

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 17-24733-Civ-WILLIAMS/TORRES

KIPU SYSTEMS, LLC,
a Florida limited liability company,

Plaintiff,

v.

ZENCHARTS, LLC, a Florida limited
liability company, *et al.*,

Defendants.

_____ /

**ORDER ON PLAINTIFF'S *EX PARTE* MOTION
FOR ALTERNATIVE SERVICE OF PROCESS**

This matter is before the Court on Kipu Systems, LLC's ("Plaintiff") *ex parte* motion for an Order authorizing alternative service of process on Bulgarian-based individuals Yanko Karkalichev ("Karkalichev") and Anton Aladzhov ("Aladzhov") (collectively "Defendants") via Defendants' email addresses, LinkedIn accounts, and publication on Plaintiff's file-sharing website.¹ [D.E. 11]. Defendants did not respond to Plaintiff's motion and the time to do so has now passed. Therefore, Plaintiff's motion is now ripe for disposition. After careful consideration of the

¹ Plaintiff intends to create a website at www.ShareSync.com where copies of the complaint, pleadings, documents, and Orders in this case will be posted. The address and a link to the publication website will be provided to Defendants via their e-mail accounts.

motion, relevant authority, and for the reasons discussed below, Plaintiff's motion is **GRANTED**.

I. ANALYSIS

Plaintiff requests leave to serve a complaint, summons, and subsequent pleadings to the Defendants' email addresses, LinkedIn accounts, and via publication on Plaintiff's website pursuant to Fed. R. Civ. P. 4(f)(3). Plaintiff contends that Defendants reside in Bulgaria and alternative methods of service are appropriate due to the Defendants' participation from abroad in the acts complained of through an online company.

Under Federal Rule 4, a party may serve a foreign defendant "by other means not prohibited by international agreement, as the court orders." Fed. R. Civ. P. 4(f)(3). The only limitations in Rule 4(f)(3) are that: (1) service must be directed by the court, (2) it must not be prohibited by international agreement, and (3) due process requires that it must be "reasonably calculated" to give notice to a defendant. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). This means that "Rule 4(f)(3) is not subsumed within or in any way dominated by Rule 4(f)'s other subsections; it stands independently, on equal footing." *Rio Properties, Inc. v. Rio Intern. Interlink*, 284 F.3d 1007, 1015 (9th Cir. 2002). In other words, Rule 4(f)(3) contains no limits that allow for its availability only after attempting service of process by other means. Indeed, Rule 4(f)(3) was "adopted in order to provide flexibility and discretion to the federal courts in dealing with

questions of alternative methods of service of process in foreign countries.” *Under Armour, Inc. v. 51nfljersey.com*, 2014 WL 644755, at *2 (S.D. Fla. Feb. 19, 2014) (quoting *In re Int’l Telemedia Assoc., Inc.*, 245 B.R. 713, 719 (N.D. Ga. 2000)).

“[T]he decision to issue an order allowing service by alternate means lies solely within the discretion of the district court.” *Chanel, Inc. v. Lin*, 2009 WL 1034627, at *1 (S.D. Fla. Apr.16, 2009) (citing *Prewitt Enters., Inc. v. Org. of Petroleum Exporting Countries*, 353 F.3d 916, 921 (11th Cir. 2003) (holding that a “district court ‘may’ direct alternate means of service [under Rule 4(f)(3)].”)); *see also Rio Properties, Inc.*, 284 F.3d at 1018 (“[W]e leave it to the discretion of the district court to balance the limitations of email service against its benefits in any particular case.”). Once service of process is effectuated outside any judicial district of the United States, pursuant to Rule 4(f)(2) or (f)(3), proof is made “by a receipt signed by the addressee, or by other evidence satisfying the court that the summons and complaint were delivered to the addressee.” *Estate of Jackson v. Sandnes*, 2013 WL 6038828, at *3 (M.D. Fla. Nov. 14, 2013).

Here, the Court finds that Plaintiff has shown good cause for the Court to authorize service of process of the complaint, summons, and subsequent pleadings on Defendant via email. Bulgaria has also not made any objections to service of process aside from its generic objection to Article 10 of the Hague Convention. And there is no indication that service of process to a defendant in Bulgaria via e-mail is prohibited by the Hague Convention or any other international law.

We acknowledge that some courts have suggested that service by email is inappropriate when a defendant is located in a country that has objected to service by

postal mail under Article 10 of the Hague Convention. *See, e.g., Agha v. Jacobs*, 2008 WL 2051061 at *1–2, (N.D. Cal. May 13, 2008) (indicating that because Germany had “filed its objection under Article 10 to service through postal channels,” the plaintiff could not serve defendant in Germany by email or fax, because the plaintiff had not met “his burden of showing that the ‘other means’ of service he proposes to utilize are permissible under an applicable ‘international agreement’—the Hague Convention.”); *see also Jian Zhang v. Baidu.com Inc.*, 293 F.R.D. 508, 515 n.2 (S.D.N.Y. 2013) (noting the argument, though without deciding the issue, “that service by e-mail, fax, or publication, all of which would occur in China, would run afoul of the Hague Convention and thus be prohibited.”).

