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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

MICROSOFT CORPORATION,  
Plaintiff,  
v.  
GAMEEST INTERNATIONAL  
NETWORK SALES CO., et al.,  
Defendants.

Case No. 17-CV-02883-LHK

**ORDER DENYING MOTION TO  
DISMISS**

Plaintiff Microsoft Corporation (“Microsoft”) sues Defendants Gameest International Network Sales Co. and WeiWei Chu (collectively, “Defendants”) for causes of action relating to Defendants’ trafficking of stolen Microsoft Account (“MSA”) credentials and virtual gaming currencies. Before the Court is Defendants’ motion to dismiss. ECF No. 34. Having considered the parties’ submissions, the relevant law, and the record in this case, the Court hereby DENIES the motion to dismiss.

**I. BACKGROUND**

**A. Factual Background**

Microsoft developed the Xbox video game console and two successor consoles, the Xbox 360 and Xbox One (collectively, “Xbox”). ECF No. 1, ¶ 18. Microsoft and third-party developers

1 sell various types of virtual gaming currencies, which are used to purchase a wide array of digital  
2 items associated with users' Xbox games. *Id.* ¶ 19. These virtual gaming currencies are deposited  
3 in users' MSAs. MSAs and their deposited virtual gaming currencies are personal to the user and  
4 their transfer or sale to third parties is not permitted. *Id.*

5 Defendants, who are citizens and residents of China, use their website to engage in the  
6 international trafficking of stolen MSA credentials and fraudulently obtained virtual gaming  
7 currencies for Xbox. *Id.* ¶ 1; *see also* ECF No. 6-5, Declaration of Jeremy Beckley ("Beckley  
8 Decl."), ¶ 7. Specifically, Defendants advertise on their websites that they sell virtual gaming  
9 currencies for Xbox games. Beckley Decl. ¶ 7. However, these virtual gaming currencies are  
10 offered at "suspiciously low prices." *Id.* Microsoft became aware of Defendants' websites in late  
11 2016. *Id.* Microsoft's Senior Fraud Investigator, Jeremy Beckley made 6 test purchases during  
12 from December 5, 2016 to January 19, 2017 to confirm Defendants were trafficking in stolen  
13 MSA credentials and virtual gaming currency. *See id.* ¶ 8.

14 For example, in December 2016 Beckley supervised a \$59.79 purchase of virtual gaming  
15 currency from Defendants' site. *Id.* ¶ 11. The list price to purchase a roughly equivalent amount of  
16 virtual gaming currency from Microsoft was \$99.99. *Id.* Once Beckley made the purchase,  
17 Microsoft received an email containing log-in and password information for a "hijacked" MSA  
18 that was otherwise owned by an authorized account holder. *Id.* The authorized account holder's  
19 credit card was used to purchase and deposit two Xbox game bundles into the account. *Id.*  
20 Microsoft refunded the customer for the transaction after the customer complained that their  
21 account had been hijacked and the credit card had been used without authorization. *Id.* The other  
22 test purchases from Defendants yielded similar results. *See id.* ¶¶ 11–16.

23 Defendants have completed over \$2 million in fraudulent purchases of virtual gaming  
24 currencies through this scheme. *Id.* ¶ 18. Microsoft has issued customer refunds or has received  
25 chargebacks from the credit card issuing banks for all of these unauthorized and fraudulent  
26 purchases. *Id.* Defendants also use Microsoft's registered trademarks on Defendants' websites to  
27 further and facilitate these fraudulent sales activities. *See* ECF No. 6-1 at 13–22 (Microsoft's

1 trademark registrations); Beckley Decl. at 14 (screen shot of Defendants’ use of Microsoft’s  
2 trademarks on their websites).

3 **B. Procedural History**

4 On May 19, 2017, Microsoft sued Defendants in this Court. *See* ECF No. 1. Microsoft  
5 alleged six causes of action against all Defendants: (1) violation of Racketeer Influenced Corrupt  
6 Organization Act (“RICO”), 18 U.S.C. § 1961; (2) violation of the Computer Fraud and Abuse  
7 Act (“CFAA”), 18 U.S.C. § 1030(a)(4) and (a)(6); (3) violation of the Lanham Act, 15 U.S.C. §  
8 1051; (4) common law fraud; (5) conversion; and (6) unjust enrichment. *Id.* ¶ 6.

