

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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STEPHANIE ZOBAY, individually, and for the :
estate of STEPHEN S. EVERHART, :
LINDSAY M. EVERHART, ABDUL :
GHAFFAR MUGHAL, SITORAI :
KHASANZOD, KHALID MUGHAL, HAMID :
MUGHAL, ANGELA MUGHAL, N.M., by :
and through her next friend Abdul Ghaffar :
Mughal, M.M., by and through his next friend :
Abdul Ghaffar Mughal, WAYNE NEWBY, :
THERESA HART, NATHAN NEWBY, :
JASON RZEPA, CASSANDRA RZEPA, C.R., :
by and through his next friend Cassandra :
Rzepa, K.R., by and through his next friend :
Adrian Davis, TYLER N. OGDEN, WILLIAM :
M. CHINN, SEAN M. NIQUETTE, LAUREN :
NIQUETTE, THOMAS NIQUETTE, MARY :
NIQUETTE, ED ELLIOTT, BRIAN C. :
ALLDRIDGE, JOANN ALLDRIDGE, :
RONALD ALLDRIDGE, DIANNA :
ALLDRIDGE, TODD JEFFREY :
ALLDRIDGE, ANDREW MAJOR, ASHLEY :
MAJOR, ALYSSA MAJOR, MARCUS :
JAMIL SULLEN, DAVID EUGENE :
HICKMAN, VERONICA HICKMAN, :
DEVON F. HICKMAN, TAMMIE FROST, :
individually, and for the estate of RUSSELL :
FROST, MADISON FROST, CRYSTAL :
FROST, AMANDA FROST, WAIEL EL :
MAADAWY, BILQIS AIDARA ADJEI, :
ALEXIS GRANT, MALIK ELMAADAWY, :
G.E., by and through his next friend Latasha :
Elmaadawy, GABRIEL ELMAADAWY, :
ZEINAB ELMAADAWY, IHAB EL :
MAADAWY, TAMER ELMAADAWY, :
MOHAMMED EL-MAADAWY, MUSTAFA :
EL-MAADAWY, AMR MOHAMED, :
BRENDA MOHAMED, NICOLE :
KAMALESON, BARCLAY KAMALESON, :
CADE KAMALESON, CEDRIC PAUL :
KAMALESON, SUNDERRAJ MARK :
KAMALESON, GRACE A. KREISCHER, :
C.L.K., by and through his next friend Grace :
Kreischer, BRIANNE BARLOW, JASON :

ORDER
21 Civ. 3503 (CBA) (VMS)

BARLOW, SHUSHAWNDRA GREGOIRE, :
J.D.G., by and through his next friend :
ShuShawndra Gregoire, JOHN GREGOIRE :
SR., L.R.G., by and through her next friend :
John Gregoire Sr., ALDENE LEE, :

Plaintiffs, :
-against- :

MTN GROUP LIMITED, MTN IRANCELL, :
MTN DUBAI LIMITED, ZTE :
CORPORATION, ZTE (USA) INC., ZTE (TX) :
INC., HUAWEI TECHNOLOGIES CO., LTD., :
HUAWEI TECHNOLOGIES USA INC., :
HUAWEI DEVICE USA INC., FUTUREWEI :
TECHNOLOGIES, INC., and SKYCOM :
TECH CO., LTD., MTN GROUP LIMITED et :
al., :

Defendants. :

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DAVID LAU, HAMIDE LAU, K.L.by and :
through his next friend David Lau, M.L. by and :
through her next friend David Lau, :
ALEXANDER LAU, VIVIAN PERRY, HOLLY :
ABRAHAM, LEROY LAU JR., MICHELLE :
LEE RAUSCHENBERGER, JAMMIE SMITH, :
ALEX ROZANSKI, CHRISTOPHER :
ROSEBROCK, CLARENCE METCALF, :
KIMBERLY METCALF, STEPHANIE FISHER, :
THOMAS FOGARTY, C.F. by and through his :
next friend Stephanie Fisher, K.F. by and through :
his next friend Stephanie Fisher, JONATHAN :
CLEARY, APRIL CLEARY, KARYN MARTA, :
LAWRENCE MARTA, TAYLOR MARTA, :
THOMAS SCHWALLIE, SARAH :
SCHWALLIE, SHANNON K. MCNULTY, :
ABBY KNAPP-MORRIS, K.K. by and through :
her next friend Abby Knapp-Morris, ERIC :
LUND, RYAN TIMONEY, DIANE TIMONEY, :
GREGORY TIMONEY, ANDREA KESSLER, :
JOSE ALBERTO MORGADO, ERIC :
MORGADO, ANNA BANZER, SOFIA :

22 Civ. 1855 (CBA) (VMS)

KESSLER, CONNOR ALEXIAN :
PLADECKMORGADO, ADOLF OLIVAS, :
ERIC HUNTER, KENNA HUNTER, J.H. by and :
through his next friend Kenna Hunter, K.H. by :
and through her next friend Kenna Hunter, :
BETTY BLACK, JOEY HUNTER SR., JOEY :
HUNTER II, NICHOLAS ROBINSON IV, :
ERICH ELLIS, JAMES ELLIS, BETHANY :
WESLEY, MITCHELL STAMBAUGH, :
CLARENCE WILLIAMS JR., TALISA :
SHERVON WILLIAMS, SAMANTHA :
SHERVON WILLIAMS, ABRILL RENEE :
WILLIAMS, RANDY RISTAU, H.R. by and :
through her next friend Randy Ristau, SUZANNE :
RISTAU, CHRISTOPHER POWERS, :
JONATHAN ASHLEY III, TAMMIE ASHLEY, :
JONATHAN ASHLEY IV, JORDAN ASHLEY, :
SONGMI KIETZMANN, BENJAMIN :
HORSLEY, JOHN HORSLEY, DEBRA PEREZ, :
ROBIN AKERS, TRACY HERRING, ADAN :
PEREZ, ANTHONY PEREZ, NICHOLAS :
PEREZ, BRIAN LAMBKA, JORDAN :
LAMBKA, KRISTIE SURPRENANT, BOB :
SURPRENANT, MATT GRIFFIN, SHAWN :
PATRICK GRIFFIN, SHEILA RISTAINO, :
DANIEL GRIFFIN, CAROL GRIFFIN, :
CHARLES ESSEX, MARION RUTH :
HOPKINS, MARY BORDER, KATHERINE :
ABREU-BORDER, DELAYNIE K. PEEK, :
NATALIE SCHMIDT, A.L.S. by and through his :
next friend Natalie Schmidt, PHILLIP J. :
SCHMIDT, LEEANN SCHMIDT, BRANDON :
SCHMIDT, CREIGHTON DAVID OSBORN, :
KADE OSBORN, KATLYN M. OSBORN, :
CHRISTA L. OSBORN, CHERYL ATWELL, :
ERIN RIEDEL, LONA L. BOSLEY, :
BRITTANY TOWNSEND, KEVIN TRIMBLE, :
L.C.D by and through his next friend Bridgett L. :
Dehoff, KIRK GOLLNITZ, TYLER :
GOLLNITZ, JAN MARIE HURNBLAD :
SPARKS, GARRY LEE SPARKS, ERIK :
SPARKS, ZACHARY DOUGLAS SPARKS, :
JANE SPARKS, JERRY HARDISON, JUSTINA :
HARDISON, EDWARD KLEIN, PAUL JAYNE, :
SHERRY SKEENS, ADAM JAYNE, AYZIA :
JAYNE, KENT SKEENS, GARRETT SKEENS, :

