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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

NICHOLAS ASSEF, et al.,  
Plaintiffs,  
v.  
DOES 1-10,  
Defendant.

Case No. [15-cv-01960-MEJ](#)

**ORDER GRANTING EX PARTE  
APPLICATION FOR LEAVE TO  
SERVE DOE DEFENDANTS BY EMAIL**

Re: Dkt. No. 24

**INTRODUCTION**

Plaintiffs Nicholas Assef and Lincoln Crowne & Company (“Lincoln Crowne”) (collectively, “Plaintiffs”) bring this action against Does 1-10 (“Defendants”) for trademark infringement and defamation. Compl., Dkt. No. 1. Plaintiffs now move for leave to serve Defendants by email and by posting to a blog allegedly maintained by Defendants. Appl., Dkt. No. 24. The Court finds this matter suitable for disposition without oral argument. *See* Fed. R. Civ. P. 78(b); Civ. L.R. 7-1(b). Having considered Plaintiffs’ position, relevant legal authority, and the record in this case, the Court **GRANTS** Plaintiffs’ Ex Parte Application for the following reasons.

**BACKGROUND**

Lincoln Crowne is an investment bank that provides advice on corporate transactions and strategic engagements. Compl. ¶ 7. Assef is its founder and executive director. *Id.* ¶ 9. Lincoln Crowne owns the following trademarks (collectively, the “Lincoln Crowne Trademarks”): Lincoln Crowne & Company (USPTO Reg. No. 4107955); Lincoln Crowne & Company (Australian Reg. No. 1423961); Lincoln Crowne (Australian Reg. No. 1423960); lincolncrowne (Australian Reg. No. 142175). *Id.* ¶ 7. Additionally, Lincoln Crowne owns and has operated a website located at

1 lincolncrowne.com. *Id.* ¶ 8.

2 Plaintiffs’ case concerns a blog located at [www.lincolncrowne.blogspot.com](http://www.lincolncrowne.blogspot.com) (the “Blog”),  
3 which was posted in 2007. *Id.* ¶¶ 11, 14; Declaration of Emily F. Evitt (“Evitt Decl.”) ¶ 2, Dkt.  
4 No. 24-1. The Blog bears the heading, “Beware Lincoln Crowne & Company” and the  
5 subheading “Warning Warning Warning – Nick Assef.” Compl. ¶ 12 & Ex. A (copy of  
6 [www.lincolncrowne.blogspot.com](http://www.lincolncrowne.blogspot.com)). The text of the Blog includes unsubstantiated personal  
7 attacks on Assef, as well as on his company. *Id.* (both). Defendants used Lincoln Crowne’s  
8 trademark as their Blogger username, and thus “LINCOLNCROWNE” appears both in the Blog’s  
9 URL and on the Blog itself under the heading “About Me.” *Id.* Defendants have no affiliation  
10 with Plaintiffs and had no authorization to use the Lincoln Crowne Trademarks. Compl. ¶¶ 12,  
11 14.

12 Defendants originally posted the Blog on or about May 25, 2007. *Id.* ¶ 14. Plaintiffs  
13 allege Defendants are individuals who were upset about the performance of a private investment  
14 and posted false statements on the Blog in retaliation. *Id.* ¶ 13. When one types “Lincoln Crowne  
15 blogspot” or “Nicholas Assef blogspot” into the search engine Google, the Blog appears on the  
16 first page of search results. Evitt Decl. ¶ 3 & Ex. A (copies of search results). Plaintiffs allege the  
17 Blog has caused and is continuing to cause damage to their reputations, including the loss of  
18 clients, significant revenue, and their ability to recruit employees. Compl. ¶ 19; Evitt Decl. ¶ 4.

19 Assef has submitted over 30 complaints to Google requesting removal of the Blog, but  
20 Google repeatedly refused to remove it. Compl. ¶ 14; Evitt Decl. ¶ 5 & Ex. B (copies of emails  
21 from Google to Assef). On or about January 7, 2014, Plaintiffs filed a defamation lawsuit against  
22 Google in the Supreme Court of New South Wales, Australia. Compl. ¶ 15. In response to the  
23 Australian lawsuit, on or about January 18, 2014, Google removed the Blog across all Blogger  
24 domains. *Id.* However, in or around September 2014, Plaintiffs discovered that Google had  
25 reinstated the Blog in the .com domain. *Id.* ¶ 16. Thus, although the Blog is no longer available at  
26 the Australia-specific URL [www.lincolncrowne.blogspot.com/au](http://www.lincolncrowne.blogspot.com/au), it is viewable at the primary  
27 URL [www.lincolncrowne.blogspot.com](http://www.lincolncrowne.blogspot.com). *Id.* Plaintiffs allege Google now refuses to take down  
28 the Blog without a U.S. court order. *Id.* ¶ 17.