9 Concurrently with the Complaint, Microsoft filed an ex parte motion for temporary  
10 restraining order (“TRO”), expedited discovery, and authorization for electronic service of  
11 process. *See* ECF No. 6. More precisely, Microsoft requested a TRO to freeze Defendants’ assets  
12 in the United States that derived from Defendants’ illegal activities. *Id.* at 1. The Court granted  
13 Microsoft’s motion the same day. In relevant part, the Court (1) authorized electronic service of  
14 process, (2) issued a TRO freezing Defendants’ assets in the United States that derived from  
15 Defendants’ illegal activities, (3) found good cause to extend the TRO through June 8, 2017, (4)  
16 set a preliminary injunction hearing for June 8, 2017, and (4) required Microsoft to post security in  
17 the amount of \$10,000. ECF No. 11. Microsoft effected email service on May 26, 2017. ECF No.  
18 23 at 3.

19 On June 7, 2017, the Court granted Microsoft’s motion for a preliminary injunction, again  
20 requiring a \$10,000 bond. ECF No. 28 at 11. The preliminary injunction ordered financial  
21 institutions providing services to Defendants to freeze Defendants’ accounts, enjoined Defendants  
22 from the continued use of Microsoft’s trademarks, and enjoined Defendants from any further  
23 interference with MSAs. *Id.* at 9–10. At that point, Defendants had yet to appear in the case, and  
24 Defendants did not file an opposition to Microsoft’s motion. *Id.* at 1.

25 On June 26, 2017, Defendants filed a motion to dismiss for defects in service of process.  
26 *See* ECF No. 34. On July 10, 2017, Microsoft filed its opposition to the motion. ECF No. 39. On  
27 July 17, 2017, Defendants filed their reply. ECF No. 41.

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1 reconsideration of the Court’s authorization of alternative service.

2 Civil Local Rule 7-9 specifies the requirements for such a motion. The moving party must  
3 show “reasonable diligence in bringing the motion” as well as one of the following:

- 4 (1) That at the time of the motion for leave, a material difference in fact or law exists from  
5 that which was presented to the Court before entry of the interlocutory order for which  
6 reconsideration is sought. The party also must show that in the exercise of reasonable  
7 diligence the party applying for reconsideration did not know such fact or law at the time  
8 of the interlocutory order; or  
9 (2) The emergence of new material facts or a change of law occurring after the time of  
such order; or  
(3) A manifest failure by the Court to consider material facts or dispositive legal arguments  
which were presented to the Court before such interlocutory order.

10 Civ. L.R. 7-9(b).

11 **III. DISCUSSION**

12 Defendants contend (1) Microsoft’s service of process did not conform to the requirements  
13 set forth in the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents  
14 (“Hague Convention”), to which the United States and China are signatories; and (2) Microsoft’s  
15 service violated due process.

16 Below, the Court finds that (1) the Hague Convention did not govern Microsoft’s service,  
17 and (2) Microsoft’s email service comported with due process.

18 **A. The Hague Convention Did Not Govern Microsoft’s Service**

19 The Hague Convention did not govern Microsoft’s form of service because Federal Rule of  
20 Civil Procedure 4(f) does not require conformance with the Hague Convention. Rule 4(f), which  
21 governs the international service of individuals, provides that individuals “not within any judicial  
22 district of the United States” may be served:

- 23 (1) by any internationally agreed means of service that is reasonably calculated to give  
24 notice, such as those authorized by the Hague Convention on the Service Abroad of  
Judicial and Extrajudicial Documents;  
25 (2) if there is no internationally agreed means, or if an international agreement allows but  
does not specify other means, by a method that is reasonably calculated to give notice:  
26 (A) as prescribed by the foreign country’s law for service in that country in an  
27 action in its courts of general jurisdiction;  
(B) as the foreign authority directs in response to a letter rogatory or letter of