TRENT SKEENS, Z.S. by and through her next :
friend Kent Alan Skeens, CASSIE MARIE :
RICHARDSON, JOHN MEANS, TAMMIE :
SCHOONHOVEN, A.M.S. by and through her :
next friend Tammie Schoonhoven, A.R.S. by and :
through her next friend Tammie Schoonhoven, :
DEBORAH SCHOONHOVEN, CHRISTOPHER :
SCHOONHOVEN, SHEESTA PERRY, :
HELENA DAVIS, C.D. by and through his next :
friend Helena Davis, COLLEEN WHIPPLE, :
MARY BETH SMEDINGHOFF, THOMAS :
SMEDINGHOFF, JOAN M. SMEDINGHOFF, :
MARK T. SMEDINGHOFF, REGINA C. :
SMEDINGHOFF, MARIA CARDOZA, :
RAMIRO CARDOZA SR., RAMIRO :
CARDOZA JR., MIRANDA LANDRUM, :
B.R.L. by and through her next friend Miranda :
Landrum, G.B.L. by and through his next friend :
Miranda Landrum, JANET LANDRUM, JAMES :
R. LANDRUM, CHET MURACH, WILLIAM :
ANTHONY MURACH, CHRISTINE H. :
PHILLIPS, S.N.P. by and through her next friend :
Christine H. Phillips, TRACEY M. PRESCOTT, :
AARON WILLIAM PRESCOTT, JACOB :
RICHARD PRESCOTT, JOSHUA MICHAEL :
PRESCOTT, SAMANTHA JEAN :
MCNAMARA, BRENDA DAEHLING, KIRK :
DAEHLING, ADAM DAEHLING, KAYLA :
MARIE DAEHLING, JOANNA GILBERT, :
JESSICA A. BENSON, LIESELOTTE R. :
ROLDAN, ANGEL R. ROLDAN, MATTHIAS :
P. ROLDAN, SAMANTHA G. ROLDAN, :
NANCY M. MULLEN, MIRIAM A. MULLEN, :
WILLIAM J. MULLEN, JOELLE RENÉ ELLIS, :
JOHN F. ELLIS, JAMES EARL ELLIS, :
BRANDON KORONA, MICHELLE MARIE :
ZIMMERMAN, CHRIS LEE ZIMMERMAN, :
BAILY ZIMMERMAN, BRUCE NICHOLS, :
M.G.N. by and through her next friend Bruce :
Nichols, JEANNE NICHOLS, LORRIA :
WELCH, BARRY WELCH, ZACKARY :
WELCH, TAMMY OLMSTEAD, WILLIAM :
MICHAEL BURLEY, MICHAEL COLLINS, :
DAN OLMSTEAD, MARTHA CAROLINA :
SMITH, THOMAS ELMER WICKLIFF, :
MICHELLE CAROLINA ROTELLI, WILLIAM :

NEVINS, GARRETT LAYNE FUNK, ANGELA :
KAHLER, NANCY WILSON, ASHLEY :
PETERS, G.R.P. by and through his next friend :
Ashley Peters, DEBORAH JEAN PETERS, :
DENNIS W. PETERS, PATRICIA GOINS, :
PAUL EDWARD GOINS III, EMMITT :
DWAYNE BURNS, JANICE CARUSO, DANA :
RAINEY, KATHLEEN L. ALEXANDER, :
DANIEL O. HUGHES, PATRICIA S. HUGHES, :
KRISTINE ANNE ZITNY, JOE TORIAN :
EMILY TORIAN, ALBERTO DIAZ, KAYLA :
DIAZ, N.J.D. by and through her next friend :
Kayla Diaz, N.J.A.D. by and through his next :
friend Kayla Diaz, FRANCES DIAZ, MAXIMO :
DIAZ, ANTHONY DIAZ, MATTHEW DIAZ, :
MICHELLE RILEY, RODNEY RILEY, JULIE :
K. MARTIN, BRIAN M. MARTIN, :
CATHERINE G. MARTIN, ELIZABETH A. :
MARTIN, JEAN S. LANDPHAIR, DOUGLAS :
A. LANDPHAIR, MEREDITH LANDPHAIR, :
KELLI DODGE, B.C.D. by and through his next :
friend Kelli Dodge, P.A.D. by and through her :
next friend Kelli Dodge, KATHLEEN :
MCEVOY, MICHELLE ROSE MCEVOY, :
PATRICK CHARLES MCEVOY, JANICE H. :
PROCTOR, LUANN VARNEY, HARRIET :
SUTTON, ERIN GOSS, SUMMER SUTTON, :
TRECIA BROCK HOOD, WENDY SHEDD, :
FREDDIE SUTTON, BARBARA A. ROLAND, :
MARK K. ROLAND, ERICA M. ROLAND, :
ANNIE L. MCBRIDE, CHESTER R. MCBRIDE :
SR., ALEXANDRA MCCLINTOCK, D.C.M. by :
and through his next friend Alexandra :
McClintock, JOYCE PATRICIA PAULSEN, :
GEORGE MCCLINTOCK III, KEVIN KING, :
STEPHANIE MILLER, TIMOTHY BAYS, :
APRIL BAYS, LINDSAY BAYS, BRENDA :
GRINER, JASMIN BAYS, JULIA STEINER, :
L.S., by and through her next friend Jasmin Bays, :
M.S., by and through her next friend Jasmin :
Bays, CHRISTOPHER BALDRIDGE, S.B., by :
and through her next friend Christopher :
Baldrige, L.B., by and through his next friend :
Christopher Baldrige, E.B., by and through his :
next friend Christopher Baldrige, ANNGEL :
:

NORKIST, AUJZA NORKIST, HART	:
NORKIST, WILLIAM NEWNHAM,	:
	:
Plaintiffs,	:
-against-	:
	:
ZTE CORPORATION, ZTE (USA) INC., ZTE:	:
(TX) INC., HUAWEI TECHNOLOGIES CO.,:	:
LTD., HUAWEI TECHNOLOGIES USA INC.,:	:
HUAWEI DEVICE USA INC., FUTUREWEI:	:
TECHNOLOGIES, INC., and SKYCOM TECH:	:
CO., LTD.,	:
Defendants.	:
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Vera M. Scanlon, United States Magistrate Judge:

Before this Court are the plaintiffs’ motions for leave to serve defendants ZTE Corporation (“ZTE”) and Huawei Technologies Co., Ltd. (“Huawei”) (together, “Defendants”) in the analogous cases, Zobay et al. v. MTN Group Ltd. et al., 21 Civ. 3503 (CBA) (VMS) (E.D.N.Y.) (“Zobay”), and in Lau et al. v. ZTE Corp. et al., 22 Civ. 1855 (CBA) (VMS) (E.D.N.Y.) (“Lau”). The plaintiffs in Zobay (the “Zobay Plaintiffs”) move for leave to serve the second amended complaint (the “Second Amended Complaint”), see Zobay, ECF No. 142, on Defendants by an alternative method of service. See Zobay, ECF No. 156. The plaintiffs in Lau (the “Lau Plaintiffs”) move for a default judgment motion or, in the alternative, for leave for serve the corrected amended complaint (the “Amended Complaint”), see Lau, ECF No. 41, on Defendants by an alternative method of service. See Lau, ECF No. 76.

Defendants are “Chinese companies headquartered in China.” Lau, ECF No. 76-1 at 3; Zobay, ECF No. 156 at 1. China is a signatory to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents (the “Hague Convention”).¹ The Lau Plaintiffs request

¹ See The Hague Convention, HCCH Members, China, available at <https://www.hcch.net/en/states/hcch-members/details1/?sid=30> (last visited on 9/6/2024).

that the Court grant them leave to file a certificate of default and move for a default judgment pursuant to Article 15 of the Hague Convention; or the Lau and Zobay Plaintiffs (together, “Plaintiffs”) move the Court to grant them leave to serve their respective operative complaint on Defendants through their U.S. counsel or by any alternative means that the Court deems proper pursuant to Fed. R. Civ. P. (“Rule”) 4(f) and Rule 4(h)(2). See generally Lau, ECF No. 76-1; Zobay, ECF No. 156.

