

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

REBECCA COSTER,

Plaintiff,

v.

THE PARTNERSHIPS AND
UNINCORPORATED ASSOCIATIONS
IDENTIFIED IN SCHEDULE “A”,

Defendants.

Civil Action No. 2:26-cv-01732-WSS

JURY TRIAL DEMANDED

**Memorandum of Law in Support of Plaintiff's Motion for Authorization to
Perform Electronic Service of Process Under Fed. R. Civ. P. 4(f)(3)**

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Plaintiff Rebecca Coster ("Plaintiff") respectfully requests, ex parte, authorization to effect alternative service of process on the Individuals, Partnerships, and Unincorporated Associations Identified in Schedule "A" (collectively, "Defendants") by email, marketplace messaging, and electronic publication under Federal Rule of Civil Procedure 4(f)(3). The evidence shows that Defendants operate pseudonymous online storefronts, conceal or omit reliable physical address information, and conduct their commercial activity through electronic channels. Plaintiff's address-search investigation, attached as Exhibit 3 to the Declaration of Pete Wolfgram ("Wolfgram Decl."), confirms that Plaintiff has been unable to identify a verifiable physical address for service for the Defendants. The requested electronic means are reasonably calculated to give actual notice and are not prohibited by international agreement.

Defendants have offered for sale, sold, and distributed knock-off and infringing versions of Plaintiff's copyrighted "Awesome Avocado", "Fine Apple" and "Positive Potato" within this district and throughout the United States. Plaintiff has sued Defendants for copyright infringement based on Defendants manufacturing, importing, exporting, advertising, marketing, promoting, distributing, offering for sale and/or selling unlicensed and infringing versions of Plaintiff's Images ("Plaintiff's Work"), which infringe at least one claim of the Asserted Copyrighted Images. Defendants are infringing the Asserted Copyrighted Images by offering for sale and selling the Infringing Plaintiff's Products through their use of seller identifiers set forth in Schedule "A" to the Complaint ("Seller IDs") and pseudo-anonymous online commerce storefronts ("Online Storefronts") under Seller IDs on online commerce platforms including, but not limited to Amazon.com. ("Online Marketplaces").

Pursuant to Federal Rules of Civil Procedure 4(f)(3), Plaintiff requests an Order authorizing Plaintiff to serve process electronically by providing a link to an online repository maintained by

Plaintiff containing the Complaint For Damages And Injunctive Relief, the Temporary Restraining Order, and all documents filed and discovery served in this action; and by sending an email to the addresses known and later-identified through expedited discovery, which email will include a link to Plaintiff's online repository for efficient access to all relevant filings in this action. Electronic notice from Plaintiff, along with the notice Defendants are expected to receive from the Online Marketplaces on which they operate, is reasonably calculated under the circumstances to notify Defendants of this action and afford an opportunity for Defendants to appear and respond.

I. STATEMENT OF FACTS

Electronic service is appropriate because Defendants are foreign online sellers who use pseudonymous Online Storefronts to promote, advertise, offer for sale, and sell the Infringing Products through Online Marketplaces. Defendants have provided incomplete, unreliable, or unavailable identifying information, including physical address information, thereby concealing their identities and locations.

Plaintiff conducted an address-search investigation for the Defendants; the results are attached as Exhibit 3 to the Wolfgram Declaration and show that either a verifiable physical address for service could not be located or the business name provided by the Defendant is not associated with the physical address provided to Amazon. (Wolfgram Decl. ¶¶ 12-14 & Ex. 3.) Defendants instead conduct their businesses primarily, if not exclusively, through electronic means, including online marketplace platforms and electronic communications. (Id. ¶¶ 5-11.) Plaintiff has created a publication website at <http://en.stratum-law.com/newsinfo/19.html> that provides access to a repository of filings in this action.

Online Marketplaces maintain electronic contact mechanisms for their sellers. Amazon.com maintains seller contact email addresses and a Buyer-Seller Messaging Service,

and similar electronic communication systems are used by other Online Marketplaces. (Wolfgram Decl. ¶¶ 6-9.) After compliance with the requested TRO and expedited discovery, Plaintiff expects to obtain seller contact information and may communicate through the marketplaces' direct messaging or inquiry systems. Service by email, marketplace messaging, and publication on Plaintiff's designated website will provide prompt, practical notice to Defendants, who rely on electronic channels to operate their businesses. See *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1017-18 (9th Cir. 2002); *Aquapaw Brands LLC v. Yan-Peng*, No. 2:21-CV-01784-CCW, 2023 WL 3538551, at *3 (W.D. Pa. May 18, 2023).

Based on the information available from Defendants' Online Storefronts, shipping information, and Plaintiff's investigation, Plaintiff has good cause to believe that Defendants reside in and/or conduct business from the People's Republic of China ("China") or source products from China. (Wolfgram Decl. ¶ 12.) China and the United States are signatories to the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters ("Hague Convention"). (Id. ¶¶ 15-19 & Exs. 1-2.) But the address-search evidence in Exhibit 3 confirms that traditional service at a known physical address is not presently available. (Id. ¶¶ 13-14 & Ex. 3.) Neither the Federal Rules, the Hague Convention, nor China's declarations expressly prohibit the electronic methods requested here. (Id. ¶¶ 15-19 & Exs. 1-2.)

