

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

**PROFESSIONAL INVESTIGATING
& CONSULTING AGENCY INC.,**

Plaintiff,

v.

Civil Action 2:11-cv-01025

Judge Gregory L. Frost

Magistrate Judge Elizabeth P. Deavers

DAVID SUZUKI, et al.,

Defendants.

OPINION AND ORDER

This matter is before the Court for consideration of Plaintiff's Motion for Order Directing Email Service. (ECF No. 25.) In the Motion, Plaintiff seeks permission to serve foreign defendants David Suzuki ("Mr. Suzuki") and Suzuki Reconnaissance Advisors, Ltd. ("SRA") by electronic mail ("email"). For the reasons that follow, Plaintiff's Motion is **GRANTED**. Plaintiff must effect service over Defendants David Suzuki and SRA via email or through the Central Authority **ON OR BEFORE JANUARY 31, 2014**.

I.

Plaintiff has tried diligently to effect service over the foreign Defendants since filing its Complaint on November 15, 2011. Both Defendants reside in Hong Kong in the People's Republic of China ("PRC"). Plaintiff's principal place of business is in Columbus, Ohio. Plaintiff contracted with Legal Language Services ("LLS"), an international litigation support service, soon after filing its Complaint. Plaintiff paid LLS to serve both Defendants through the PRC's Central Authority. LLS ran into difficulty, however, because it did not have Defendants' correct addresses. Despite Plaintiff's inability to effect proper service over Defendants, a Hong Kong law firm purporting to represent Defendants reached out to Plaintiff. The law firm refused

to accept service on Defendants' behalf, but did begin settlement negotiations with Plaintiff. On August 28, 2012, Plaintiff amended its Complaint in order to correct Defendants' addresses. Plaintiff again retained LLS to serve its Amended Complaint on Defendants. Plaintiff's service package arrived at the PRC's Central Authority on September 14, 2012. To date, the Central Authority has not effected service over Defendants.

Frustrated by the delays at the Central Authority, Plaintiff attempted to serve Defendants physically. His process server managed to approach Mr. Suzuki and leave him a copy of the Summons and Amended Complaint. Soon after, Mr. Suzuki sent a letter to the Court, indicating that he and SRA should be dismissed because physical service was improper. (ECF No. 22.) In his letter, Mr. Suzuki noted that he "may be contacted at dsuzuki@sraww.com." (*Id.*) Although physical service was improper, the Court did not dismiss the case and gave Plaintiff until January 31, 2014 to effect service over Defendants through the Central Authority. (ECF No. 24.)

Plaintiff filed the subject Motion on December 31, 2013. Plaintiff asks the Court to allow it to serve Defendants by email. Plaintiff argues that an alternative means of service is required because of the delays at the Central Authority. Plaintiff notes that the email is reasonably calculated to reach Mr. Suzuki because he provided the email address in his letter to the Court. Plaintiff further asserts that the email is reasonably calculated to reach SRA because the email address is the one provided on its company website. Moreover, Mr. Suzuki has actual knowledge of the lawsuit against him and has already been served with a copy of the Summons and Amended Complaint. Finally, Plaintiff notes that the Hague Convention is "silent" on email service and the PRC does not specifically object to email service in its Declarations and Reservations to the Convention. (Pl.'s Mot. 3, ECF No. 25.) In the alternative, Plaintiff

requests extra time in which to serve Defendants through the Central Authority.

II.

Federal Rule of Civil Procedure 4(f) provides that an individual foreign defendant may be served outside of the United States “by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents.” Fed. R. Civ. P. 4(f). The United States and the PRC are both signatories to the Hague Convention. *U.S. ex rel Thomas v. Siemens AG*, 708 F. Supp. 2d 505, 517-18 (E.D. Pa. 2010). A foreign corporation may be served “in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C)(I).” Fed. R. Civ. P. 4(h)(2).

Generally, the Hague Convention “requires signatory countries to establish a Central Authority to receive requests for service of documents from other countries and to serve those documents.” *Zhang v. Baidu.com Inc.*, 932 F. Supp. 2d 561, 565 (S.D.N.Y. 2013) (citing Hague Convention arts. 2-6). Article 10 of the Hague Convention, however, allows for service through postal channels or personal service by judicial officers, and applies unless the destination country has objected to those specific methods of service. Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents, art. 10, Jan. 8, 1969, T.I.A.S. No. 6638. The PRC has objected to Article 10 of the Convention in its entirety. *See* People’s Republic of China’s Decls. & Reservs. to the Hague Convention, entered into force on July 19, 1970, *available at* http://www.hcch.net/index_en.php?act=status.comment&csid=393&disp=resdn (last visited Jan. 6, 2014).

