UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.:	2:23-cv-09649-AB-MAA	Date:	April 17, 2024

Title: *Seasons 4 Inc. v. Special Happy, LTD.*

Present: The Honorable	**ANDRÉ BIROTTE JR., United States District Judge**

Carla Badirian Deputy Clerk	N/A Court Reporter
Attorney(s) Present for Plaintiff(s): None Appearing	Attorney(s) Present for Defendant(s): None Appearing

Proceedings: **[In Chambers] ORDER GRANTING PLAINTIFF'S MOTION FOR SERVICE OF SUMMONS AND COMPLAINT BY ALTERNATIVE MEANS [Dkt. No. 24]**

Before the Court is Plaintiff Seasons 4 Inc.'s ("Plaintiff") Motion for Service of Summons and Complaint by Alternative Means ("Motion," Dkt. No. 24). Defendant Special Happy, LTD ("Defendant") filed an opposition[1] and Plaintiff filed a reply[2]. The Court will resolve the Motion with out oral argument and therefore **VACATES** the hearing. *See* Fed. R. Civ. P. 78, C.D. Cal. L.R. 7-15. The Motion is **GRANTED**.

[1] Defendant specially appeared to oppose the Motion. Going forward, citations should be in the body of the memorandum, not in footnotes.

[2] Plaintiff filed a reply (Dkt. No. 31) and an "updated" reply (Dkt. No. 33) without explaining what was "updated." Plaintiff should have filed a Notice of Withdrawal of the original reply or a Notice of Errata to correct it. The Court **STRIKES** the original reply (Dkt. No. 31).

I. DISCUSSION

Federal Rule of Civil Procedure ("Rule") 4(f) sets forth methods for serving an individual in a foreign country. Rule 4(f) authorizes service of process on an individual in a foreign country in the following ways:

> (1) 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;
> (2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:
>> (A) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;
>> (B) as the foreign authority directs in response to a letter rogatory or letter of request; or
>> (C) unless prohibited by the foreign country's law, by:
>>> (i) delivering a copy of the summons and of the complaint to the individual personally; or
>>> (ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or
> (3) by other means not prohibited by international agreement, as the court orders.

The Ninth Circuit has held that "service under Rule 4(f)(3) must be (1) directed by the court; and (2) not prohibited by international agreement. No other limitations are evident from the text." *Rio Props., Inc. v. Rio Intern. Interlink*, 284 F.3d 1007, 1014 (9th Cir. 2002) (affirming propriety of service of process by email). The decision to allow alternative means of service under Rule 4(f)(3) is discretionary, but the means of service must comport with constitutional notions of due process. *Id.* at 1016. To satisfy this requirement, "the method of service crafted by the district court 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.' " *Id.* at 1016-17 (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)).

Furthermore, service under Rule 4(f)(3) is neither a "last resort" nor "extraordinary relief." *Id.* at 1015. "[C]ourt-directed service under Rule 4(f)(3) is as favored as service available under Rule 4(f)(1) or Rule 4(f)(2)." *Id.* "Plaintiffs are not required to serve foreign defendants in accordance with 'any internationally

agreed means reasonably calculated to give notice,' such as the Hague Service Convention under Rule 4(f)(1), prior to moving for alternate service under Rule 4(f)(3)." *Carrico v. Samsung Electronics Co., Ltd.*, No. 15-cv-02087, 2016 WL 2654392, at *3 (N.D. Cal. May 10, 2016) (citing *Rio Props.*, 284 F.3d at 1015).

II. DISCUSSION

Plaintiff moves under Rule 4(f)(3) for a Court order authorizing them to serve Defendant, a Chinese corporation, via an email address provided on a business card for Sam Tsai, whom it believes is Defendant's Sales Director, and via email on Defendant's counsel Thomas E. Lees, of the Law Office of Thomas E. Lees, LLC. Such service is appropriate under Rule 4(f)(3), and none of Defendant's objections has merit.

