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5 **UNITED STATES DISTRICT COURT**
6 **NORTHERN DISTRICT OF CALIFORNIA**
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8 FLETCHER CARSON,

9 Plaintiff,

10 vs.

11 WALSH GRIFFIN, et al.,

12 Defendants.
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14

Case No.: 13-cv-0520 KAW

ORDER DENYING PLAINTIFF'S MOTION
TO ALLOW ALTERNATE SERVICE OF
PROCESS WITHOUT PREJUDICE AND
DISMISSING DEFENDANTS AJR
INTERNATIONAL FZE AND VICTORIA
ELLIS WITHOUT PREJUDICE

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16 Plaintiff Fletcher Carson, who proceeds pro se and has paid the filing fee, filed the complaint
17 in this case on February 6, 2013. On March 24, 2013, Plaintiff filed a Motion to Allow Alternate
18 Service on Defendants. For the following reasons, the motion is denied without prejudice.

19 **I. Background**

20 Plaintiff is suing the following Defendants: Walsh Griffin, Walsh Capital Group, AJR
21 International FZE, Kelvin Don, Salvatore Financial Agency, Priscilla Ellis, John Kagose, Kenietta
22 Johnson, KVP International Consultants, KVP International Trades, Victoria Ellis, Vicken
23 International Traders LLC, Ivan Ahmed Azziz, Daniel Okwudili Nwankwo, Cisse Abdoulaye, and
24 Ben Aka. Plaintiff alleges that Defendants were responsible for fraudulently soliciting money from
25 him, which was never returned.

26 None of the Defendants have yet appeared in the case. Plaintiff's Motion to Allow Alternate
27 Service states that he attempted to serve all of the Defendants through the United States mail on
28

1 February 11, 2013. However, many of the service documents were returned for lack of a correct
2 address.

3 **II. Dismissal of Defendants**

4 In his motion for alternate service, Plaintiff states that he wishes to "delete from the
5 complaint" Defendant Victoria Ellis, and "remove[]" Defendant AJR International FZE. Mot. at 4.
6 Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i), Plaintiff may dismiss these parties without
7 prejudice without a Court order, as Defendants have not served an answer or motion for summary
8 judgment. The Court construes Plaintiff's requests in the motion for alternate service as a notice of
9 dismissal. Defendants Victoria Ellis and AJR International FZE are, therefore, dismissed from this
10 case without prejudice.

11 **III. Motion for Alternate Service**

12 In his motion, Plaintiff asserts that he has sent all of the Defendants—except for those
13 Defendants who are dismissed without prejudice, as explained above—registered emails containing
14 all of the service documents. The emails were sent through a service called RPost Holdings, which,
15 according to Plaintiff, returns an acknowledgement that the recipient's email server received the email.
16 Plaintiff claims that "none of the emails bounced." Mot. at 4-5.

17 Some of the Defendants are allegedly individuals from outside the United States. Other
18 Defendants are allegedly individuals and businesses in the United States.

19 **A. Service on Foreign Individuals and Foreign Business**

20 Plaintiff wishes to serve foreign individuals, including Ivan Ahmed Azziz, a "broker located in
21 Dubai"; Daniel Okwudili Nwankwo, Azziz's attorney; Cisse Abdoulaye, an agent in Dubai; and Ben
22 Aka, another agent in Dubai, and Walsh Griffin, a person living in France and Ireland. *See Comp'l* at
23 3, 6-7. Plaintiff also wishes to serve a foreign business, Walsh Capital Group, which is allegedly
24 located in Ireland. *Id.* at 3.

25 Federal Rule of Civil Procedure 4(f) ("Serving an Individual in a Foreign Country") authorizes
26 service of process on an individual in a foreign country by any "means not prohibited by international
27 agreement, as the court orders."¹ A foreign business can be served in the same manner prescribed by

28 ¹ The full text of Rule 4(f) allows service on a foreign individual by the following means:

1 Rule 4(f) for serving an individual, except personal delivery under (f)(2)(c)(1). Fed. R. Civ. P.
2 4(h)(2). A method of service of process must comport with constitutional notions of due process, and
3 must be “reasonably calculated, under all the circumstances, to apprise interested parties of the
4 pendency of the action and afford them an opportunity to present their objections.” *Rio Properties,*
5 *Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1016 (9th Cir. 2002).

