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4 IN THE UNITED STATES DISTRICT COURT  
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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7 HENRY R. HU and STEPHANIE F. HU, ) Case No. 09-2588 SC  
8 )  
9 Plaintiffs, ) SECOND ORDER RE: SERVICE OF  
10 ) PROCESS  
11 v. )  
12 )  
13 LANEY LEE, JASON WANG, STEWARD )  
14 WANG, ANITA BEI HUANG, JERRY )  
15 HUANG, EDWARD WONG, KING MARK, I- )  
16 95 MALL OF ASIA INC., A.T.E.C. )  
17 HOLDING INC., AMERICAN PRODUCTS )  
18 EXHIBITION & EXCHANGE CENTER )  
19 (U.S.A.), INC., ETRADE GUARANTEE )  
20 ASSURANCE CORP., EASY EXPRESS )  
21 SERVICES CORP., KATHY WANG, RUNAN )  
22 ZHANG, ANDY TING, )  
23 Defendants. )  
24 )  
25 )  
26 )  
27 )  
28 )

19 **I. INTRODUCTION**

20 This matter comes before the Court on Plaintiffs' Motion to  
21 Extend Time to Serve and Motion to Serve Defendants in Foreign  
22 Countries by Other Means; Motion to Reschedule Case Management  
23 Conference ("Motion"). Docket No. 35. Plaintiffs contend that  
24 Defendants Anita Bei Huang, Jerry Huang and Kathy Wang  
25 (collectively, "Defendants"), are residing in China, and that  
26 Plaintiffs' various attempts to serve them in the United States  
27 have failed. Id. ¶¶ 5-8. To this end, Plaintiffs request that  
28 this Court extend the time within which Plaintiffs may serve these

1 Defendants, and further request leave to serve these Defendants "by  
2 other means, including emails." Id. ¶¶ 9, 14. Plaintiffs have  
3 also requested that this Court reschedule the initial case  
4 management conference. Id. ¶ 15.

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6 **II. DISCUSSION**

7 **A. Extension of Time to Serve Defendants**

8 The Court first addresses Plaintiffs' request for an extension  
9 of time to perform service. Service of process must typically be  
10 performed within 120 days of the date on which the plaintiff files  
11 a complaint. Fed. R. Civ. P. 4(m). "But if the plaintiff shows  
12 good cause for the failure [to timely serve a defendant], the court  
13 must extend the time for service for an appropriate period." Id.

14 Defendants Anita Bei Huang and Jerry Huang were first named in  
15 Plaintiffs' original Complaint, filed nearly six months ago on June  
16 10, 2009. See Compl., Docket No. 1. Plaintiffs attempted to serve  
17 these two Defendants on June 15, 2009. Henry Hu Decl. ¶ 6.<sup>1</sup> The  
18 Court notes that it has already granted an extension of the 120-day  
19 deadline as to Defendant Anita Bei Huang, extending this deadline  
20 by two months at Plaintiffs' request. Docket No. 12. When making  
21 the previous request for an extension, Plaintiffs made no mention  
22 of Defendant Jerry Huang. Plaintiffs have failed to submit any  
23 evidence that suggests that they have diligently attempted to serve  
24 these Defendants at all since June 15, 2009, or that they have made  
25 good use of the Court's previous extension of time as to Anita Bei  
26 Huang. Consequently, Plaintiffs have not shown "good cause" as

27  
28 <sup>1</sup> Plaintiff Henry Hu, an attorney representing himself and  
Stephanie Hu, filed a declaration in support of the Motion. Motion  
Ex. 1.

1 required by Rule 4(m). The Court therefore DENIES Plaintiffs'  
2 request to extend the deadline for service as to Jerry Huang and  
3 Anita Bei Huang. This denial is without prejudice; Plaintiffs may  
4 resubmit a motion to extend the deadline, but must base their  
5 request upon evidence that they have been diligent in attempting to  
6 serve Jerry Huang and Anita Bei Huang.

