

1
2
3
4
5
6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 AMAZON.COM INC., *et al.*,

9 Plaintiffs,

Case No. C23-1703-TL-MLP

10 v.

ORDER

11 VICTORIIA ANANCHENKO, *et al.*,

12 Defendants.

13
14 This matter is before the Court on Plaintiffs Amazon.com, Inc., Amazon.com Services
15 LLC, The James Bryson Shepherd Trust, and Berkey International LLC's (collectively,
16 "Plaintiffs") *Ex Parte* Motion for Alternative Service ("Plaintiffs' Motion"). (Pls.' Mot. (dkt.
17 # 12).) No defendant has yet appeared in this action. Having considered Plaintiffs' submissions,
18 the governing law, and the balance of the record, the Court GRANTS Plaintiffs' Motion (dkt.
19 # 12).

20 **I. BACKGROUND**

21 On November 7, 2023, Plaintiffs filed a complaint alleging Defendants Victoriia
22 Ananchenko, who controlled Amazon Selling Account "CloudMK"; Yevhenii Kolisnyk, who
23 controlled Amazon Selling Account "Beyonders"; Yuri Smulskyi, who controlled Amazon

1 Selling Account “TiFlowers”; Nikita Kuznetsov, who controlled Amazon Selling Account
2 “Tayler Weedon” (collectively, “Defendants”); and “Does 1-10” acted in concert to sell
3 counterfeit Berkey-branded products. (Compl. (dkt. # 1) at ¶¶ 11-15, 39.) Plaintiffs allege
4 Defendants reside in Ukraine. (*Id.* at ¶¶ 11-14.)

5 To identify and locate Defendants, Plaintiffs used information Defendants provided in
6 opening their Amazon Selling Accounts in addition to working with a private investigator and
7 seeking third-party discovery from the provider of the virtual bank accounts Defendants linked
8 with their Amazon Selling Accounts. (Rainwater Decl. (dkt. # 13) at ¶¶ 2-3.) Plaintiffs’
9 investigation confirmed Defendants were located in Ukraine, but physical addresses they had
10 provided were nonexistent or unrelated to Defendants. (*Id.* at ¶ 4.) Defendants accessed their
11 bank accounts from IP addresses in Ukraine until March 2022, “near in time to the Russian
12 invasion of Ukraine[.]” (*Id.* at ¶ 5.) Subsequently, Defendants’ IP logins traced to Russia, the
13 Netherlands, and the United States, but Plaintiffs believe these logins were through virtual
14 private networks that can hide geographic location. (*Id.*) Plaintiffs have been unable to locate
15 valid physical addresses for Defendants. (*Id.* at ¶¶ 5-6.)

16 II. DISCUSSION

17 Plaintiffs seek to serve Defendants Ananchenko, Kolisnyk, and Smulskyi through the
18 email addresses they registered with their Amazon Selling Accounts. (Pls.’ Mot. at 5; *see* Garrett
19 Decl. (dkt. # 14) at ¶¶ 4-5.) On January 19, 2024, Plaintiffs sent test emails to these addresses
20 and “received no error notices, bounce back messages, or other indications that the test emails
21 failed to deliver[.]” (Rainwater Decl. at ¶ 7.)

22 The test email sent to Defendant Kuznetsov’s email address registered with the “Tayler
23 Weedon” Amazon Selling Account, however, generated an error notice in response. (Rainwater

1 Decl. at ¶ 8.) The “Tayler Weedon” Amazon Selling Account “also communicated with Amazon
2 using a second email address, hanhtrinhyeuthuonggg05@gmail.com . . . regarding seller
3 feedback published on the Selling Account’s seller profile page.” (Garret Decl. at ¶ 6 (footnote
4 omitted).) On January 26, 2024, Plaintiffs sent a test email to this second address and received no
5 error notice. (Rainwater Decl. at ¶ 8.) Plaintiffs seek to serve Defendant Kuznetsov at this email
6 address. (Pls.’ Mot. at 5.)