6 Plaintiff has not addressed whether any international agreement prohibits service via
7 email under the circumstances of this case.

8 In addition, the Court must determine whether Plaintiff's attempt to serve each of these
9 foreign individuals is reasonably calculated, under all the circumstances, to apprise them of the
10 action and give them an opportunity to respond.

11 Plaintiff asserts that Ivan Ahmed Azziz is a broker located in Dubai. He asserts that he
12 served Azziz by registered email, as indicated by Ex. 1-5 to Plaintiff's motion. The exhibit is a
13 receipt authentication of an email sent to fc@omsphere.com,² ivanahmed48@hotmail.com,
14 ivanahmedm@gmail.com, and a receipt authentication of another email sent only to the latter
15 two email addresses. Plaintiff apparently sent two emails because the attachments were too
16 large to be sent in one email. The complaint states that Azziz "introduced Plaintiff to Walsh
17 Griffin via email," and Ex. G to the complaint states that the latter two email addresses above

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19 "(1) by any internationally agreed means of service that is reasonably calculated to give notice,
20 such as those authorized by the Hague Convention on the Service Abroad of Judicial and
21 Extrajudicial Documents;

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

24 (A) as prescribed by the foreign country's law for service in that country in an action in
25 its courts of general jurisdiction;

26 (B) as the foreign authority directs in response to a letter rogatory or letter of request;

27 or

28 (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; or

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

² This appears to be Plaintiff's email address.

1 are Azziz's email addresses. Comp'l at 2. The receipts have a column showing that the emails
2 were "delivered" on March 15, 2013. The receipts also have a column for the date and time
3 that the emails were "opened," but this column is blank.

4 The Court finds that service on Azziz by registered email is not sufficient for the
5 following reasons. Plaintiff does not explicitly state that he communicated with Azziz through
6 these email addresses. In addition, the column of the receipt authentication document labeled
7 "opened" is blank. In the absence of explanation, the Court presumes that if the email had
8 been read by the recipient, the "opened" column would show that. Plaintiff will be given an
9 opportunity to cure these defects, as explained below.

10 Plaintiff also apparently seeks to serve Daniel Okwudili Nwankwo, Azziz's attorney;
11 Cisse Abdoulaye, an agent in Dubai; and Ben Aka, another agent in Dubai, through the
12 registered emails to Azziz's email addresses. *See* Ex. I-5 ("Authentication of Registered Email
13 Receipt to: ivanahmedm@gmail.com, ivanahmed48@hotmail.com for Ivan Ahmed Azziz,
14 Daniel Okwudili Nwankwo, Cisee Abdoulaye, Ben Aka"). It is unclear why those Defendants
15 should be served via email addresses belonging to Azziz, i.e., why emails sent to Azziz's
16 accounts are reasonably calculated to be received by Nwankwo, Abdoulaye, or Aka. Again,
17 there is no indication that Plaintiff has communicated with these individuals through these
18 email addresses, and the receipt authentication does not show that the emails were actually
19 opened.

20 Plaintiff seeks to serve Walsh Griffin, whom he claims is an individual living in France
21 and Ireland, through the email addresses info@walshcapital.org and
22 investment@walshcapital.org. Plaintiff's complaint attaches printouts of a screenshot of a
23 website, walshcapital.org, but does not explain why he believes that emails sent to the above
24 accounts are reasonably calculated to be received by Walsh Griffin personally.

25 Plaintiff also apparently seeks to serve the business, Walsh Capital Group, through the
26 same email addresses. The Court agrees that an email to a business's contact email address
27 that is listed on its website, is reasonably calculated, under all the circumstances, to apprise the
28 business of this action and afford it an opportunity to present their objections. Again,

1 however, there is no indication from the receipt authentication that the emails sent to those
2 addresses were ever opened. However, it is reasonable to assume that a business checks, or
3 ought to check, an email address that is listed on its website. Thus, if Plaintiff demonstrates in
4 a future motion for alternate service that no international agreement prohibits service by
5 registered email in Ireland, the Court will deem Walsh Capital Group served.³