1           Plaintiffs filed this lawsuit on April 30, 2015 to seek redress for Defendants’ conduct. *Id.* ¶  
2           1. When Plaintiffs filed the Complaint, they were unaware of Defendants’ identities, and therefore  
3           sued them as Does 1-10. Plaintiffs have since attempted to determine who posted the anonymous  
4           Blog. Evitt Decl. ¶ 7. After filing the Complaint, Plaintiffs filed an ex parte application for leave  
5           to take limited immediate discovery to determine Defendants’ identities. Dkt. No. 8; Evitt Decl. ¶  
6           8. The Court granted, in part, Plaintiffs’ ex parte application and issued an order permitting them  
7           to serve a subpoena on Google “to obtain the Defendants’ names, addresses, telephone numbers,  
8           and email addresses, as well as documents sufficient to identify the IP addresses used to create,  
9           operate, and access the Blog . . . .” Dkt. No. 9. Plaintiffs served a subpoena on Google and in its  
10          response, Google provided the Gmail email address used to register the Blog:  
11          lincolncrowne@gmail.com (the “Gmail Address”). Dkt. No. 16; Evitt Decl. ¶ 8.

12           As Google also operates Gmail, Plaintiffs filed a second ex parte application and sought  
13          leave from the Court to serve a second subpoena on Google. Dkt. No. 16. The Court granted  
14          Plaintiffs’ ex parte application on October 27, 2015 (Dkt. No. 17), and that same day Plaintiffs  
15          issued a subpoena to Google. Dkt. No. 18. In its response, Google disclosed a Yahoo email  
16          address—nick@yahoo.com (the “Yahoo Address”)—for the user who created the Gmail Address  
17          that had been used to register the Blog. Evitt Decl. ¶ 9. Plaintiffs’ counsel subsequently emailed  
18          the Yahoo Address and the Gmail Address, asking if Defendants would accept service of the  
19          Complaint or contact Plaintiffs’ counsel to discuss the case. Evitt Decl. ¶ 10 & Ex. D (copy of  
20          email). However, Plaintiffs’ counsel received a bounce-back from the Yahoo Address stating the  
21          email address did not exist. Evitt Decl. ¶ 10 & Ex. E (copy of bounce-back notification).  
22          Plaintiffs’ counsel did not receive a bounce-back from the Gmail Address, but Defendants did not  
23          respond to Plaintiffs’ email. Evitt Decl. ¶ 10.

24           Additionally, in its second subpoena response, Google provided the IP address used to  
25          create the Gmail Address (the “IP Address”). *Id.* ¶ 11. Plaintiffs’ counsel traced the IP address to  
26          Singapore. *Id.* & Ex. F (copy of IP Address lookup). Assef then researched the IP Address and  
27          traced it to a large public area in Singapore (circa 90 Bras Basah Road, Singapore), an area that  
28          features a number of food outlets that offer free wireless Internet. *Id.* ¶ 12 & Exs. G-I (copies of

1 the IP Address Location Report created by Assef on the website ipaddresslocation.org, the map for  
2 the Esplanade MRT station that is available from the website streetdirectory.com, and a Google  
3 map for 90 Bras Basah Road, respectively). Based on the Singapore IP Address used by  
4 Defendants, as well as Plaintiffs' own location in Australia, Plaintiffs have determined that  
5 Defendants are likely based outside the United States, in Singapore or Australia. Appl. at 4.