7 Plaintiffs have not previously requested an extension of the  
8 120-day deadline as to Defendant Kathy Wang. Kathy Wang was first  
9 named in Plaintiffs' First Amended Complaint ("FAC"), filed roughly  
10 one month ago on November 10, 2009. Docket No. 31. Consequently,  
11 the Court orders that Defendant Kathy Wang be served no later than  
12 March 10, 2010.

13 **B. Service "By Other Means"**

14 Second, the Court addresses Plaintiffs' request to serve  
15 Defendants "by other means," pursuant to Rule 4(f)(3) of the  
16 Federal Rules of Civil Procedure. Plaintiffs allude to email  
17 contact that they have had with Defendant Anita Bei Huang, and the  
18 Court assumes that Plaintiff is requesting permission to serve  
19 these Defendants via email. The Ninth Circuit has previously  
20 permitted service by email where plaintiffs are able "to  
21 demonstrate that the facts and circumstances of the present case  
22 necessitate[] the district court's intervention." Rio Props., Inc.  
23 v. Rio Int'l Interlink, 284 F.3d 1007, 1016 (9th Cir. 2002). The  
24 Ninth Circuit emphasized that alternative methods of service  
25 authorized by Rule 4(f)(3) "must be reasonably calculated, under  
26 all the circumstances, to apprise interested parties of the  
27 pendency of the action and afford them an opportunity to present  
28 their objections." Id. at 1016-17 (citation and internal quotation

marks omitted). In particular, the court emphasized a concern that "there is no way to confirm receipt of an e-mail message." Id. at 1018.

In their request, Plaintiffs have not specified a precise method of alternative service. The Court will not issue a blanket order authorizing service "by other means." Before this Court authorizes a particular method of service, Plaintiffs must identify a method that is reasonably calculated to notify Defendants. Plaintiffs must therefore identify particular email addresses for the Court, and must demonstrate that Defendants can and will be reached through these email addresses. In order to make this showing, Plaintiffs may submit recent correspondences that they have had with Defendants at specific email addresses. The Court will also entertain motions for third-party discovery upon email service providers, if Plaintiffs believe that such discovery will help to establish that Defendants can and will be reached at specific email addresses. If Plaintiffs can do so, they may further support their request by seeking permission to use additional methods of service that can be performed in conjunction with service by email, such as sending the summons and FAC to a physical address by international mail. The Court DENIES Plaintiffs' request to serve Defendants by other means, as to each Defendant and without prejudice.

**C. Initial Case Management Conference**

Finally, Plaintiffs have requested that the Court reschedule the initial case management conference. The Court hereby GRANTS this request. In light of the substantial evidentiary requirements that the Court has outlined above, this request is especially

appropriate. The Court hereby GRANTS Plaintiffs' request to reschedule the initial case management conference.

**III. CONCLUSION**

The Court hereby GRANTS Plaintiffs' request to extend the deadline for service as to Defendant Kathy Wang. Service upon Kathy Wang may be performed no later than March 10, 2010.

The Court DENIES Plaintiffs' request to extend the deadline for service upon Anita Bei Huang and Jerry Huang. Plaintiffs may submit another motion requesting an extension of time as to these Defendants no later than December 31, 2009.

The Court DENIES Plaintiffs' request to permit service upon Defendants Anita Bei Huang, Jerry Huang, and Kathy Wang "by other means." Plaintiffs may submit another motion requesting specific alternative means of service upon these Defendants no later than December 31, 2009.

The initial case management conference that is scheduled for December 18, 2009 is VACATED. The initial case management conference will instead take place on Friday, April 16, 2010, at 10:00 a.m. in Courtroom 1, on the 17th floor, U.S. Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102.

IT IS SO ORDERED.

Dated: December 10, 2009

  
UNITED STATES DISTRICT JUDGE