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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

FOURTE INTERNATIONAL LIMITED BVI, <i>et al.</i> ,	
Plaintiffs,	
v.	
PIN SHINE INDUSTRIAL CO., LTD., <i>et al.</i> ,	
Defendants.	

Case No. 18-cv-00297-BAS-BGS

**ORDER DENYING EX PARTE
MOTIONS FOR ORDER
AUTHORIZING ALTERNATIVE
MEANS OF SERVICE OF
SUMMONS AND COMPLAINT**

[ECF Nos. 5, 9]

Pending before the Court is Plaintiff Fourte International Limited BVI and Plaintiff Fourte International Sdn. Bhd.’s (collectively, “Plaintiffs”) ex parte motion and supplemental ex parte motion for an order authorizing Plaintiffs to use alternative methods to serve the complaint and summons on Defendants Suzhou Pinshine Technology Co., Ltd. (“Pinshine”) and Suzhou Sunshine Technology Co., Ltd. (“Sunshine”) (collectively, “Defendants”), both located in China. (ECF Nos. 5, 9.) Plaintiffs requests two alternative avenues pursuant to Rule 4(h)(2) and Rule 4(f)(3): (1) email service (ECF No. 5), and (2) service on the office of Defendants’ California

1 attorney (ECF No. 9). Defendants’ counsel opposed both ex parte motions. (ECF
2 Nos. 6, 10.)

3 Previously, this Court granted Plaintiffs’ ex parte application requesting the
4 Court to authorize service of the summons and complaint by the Clerk of the Court
5 pursuant to Rule 4(f)(2)(C)(ii) on two other defendants, Pin Shine Industrial Co., Ltd.
6 and Bobbin & Tooling Electronics International Company of BVI. (ECF No. 4.) The
7 motion was unopposed. Service was not affected upon Pin Shine Industrial Co., Ltd.
8 because Pin Shine Industrial Co., Ltd. refused to accept the delivery. (ECF No. 11.)

9 For the reasons herein, the Court **DENIES** Plaintiffs’ ex parte requests.

10 11 **I. LEGAL STANDARD**

12 Under Federal Rule of Civil Procedure Rule 4(h)(2), if a corporation is served
13 outside any judicial district of the United States, it must be served “in any manner
14 prescribed by Rule 4(f) for serving an individual, except personal delivery under
15 (f)(2)(C)(i).” Rule 4(f) permits service on an individual, other than a minor, an
16 incompetent person, or a person whose waiver has been filed, at a place not within
17 any judicial district of the United States by one of three means. Of the methods Rule
18 4(f) permits, it “does not denote any hierarchy or preference of one method of service
19 over another.” *Rio Properties, Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1015 (9th
20 Cir. 2002). Rule 4(f)(1) expressly addresses service pursuant to the Hague
21 Convention. *See* Fed. R. Civ. P. 4(f)(1). Like the United States, China is a signatory
22 to the Hague Convention. The Hague Convention requires signatory countries to
23 establish a Central Authority to receive requests for service of documents from other
24 countries and to serve those documents by methods compatible with the internal laws
25 of the receiving state. *See Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S.
26 694, 698-99 (1988). Service through a country’s Central Authority is the principal
27 means of service under the Hague Convention.

28

1 Rule 4(f)(3) permits service on an individual located abroad “by other means
2 not prohibited by international agreement, as the court orders.” Fed. R. Civ. P.
3 4(f)(3); *cf. Rio Props., Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1015 n.4 (9th Cir.
4 2002) (“A federal court would be prohibited from issuing a Rule 4(f)(3) order in
5 contravention of an international agreement, including the Hague Convention,
6 referenced in Rule 4(f)(1).”). Service by email or on local U.S. counsel is not
7 expressly prohibited by the Hague Convention. *See* Art. 1-14; *see also California Bd.*
8 *Sports, Inc. v. G.H. Dijkmans Beheer B.V.*, No. CIV.09CV1855LRBB, 2009 WL
9 3448456, at *1 (S.D. Cal. Oct. 21, 2009). The Ninth Circuit has determined that
10 “service of process under Rule 4(f)(3) is neither a ‘last resort’ nor ‘extraordinary
11 relief,’” *Rio Props.*, 284 F.3d at 1015 (quoting *Forum Fin. Grp., LLC v. President &*
12 *Fellows*, 199 F.R.D. 22, 23-23 (D. Me. 2001)), and is available “without first
13 attempting service by other means.” *Id.* (referring to the advisory committee notes to
14 Rule 4(f)). However, the moving party must show “that the facts and circumstances
15 of the . . . case necessitate[] the district court's intervention.” *Id.* at 1016 (finding
16 alternative means of service was necessary because defendant was “elusive” and
17 “striving to evade service of process”).