6 Plaintiffs bring this ex parte application seeking leave to serve Defendants by email and  
7 posting to the Blog, arguing that unless the Court grants this request, they will have no redress  
8 from the alleged infringing and defamatory speech that they have been trying to remove for nearly  
9 nine years. Appl. at 1. Although they have made efforts to identify and locate Defendants, they  
10 contend the only available means to contact them is by email because Defendants have actively  
11 concealed their identities. *Id.*

#### 12 LEGAL STANDARD

13 Federal Rule of Civil Procedure 4(f) sets forth methods for serving an individual in a  
14 foreign country, such as via the Hague Convention on the Service Abroad of Judicial and  
15 Extrajudicial Documents ("Hague Convention"), by means prescribed by the law of the foreign  
16 country, or by letters rogatory. Specifically, Rule 4(f)(3) states: "Unless federal law provides  
17 otherwise, an individual . . . may be served at a place not within any judicial district of the United  
18 States: . . . (3) by other means not prohibited by international agreement, as the court orders."<sup>1</sup> A  
19 plaintiff need not attempt service by another method before seeking leave from the Court to serve  
20 defendant pursuant to Rule 4(f)(3); plaintiff must only "demonstrate that the facts and  
21 circumstances of the present case necessitate[] the district court's intervention." *Rio Props., Inc.*

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23 <sup>1</sup> The other methods of service of an individual in a foreign country are: "(1) by any  
24 internationally agreed means of service that is reasonably calculated to give notice, such as those  
25 authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial  
26 Documents; (2) if there is no internationally agreed means, or if an international agreement allows  
27 but does not specify other means, by a method that is reasonably calculated to give notice: (A) as  
28 prescribed by the foreign country's law for service in that country in an action in its courts of  
general jurisdiction; (B) as the foreign authority 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).

1 v. *Rio Int'l Interlink*, 284 F.3d 1007, 1016 (9th Cir. 2002) (affirming propriety of service of  
2 process by e-mail).

3 “As obvious from its plain language, service under Rule 4(f)(3) must be (1) directed by the  
4 court; and (2) not prohibited by international agreement. No other limitations are evident from the  
5 text.” *Id.* at 1014. While Rule 4(f)(3) gives the court discretion to “craft alternate means of  
6 service,” such means still must comport with constitutional notions of due process. *Id.* at 1016.  
7 “To meet this requirement, the method of service crafted by the district court must be ‘reasonably  
8 calculated under all the circumstances, to apprise interested parties of the pendency of the action  
9 and afford them an opportunity to present their objections.’” *Id.* at 1016-17 (quoting *Mullane v.*  
10 *Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950)).

### 11 DISCUSSION

12 The Court finds Plaintiffs have satisfied all of the requirements for alternative service  
13 under Rule 4(f)(3). First, based on their service efforts to date, Plaintiffs have learned that  
14 Defendants are likely based in either Singapore or Australia. The Gmail Address used to create  
15 the Blog was created from the IP Address in Singapore. Plaintiffs, in turn, are based in Australia,  
16 as are their customers; thus, there is also a chance that Defendants are in Australia. Even though  
17 Plaintiffs do not have Defendants’ precise location, a defendant’s location need not be known with  
18 certainty to authorize service under Rule 4(f)(3). *Wilens v. Automattic Inc.*, 2015 WL 498745, at  
19 \*5 (N.D. Cal. Feb. 5, 2015) (granting leave to serve anonymous Doe defendant by email where  
20 defendant “appear[ed] to be located in Russia”). Neither Singapore nor Australia is party to an  
21 international agreement prohibiting service by email. Australia is a member of the Hague  
22 Convention, which does not prohibit service by email. *See Hague Conf. on Private Int’l Law*,  
23 *Status Table 14*, [http://www.hcch.net/index\\_en.php?act=conventions.status&cid=17](http://www.hcch.net/index_en.php?act=conventions.status&cid=17) (last visited  
24 Mar. 28, 2016); *Facebook, Inc. v. Banana Ads, LLC*, 2012 WL 1038752, at \*2 (N.D. Cal. Mar. 27,  
25 2012) (collecting cases). Singapore is not a member of the Hague Convention, but the Court is  
26 unaware of any international agreement prohibiting service by email there. *See United States v.*  
27 *First Coast Meat & Seafood*, 30 C.I.T. 1377, 1378 (2006) (noting that Singapore has not “acceded  
28 to the Hague Service Convention). Regardless, “because [Defendants] physical addresses are



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methods by April 25, 2016.

**IT IS SO ORDERED.**

Dated: March 28, 2016



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MARIA-ELENA JAMES  
United States Magistrate Judge