of the action and
7 afford them an opportunity to present their objections.'" Id.
8 "[T]he Constitution does not require any particular means of
9 service of process, only that the method selected be reasonably
10 calculated to provide notice and an opportunity to respond." Id.
11 at 1017.

12 In Rio, the Ninth Circuit approved of the plaintiff's
13 alternative service via email in light of the variety of
14 conventional means by which the plaintiff had previously
15 attempted to serve defendant. Rio, 284 F.3d at 1016. In that
16 case, the plaintiff had first attempted to serve the defendant in
17 the United States via the address used to register the
18 defendant's domain name and through the defendant's lawyer. Id.
19 When that failed, the plaintiff made a diligent search for the
20 defendant in the defendant's native country. Id. After these
21 efforts likewise failed, the Ninth Circuit approved of email
22 service because it appeared that email was the only method of
23 contacting the defendant, and because the court concluded that
24 email was reasonably calculated to apprise the defendant of the
25 pending suit in comport with due process. Id. at 1017.

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methods of service.

1 In this case, plaintiff likewise attempted to serve Hashem
2 and his alleged business Hashem(s) Films through a variety of
3 conventional methods in addition to email service to Hashem's
4 various personal and business email accounts. In conjunction
5 with the service apparently made on Hashem at the American
6 University in Cairo by TCM Egypt on January 12, 2009, plaintiff
7 utilized the services of Donn Altmann, who inquired as to
8 Hashem's whereabouts with defendant's associates, former
9 landlord, through various database searches, and at his last
10 known address. As none of these methods were successful, Altmann
11 attempted to serve Hashem and Hashem(s) Films by emails sent to
12 Hashem's personal email address, his business email address, and
13 to four administrative email addresses also associated with
14 www.hashemsfilms.com. Altmann also observed the entire complaint
15 posted on www.hashemsfilms.com for at least 30 days between April
16 and May 2008. Sometime after November 10, 2008, physical copies
17 of the court papers were sent via the U.S. Postal Service to
18 Hashem's forwarding address listed with the U.S. Postal Service.
19 Physical copies of the court papers were also mailed to the
20 physical addresses associated with the domain
21 www.hashemsfilms.com and the hosting servers in January and
22 February of 2009, respectively. Furthermore, a copy of the court
23 papers was published in the *Court & Commercial Record* located in
24 Indianapolis, Indiana on January 16, 23, and 30 of 2009. As in
25 Rio, plaintiff utilized a wide variety of means in its attempt to
26 locate and serve Hashem and Hashem(s) Films within the United
27 States and Egypt, of which the attempts to mail the court papers
28 electronically by email and physically through the U.S. Postal

1 Service were apparently successful. Thus, in light of
2 plaintiff's concerted effort to locate and serve defendant, the
3 court finds that the alternative methods of service undertaken by
4 plaintiff were reasonably calculated to apprise defendants with
5 notice of the pendent action.

6 Accordingly, the court approves of plaintiff's alternative
7 methods of service under FRCP 4(f)(3) and finds that any of these
8 means will be sufficient in plaintiff's efforts to re-serve
9 Hashem and Hashem(s) Films.

10 **B. Extension of Service of Process**

11 The court grants plaintiff sixty days to effectuate service
12 on Hashem and Hashem(s) Films through any of the aforementioned
13 means.

14 **CONCLUSION**

15 For the foregoing reasons, plaintiff's motion for
16 alternative service pursuant to FRCP 4(f)(3) is DENIED in part
17 and GRANTED in part.

18 IT IS SO ORDERED.

19 DATED: July 15, 2009



FRANK C. DAMRELL, JR.
UNITED STATES DISTRICT COURT