6 **II. Service on Domestic Individuals**

7 Individuals to be served living in the United States include: Kelvin Don, Priscilla Ellis,
8 John Kagose, and Kenietta Johnson. *See* Comp'l at 2-3. Businesses based in the United States
9 include Salvatore Financial Agency, KVP International Consultants, KVP International
10 Trades,⁴ and Vicken International Traders LLC. *Id.*

11 Federal Rule of Civil Procedure 4(e)(1) provides that "an individual ... may be served
12 in a judicial district of the United States by: following state law for serving a summons in an
13 action brought in courts of general jurisdiction in the state where the district court is located or

14 _____
15 ³ Plaintiff may wish to consider that walshcapital.org is listed as a "fraudulent website" on Artists
16 Against 419, a website that purports to identify "fraudulent websites and make[] this data available as
17 a public service." *See* <http://db.aa419.org/fakebanksview.php?key=70753>, last accessed on April 8,
2013. The website also lists the following information regarding the person who registered the
18 website:

18 "Registrant Name:Shaw Thompson
19 Registrant Organization:N/A
20 Registrant Street1:3011 Greenbrook
21 Registrant Street2:
22 Registrant Street3:
23 Registrant City:Arlington
24 Registrant State/Province:Texas
25 Registrant Postal Code:76016
26 Registrant Country:US
27 Registrant Phone:+1.8179919207
28 Registrant Phone Ext.:
Registrant FAX:
Registrant FAX Ext.:
Registrant Email:dabbie0180@gmail.com."

Id. The Court makes no findings regarding the veracity of this information.

⁴ According to the complaint, KVP International Consultants and KVP International Trades are the same company. Comp'l at 5.

1 where service is made.” As this Court is located in California, service of process is governed
2 by California law. Section 415.30 of the California Code of Civil Procedure provides that
3 service may be made by first-class mail to the person to be served. Section 413.30 of the
4 California Code of Civil Procedure states that “[w]here no provision is made in this chapter or
5 other law for the service of summons, the court in which the action is pending may direct that
6 summons be served in a manner which is reasonably calculated to give actual notice to the
7 party to be served and that proof of such service be made as prescribed by the court.”

8 Plaintiff states that mail containing the service documents was delivered to Priscilla
9 Ellis as CEO of KVP International Consultants, KVP International Consultants, and Kenietta
10 Johnson and John Kagose as employees of KVP International Consultants.⁵ See Mot. at 3-4.
11 The Court finds that mail delivered to the address listed on the company's website would
12 comply with the requirements of Section 415.30. The exhibits to Plaintiff's motion attempt to
13 show that this was accomplished. However, the exhibits do not show to whom and to what
14 address the package was delivered, or what documents were contained in the package. If
15 Plaintiff has met the requirements of Cal. Code Civ. P. § 415.30, there is no need for alternate
16 service by email on these Defendants. If Plaintiff has not met the requirements of § 415.30, he
17 may re-serve them in compliance with the statute.

18 Plaintiff states that the mail he sent to Kelvin Don, Salvatore Financial Agency, and
19 Vicken International Traders was returned, as the addresses were wrong. Plaintiff's exhibit
20 shows that he sent registered emails to Kelvin Don at the address
21 salvtoreloanagency@yahoo.com. Mot., Ex. F-2. Unlike any of the other receipts, this receipt
22 shows that one of the registered emails was opened. Neither Plaintiff's motion nor his
23 complaint, however, explains why he believes that this email address belongs to Kelvin Don
24 or to Salvatore Financial Agency. Similarly, Plaintiff does not explain why the entity Vicken
25 International Traders can be served at the email address mspajd@aol.com. See Mot., Ex. A-4
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28 ⁵ The Court notes that the names Priscilla Ellis, Kenietta Johnson and John Kagose are listed on the website under the section titled, "Meet Our Team." Mot., Ex. C.

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Because Plaintiff has not provided this explanation, the Court cannot find at this time that the registered email to these email addresses is reasonably calculated to give actual notice to these Defendants.

IV. Conclusion

For the reasons explained above, it is hereby ORDERED that:

1. Plaintiff's Motion for Alternate Service is denied without prejudice. Within 21 days of the date of this order, Plaintiff may file a revised motion remedying the defects discussed above.
2. Defendants AJR International FZE and Victoria Ellis are hereby dismissed without prejudice.

DATE: April 16, 2013


KANDIS A. WESTMORE
UNITED STATES MAGISTRATE JUDGE