For the reasons set forth below, Plaintiffs’ motion for leave to serve Defendants by alternative means of service through their respective U.S. counsel is granted. Plaintiffs must serve by overnight mail or similar delivery service Defendants’ respective U.S. counsel as listed in Exhibit A of this Order and counsel who submitted oppositions for Defendants in these two cases with (1) their respective operative summons and complaint, (2) a copy of this Order and (3) certified Chinese translations of these documents. Plaintiffs must file proof of service on the docket within 30 days of this Order in their respective case. The Lau Plaintiffs’ motion for a default judgment motion is denied as moot given that their service request is granted herein. Defendants have 60 days following service to answer or otherwise move.

I. BACKGROUND

A. Procedural Background In Zobay

On April 3, 2022, the Zobay Plaintiffs commenced a lawsuit asserting Anti-Terrorism Act (“ATA”) claims against Defendants. See Zobay, ECF No. 1; ATA, 18 U.S.C. § 2331. See Zobay, ECF No. 156-1 at 2. The Zobay Plaintiffs seek damages under the ATA on behalf of individuals who were “killed or wounded while serving [the United States] in Iraq between 2011 and 2017 or in Afghanistan in 2019. [The Zobay plaintiffs] seek to hold MTN, a South African telecom company, and [Defendants] ZTE and Huawei . . . accountable for their conspiracy with,

and substantial assistance to, multiple [FTOs] targeting Americans in Iraq, Afghanistan, the Middle East, and Europe.” Zobay, ECF No. 52 ¶ 1.

On or about September 9, 2021, the Zobay Plaintiffs first attempted to serve the initial complaint on Defendant ZTE through China’s Central Authority in accordance with the Hague Convention. See Zobay, ECF No. 156-1 at 3; Declaration of Hilary Lister, ECF No. 156-2 ¶¶ 16-17. “[C]ontrary to the requirements of Article 6 of the Hague Convention,² the Central Authority did not issue any formal certificate on that request and Plaintiffs have yet to receive any formal certificate (or similar document) from [China’s] Central Authority, consistent with the form prescribed by the Hague Convention, confirming the completion, or rejection, of Plaintiffs’ initial service request on ZTE.” Zobay, ECF No. 156-1 at 4-5 (footnote added by the Court); see Lister Decl. ¶¶ 16-17.

The Zobay Plaintiffs filed a first amended complaint on February 4, 2022. See Zobay, ECF No. 49. On February 9, 2022, the Zobay Plaintiffs filed a corrected amended complaint adding Huawei and its subsidiaries as Defendants. See Zobay, Amended Compl., ECF No. 52; ECF No. 156-1 at 5. On February 7, 2023, the Zobay Plaintiffs submitted their request to serve

² Article 6 states as follows:

The Central Authority of the State addressed or any authority which it may have designated for that purpose, shall complete a certificate in the form of the model annexed to the present Convention.

The certificate shall state that the document has been served and shall include the method, the place and the date of service and the person to whom the document was delivered. If the document has not been served, the certificate shall set out the reasons which have prevented service.

The applicant may require that a certificate not completed by a Central Authority or by a judicial authority shall be countersigned by one of these authorities. The certificate shall be forwarded directly to the applicant.

The Hague Convention, Art. 6.

the amended complaint on Defendants to China's Central Authority through its online portal (ilcc.online) in accordance with Article 5 of the Hague Convention. See Zobay, ECF No. 156-1 at 5; Lister Decl. ¶ 21; Declaration of Aaron Lukken, ECF No. 156-3 ¶ 5. On July 28, 2023, the Zobay Plaintiffs' litigation support vendor received two emails from China's Central Authority, "with no certificates or other documents attached, informing Plaintiffs that each of the request were rejected, without any explanation or reasons for the rejections." Zobay, ECF No. 156-3 ¶ 5 (emphasis in original); Lister Decl. ¶ 22; Lukken Decl. ¶ 7. That same day, China's Central Authority posted status updates on its online portal noting that the Zobay Plaintiffs' requests to serve the amended complaint on Defendants had been rejected because "the request would infringe the sovereignty or security of the People's Republic of China (Article 13)." Zobay, ECF No. 156-1 at 6; Lister Decl. ¶ 22; Lukken Decl. ¶¶ 8-9.

The Zobay Plaintiffs then filed their second amended complaint. See Zobay, Sec. Am. Compl., ECF No. 142; ECF No. 156-1 at 6. They did not attempt to serve this amended complaint on Defendants. Through the present motion, the Zobay Plaintiffs seek leave to serve the second amended complaint on Defendants through alternative means pursuant to Rules 4(f) and 4(h)(2). In support of their motion, the Zobay Plaintiffs "propose a simple and proven method of alternative service that satisfies the requisite due process requirements without running afoul of the Hague Convention: service through ZTE's and Huawei's respective rosters of U.S.-based counsel representing them in multiple active criminal and civil cases in the U.S." Zobay, ECF No. 156-1 at 14-15.

B. Procedural Background In Lau

On April 3, 2022, the Lau Plaintiffs commenced a lawsuit asserting ATA claims against Defendants. See generally Lau, ECF No. 1; ATA, 18 U.S.C. § 2331. The Lau Plaintiffs seek

damages under the ATA on behalf of individuals “who were killed or wounded while serving [the United States] in Afghanistan between 2012 and 2017.” Lau, ECF No. 41 ¶ 1. Plaintiffs in Lau also brought their claims against Defendants ZTE and Huawei. See generally id. The Lau Plaintiffs first attempted to serve their initial complaint on Defendants through China’s Central Authority in accordance with the Hague Convention. See Lau, ECF No. 76-1 at 4; Declaration of Hilary Lister, ECF No. 76-2 ¶ 8. According to the Lau Plaintiffs, “contrary to the requirements of Article 6 of the Hague Convention, the Central Authority has yet to issue any formal certificates on those requests and [the Lau] Plaintiffs have yet to receive any formal certificates (or similar documents), consistent with the form prescribed by the Hague Convention, confirming the completions, or rejections, of Plaintiffs’ initial service requests on ZTE and Huawei.” Lau, ECF No. 76-1 at 6.

The Lau Plaintiffs filed a first amended complaint on August 22, 2022. See Lau, ECF No. 40. That same day, Plaintiffs filed a corrected amended complaint. See Lau, ECF No. 42; ECF No. 76-1 at 6. On or around February 7, 2023, the Lau Plaintiffs submitted their request to serve the amended complaint on Defendants to China’s Central Authority through its online portal (ilcc.online) in accordance with Article 5 of the Hague Convention. See Lau, ECF No. 76-1 at 6-7; Lister Decl. ¶ 11. On July 28, 2023, Plaintiffs’ litigation support vendor received two emails from China’s Central Authority, “with no certificates or other documents attached, informing [the Lau and Zobay] Plaintiffs that each of the requests were rejected, without any explanation or reasons for the rejections.” Zobay, ECF No. 156-3 ¶ 5; Lau, ECF No. 76-1 at 7 (emphasis in original); Lister Decl. ¶ 12. That same day, China’s Central Authority posted status updates on its online portal noting that Plaintiffs’ requests to serve the amended complaint on Defendants had been rejected because “the request would infringe the sovereignty or security of

the People’s Republic of China (Article 13).” Zobay, ECF No. 156-1; Lau, ECF No. 76-1 at 7; Lister Decl. ¶ 11.