18 19 **II. DISCUSSION**

20 As an initial matter, Plaintiffs argue for the first time in their Reply that
21 Defendants cannot “specially appear” in federal court, and thus, by filing oppositions
22 to Plaintiffs’ motions regarding service, the Court “should find that Defendants . . .
23 are deemed served.” (ECF No. 7 at 2-3.) Even if the Court was to consider this
24 argument, it fails. *See Benny v. Pipes*, 799 F.2d 489, 492 (9th Cir. 1986) (finding that
25 making a “general appearance” requires an intention to appear); *see also Twin Rivers*
26 *Eng’g, Inc. v. Fieldpiece Instruments, Inc.*, No. CV 16-04502-BRO (MRWx), 2016
27 WL 7479373, at *11 (C.D. Cal. Sept. 8, 2016) (rejecting plaintiff’s argument
28 regarding special appearances when defendant explicitly stated it intended to

1 challenge service in its first appearance to dispute an entry of default). Though
2 Defendants’ counsel’s label that he is “specially appearing” has no legal significance,
3 it “does emphasize a party’s intent to object to jurisdiction.” *McGarr v. Hayford*, 52
4 F.R.D. 219, 221 (S.D. Cal. 1971). Defendants have not waived any arguments
5 relating to insufficient service; instead, each appearance counsel has made is to solely
6 dispute the methods of service. *See Peterson v. Highland Music, Inc.*, 140 F.3d 1313,
7 1318 (9th Cir.1998); *cf. Neumont Univ., LLC v. Nickles*, 304 F.R.D. 594, 597 (D.
8 Nev. 2015) (“Such defenses may also be waived when a defendant ‘engage[s] in . . .
9 deliberate, strategic behavior’ in defending against the lawsuit.”). Thus, the Court
10 declines to find Defendants have waived any arguments regarding service or that
11 Defendants have been served.

12 As to Plaintiffs’ requests for a court order to serve Defendants by other
13 alternative methods under Rule (f)(3), the Court denies Plaintiffs’ requests. The Court
14 finds that Plaintiffs have not shown that the circumstances of this action necessitate
15 the Court’s intervention. Plaintiffs only argue that the requested alternative methods
16 of service are the most efficient and effective methods of service, but this argument
17 does not meet the requisite standard for obtaining a court order. *See Rio Props.*, 284
18 F.3d at 1016; *see also California Bd. Sports, Inc.*, 2009 WL 3448456, at *2 (denying
19 request for service on U.S. counsel when plaintiff only argued that service through
20 available methods was “too slow”). Plaintiffs have not alleged any facts that show
21 that the available methods of service have failed to affect service, that this case is of
22 particular urgency requiring alternative service methods, or any other facts to support
23 their requests. Instead, Plaintiffs only state that they attempted to serve a “waiver of
24 service of summons packet” on Pinshine by Federal Express, which Pinshine refused.
25 (Schierling Decl., ECF No. 5-1, ¶ 2.)

26 Therefore, the Court **DENIES** Plaintiffs’ *ex parte* requests to permit email
27 service and service on Defendants’ counsel under Rule 4(f)(3).
28

1 **III. CONCLUSION**

2 For the foregoing reasons, the Court **DENIES** Plaintiffs' ex parte requests to
3 authorize alternative service of process on Defendants Pinshine and Sunshine. (ECF
4 Nos. 5, 9.)

5 **IT IS SO ORDERED.**

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7 **DATED: April 11, 2018**


Hon. Cynthia Bashant
United States District Judge

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