First, the Court overrules Defendant's hearsay objections to the Sam Tsai business card as moot: the correspondence between counsel shows that Defendant's counsel received notice of this suit from the letter Plaintiff's counsel previously emailed to Tsai, which in turn establishes that Tsai is employed by Defendant and that the email address is monitored. The business card is not necessary. Second, the Court overrules Defendant' objection based on the apparent error on Plaintiff's proof of service of this motion, which Plaintiff explained in the reply.[3]

Turning to the merits, service by the proposed electronic means (email) is not prohibited by international agreement. China is a signatory to the Hague Service Convention, so the Court may not order service "in contravention of" it. *Thunder Studios, Inc. v. Kazal*, 2017 WL 10434398 (C.D. Cal. May 26, 2017) (citing *Rio Props.*, 284 F.3d at 1015 n.4). The Hague Service Convention does not prohibit service by email. China has objected to Article 10 of the Hague Service Convention, which authorizes service by "postal channels." Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361, 658 U.N.T.S. 163. While some courts have held that this objection prohibits service by email, other courts have distinguished email from postal mail and permitted service. *See WeWork Companies Inc. v. WePlus*

[3] The Court **DENIES** Defendant's requests to take judicial notice of facts relating to the "signatory" who signed the proof of service. These requests, stated in a footnotes 61 and 62, direct the Court to websites to verify the facts, instead of attaching the printouts from those websites. For the same reasons, the Court **DENIES** the requests for judicial notice made in footnotes 40-42 and 69.

(Shanghai) Tech. Co. Ltd., No. 5:18-cv-04543-EJD (N.D. Cal. Jan. 10, 2019) (denying defendant's motion to quash service of process where court authorized service by email on a defendant located in China); *Thunder Studios, Inc.*, 2017 WL 10434398, at *3 ("[T]o the extent that Australia objects to service via 'postal channels,' this objection applies to documents that are physically delivered by a postal service, not electronic mail.") (collecting cases); *Juicero, Inc. v. Itaste Co.*, No. 17-cv-01921-BLF, 2017 WL 3996196, at *3 (N.D. Cal. Jun. 5, 2017) (collecting cases). Because Article 10 is limited to "postal channels" and does not contemplate electronic means of service, China's objection to Article 10 does not prohibit a party from serving a defendant in China by electronic mail.

The Court also finds that Plaintiff's proposed methods of service comply with due process because they are reasonably calculated to give Defendant notice of the lawsuit. Email is "aimed directly and instantly" at Defendant. *Rio Props.*, 284 F.3d at 1018. "Where, as here, a plaintiff demonstrates that service via electronic mail is likely to reach the defendant, due process is satisfied." *Gurung v. Malhotra*, 279 F.R.D. 215, 220 (S.D.N.Y. 2011). Plaintiff proposes emailing an email address associated with Defendant's putative Sales Director Mr. Tsai that is apparently monitored, and emailing Defendant's counsel Mr. Lees, who, after received the letter Plaintiff emailed to Mr. Tsai, reached out via email to Plaintiff representing himself as Defendant's counsel. Thus, Plaintiff has already determined that service via the Tsai email address and Attorney Lees's email address is likely to reach the Defendant. The Tsai email address is how Defendant received notice of this action in the first place. Accordingly, the criteria for authorizing alternative service under Rule 4(f)(3) are satisfied.

None of Defendant's contrary arguments is persuasive. First, Defendant's complaint that Plaintiff's motion should be denied because Plaintiff has not tried other means of service is without merit: service under Rule 4(f)(3) is neither a "last resort" nor "extraordinary relief," rather, "[C]ourt-directed service under Rule 4(f)(3) is as favored as service available under Rule 4(f)(1) or Rule 4(f)(2)." *Rio Props, supra* at 1015. Second, Rule 4(h)(1)(B), which requires service on a domestic corporation through "an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process," does not apply here because Defendant is a foreign corporation. Third, Defendant's complaint that service on their counsel Mr. Lees is improper is without merit: Mr. Lees represented himself to be Defendant's counsel and acted in that capacity through at least the meet and confer process on this motion, so service on him is likely to give Defendant actual notice. That Defendant has not "authorized" Mr. Lees to accept service does not bar this Court from permitting such service.

Finally, none of Defendant's other various objections has merit.

III. CONCLUSION

Plaintiff's Motion is **GRANTED**. Pursuant to Federal Rule of Civil Procedure 4(f)(3), Plaintiff is authorized to serve the Summons, Complaint, and this Order on Defendant Special Happy, Ltd., by email, as follows:

1. Plaintiff must email copies of the Summons, Complaint, and this Order to Defendant Special Happy, Ltd. at samtsai@specialhappy.com.hk

2. Plaintiff must email copies of the Summons, Complaint, and this Order to Defendant Special Happy, Ltd.'s counsel at tlees@lees-ip.com

3. Plaintiff must file a Proof of Service for Defendant within 21 days of the issuance of this Order.

IT IS SO ORDERED.