On July 28, 2023, Plaintiffs’ counsel filed an analogous case against Defendants seeking damages under the ATA on behalf of the plaintiffs’ respective family members, two of whom were killed while serving the United States in Afghanistan between 2013 and 2014, and one of whom was abducted in Aleppo, Syria in late 2012, and brutally tortured and held hostage for more than 200 days until his escape in 2013. See Long et al. v. MTN Group Ltd. et al., 23 Civ. 5705 (CBA) (VMS) (E.D.N.Y.) (“Long”).³

C. Motions For Leave To Serve Defendants Through Alternative Means in Zobay and Lau

Through their respective motions, Plaintiffs seek leave to serve their operative complaints on Defendants through alternative means pursuant to Rules 4(f)(3) and 4(h)(2). See generally, Lau, ECF No. 76-1; Zobay, ECF No. 156-1.⁴

As to their motions for leave to serve Defendants through alternative means pursuant to Rule 4(f)(3), Plaintiffs “propose a simple and proven method of alternative service that satisfies the requisite due process requirements without running afoul of the Hague Convention: service through ZTE’s and Huawei’s respective rosters of U.S.-based counsel representing them in

³ A similar motion for alternative service in Long is decided contemporaneously with this decision.

⁴ In addition, the Lau Plaintiffs moved for a certificate of default and a default judgment, as they allege that all the requirements under Article 15 of the Hague Convention are met for this Court to enter a certificate of default and a default judgment against Defendants. See ECF No. 76-1 at 12-14. Defendants opposed the motion for a default judgment. See ECF Nos. 81 & 82. In their reply, the Lau Plaintiffs claimed that they are entitled to a certificate of default and a default judgment against Defendants because they “diligently attempted to serve Defendants with the Amended Complaint via Hague Convention procedures.” Lau, ECF No. 86 at 6.

multiple active criminal and civil cases in the U.S.” Lau, ECF No. 76-1 at 20; see Zobay, ECF No. 156-1 at 14-15.

Although Defendants have not yet been served in Lau or Zobay action for the reasons stated above, Defendants filed their respective oppositions to Plaintiffs’ motions on the basis that Plaintiffs’ proposed alternative method of service is not permitted by Rule 4(f), which authorizes service “‘at a place **not within any judicial district** of the United States.’ Fed. R. Civ. P. 4(f) (emphasis added). Service on U.S. counsel would take place within a judicial district of the United States and thus is not permitted by Rule 4(f).” Lau, Huawei Opposition, ECF No. 82 at 15-16; Zobay, Huawei Opposition, ECF No. 162 at 11; Lau, ZTE Opposition, ECF No. 81; Zobay, ZTE Opposition, ECF No. 161.

As to Plaintiffs’ motions for leave to serve Defendants through alternative means, Plaintiffs argue that service on U.S. counsel is not prohibited by the Hague Convention. See Lau, ECF No. 86 at 7-10.

On July 4, 2024, this Court issued an Order in Long requesting a status letter from Plaintiffs’ counsel as to any developments regarding their attempts to serve Defendants in Long, as well as in Zobay and Lau, “including but not limited to whether any communications have been received from the China Central Authority.” Long, Dkt. Order 7/4/2024. The Long Plaintiffs’ counsel (who are also counsel here) timely filed a report with this Court. See Long, ECF No. 32. As to Zobay and Lau, Plaintiffs’ counsel stated that Viking Law, counsels’ service-of-process vendor engaged to serve Defendants through China’s Central Authority in these cases, “reported that the service requests in both Zobay and Lau remain rejected on the Central Authority’s online portal with the following statement: ‘[t]he execution of the request would infringe the sovereignty or security of the People’s Republic of China (Article 13).’” Id. On

July 6, 2024, Viking Law also emailed “the International Legal Cooperation Center for the Ministry of Justice of China to request the issuance of an Article 6 certificate to confirm the rejection of these service requests, to which the Ministry of Justice responded on July 8, 2024 with the following reply: ‘That the requests were rejected means that the requests would not be executed so there will not be any certificate of service. Thank you.’” Id. at 2-3. Despite receipt of this additional information, counsel did not update their motion to clarify that they had received a statement as to certificates of service.

II. Plaintiffs’ Motions For Leave To Serve Defendants By Alternative Means

A. Legal Standard

Unless federal law provides otherwise, Rule 4(e) provides that an individual “may be served in a judicial district of the United States by:

- (1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or
- (2) doing any of the following:
 - (A) delivering a copy of the summons and of the complaint to the individual personally;
 - (B) leaving a copy of each at the individual’s dwelling or usual place of abode with someone of suitable age and discretion who resides there; or
 - (C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

Fed. R. Civ. P. 4(e). As to service on a corporation within the United States, Rule 4(h) provides that:

Unless federal law provides otherwise or the defendant’s waiver has been filed, a domestic or foreign corporation, or a partnership or other unincorporated association that is subject to suit under a common name, must be served:

- (1) in a judicial district of the United States:
 - (A) in the manner prescribed by Rule 4(e)(1) for serving an individual; or
 - (B) by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and—if the agent is one

authorized by statute and the statute so requires—by also mailing a copy of each to the defendant; or

(2) at a place not within any judicial district of the United States, in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C)(i).

Fed. R. Civ. P. 4(h).

Plaintiffs proceed on the assumption that if the motions were to be granted, Defendants would be served outside the United States, so the Court also considers the relevant rule for such service. Under Rule 4(f),

[u]nless federal law provides otherwise, an individual . . . may be served at a place not within any judicial district of the United States:

(1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by [the Hague Convention];

(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.

Fed. R. Civ. P. 4(f).

Rule 4(h)(2) provides that foreign corporations may be served “in any manner prescribed by Rule 4(f) for serving an individual,” except personal service. Fed. R. Civ. P. 4(h)(2). “Under the Hague Convention, service through a country’s Central Authority is the primary method of service.” GTE GmbH, 523 F. Supp. 3d at 342. “The Hague Convention ‘mandates that each contracting country designate a Central Authority which undertakes to receive requests for service from other countries party to the agreement.’” W.J. Deutsch & Sons Ltd. v. Zamora, No.

21 Civ. 11003 (LTS), 2023 WL 5609205, at *5 (S.D.N.Y. Aug. 30, 2023) (citing & quoting Vega v. Hastens Beds, Inc., 339 F.R.D. 210, 216 (S.D.N.Y. 2021)). “The process of service through a country’s Central Authority has been explained by the Second Circuit as follows:

Under this method, process is first sent to the Central Authority of the foreign jurisdiction in which process is to be served The Central Authority must then arrange to have process served on the defendants. Upon completion of service the Central Authority must complete a Certificate detailing how, where, and when service was made, or explaining why service did not occur. Finally, the completed Certificate is returned to the applicant.

Id. (internal citations & quotation marks omitted).

“In cases involving service on a person residing in a country that is a signatory to the Hague Convention, courts have often imposed a requirement that litigants first attempt service by means of the Hague Convention before seeking court-ordered alternative service under section 4(f)(3).” Elsevier, Inc. v. Siew Yee Chew, 287 F. Supp. 3d 374, 378 (S.D.N.Y. 2018) (internal citations & quotation marks omitted); see Spin Master, Ltd. v. Aomore-US, No. 23 Civ. 7099 (DEH), 2024 WL 3030405, at *4 (S.D.N.Y. June 17, 2024) (“[c]ompliance with the Convention is mandatory in all cases to which it applies”) (citing & quoting Smart Study Co. v. Acuteye-US, 620 F. Supp. 3d 1382, 1389 (S.D.N.Y. 2022)).