7 **A. Legal Standards**

8 Federal Rule of Civil Procedure 4(f) permits service of process on individuals in foreign
9 countries by: (1) internationally agreed methods such as those authorized by the Hague
10 Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or
11 Commercial Matters (the “Hague Convention”); (2) if there is no internationally agreed means,
12 in accordance with the foreign country’s law; or (3) by “other means not prohibited by
13 international agreement, as the court orders.” Fed. R. Civ. P. 4(f)(3). To obtain a court order
14 under Rule 4(f)(3), a plaintiff must “demonstrate that the facts and circumstances of the present
15 case necessitated the district court’s intervention.” *Rio Props., Inc. v. Rio Int’l Interlink*, 284 F.3d
16 1007, 1016 (9th Cir. 2002).

17 In addition to the requirements of Rule 4(f), “a method of service of process must also
18 comport with constitutional notions of due process.” *Rio*, 284 F.3d at 1016. “To meet this
19 requirement, the method of service crafted by the district court must be ‘reasonably calculated,
20 under all the circumstances, to apprise interested parties of the pendency of the action and afford
21 them an opportunity to present their objections.’” *Id.* at 1016-17 (quoting *Mullane v. Cent.*
22 *Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)).

1 **B. Rule 4(f)**

2 The Court concludes Plaintiffs have adequately shown the Court’s intervention is
3 necessary. Despite a thorough investigation through multiple avenues, Plaintiffs have been
4 unable to locate valid physical addresses for Defendants. (Rainwater Decl. at ¶¶ 5-6.) Email
5 addresses are the only valid contact information Plaintiffs have been able to identify. (*Id.* at ¶ 6.)

6 Plaintiffs contend Rule 4(f)(3) and the Hauge Convention allow for service by email on
7 defendants located in Ukraine. (Pls.’ Mot. at 6.) Ukraine, like the United States, is a party to the
8 Hague Convention.¹ The Hague Convention expressly “shall not apply where the address of the
9 person to be served with the document is not known.” Hague Convention, art. 1.² Plaintiffs here
10 have been unable to locate physical addresses for Defendants, and thus, could not utilize methods
11 authorized by the Hague Convention. (Rainwater Decl. at ¶ 6.)

12 Nevertheless, whether or not the Hague Convention applies, courts in the Ninth Circuit
13 have concluded that email service on individuals located in Ukraine is not prohibited by it or any
14 other international agreement. *See Williams-Sonoma Inc. v. Friendfinder Inc.*, 2007 WL
15 1140639, at *2 (N.D. Cal. Apr. 17, 2007) (“service via email [on defendants in Ukraine] is not
16 prohibited by an international agreement”); *Davy v. Paragon Coin, Inc.*, 2020 WL 1539617, at
17 *1-2 (N.D. Cal. Feb. 5, 2020) (permitting service by email on defendant located in Ukraine
18 whose physical address could not be obtained). The Court therefore concludes that service by
19 email is not prohibited by international agreement. Plaintiffs have shown that an order permitting
20 service by email would comport with Rule 4(f).

21
22

¹ *See Contracting Parties*, available at <https://www.hcch.net/en/instruments/conventions/status-table/?cid=17> (last viewed February 7, 2024).

23 ² Available at <https://www.hcch.net/en/instruments/conventions/full-text/?cid=17> (last viewed February 7, 2024).

1 **C. Due Process**

2 The Court next considers whether service of process using email addresses used to
3 communicate with Amazon with regard to Defendants’ Amazon Selling Accounts comports with
4 constitutional due process—that is, whether the method of service is “reasonably calculated,
5 under all the circumstances, to apprise interested parties of the pendency of the action and afford
6 them an opportunity to present their objections.” *Mullane*, 339 U.S. at 314.

7 Plaintiffs contend email service comports with due process because: (1) Defendants used
8 the email addresses to communicate with Amazon in conducting their online businesses; and (2)
9 test emails confirmed that the email addresses remain functional. (Pls.’ Mot. at 7-8.) Plaintiffs
10 point to *Facebook, Inc. v. Banana Ads, LLC*, where a court authorized service via email on
11 foreign defendants who “rely on electronic communications to operate their businesses” and for
12 whom plaintiff had “valid email addresses[.]” 2012 WL 1038752, at *2 (N.D. Cal. Mar. 27,
13 2012). In that case, however, it appears that the defendants’ businesses were ongoing and used
14 internet domain names that, when registered, “required [defendants] to provide accurate contact
15 information and to update that information.” *Id.* at *1.