Plaintiff need not exhaust traditional methods of service before requesting an alternative means under Rule 4(f)(3). See *Rio Props.*, 284 F.3d at 1014-15; *In re LDK Solar Sec. Litig.*, No. 3:07-cv-05182, 2008 WL 2415186, at *2 (N.D. Cal. June 12, 2008). Rule 4(f)(3) is not a last resort; it is one permissible method of service when ordered by the Court and not prohibited by international agreement. The absence of verifiable physical addresses, as documented in Exhibit

3, further supports the requested tailored electronic service.

Accordingly, Plaintiff requests permission to electronically serve Defendants. The proposed Temporary Restraining Order (“TRO”) includes authorization for electronic service and provides for issuance of a single original summons in the name of all Schedule “A” Defendants, which shall apply to all Defendants in accordance with Fed. R. Civ. P. 4(b).

Defendants operate online businesses and necessarily use electronic means of communication. Online sellers generally maintain electronic contact information to communicate with customers, Online Marketplaces, payment processors, banks, and other service providers. (Wolfgram Decl. ¶¶ 6-11.) In contrast, Plaintiff’s investigation did not yield reliable physical addresses at which traditional service could be accomplished. (Id. ¶¶ 12-14 & Ex. 3.)

The Online Marketplaces used by Defendants, including Amazon.com and Walmart.com, maintain contact email addresses or electronic messaging mechanisms for merchants operating through their platforms. Based on prior actions, Plaintiff expects these third parties to identify available seller contact information during compliance with the TRO and expedited discovery sought in this action. (Wolfgram Decl. ¶¶ 6-11.)

Accordingly, Plaintiff will provide each Defendant with timely notice through the electronic channels that are most likely to reach it. Plaintiff will send correspondence containing a link to an online repository maintained by Plaintiff and regularly updated with all filings in this action to Defendants’ email addresses identified through expedited discovery and/or through the direct messaging or inquiry systems used by the Online Marketplaces. This method will give Defendants immediate access to the filings for review, download, or printing.

Plaintiff will also provide notice by publication on its designated website, <http://en.stratum-law.com/newsinfo/19.html>. The website will contain a link to the documents in

this action, available without charge. The website address will be included in the electronic communications sent to Defendants. This additional method reinforces notice where the available evidence shows that physical addresses are unavailable or unverified. (Wolfgram Decl. ¶¶ 10-11, 13-14 & Ex. 3.)

II. ARGUMENT

Under Rule 4(h)(2), a foreign partnership or other unincorporated association may be served in a manner permitted by Rule 4(f) for serving an individual in a foreign country. Rule 4(f)(3) permits service "by other means not prohibited by international agreement, as the court orders." Electronic service is warranted here because Defendants operate through online storefronts, use electronic communications as an ordinary part of their businesses, and have not supplied verifiable physical addresses for traditional service. The requested methods are reasonably calculated to provide notice and should be authorized.

A. Plaintiff Is Not Required to Serve Defendant Through Hague Service Convention Because Defendant's Address Is Unknown

According to Article 1 of the Hague Convention, the "convention shall not apply where the address of the person to be served with the document is not known." *Id.*; see also *U.S. Commodity Futures Trading Comm'n v. Rubio*, No. 12–CV–22129, 2012 WL 3614360, at *2 (S.D. Fla. Aug. 21, 2012) (holding that "the Hague Service Convention is not applicable here because it 'shall not apply where the address of the person to be served with the documents is not known.'"); *Philip Morris USA Inc. v. Veles Ltd.*, No. 06 CV 2988(GBD), 2007 WL 725412, at *2 (S.D.N.Y. Mar. 12, 2007) (finding the Hague Service Convention inapplicable because physical addresses could not be confirmed as valid). United States District Courts, including Courts in this District, routinely permit alternative service of process notwithstanding the Hague Convention in similar cases. See e.g., *Peanuts Worldwide LLC v.*

P'ships, et al., 347 F.R.D. 316, 329 (N.D. Ill. 2024) (“Accordingly, the court concludes that Plaintiff was not required to exhaust the option of service under the Convention before seeking alternative service under Rule 4(f)(3); In re Potash Antitrust Litig., 667 F. Supp. 2d 907, 930 (N.D. Ill. 2009) (“plaintiffs are not required to first attempt service through the Hague Convention.”); see also, Strabala v. Zhang, 318 F.R.D. 81, 114 (N.D. Ill. 2016) (authorizing alternative service pursuant to Fed. R. Civ. P. 4(f)(3)); Sulzer Mixpac AG v. Medenstar Indus. Co., 312 F.R.D. 329, 331-32 (S.D.N.Y. 2015) (same); In re LDK Solar Securities Litigation, 2008 U.S. Dist. LEXIS 90702, at *11 (N.D. Cal. June 12, 2008) (same); Williams- Sonoma Inc. v. Friendfinder Inc., 2007 U.S. Dist. LEXIS 31299, at *5-7 (N.D. Cal. Apr. 17, 2007) (same); NBA Properties, Inc. v. P’ships, et al., 549 F. Supp. 3d 790, 797 (N.D. Ill. 2021) (same).