“[W]hile there is no requirement that a party exhaust efforts to effect service pursuant to Rules 4(f)(1) or 4(f)(2), the moving party must make some showing of the need for judicial intervention.” Convergen Energy LLC v. Brooks, No. 20 Civ. 3746 (LJL), 2020 WL 4038353, at *4 (S.D.N.Y. July 17, 2020). When exercising their discretion to grant a motion for alternative means of service under Rule 4(f)(3), “courts in this Circuit have ‘often found it appropriate for certain threshold conditions to be satisfied prior to the issue of an alternative-service order, so as to prevent parties from whimsically seeking alternate means of service and thereby increasing the workload of the courts.’” Shanghai Zhenglang Tech. Co. v. Mengku

Tech. Co., No. 20 Civ. 5209 (JS) (ARL), 2020 WL 13280555, at *1 (E.D.N.Y. Nov. 18, 2020) (citing & quoting Baliga on behalf of Link Motion Inc. v. Link Motion Inc., No. 18 Civ. 11642, 2020 WL 5350271, at *8-9 (S.D.N.Y. Sept. 4, 2020)). “These ‘threshold conditions’ require ‘(1) a showing that the plaintiff has reasonably attempted to effectuate service on the defendant[s], and (2) a showing that the circumstances are such that the district court’s intervention is necessary.’” Mengku Tech., 2020 WL 13280555, at *1 (citing & quoting Fabbro v. Balke, No. 19 Civ. 5764, 2020 WL 3525692, at *2 (E.D.N.Y. June 29, 2020)). “The general legal proposition is that, as always, when a party asks a court to exercise its authority, the party must make some showing that the exercise of that authority is necessary.” Convergen Energy, 2020 WL 4038353, at *4.

Of particular relevance in the present case is that “Rule 4(f)(3) . . . ‘permits a Court to order that service of a summons be made by other means, so long as the ordered means of service (1) is not prohibited by international agreement; and (2) comports with constitutional notions of due process.’” Kelly Toys Holdings, LLC. v. Top Dep’t Store, No. 22 Civ. 558 (PAE), 2022 WL 3701216, at *5 (S.D.N.Y. Aug. 26, 2022) (citing & quoting Vega, 339 F.R.D. at 217). “The decision whether to allow alternative methods of serving process under Rule 4(f)(3) is committed to the sound discretion of the district court.” In GLG Life Tech Corp. Sec. Litig., 287 F.R.D. 262, 265 (S.D.N.Y. 2012) (citing & quoting Madu, Edozie & Madu, P.C. v. Socketworks Ltd. Nigeria, 265 F.R.D. 106, 115 (S.D.N.Y. 2010)); see Sulzer Mixpac AG v. Medenstar Indus. Co. Ltd., 312 F.R.D. 329, 330 (S.D.N.Y. 2015) (same). “Courts have repeatedly recognized that ‘there is no hierarchy among the subsections in Rule 4(f).’” GLG Life Tech, 287 F.R.D. at 265 (citing & quoting Advanced Aerofoil Techs., AG v. Todaro, No. 11 Civ. 9505 (ALC) (DCF), 2012 WL 299959, at *1 (S.D.N.Y. Jan. 31, 2012)). The district court in

Grp. One Ltd. held that “nothing in Rule 4(f) itself . . . suggests that a court must always require a litigant to first exhaust the potential for service under the Hague Convention before granting an order permitting alternative service under Rule 4(f)(3).” Grp. One Ltd. v. GTE GmbH, 523 F. Supp. 3d 323, 341 (E.D.N.Y. 2021) (citing & quoting In re Fairfield Sentry Ltd, No. 10 BR 13164, 2020 WL 7345988, at *11 (Bankr. S.D.N.Y. 2020)). “Accordingly, ‘court-directed service under Rule 4(f)(3) is as favored as service under Rule 4(f)(1),’ inasmuch as it is ‘merely one means among several which enables service of process on an international defendant.’” Id. (citing & quoting Rio Props., Inc. v. Rio Int’l Interlink, 284 F.3d 1007, 1015 (9th Cir. 2002)).

In some cases, the preference that a party attempt to serve a defendant under the Hague Convention may be waived when such service is unlikely to succeed. For example, in Stream SICAV v. Wang, the district court granted the plaintiff’s request to serve the defendant in China through alternative means before attempting to serve the defendant through the Hague Convention. See 989 F. Supp. 2d 264, 269 (S.D.N.Y. 2013). In looking at whether it could exercise its discretion to grant the plaintiff’s motion, the district court found that the plaintiff “articulated good reasons why it could not have realistically served [the defendant] until now.” Id. at 280. The court held that “[t]o serve a defendant in China, a plaintiff must provide the defendant’s address and the translated complaint to the Chinese Ministry of Justice. Service by the Ministry of Justice may or may not be successful; when successful, it has been said to take anywhere from four to six months, . . . six to eight months, . . . or six to 18 months.” Id. The court agreed with the plaintiff that requiring it to serve the defendant in China “through the Hague Convention now would either needlessly delay the resolution of this case for many months, when in other respects it is ready to go forward, or result in the case against [the U.S. co-defendant] moving forward decoupled from the case against [the Chinese defendant]—an

inefficient result. ‘Courts have frequently cited delays in service under the Hague Convention as supporting an order of alternative service under Rule 4(f)(3).’” Id. (citing & quoting GLG Life Tech, 287 F.R.D. at 266).

In a similar recent case, Orient Plus Int’l., the district court granted the plaintiffs’ motion for leave to serve the defendant in China through alternative means prior to attempting service through the Hague Convention. See Orient Plus Int’l Ltd. v. Baosheng Media Grp. Holdings Ltd., No. 24 Civ. 00744 (JLR), 2024 WL 2317715 (S.D.N.Y. May 22, 2024). The court found that, although courts “in this Circuit generally require a plaintiff first to reasonably attempt service and then to show that the court’s intervention is necessary to achieve it, United States v. Lebanese Canadian Bank SAL, 285 F.R.D. 262, 267 (S.D.N.Y. 2012), . . . the issue is left to the individual court’s broad discretion, and “each case must be judged on its facts.”” Id. at *5 (citing & quoting GLG Life Tech, 287 F.R.D. at 266). In light of the facts in Orient Plus Int’l., the court held that, were the plaintiffs “to pursue service through the Chinese Ministry of Justice and then further amend their complaint, the need to re-serve amended pleadings would require that [the plaintiffs] begin anew in attempting service.” Id. at *5.

B. Discussion

1. Plaintiffs Have Satisfied The Threshold Conditions For Alternative Service

a. Plaintiffs Reasonably Attempted To Serve Defendants Under The Hague Convention

i. The Zobay Plaintiffs’ Attempts To Serve Defendants

Plaintiffs here have made reasonable attempts to achieve service via the Hague Convention processes. The Zobay Plaintiffs first attempted to serve ZTE with the initial complaint on or about September 9, 2021. See Zobay, ECF No. 156-1 at 6. In accordance with

Article 6 of the Hague Convention, “Plaintiffs (a) had the Complaint (and related documents) translated into Chinese at a cost of \$10,900, and (b) engaged a vendor, at a cost of \$1,735, to prepare and submit Plaintiffs’ request for service of the translated documents on ZTE to China’s Central Authority on or about September 9, 2021.” Zobay, ECF No. 156-1 at 6; see Lister Decl. ¶¶ 16-17; Zobay, ECF No. 156-2, Exh. D. Plaintiffs claim that as of July 10, 2024, the date of Plaintiffs’ counsel’s status update in Long, see Long, ECF No. 32, China’s Central Authority had yet to issue a formal certificate to the Zobay Plaintiffs confirming “confirming the completion, or rejection, of Plaintiffs’ initial service request on ZTE.” Zobay, ECF No. 156-1 at 6-7.