16 The situation is somewhat less clear here, however, as the Amazon Selling Accounts at
17 issue are no longer operating. (*See* Compl. at ¶ 45 (“After Amazon verified Defendants’ sale of
18 counterfeit Berkey products, it promptly blocked Defendants’ Selling Accounts.”).) It is unclear
19 when the accounts were blocked but it appears all of the accounts were operating through at least
20 April or May 2023, when Amazon sent Berkey sample products to determine if they were
21 counterfeit. (*See id.*, Schedule 1.)

22 Nevertheless, Plaintiffs provide evidence that the email addresses they propose effecting
23 service through were actively used in operating the Amazon Selling Accounts. Individuals used

1 the emails to communicate with Amazon in conducting their online businesses. (*See* Garrett
2 Decl. at ¶¶ 5-6.) And Plaintiffs have verified that the email addresses remain active. (*See*
3 Rainwater Decl. at ¶¶ 7-8.) This provides some evidence that Defendants are still using those
4 addresses.

5 In a similar situation in *Bright Solutions for Dyslexia*, alternative service by email was
6 used where plaintiffs were “unable to locate [d]efendants and believed they may have moved to
7 China.” *Bright Sols. for Dyslexia, Inc. v. Lee*, 2017 WL 10398818, at *4 (N.D. Cal. Dec. 20,
8 2017), *report and recommendation adopted*, 2018 WL 4927702 (N.D. Cal. Mar. 26, 2018). After
9 issuing takedown notices, the plaintiffs obtained email addresses associated with eBay online
10 seller accounts that defendants had used to sell allegedly counterfeit products. *Id.* at *3. “No
11 errors were received” when plaintiffs sent test emails to two of the addresses. *Id.* The court
12 granted plaintiffs’ motion for alternative service by email, and granted default judgment after
13 defendants failed to respond even though “the emails had been successfully delivered with no
14 errors.” *Id.* at *4. The court concluded “email service was proper because [d]efendants structured
15 their counterfeit business such that they could only be contacted by email” and, when served by
16 email, “[t]hese emails did not bounce back.” *Id.* at *7.

17 In contrast, in *Amazon.com Inc. v. KexleWaterFilters*, this Court denied alternative
18 service by email because plaintiffs had not shown sufficient “indicia that the defendants would in
19 fact receive notice of the lawsuit if the plaintiffs served them by email.” 2023 WL 2017002, at
20 *4 (W.D. Wash. Feb. 15, 2023). The approach in *Bright Solutions for Dyslexia* was endorsed by
21 this Court in that case, but in *KexleWaterFilters*, the plaintiffs had “not demonstrated that the
22 email addresses associated with [d]efendants’ Selling Accounts are still valid[.]” *Id.* Plaintiffs
23 were permitted to “renew their motion with evidence of recent communications to [d]efendants

1 that demonstrates that service by email is a reliable method to provide [d]efendants with notice
2 of the pendency of this action.” *Id.*

3 Here, as in *Bright Solutions for Dyslexia*, Plaintiffs have identified email addresses that
4 Defendants used in their online businesses, and verified that those email addresses remain
5 functional. As in *Bright Solutions for Dyslexia*, Defendants structured their counterfeit
6 businesses such that they can only be contacted by email. Together, these circumstances provide
7 sufficient indicia that Defendants are likely to receive notice if served through the email
8 addresses used in conjunction with their Amazon Selling Accounts.

9 Moreover, Plaintiffs propose to “serve Defendants using an online service for service of
10 process, RPost (www.rpost.com), that provides proof of authorship, content, delivery, and
11 receipt[.]” (Rainwater Decl. at ¶ 9.) Service via RPost should, according to Plaintiffs’
12 representations to the Court, provide evidence as to whether service by email was, in fact,
13 received. This offers reassurance that if the email addresses are not being monitored and used,
14 then service will not be erroneously deemed completed.

15 The Court concludes service via the email addresses is reasonably calculated to apprise
16 Defendants of the pendency of this action and provide them an opportunity to respond.
17 Accordingly, the Court finds due process concerns are satisfied.

18 III. CONCLUSION

19 For the foregoing reasons, the Court GRANTS Plaintiffs’ Motion (dkt. # 12). Plaintiffs
20 are authorized to serve the following Defendants at the following email addresses:

- 21 • Defendant Victoriia Ananchenko: xbinhgo@gmail.com
- 22 • Defendant Yevhenii Kolisnyk: bartcamarenokkc59@gmail.com
- 23 • Defendant Yurii Smulskyi: flowerstec33@gmail.com