“[C]ompliance with the [Hague] Convention is mandatory in all cases to which it applies.” *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 705 (1988). A court,

however, may order alternative means of service when the method comports with constitutional notions of due process and is not prohibited by international agreement. Fed. R. Civ. P. 4(f)(3); *see also Lexmark Int'l, Inc. v. Ink Techs. Printer Supplies, LLC*, 291 F.R.D. 172, 174 (S.D. Ohio 2013) (noting that the alternative method must be directed by the court, must not be prohibited by international agreement, and must be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”) (quoting *Studio A. Entm't, Inc. v. Active Distribs., Inc.*, No. 1:06cv2496, 2008 WL 162785, at *4 (N.D. Ohio Jan. 15, 2008)). Before ordering alternative service, “[t]he court may require a showing by the plaintiff that reasonable efforts to serve defendant have already been made and the court’s intervention will avoid further unduly burdensome or futile attempts at service.” *Studio A. Entm't*, 2008 WL 162785 at *3.

III.

The Court concludes that Plaintiff meets all of the requirements of Rule 4(f)(3) and is entitled to serve Defendants through email. First, Plaintiff has sufficiently shown that service through email is not prohibited by an international agreement. As Plaintiff contends, the Hague Convention is silent on email service. “Various courts have agreed that service by email is not prohibited by the Hague Convention.” *Lexmark*, 291 F.R.D. at 174; *see also Facebook, Inc. v. Banana Ads, LLC*, No. C-11-3619 YGR, 2012 WL 1038752, at *2 (N.D. Cal. Mar. 27, 2012) (noting that the “Hague Service Convention does not expressly prohibit email service.”); *Williams-Sonoma Inc. v. Friendfinder Inc.*, No. C 06-06752 JSW, 2007 WL 1140639, at *2 (N.D. Cal. Apr. 17, 2007) (concluding that the plaintiff demonstrated that service via email is not prohibited by the Hague Convention). “Email service has been approved even where, as here, the country objects to Article 10 of the Hague Convention.” *Lexmark*, 291 F.R.D. at 175

(allowing email service on defendants in the PRC); *see also Gurung v. Malhotra*, 279 F.R.D. 215, 219 (S.D.N.Y. 2011) (“Where a signatory nation has objected to only those means of service listed in Article [10], a court acting under Rule 4(f)(3) remains free to order alternative means of service that are not specifically referenced in Article [10]”).

Second, Plaintiff has provided the Court with sufficient information that email service comports with constitutional notions of due process. Serving Defendants at the email addresses Plaintiff proposes is reasonably calculated to apprise Defendants of the action pending against them.¹ Mr. Suzuki provided the email address himself in a letter to the Court. The corporate email address is less obviously connected to SRA. Plaintiff proposes to use the email address on the company website for “SRA Worldwide Risk Management, Ltd.” *See* SRA Worldwide Risk Management, <http://www.sraww.com/Pages/sitemap.aspx> (last visited Jan. 6, 2014). Plaintiff asserts that SRA is also known as “SRA Worldwide Risk Management, Ltd.” (Pl.’s Mot. 3, ECF No. 25.) The Court conducted a search of the two companies and agrees with Plaintiff that it is reasonable to conclude that the companies are the same entity. Mr. Suzuki is a principal of SRA, and his email address has the same domain name as the one provided for SRA Worldwide Risk Management, Ltd. A search of the phrase “Suzuki Reconnaissance Advisors, Ltd.” yields the SRA Worldwide Risk Management, Ltd. website provided by Plaintiff. Plaintiff has provided sufficient information to show that both email addresses are valid ways to apprise Defendants of the action pending against them. Thus, this method of service comports with due process requirements.

Finally, Plaintiff has sufficiently shown that the circumstances of this case warrant

¹ The Court also emphasizes that Defendants have actual knowledge of the lawsuit, which bolsters the position that email service would sufficiently satisfy any due process concerns.

alternative service. Plaintiff has made every reasonable effort to effect service over Defendants under the Central Authority. This case has been pending for over two years. The PRC's Central Authority has had Plaintiff's service package since 2012. Allowing Plaintiff to serve Defendants by email will avoid further burdensome and likely futile attempts at service through the Central Authority. Further, Mr. Suzuki is clearly aware of the action pending against him and SRA. Defendants' law firm has been involved in negotiating settlement of this case with Plaintiff since 2012. Mr. Suzuki was personally served with a copy of the Summons and Complaint, and went as far as to write a letter to the Court about the pending lawsuit. Thus, the Court concludes that alternative service is warranted under the facts of this case.

The Court therefore authorizes service on Defendants through email. Plaintiff may serve Summonses and copies of its Amended Complaint on Mr. Suzuki at dsuzuki@sraww.com and on SRA at info@sraww.com.

IV.

Plaintiff's Motion is **GRANTED**. Plaintiff must effect service through the Central Authority or through the email addresses provided above **ON OR BEFORE JANUARY 31, 2014**. If Plaintiff cannot effect service over one or both Defendants by that date, this case will be **DISMISSED WITHOUT PREJUDICE**.

IT IS SO ORDERED.

Date: January 7, 2014

/s/ Elizabeth A. Preston Deavers

Elizabeth A. Preston Deavers
United States Magistrate Judge