

1 interpretation would require that a party attempt service of process by those methods enumerated in Rule
2 4(f)(2), including diplomatic channels and letters rogatory, before petitioning the court for alternative
3 relief under Rule 4(f)(3). We find no support for [this] position. No such requirement is found in the
4 Rule’s text, implied by its structure, or even hinted at in the advisory committee notes.” *Rio Properties,*
5 *Inc. v. Rio Intern. Interlink*, 284 F.3d 1007, 1014-15 (9th Cir. 2002). The Ninth Circuit concluded “that
6 service of process under Rule 4(f)(3) is neither a ‘last resort’ nor ‘extraordinary relief.’ It is merely one
7 means among several which enables service of process on an international defendant.” *Id.* at 1015
8 (internal citation omitted). To the extent that defendant relies on the 1993 Advisory Committee Notes
9 to argue that plaintiffs must show “urgency” in order to warrant alternative service, the Court disagrees.
10 *Rio Properties* held that district courts have “sound discretion” to determine when the “particularities
11 and necessities of a given case require alternate service of process under Rule 4(f)(3)” and noted that
12 “trial courts have authorized a wide variety of alternative methods of service including publication,
13 ordinary mail, mail to the defendant’s last known address, delivery to the defendant’s attorney, telex,
14 and most recently, email.” *Id.* at 1016. In any event, the portion of the 1993 Advisory Committee Notes
15 that defendant quotes presents a hypothetical involving the Hague Convention, which is inapplicable
16 here because Taiwan is not a signatory to that agreement.

17 Plaintiffs assert that service by letters rogatory is more expensive and time-consuming than
18 serving defendant’s counsel. As plaintiffs note, earlier in the MDL the direct purchaser plaintiffs spent
19 many months attempting to effect service on some Taiwanese defendants through the letter rogatory
20 process, and this process proved time-consuming, expensive, and burdensome. *See* Docket No. 725
21 (Order Re: Defendant Nexgen Mediatech Inc.’s Motion to Dismiss for Insufficient Service of Process;
22 Quashing Service; and Granting Direct Purchaser Plaintiffs’ Motion to Serve Nexgen Through its
23 Counsel under Fed.R.Civ.P. 4(f)(3)).² Other plaintiffs have submitted cost estimates for serving
24

25 ² In that order, the Court held that the record did not demonstrate that defendant Nexgen
26 Mediatech, Inc., a Taiwanese corporation, had been properly served by the letter rogatory method, and
27 granted the direct purchaser plaintiffs’ request to serve Nexgen through its U.S. counsel. In four other
28 individual cases related to the MDL, the Court granted the plaintiffs’ motions to serve Taiwanese
defendants, including Chunghwa, through their U.S. counsel. *See* *ATS Claim, LLC v. Epson Elecs. Am.*
Inc., et al., (Docket No. 1309), *AT&T Mobility LLC v. AU Optronics et al.*, (Docket No. 1657), *Motorola*
Inc. v. AU Optronics et al., (Docket No. 1657), *Nokia Corp. v. AU Optronics Corp.*, (Docket No. 1779),

1 Chunghwa through the letter rogatory process, all of which have indicated a likely cost of more than
2 \$8,000.³ In light of the availability of alternative, speedier relief under Rule 4(f)(3), the Court finds that
3 there is no reason to require service through letters rogatory in the instant action, particularly given the
4 stage of the litigation in the MDL and the significant discovery that is already underway in those
5 proceedings. This action has been consolidated with the MDL and is now part of a coordinated
6 discovery schedule. Until plaintiffs are able to serve Chunghwa, plaintiffs will not be able to coordinate
7 and participate in discovery against Chunghwa with the other plaintiffs.

8 The Court also finds that service on Chunghwa through its U.S. counsel comports with due
9 process. Service under Rule 4(f)(3) must “comport with constitutional notions of due process,” meaning
10 that service must be “reasonably calculated, under all the circumstances, to apprise interested parties
11 of the pendency of the action and afford them an opportunity to present their objections.” *Rio*
12 *Properties*, 284 F.3d at 1016-17 (internal quotation and citation omitted). Here, the record shows that
13 Chunghwa has consulted its U.S. counsel regarding the MDL lawsuits and participated in the MDL
14 cases through its U.S. counsel. Chunghwa has been represented in the MDL by the law firm of Gibson,
15 Dunn & Crutcher LLP since June 2008. Since that time, Gibson Dunn has repeatedly appeared as
16 counsel for Chunghwa and has answered complaints, provided declarations, joined defendants’ motions
17 to dismiss, and negotiated settlements with the direct purchaser plaintiffs and the indirect purchaser
18 plaintiffs. Under these circumstances, the Court finds it reasonable to infer that Chunghwa has
19 sufficient notice of this case and that service of defendant through its U.S. counsel will comport with
20 due process. *See FMAC Loan Receivables v. Dagra*, 228 F.R.D. 531, 534 (E.D. Va. 2005) (stating that
21 the numerous motions filed by defendant’s attorney make it “abundantly clear” that defendant has been

22 _____
23 and *TracFone Wireless, Inc. v. AU Optronics et al.*, (Docket No. 2109).

24 ³ See, e.g., *TracFone Wireless, Inc. v. AU Optronics et al.*;

25 According to the Legal Language Services estimate, TracFone will incur a charge of at
26 least \$6,215.00 for translating TracFone’s Complaint and the other documents associated
27 with the TracFone action into Chinese for Chunghwa. Legal Language Services also
estimates that TracFone will incur charges of at least \$3,720 for processing the letters
rogatory for Chunghwa and for paying the fees required by the U.S. Department of State
for service on that entity.

28 Docket No. 2109 at 2-3.

1 in constant communication with his attorney); *see also In re Cathode Ray Tubes (CRT) Antitrust Litig.*,
2 MDL No. 1917, No. 07-5944 SC, 2008 WL 4104341, at *1 (N.D. Cal. Sept. 3, 2008) (authorizing
3 service on foreign defendants through U.S. subsidiaries and domestic counsel); *In re LDK Solar Sec.*
4 *Litig.*, C No. 07-5182 WHA, 2008 WL 2415186, at *2 (N.D. Cal. June 12, 2008) (authorizing service
5 on foreign corporation and foreign individuals on corporation's domestic subsidiary, and noting
6 "[s]ignificantly, FRCP 4(f)(3) stands independently of FRCP 4(f)(1); it is not necessary for plaintiffs
7 to first attempt service through 'internationally agreed means' before turning to 'any other means not
8 prohibited by international agreement.'").

9
10 **CONCLUSION**

11 For the foregoing reasons and for good cause shown, the Court hereby GRANTS plaintiffs'
12 motion to serve Chunghwa Picture Tubes Ltd. through its U.S. counsel pursuant to Federal Rule of Civil
13 Procedure 4(f)(3). Docket No. 16 in C 10-4572 SI; Docket No. 2463 in M 07-1827 SI.

14
15 **IT IS SO ORDERED.**

16
17 Dated: March 8, 2011



18 SUSAN ILLSTON
19 United States District Judge