

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

NJOY, LLC v. Imiracle (HK) Ltd., et al.

NJOY · No. 24-cv-00397-BAS-JLB · Decided May 2, 2025

SUMMARY

The United States District Court for the Southern District of California granted NJOY, LLC’s renewed motion to serve Shenzhen Han Technology Co., Ltd. by email under Federal Rule of Civil Procedure 4(f)(3). The court held that email service was not prohibited by international agreement, satisfied due process, and was necessary after unsuccessful Hague Convention service efforts. The court also terminated as moot Guangdong Qisitech Co., Ltd.’s motion to dismiss and joinder because NJOY had voluntarily dismissed its claims against Guangdong.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Cynthia Bashant
JURISDICTION	United States District Court for the Southern District of California
DECIDED	May 2, 2025
DOCKET	24-cv-00397-BAS-JLB
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved for leave to serve a foreign defendant by email under Federal Rule of Civil Procedure 4(f)(3). A defendant's motion to dismiss and joinder was also pending when plaintiff voluntarily dismissed all claims against that defendant.
STANDARD OF REVIEW	The Court exercised its discretion under Rule 4(f)(3) to determine whether alternative service was necessary under the circumstances.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

- service of process
- civil procedure
- commercial litigation
- commercial
- motions to dismiss

PRACTICE AREAS

- Civil procedure
- International service of process
- Commercial litigation

QUESTIONS PRESENTED

1. Whether service on Shenzhen Han by email was permissible under Federal Rule of Civil Procedure 4(f)(3).
2. Whether the proposed email service method was reasonably calculated to provide Shenzhen Han notice and therefore satisfied due process.
3. Whether the circumstances established sufficient necessity to authorize alternative service after unsuccessful Hague Convention efforts.
4. Whether Guangdong Qisitech's motion to dismiss and joinder should be terminated as moot after NJOY voluntarily dismissed all claims against Guangdong.

HOLDINGS

1. A district court may authorize service by email under Rule 4(f)(3) when the proposed method is not prohibited by an international agreement, satisfies due process, and is necessary under the circumstances.
2. Service by email satisfies due process where the address is regularly used for business or is otherwise reasonably calculated to provide the foreign defendant with notice and an opportunity to respond.
3. Necessity under Rule 4(f)(3) may be established by diligent but unsuccessful efforts to serve an elusive international defendant through the Hague Convention, particularly when further Hague Convention efforts are impracticable and would cause delay.
4. Guangdong's motion to dismiss and joinder became moot after NJOY voluntarily dismissed without prejudice all claims against Guangdong.

KEY QUOTATIONS

“To authorize alternative service under Rule 4(f)(3), the Court must find that (1) the proposed method does not violate an international agreement; (2) it satisfies due process; and (3) it is necessary under the present circumstances.” (at 2)

“The proposed method service is not prohibited by international agreement, comports with due process, and is necessary given the circumstances.” (at 5)

FACTUAL BACKGROUND

NJOY sued, among others, Shenzhen Han, a China-based entity allegedly involved in manufacturing and distributing Elf Bar-branded flavored disposable vapor devices in the United States. NJOY attempted service through the Hague Convention, but Chinese authorities reported that service failed because the physical address was invalid and would not be reattempted. NJOY sought permission to serve Shenzhen Han at a consumer-contact email address displayed on the company's public website; counsel's prior messages to that address did not generate delivery failures.

PROCEDURAL HISTORY

NJOY filed suit against multiple foreign and domestic defendants concerning the alleged unlawful distribution of flavored disposable vapor devices. The Court previously denied NJOY's request for email service without prejudice and directed it to attempt service under the Hague Convention. After Hague Convention service on Shenzhen Han failed because of an invalid physical address, NJOY renewed its motion for alternative service. The Court granted email service and terminated Guangdong's motion to dismiss and joinder as moot after NJOY voluntarily dismissed its claims against Guangdong without prejudice.

DISPOSITION

other

CASES CITED

- Rio Props., Inc. v. Rio Int'l Interlink, 284 F.3d 1007, 1014-17 (9th Cir. 2002)
- Juicero, Inc. v. Itaste Co., No. 17-cv-1921-BLF, 2017 WL 3996196, at *2-3 (N.D. Cal. June 5, 2017)
- Liberty Media Holdings, LLC v. March, No. 10cv1809 WQH (BLM), 2011 WL 197838, at *2 (S.D. Cal. Jan. 20, 2011)
- Williams-Sonoma, Inc. v. Friendfinder Inc., No. C 06-06572 JSW, 2007 WL 1140639, at *2 (N.D. Cal. Apr. 17, 2007)
- Mullane v. Cent. Hanover Bank & Tr. Co., 339 U.S. 306, 318 (1950)
- Leo Middle E. FZE v. Zhang, No. 21-CV-03985-CRB, 2021 WL 11593016, at *5 (N.D. Cal. Nov. 2, 2021)
- Sec. & Exch. Comm'n v. China Sky One Med., Inc., No. CV 12-07543-MWF (MANx), 2013 WL 12314508, at *1 (C.D. Cal. Aug. 8, 2013)

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