But, we find more persuasive “the reasoning of several courts that have declined to extend countries’ objections to specific forms of service permitted by Article 10 of the Hague Convention, such as postal mail, to service by other alternative means, including email.” *Sulzer Mixpac AG v. Medenstar Indus. Co.*, 312 F.R.D. 329, 331–32 (S.D.N.Y. 2015) (citing *F.T.C. v. PCCare247 Inc.*, 2013 WL 841037, at *3–*4 (S.D.N.Y. March 7, 2013) (authorizing service by email and Facebook to defendants in India, and stating that “[n]umerous courts have held that service by email does not violate any international agreement where the objections of the recipient nation are limited to those means enumerated in Article 10.”); *Gurung v. Malhotra*, 279 F.R.D. 215, 219–20 (S.D.N.Y. 2011) (authorizing service by email to India despite India’s objections to service through postal channels under Article 10 of the Hague Convention, and stating that “[w]here a signatory nation has objected to only those means of service listed in Article X [of the Hague Convention], a court

acting under Rule 4(f)(3) remains free to order alternative means of service that are not specifically referenced in Article X.”); *S.E.C. v. Anticevic*, 2009 WL 361739, at *4 (S.D.N.Y. Feb. 13, 2009) (authorizing service by publication and noting that “[n]either Germany nor Croatia explicitly objects to service by publication in their Declarations pursuant to the [Hague] Convention.”); *In re S. African Apartheid Litig.*, 643 F. Supp. 2d 423, 434 (S.D.N.Y. 2009) (permitting service on counsel in Germany and noting that “[a]lthough Germany has objected to specific forms of service otherwise enumerated in the Hague Convention, it has not expressly barred alternative forms of effective service not referenced in the Hague Convention.”)). Because Defendants’ email addresses are known and operational, we conclude that service via email is appropriate given the circumstances presented.

We also find good cause for Plaintiff to serve Defendants via their respective LinkedIn accounts and publication on Plaintiff’s website.² For example, Plaintiff claims that Karkalichev reviewed Plaintiff’s counsel LinkedIn profile after the complaint was filed in this case – suggesting that LinkedIn is a successful platform to provide notice to Defendants. And notice via publication on Plaintiff’s website

² The United States Supreme Court has explained the due process rationale behind Rule 4’s service provision:

An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice 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. The notice must be of such nature as reasonably to convey the required information, and it must afford a reasonable time for those interested to make their appearance.

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950).

provides another opportunity to accord Defendants due process because all parties will have access to the complaint, pleadings, documents, and Orders in this case. When coupled with the fact that “a link . . . will be directly emailed to Defendants’ known email addresses,” service via website publication is proper because it is “reasonably calculated, under all circumstances, to apprise [Defendants] of the pendency of the action and afford them an opportunity to present their objections.” *Chanel, Inc. v. 2012leboyhandbag.com*, 2015 WL 10818551, at *1 (S.D. Fla. Nov. 16, 2015) (quoting *Brookshire Bros. v. Chiquita Brands Int’l, Inc.*, 2007 WL 1577771, at *1 (S.D. Fla. May 31, 2007)).

Accordingly, Plaintiff’s *ex parte* motion for an Order authorizing alternative service of process on Defendants via (1) e-mail, (2) LinkedIn, and (3) publication on Plaintiff’s website is **GRANTED**. See *Chanel, Inc. v. 2012leboyhandbag.com*, 2015 WL 10818551, at *1 (S.D. Fla. Nov. 16, 2015) (“[T]he Court will allow e-mail service upon Defendants . . . the Court will also require that Plaintiff couples any attempt at e-mail service with publication of service of the Summonses and Complaint, and all filings in this matter upon Defendants via publication on [Plaintiff’s] Internet website”).

II. CONCLUSION

For the foregoing reasons, it is hereby **ORDERED AND ADJUDGED** that Plaintiff’s *ex parte* motion for an Order authorizing alternative service of process on Defendants is **GRANTED**. [D.E. 9]. Plaintiff is authorized to serve the complaint, summons, and all subsequent pleadings and discovery upon Defendants in this case via the following means: (1) Karkalichev’s two e-mail accounts:

yanko@solutionsrecovery.com and yanko@websiteconsultants.com; (2) Karkalichev's LinkedIn account; (3) Aladzhov's e-mail account, tanyo@websiteconsultants.com; (4) Aladzhov's LinkedIn account; and (6) publication of the aforementioned items on Plaintiff's notice website.

DONE AND ORDERED in Chambers at Miami, Florida, this 29th day of March, 2018.

/s/ Edwin G. Torres

EDWIN G. TORRES
United States Magistrate Judge