On February 7, 2023, the Zobay Plaintiffs submitted their requests to serve the Amended Complaint on both ZTE and Huawei through China’s Central Authority’s online portal (ilcc.online) in accordance with Article 5 of the Hague Convention. See Zobay, id. at 7; Lister Decl. ¶ 21; Lukken Decl. ¶ 5. “Plaintiffs (a) had the Amended Complaint (and related documents) translated into Chinese at a cost of \$20,200, and (b) engaged another litigation support vendor, at a cost of \$3,600, to submit Hague Convention service requests, with the translated documents, to the Central Authority for service on ZTE and Huawei.” Zobay, ECF No. 156-1 at 7; Lister Decl. ¶ 21; Lukken Decl. ¶ 5; see Zobay, ECF No. 156-2, Exh. C. The Zobay Plaintiffs’ first request to China’s Central Authority to serve ZTE was made over three years prior to the date of Plaintiffs’ counsel’s 2024 status update in Long. See Long, ECF No. 32. The Zobay Plaintiffs’ request to China’s Central Authority to serve Defendants with the Amended Complaint was made over a year and a half before the date of Plaintiffs’ counsel’s 2024 status update in Long. See id.

On July 8, 2024, counsels’ agent received email confirmation that a Hague Convention certificate of service would not be forthcoming. See id. at 2-3. Although not in the precise form

of a Hague Convention certificate, this email communication and the related portal entry confirmed the Chinese authority's refusal of service and the reasons for the denial. See id.

ii. The Lau Plaintiffs' Attempts To Serve Defendants

The Lau Plaintiffs first attempted to serve Defendants with the initial complaint in April 2022. See Lister Decl. ¶ 5. In accordance with Article 6 of the Hague Convention, "Plaintiffs (a) had the Complaint (and related documents) translated into Chinese at a cost of \$24,272.50, and (b) engaged a vendor, at a cost of \$4,785, to prepare and submit Plaintiffs' request for service of the translated documents on ZTE and Huawei to China's Central Authority." ECF No. 76-1 at 6; see Lister Decl. ¶ 8.

On February 7, 2023, the Lau Plaintiffs submitted their requests to serve the Amended Complaint on Defendants through China's Central Authority's online portal (ilcc.online) in accordance with Article 5 of the Hague Convention. See Lau, ECF No. 76-1 at 7; Lister Decl. ¶ 10-11. "Plaintiffs (a) had the Amended Complaint (and related documents) translated into Chinese at a cost of \$21,000, and (b) engaged another litigation support vendor, at a cost of \$3,600, to submit Hague Convention service requests, with the translated documents, to the Central Authority for service on ZTE and Huawei." Lau, ECF No. 76-1 at 7; Lister Decl. ¶ 10. On July 28, 2023, "Plaintiffs' litigation support vendor received two emails from China's Central Authority, with no certificates or other documents attached, informing Plaintiffs that each of the requests were rejected, without any explanation or reasons for the rejections." Lau, ECF No. 76-1 at 7 (emphasis in original).

The Lau Plaintiffs' most recent attempt to serve Defendants through China's Central Authority was made over a year and a half before the date of Plaintiffs' counsel's 2024 Long status letter to this Court. See id. at 6-7. Plaintiffs claim in their motion that "to date, no official

certificates or other formal documents similar to the model forms provided for by the Hague Convention were sent or otherwise made available to Plaintiffs confirming service of the Amended Complaint on ZTE and Huawei, or officially rejecting Plaintiffs' requests for service." Id. at 7; see Lister Decl. ¶ 13.

As noted in the Long 2024 status letter, as of July 8, 2024, China's Central Authority had confirmed in writing that it would not issue a formal certificate of service to Plaintiffs confirming the completion, or rejection, of Plaintiffs' service of the Amended Complaint on ZTE and Huawei. See generally Long, ECF No. 32. The online portal stated the reasons for the service denial. See id. at 2-3.

b. The Court's Intervention Is Necessary

Although Plaintiffs' position as to the non-issuance of a Hague Convention certificate should have been updated to reflect the information provided in the Long status letter, the net result of the events described above is that service of the various summons and the complaints in either case has not been and likely will not be made by China's Central Authority. In light of Plaintiffs' good-faith attempts to serve Defendants in accordance with the Hague Convention, and the July 8, 2024 confirmation from Chinese authorities that service has been rejected, the Court finds that Court intervention permitting alternative service is necessary. See Khan Funds Mgmt. Am., Inc. v. Nations Techs. Inc., No. 22 Civ. 5055 (ER), 2024 WL 3013759, at *5 (S.D.N.Y. June 13, 2024) (holding that "[c]ourts have regularly ordered alternative service where, as here, a plaintiff has attempted to serve a defendant pursuant to the Hague Convention, but a country's central authority has been unable or unwilling to effect service"); Zamora, 2023 WL 5609205, at *6-7 (granting the plaintiff's motion for alternative service "namely, service via mail, email [and] international courier," where the plaintiff "made a good faith effort to comply

with the Hague Convention by making a timely request for service with Spain’s Central Authority” but where “the Spanish Central Authority apparently never completed the service request”); see also Equipav S.A. Pavimentação, Engenharia e Comercia Ltda v. Bertin, No. 22 Civ. 4594 (PGG), 2022 WL 2758417, at *5 (S.D.N.Y. July 14, 2022) (holding that “courts in this District have found that lengthy delays in service under the Hague Convention are sufficient to show that alternative service under Rule 4(f)(3) is warranted”); Aircraft Engine Lease Finance, Inc. v. Plus Ultra Lineas Aereas, S.A., 21 Civ. 1758, 2021 WL 6621578, at *1 (S.D.N.Y. Apr. 23, 2021) (“[B]ecause service through the Hague Convention would unnecessarily delay this case, the Court finds that intervention is necessary.”). It is thus appropriate for the Court to exercise its discretion to permit alternative service. See GLG Life Tech, 287 F.R.D. at 265 (holding that “alternative methods of serving process under Rule 4(f)(3) is committed to the sound discretion of the district court”) (citing & quoting Socketworks Ltd. Nigeria, 265 F.R.D. at 115).

2. Plaintiffs May Serve Their Respective Summons and Operative Complaint On Defendants ZTE And Huawei Through Alternative Methods Of Service Pursuant To Rule 4(f)(3)

a. Whether Other Alternative Methods of Service Are Available

Although Plaintiffs claim that they are open to any method of alternative service preferred by the Court pursuant to Rules 4(f) and 4(h)(2), see Lau, ECF No. 76-1 at 20; Zobay, ECF No. 156-1 at 16, they do not identify any alternative method of service in their motion papers other than service via U.S. counsel. The Court briefly considers some of the more straight forward methods of alternative service, such as service by postal mail, email and publication.

i. Postal Mail

In Water Splash, the United States Supreme Court addressed the scope of Article 10 of the Hague Convention and, specifically, whether Article 10 includes or “prohibits service by mail.”⁵ Water Splash, Inc. v. Menon, 581 U.S. 271, 273 (2017) (footnote added by the Court). The Supreme Court applied “traditional tools of treaty interpretation,” including the Treaty’s drafting history, and found that the Hague Convention “strongly suggests that Article 10(a) allows service through postal channels.” Id. at 280. “To be clear, this does not mean that the Convention affirmatively authorizes service by mail In other words, in cases governed by the Hague Service Convention, service by mail is permissible if two conditions are met: first, the receiving state has not objected to service by mail; and second, service by mail is authorized under otherwise-applicable law.” Id. (emphasis in original). Evaluating China’s position as to postal mail, courts have concluded that “China has specifically objected to . . . service by postal channels.” Safavieh Int’l, LLC v. Chengdu Junsen Fengrui Tech. Co.-Tao Shen, No. 23 Civ. 3960 (CM), 2023 WL 3977505, at *3 (S.D.N.Y. June 13, 2023); see generally Smart Study, 620 F. Supp. 3d 1382. Service by mail does not appear to be authorized in China, and Plaintiffs have not shown otherwise.