Rule 4(f)(3) gives this Court broad discretion to authorize a method of service that is not prohibited by international agreement and is reasonably calculated to give notice. See Henry F. Teichmann, Inc. v. Caspian Flat Glass OJSC, No. 2:13-cv-00458, 2013 WL 1644808, at *1-2 (W.D. Pa. Apr. 16, 2013). Service under Rule 4(f)(3) is "neither a last resort nor extraordinary relief"; it is one means available to effect service on an international defendant. Aquapaw Brands, 2023 WL 3538551, at *2 (quoting Rio Props., 284 F.3d at 1015). This is an appropriate case for that authority: Defendants use aliases and incomplete identifying information in connection with online storefronts, and Plaintiff's address-search investigation did not identify a verifiable physical address for service. (Wolfgram Decl. ¶¶ 12-14 & Ex. 3.)

Electronic service satisfies Rule 4(f)(3) and due process when it is reasonably calculated to apprise a defendant of the action and afford an opportunity to respond. In Rio Properties, the Ninth Circuit held that email service on an internet-based business was

constitutionally acceptable because the defendant conducted business online, used email regularly, and encouraged electronic contact. 284 F.3d at 1017-18. The same practical considerations apply here.

Rule 4 does not impose a hierarchy requiring Plaintiff to attempt each other method before seeking relief under Rule 4(f)(3). *Rio Props.*, 284 F.3d at 1014-15. The Rule requires a court-ordered method that is not prohibited by international agreement and that satisfies due process. Here, the requested combination of email or marketplace messaging and website publication meets those requirements.

Due process does not require service by any single prescribed method. It requires a method "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." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Courts in this District have authorized email service and electronic publication where those methods are reasonably likely to give notice to online sellers. See *Aquapaw Brands*, 2023 WL 3538551, at *2-3; *Nifty Home Prods., Inc. v. Ladynana US*, No. 22cv0994, 2023 WL 3276407, at *7, 9 (W.D. Pa. May 5, 2023); *Aquapaw LLC v. Allnice*, No. 2:20-cv-01954-CCW, 2022 WL 3019808, at *4 (W.D. Pa. July 29, 2022).

The proposed methods satisfy due process. Each Defendant has at least one electronic avenue of contact through the Online Marketplaces on which it conducts business. (Wolfgram Decl. ¶¶ 6-11.) Plaintiff will use email addresses obtained through expedited discovery where available and the marketplaces' direct messaging or inquiry systems, and will provide a website link to the case materials. That approach is more likely to provide actual notice than attempting service at an address that Plaintiff's investigation could not verify. (*Id.* ¶¶ 10-14 & Ex. 3.)

Website publication provides a further means of notice. Courts have approved publication on a designated website where it is reasonably calculated to apprise defendants of the action. See *Aquapaw II*, 2022 WL 3019808, at *4. Plaintiff's website will provide access to the operative case materials, including the summons, Complaint, motions, orders, and discovery served in this action. The website address will be transmitted through the electronic service methods described above.

B. Electronic Service is Not Prohibited by International Agreement

The requested electronic service is not prohibited by international agreement. Plaintiff has good cause to believe that Defendants may reside in China or obtain products from China, but the physical addresses needed for conventional service have not been verified despite Plaintiff's investigation. (Wolfgram Decl. ¶¶ 12-14 & Ex. 3.) Although China has objected to certain methods enumerated in Article 10 of the Hague Convention, those objections do not expressly prohibit email, marketplace messaging, or electronic publication. See *Aquapaw II*, 2022 WL 3019808, at *4.

A signatory's objection to the specific means listed in Article 10 does not amount to an express prohibition on electronic service. See *Aquapaw Brands*, 2023 WL 3538551, at *2; *Gurung v. Malhotra*, 279 F.R.D. 215, 219-20 (S.D.N.Y. 2011). The requested methods are therefore permissible under Rule 4(f)(3). They are also tailored to the facts of this case: Defendants conduct their businesses online, regularly use electronic communications, and have no verifiable physical addresses for service as documented in Exhibit 3. (Wolfgram Decl. ¶¶ 6-14 & Ex. 3.)

III. CONCLUSION

For these reasons, Plaintiff respectfully requests that the Court grant the Motion and

authorize service of the summons, Complaint, discovery, and all filings in this action upon each Defendant by the following electronic means:

(1) email to each Defendant at contact email addresses identified by third-party Online Marketplaces through expedited discovery; (2) direct messaging or inquiry systems used by the Online Marketplaces; and (3) publication of the case materials at Plaintiff's designated website, <http://en.stratum-law.com/newsinfo/19.html>. These methods are reasonably calculated to provide notice, particularly because the address-search results in Exhibit 3 show that conventional service at a verified physical address is not presently feasible.

A proposed Order authorizing electronic service under Federal Rule of Civil Procedure 4(f)(3) is submitted concurrently herewith.

August 26, 2026.

Respectfully submitted,

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