

**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 David Suzuki's February 1, 2014 Correspondence (ECF No. 32-1) and Plaintiff's Response (ECF No. 33). In his Letter, Mr. Suzuki asserts that neither he nor Suzuki Reconnaissance Advisors, Limited ("SRA") have been served by Plaintiff in accordance with the Court's January 7, 2014 Opinion and Order. Further, Mr. Suzuki takes issue with the Court's determination that the email address provided for SRA Worldwide Risk Management Limited is reasonably calculated to reach SRA. SRA Worldwide Risk Management Limited, Mr. Suzuki notes, is a new company he formed in May 2013.

In its response, Plaintiff asserts that it sent a copy of the summons and Complaint to both Defendants at the email addresses specified by the Court. Plaintiff provides an affidavit from its counsel, Mr. Gonzalez, certifying that he emailed the documents to Defendants in accordance with the Court's Order on January 10, 2014. Mr. Gonzales also attests that he received the notifications confirming that both emails had been delivered to the recipients on January 10, 2014. (Gonzalez Aff. ¶ 7, ECF No. 33-1.)

The Court concludes that Plaintiff effected service over both Defendants in accordance with its January 7, 2014 Order, which allowed Plaintiff to serve Defendants via email after

numerous failed attempts to effect service, which Defendants were clearly trying to evade. In making its decision to allow email service, the Court found that such alternative service was not prohibited by international agreement and was reasonably calculated to apprise Defendants of the action pending against them. *See* Fed. R. Civ. P. 4(f)(3); *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).

Plaintiff has provided sufficient evidence to demonstrate that the appropriate documents were served in compliance with the Court's Order. *See, e.g., TracFone Wireless, Inc. v. Bitton*, 278 F.R.D. 687, 693 (S.D. Fla. 2012) (allowing plaintiff to file an email delivery confirmation “or substantially equivalent documents” as proof that service had been effectuated); *Flores v. Koster*, No. 3:11-cv-0726-M-BH, 2013 WL 664682 (N.D. Tex. Jan. 24, 2013), adopted by 2013 WL 708683 (N.D. Tex. Feb. 25, 2013) (accepting plaintiffs' attestation that defendant was served with copies of the summons and complaint by email as proof of service).

Because Plaintiff effected service over Defendants on January 10, 2014, Defendants were required to respond to Plaintiff's Complaint on or before January 31, 2014. The Court, however, will grant Defendants additional time in which to file their response. Defendants must file an answer or other responsive pleading **WITHIN TWENTY-ONE (21) DAYS OF THE DATE OF THIS ORDER**. Defendant may raise the matters addressed in Mr. Suzuki's February 1, 2014 Letter in an answer or responsive pleading. The Court, however, will not accept the letter

as a response to Plaintiff's Complaint. *See Taylor v. Stanley Works*, No. 4:01-cv-120, 2002 WL 32058966, at *3 (6th Cir. July 16, 2002) ("By answering the complaint, the defendant has not waived its objection to the sufficiency of service of process"). The Clerk is **DIRECTED** to send a copy of this Order to Defendant David Suzuki at dsuzuki@sraww.com and to Defendant SRA at info@sraww.com.

IT IS SO ORDERED.

Date: February 14, 2014

/s/ Elizabeth A. Preston Deavers

Elizabeth A. Preston Deavers
United States Magistrate Judge