⁵ Article 10 of the Hague Convention states that, “[p]rovided the State of destination does not object, the present Convention shall not interfere with – a) the freedom to send judicial documents, by postal channels, directly to persons abroad, b) the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination, c) the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination.” The Hague Convention, Art. 10.

ii. Email Service

“In recent years . . . [Second Circuit courts] have split over whether e-mail service is permitted where signatories to the Hague Convention object to service by postal channels.” Safavieh Int’l, 2023 WL 3977505, at *4. Some courts in this Circuit “have reasoned that service by email of foreign defendants is permitted under the Hague Convention, because a signatory country’s objection to service by postal channels does not expressly bar service by email.” Id. (internal citations & quotation marks omitted); see Makina v. Kimya Endustrisi A.S., No. 22 Civ. 3933 (PGG), 2022 WL 3018243, at *5 (S.D.N.Y. July 29, 2022); Mattel, Inc. v. Animefun Store, 18 Civ. 8824 (LAP), 2020 WL 2097624, at *5 (S.D.N.Y. May 1, 2020) (“[T]his Court has held that China’s objection to service by postal channels under Article 10 of the Hague Convention does not encompass service by email and that, further, service by email is not prohibited by any international agreement.”) (citing Sulzer Mixpac AG v. Medenstar Indus. Co., 312 F.R.D. 329, 339 (S.D.N.Y. 2015) (declining 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”).

In contrast, other courts in this Circuit have recently held that “service via email on litigants located in China is not permitted by the Hague Convention.” Smart Study, 620 F. Supp. 3d at 1393; see Pinkfong Co., Inc. v. Aveny Store, No. 23 Civ. 09238 (JLR), 2023 WL 8531602, at *3 (S.D.N.Y. Nov. 30, 2023) (“The Court is persuaded by the in-depth analysis in Smart Study Co. that, in light of its objections, China prohibits service by email on defendants located in China, and exigent circumstances – such as the need for urgent relief – do not create an exception to this rule that is available here.”) (internal citation & quotation marks omitted); Schluter Sys., L.P. v. Sanven Corp., No. 22 Civ. 155 (TJM) (CFH), 2023 WL 130888, at *5

(N.D.N.Y. Jan. 6, 2023) (“The undersigned concludes that Smart Study’s logic is sound and chooses to follow this case, rather than the line of district court cases in this Circuit that permitted e-mail service by countries that are signatories to the Hague Convention and object to service by postal channels under Article 10(a).”). The cases that have declined to allow service by email under the Hague Convention have extended China’s explicit objection to service by postal mail to email. In the present cases based on the present briefings, whether service by email is authorized in China is unclear. In any event, Plaintiffs have not provided email addresses for which the Court could conclude that service could be achieved consistent with due process. Thus, the Court cannot direct email service to unidentified email addresses in China.

iii. Publication

As to service by publication, courts have acknowledged that this method of service is acceptable where “the defendant is likely to read the newspaper in which the notice is published.” Ajmad v. Crescioni, No. 23 Civ. 5776 (VSB) (JLC), 2024 WL 78558, at *2 (S.D.N.Y. Jan. 8, 2024) (citing & quoting Ryzhov v. Malofeyev, No. 23 Civ. 1072 (JMF), 2023 WL 6162823, at *2 (S.D.N.Y. Sept. 21, 2023)). Courts have “denied application for substitute service by publication, however, where plaintiffs failed to provide any details about the newspapers or media outlets where they intended to publish notice.” Id. (citing Ryzhov, 2023 WL 6162823, at *3); see SEC v. China Intelligent Lighting & Elecs., Inc., No. 13 Civ. 5079 (JMF), 2014 WL 338817, at *1 (S.D.N.Y. Jan. 30, 2014) (denying the plaintiff’s motion for proposed service by publication in the International New York Times where the plaintiff failed to “present even basic information” about the newspaper such as its circulation in China, “where in China it is distributed, and in what languages it is published”). In Ryshov, the district court denied the plaintiff’s request to serve the defendants by publication holding that because the

plaintiff “failed to identify how he would effectuate service by publication, in what media outlets he would publish notice or for how long, and what facts suggest that publication in the proposed media outlet is likely to reach [the defendants], the Court is unable to determine whether such substituted service would comport with due process.” Ryzhov, 2023 WL 6162823, at *3. Here, Plaintiffs’ motions papers do not offer any information about how they would serve Defendants by publication, see generally Lau, ECF No. 76; Zobay, ECF No. 156; thus, the Court cannot grant leave for service by publication.

Given the lack of other more conventional available means of service, the Court turns to the question of whether service on Defendants’ U.S. counsel is an appropriate alternative method of service.

b. Whether Serving Defendants Through U.S. Counsel Is Authorized Under Rule 4(f)

Courts in this Circuit are split as to whether serving a foreign defendant’s U.S. counsel is authorized under Rule 4(f)(3).

On one hand, some courts in this Circuit have held that serving a foreign defendant through their U.S. counsel is not authorized under Rule 4(f)(3) because they deem such service to be effectuated in the United States, which is outside of the scope of the Rule and within a U.S. judicial district. See Spin Master, Ltd., 2024 WL 3030405, at *7; also Convergenc Energy LLC, 2020 WL 4038353, at *7 (declining the plaintiff’s request to serve defendant’s U.S. counsel and holding that “the court cannot enter a Rule 4(f)(3) order permitting service on a foreign individual at a place not within a judicial district of the United States when the person to whom the complaint and summons is to be delivered and as to which service is deemed to be effective is at a place within the United States”); see Uipath, Inc. v. Shanghai Yunkuo Info. Tech. Co., No. 23 Civ. 7835 (LGS), 2023 WL 8600547, at *3 (S.D.N.Y. Dec. 12, 2023) (holding that the Hague

Convention “does not apply to service within the United States, including on a foreign party’s counsel in the United States”); In re New Oriental Educ. & Tech. Grp. Inc. Sec. Litig., No. 22 Civ. 01014, 2023 WL 5466333, at *3 (S.D.N.Y. Aug. 24, 2023) (“[T]he Hague Convention governs only transmittal of documents abroad When executing service via U.S.-based corporate counsel, no documents will be transmitted abroad.”).⁶

Other courts in this Circuit have allowed “service under Rule 4(f) on foreign defendants via U.S.-based counsel in some circumstances—but only ‘where U.S. counsel is a conduit to the service that is effectuated at a place not within any jurisdiction of the United States.’” Spin Master, 2024 WL 3030405, at *7 (citing & quoting Mrvic, 652 F. Supp. 3d at 413). “Put another way, Rule 4(f) permits a method of service that entails transmitting documents through U.S. counsel, but only if service is ultimately completed abroad.” Id. (emphasis in original). “[T]he majority view’ in this District is that service on U.S.-based counsel is permissible pursuant to the Rule.” Nations Techs., 2024 WL 3013759, at *5 n.6 (agreeing with the majority view) (citing In re Fairfield Sentry, 2020 WL 7345988, at *12 (collecting cases)).

The Court agrees with this latter line of reasoning here because the intent of this Order is to allow Plaintiffs to serve Defendants in China by using their U.S. counsel as a conduit for such service. The Court agrees with the view that service on U.S. counsel is not inconsistent with Rule 4(f) to the extent that U.S. counsel can serve as a conduit to serve a foreign defendant abroad and such service comports with due process, as discussed below.

⁶ Another line of cases had held that because China has specifically not authorized service via counsel, such service is not permitted. See Smart Study, 620 F. Supp. 3d at 1393. This Court finds this argument to be an over-extension of Water Splash, which held that, although the Convention does not affirmatively authorize service by mail, “as long as the receiving state does not object, the Convention does not ‘interfere with . . . the freedom’ to serve documents through postal channels.” See Water Splash, 581 U.S. at 284 (quoting Art. 10(a) of the Hague Convention). The record does not show that China prohibits service via counsel.

c. Whether Serving Defendants Through U.S. Counsel Comports With Due Process

The remaining inquiry is whether service through U.S. counsel would reasonably put Defendants on notice of this litigation, “thereby comporting with due process.” Mrvic, 652 F. Supp. 3d 409, 413 (S.D.N.Y. 2023). In Mrvic, the district court looked at whether the plaintiff had shown adequate communication between the defendant and its U.S. counsel such that this means of service “would be reasonably likely to put [the defendant] on notice.” Id.