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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; or

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

Fed. R. Civ. 4(f). Because Rule 4(f)(3) authorizes service that does *not* conform with the Hague Convention, service under Rule 4(f)(3) is permissible so long as it “is not *prohibited* by international agreement.” Fed. R. Civ. 4(f)(3) (emphasis added).<sup>1</sup> Moreover, because Rule 4(h)(2) “authorizes service of process on a foreign business entity in the manner prescribed by Rule 4(f) for individuals,” the procedures set forth in Rule 4(f) also apply to corporate litigants. *Rio Properties, Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1014 (9th Cir. 2002).

This Court’s May 19, 2017 order, which authorized service on Defendants “by registered electronic mail to the unique email addresses used by Defendants,” was consistent with Rule 4(f)(3). ECF No. 11 at 5. Thus, the Court rejects Defendants’ contention that Microsoft’s service was improper because the email service did not conform with the Hague Convention. Defendants’ claim incorrectly assumes that the Hague Convention is the only means of effecting service.

On the contrary, Microsoft was entitled to, and did, effect service according to the terms of Rule 4(f)(3). For while Rule 4(f) allows service under Rule 4(f)(1), it neither prefers nor requires it: “By all indications, court-directed service under Rule 4(f)(3) is as favored as service available under Rule 4(f)(1) or Rule 4(f)(2).” *Rio Properties*, 284 F.3d at 1015; *Richmond Techs., Inc. v. Aumtech Bus. Sols.*, 2011 WL 2607158, at \*12 (N.D. Cal. July 1, 2011). Consequently, the decision to opt for Rule 4(f)(3) is “commit[ted] to the sound discretion of the district court.” *Rio Properties*, 284 F.3d at 1016; *accord Microsoft Corp. v. Buy More, Inc.*, 2017 WL 2790693, at \*3 (9th Cir. June 27, 2017).

Defendants attempt to avoid this conclusion by pointing to China’s objection to Article 10 of the Hague Convention. The Hague Convention “requires each state to establish a central

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<sup>1</sup> Since the Hague Convention is “an internationally agreed means,” Rule 4(f)(2) is inapplicable here. The Court discusses it no further.

1 authority to receive requests for service of documents from other countries.” *Water Splash, Inc. v.*  
2 *Menon*, 137 S. Ct. 1504, 1508 (2017). When the central authority “receives an appropriate request,  
3 it must serve the documents or arrange for their service and then provide a certificate of service.”  
4 *Id.* (internal citations omitted). However, Article 10 of the Hague Convention also permits service  
5 through means such as postal channels, provided the destination state (here, China) does not  
6 object. *Id.* China has objected, so Article 10 does not apply.

7 Yet China’s objection to Article 10 does not prohibit the email service the Court ordered in  
8 the instant case. As this Court has noted previously, “numerous courts have authorized alternative  
9 service under Rule 4(f)(3) even where the Hague Convention applies. This is true even in cases  
10 involving countries that . . . have objected to the alternative forms of service permitted under  
11 Article 10 of the Hague Convention.” *Richmond Techs.*, 2011 WL 2607158, at \*12; *see, e.g., In re*  
12 *LDK Solar Securities Litigation*, 2008 WL 2415186, at \*3 (N.D. Cal. June 12, 2008) (permitting  
13 service of Chinese defendants under Rule 4(f)(3), despite China’s objections to Article 10, because  
14 the service requested did not involve service by “postal channels”); *Williams–Sonoma Inc. v.*  
15 *Friendfinder Inc.*, 2007 WL 1140639, at \*2 (N.D. Cal. Apr.17, 2007) (permitting service by email,  
16 but not by international mail, for defendants in countries that objected to Article 10 of the Hague  
17 Convention).

18 The Advisory Committee Notes to the 1993 Amendments to Rule 4(f) underscore the  
19 point. They state “that in cases of ‘urgency,’ Rule 4(f)(3) may allow the district court to order a  
20 ‘special method of service,’ even if other methods of service remain incomplete or unattempted.”  
21 *Rio Properties*, 284 F.3d at 1014 (quoting Advisory Committee Notes to the 1993 Amendments to  
22 Rule 4(f)). The situation described in Microsoft’s May 19, 2017 motion for expedited discovery,  
23 temporary restraining order, and authorization for electronic service of process was urgent enough  
24 to warrant service under Rule 4(f)(3). ECF No. 6-2. The motion stated Microsoft had reason to  
25 believe Defendants would “funnel proceeds of their fraud through PayPal to foreign bank accounts  
26 held in China,” and hence “as soon as Defendants learn about the existence of this lawsuit, they  
27 will repatriate all of their assets currently held in the United States to China to prevent them from

1 being made available to satisfy an award for Microsoft in this case.” ECF No. 6-2 at 17–18.  
2 Microsoft supported this assertion with a declaration from its Senior Fraud Investigator, Jeremy  
3 Beckley. ECF No. 6-5. The Court credited this representation, recognized the urgency of the  
4 situation, and thus its May 19, 2017 order authorized email service instead of requiring Microsoft  
5 to follow the time-consuming alternative approach of Rule 4(f)(1) and, by extension, the Hague  
6 Convention. ECF No. 11 at 5.

7 Defendants’ subsequent behavior confirmed the situation’s urgency. Three days after the  
8 Court authorized email service and granted a TRO on May 19, 2017, Defendant Weiwei Chu  
9 shifted almost \$54,000 from his U.S. based HSBC account (which had not yet been identified and  
10 served with the TRO) to his Chinese account. ECF No. 39-1, Declaration of Bonnie  
11 MacNaughton, (“MacNaughton Decl.”) ¶ 4.

12 The next question is whether Microsoft’s service complied with Rule 4(f)(3). The  
13 requirements for service under Rule 4(f)(3) are that it “be (1) directed by the court; and (2) not  
14 prohibited by international agreement.” *Rio Properties*, 284 F.3d at 1014; *In re LDK Solar*, 2008  
15 WL 2415186, at \*2; *see Richmond Techs.*, 2011 WL 2607158, at \*11–12. The Court’s May 19,  
16 2017 Order found “that [Microsoft] may complete service of process on Defendants by registered  
17 electronic mail to the unique email addresses used by Defendants . . . .” ECF No. 11 at 5.  
18 Microsoft then served Defendants at their unique email addresses by sending registered email  
19 through a third-party service, RPost, which “confirmed that all of these emails were received the  
20 same day and that the email service sent to gameest.com@gmail.com was opened.” MacNaughton  
21 Decl. ¶ 3. Microsoft’s service was therefore directed by the Court.

22 Nor was Microsoft’s service “prohibited by international agreement.” Fed. R. Civ. 4(f)(3).  
23 As noted above, Rule 4(f)(3) service is permissible when the Hague Convention applies, and even  
24 when the destination country has objected to Article 10. *Richmond Techs.*, 2011 WL 2607158, at  
25 \*12 (listing examples). Indeed, so long as service of process meets Rule 4(f)(3)’s requirements it  
26 may even “be accomplished in contravention of the laws of the foreign country.” *Rio Properties*,  
27 284 F.3d at 1014.



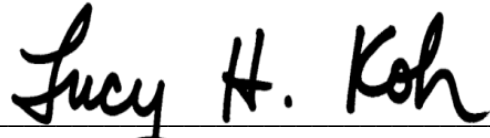


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under Rule 4(f)(3). The Court therefore denies Defendants' Rule 12(b)(5) motion to dismiss for defects in service of process. Insofar as the motion constitutes a request under Civil Local Rule 7-9 seeking leave to file a motion to reconsider, the Court also denies it because there has been no material change in law or facts, and Defendants have failed to point to any dispositive facts or issues the Court failed to consider. Civ. L.R. 7-9.

**IT IS SO ORDERED.**

Dated: October 10, 2017

  
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LUCY H. KOH  
United States District Judge