In Nations Techs., the district court that “counsel’s representation that they are not authorized to accept service on [the defendant’s] behalf ‘is not determinative as to whether the Court may permit alternate service on that counsel through Rule 4(f)(3).’” Nations Techs., 2024 WL 3013759, at *6 (citing & quoting Mrvic, 652 F. Supp. 3d at 414) (collecting cases). “As one court in this [d]istrict explained, ‘[t]he Court’s order to serve these attorneys is not to suggest that the lawyers must accept service on [the defendant’s] behalf,’ but rather ‘sending the service papers to these attorneys is simply a method of notice that is likely to inform [the defendant] of this lawsuit, as the Court assumes that most reasonable lawyers will inform their clients about the pendency of a lawsuit when notified in this manner.’” Id. (citing & quoting Platina Bulk Carriers Pte Ltd. v. Praxis Energy Agents DMCC, No. 20 Civ. 4892 (NRB), 2020 WL 6083275, at *4 n.4 (S.D.N.Y. Oct. 15, 2020)); see Schluter Sys., 2023 WL 130888, at *7 (holding that “in order . . . to properly assess whether service on the U.S. counsel would ‘pass[] constitutional muster’ such service must “comport with the notions of due process.”) (citing & quoting GLG Life Tech, 287 F.R.D. at 267).

Here, Plaintiffs have provided sufficient information to meet this due-process requirement. Plaintiffs argue that “ZTE and Huawei are actively participating in criminal proceedings pending in U.S. courts. In Huawei’s criminal case pending in this Court, Huawei is

represented by numerous attorneys from at least two large U.S. law firms,⁷ and in ZTE’s criminal case pending in the U.S. District Court for the Northern District of Texas, ZTE is represented by several attorneys from at least four large U.S. law firms.”⁸ Lau, ECF No. 76-1 at 21; Zobay, ECF No. 156-1 at 18 (footnotes added by the Court). Plaintiffs claim that because U.S. counsel are “actively representing ZTE or Huawei in matters involving substantially the same issues at the center of Plaintiffs’ claims . . . serving the Second Amended Complaint through these defendants’ existing attorneys will satisfy due process concerns and provide each of ZTE and Huawei with notice and opportunity to respond.” Lau, ECF No. 76-1 at 21; Zobay, ECF No. 156-1 at 18. Plaintiffs add that U.S. counsels’ representation of Defendants in these analogous federal cases demonstrates that U.S. counsel “are necessarily in contact and communication with their clients, and therefore, are valid and reasonable avenues for effectuating alternative service and providing sufficient notice to ZTE and Huawei.” Lau, ECF No. 76-1 at 21; Zobay, ECF No. 156-1 at 18.

⁷ Based on the docket in USA v. Huawei Technologies Co. Ltd., 1:18-cr-00457 (E.D.N.Y.), Huawei is represented by David Bitkower and Matthew S. Hellman of Jenner & Block LLP’s New York and Washington, D.C. offices; and Michael Alexander Levy, Daniel J. Hay, Daniel D. Rubinstein, Douglas A. Axel, Ellyce R. Cooper, Frank Robert Volpe, Jennifer L. Saulino, Joan Loughnane, Mark D. Hopson and Melissa Colon-Bosolet of Sidley Austin LLP’s New York, Washington, D.C., Los Angeles, San Francisco and Chicago offices.

⁸ Based on the docket in USA v. ZTE Corp., 3:17-cr-00120-K-1 (N.D. Tex.), ZTE is represented by Daniel P. Chung, Allyson N. Ho, Betty X. Yang, Elizabeth Ashley Kiernan, F. Joseph Warin, John W.F. Chesley, Kyle D. Hawkins, Robert C. Walters of Gibson Dunn & Crutcher LLP’s Washington, D.C., Dallas and Houston; Alex Schulman, Bruce D. Oakley, James Evans Rice, III, Mary Elizabeth Peters, Matthew Corey Sullivan, Nathaniel H. Nesbitt, Robert Buehler and Stephen Floyd Propst of Hogan Lovells US LLP’s Washington, D.C., New York, Denver, Houston offices; Brennan Holden Meier, Elizabeth Marie Dulong Scott, M. Scott Barnard of Akin Gump Strauss Hauer & Feld LLP’s Dallas office; and Paul Taliaferro Lund and Michael P. Gibson of Burleson Pate & Gibson LLP’s Dallas office.

The Court finds this reasoning persuasive. The motion for alternative service is granted. As to Huawei and ZTE, the Lau and Zobay Plaintiffs may serve Defendants' respective U.S. counsel as listed in Exhibit A. In addition, service via the U.S. counsel who filed oppositions in these cases is authorized.⁹

II. The Lau Plaintiffs' Motion For Entry Of Defaults And Default Judgments Is Moot

The Lau Plaintiffs move "for entry of defaults and default judgments, or in the alternative, for leave to serve Defendants by alternative means" under Article 15 of the Hague Convention.¹⁰ See generally ECF No. 76-1.

In light of the Court's analysis above and its decision herein to grant Plaintiffs' motion for leave to serve Defendants by alternative of means of service, the Court finds that the Lau

⁹ Counsel who filed their opposition on behalf of ZTE include Frank A. Dante, Melissa F. Murphy, Serena S. Gopal and Martin S. Krezalek of Blank Rome LLP's Philadelphia and New York offices. See Zobay, ECF No. 161; Lau, ECF No. 81. Counsel who filed their opposition on behalf of Huawei include Steven T. Cottreau and James E. Gauch of Jones Day's Washington, D.C. office. See Zobay, ECF No. 162; Lau, ECF No. 82. Their contact information is available on the respective dockets.

¹⁰ Article 15 of the Hague Convention provides, in relevant part, that:

"[e]ach Contracting State shall be free to declare that the judge . . . may give judgment even if no certificate of service or delivery has been received, if all the following conditions are fulfilled –

- a) the document was transmitted by one of the methods provided for in this Convention,
- b) a period of time of not less than six months, considered adequate by the judge in the particular case, has elapsed since the date of the transmission of the document,
- c) no certificate of any kind has been received, even though every reasonable effort has been made to obtain it through the competent authorities of the State addressed."

The Hague Convention, Art. 15.

Plaintiffs' motion for entry of defaults and default judgments against Defendants is denied without prejudice as moot.

III. CONCLUSION

For the reasons set forth above, Plaintiffs' motion for leave to serve Defendants by alternative means of service through their respective U.S. counsel is granted. The Zobay Plaintiffs and the Lau Plaintiffs must serve by overnight mail or similar delivery service Defendants' respective U.S. counsel who are listed in Exhibit A with (1) their respective operative summons and Complaint, (2) a copy of this Order, and (3) certified Chinese translations of these documents. Plaintiffs' counsel may also serve by overnight mail or similar delivery service Defendants via their respective counsel who filed an opposition in their respective cases at the addresses included on their respective docket. Plaintiffs must file proof of service on the docket within 30 days of this Order. The Lau Plaintiffs' motion for a default judgment motion is denied as moot without prejudice given their request in the alternative is granted herein.

Defendants have 60 days following service to answer or otherwise move.

Dated: Brooklyn, New York
September 30, 2024

Vera M. Scanlon

VERA M. SCANLON
United States Magistrate Judge

EXHIBIT A

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