

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PRECEDENTIAL VALUE	nonprecedential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)

OPINION

NJOY, LLC v. Imiracle (HK) Limited

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 NJOY, LLC, Case No. 24-cv-00397-BAS-JLB 12 Plaintiff, ORDER: 13 v.

(1) TERMINATING AS MOOT

14 IMIRACLE (HK) LTD., et al.,

MOTION TO DISMISS BY

15 Defendants. GUANGDONG QISITECH CO.,

LTD. (ECF No. 143); AND

16 17

(2) GRANTING MOTION TO

18 SERVE DEFENDANT

SHENZHEN HAN

TECHNOLOGY CO., LTD. BY

20 EMAIL (ECF No. 179)

21 22 Before the Court are two motions: (1) Defendant Guangdong Qisitech Co., Ltd.’s 23 (“Guangdong”) Motion to Dismiss and Joinder (ECF No. 143); and (2) Plaintiff NJOY, 24 LLC’s (“NJOY”) Renewed Motion for Leave to Serve Defendant Shenzhen Han 25 Technology Co., Ltd. (“Shenzhen Han”) by Email pursuant to Federal Rule of Civil

26 Procedure 4(f)(3). (ECF No. 179.) NJOY contends that, despite diligent efforts, it has 27 been unable to effectuate service on Shenzhen Han through the Hague Convention and 28 seeks authorization to serve via an email address listed on the company’s website. (ECF

1 No. 179 at 1:9–2:10.) For the reasons discussed below, the Court GRANTS NJOY’s

2 Motion for Alternative Service. (ECF No. 179.) 3 Furthermore, in light of NJOY’s voluntary dismissal without prejudice of all claims 4 against Guangdong (ECF No. 158), the Court TERMINATES AS MOOT Guangdong’s 5 Motion to Dismiss and Joinder (ECF No. 143).

6 I. BACKGROUND

7 NJOY initiated this action to halt the alleged unlawful distribution of flavored 8 disposable vapor devices (“FDVs”) by multiple foreign and domestic defendants. (Compl., 9 ECF No. 1 ¶ 1.) NJOY alleges that Shenzhen Han, a China-based entity, manufactures and 10 distributes FDVs—including products marketed under the “Elf Bar” brand—in violation 11 of California law. (Id. ¶¶ 2–4, 51.) After filing its complaint, NJOY sought leave to serve 12 the six foreign Defendants via email pursuant to Rule 4(f)(3). (ECF No. 24.) The Court 13 denied that motion without prejudice and directed NJOY to first attempt service through 14 the Hague Convention. (ECF No. 42 at 5:21–24.) 15 Following the Court’s directive, NJOY retained a Hague Convention service vendor 16 and initiated formal service on the foreign defendants, including Shenzhen Han. 17 (Iliopoulos Decl. ¶¶ 5–6, ECF No. 179-2; Ingalls Decl. ¶¶ 3, 8–10, ECF No. 179-3.) While 18 service was successful as to some entities, Chinese authorities advised that service on 19 Shenzhen Han had failed due to an invalid physical address and would not be reattempted. 20 (Iliopoulos Decl. ¶¶ 7–8; Ingalls Decl. ¶¶ 10–14.) NJOY contends it has been unable to 21 identify a valid alternative physical address. (Iliopoulos Decl. ¶ 9.) Consequently, NJOY 22 renewed its motion for alternative service, seeking leave to serve Shenzhen Han via an 23 email address listed on the company’s public-facing website—an email address NJOY 24 asserts is used for consumer communication and previously accepted counsel’s messages 25 without any delivery error. (Id. ¶¶ 10–13, Exs. 1–3.)

26 II. LEGAL STANDARD

27 Under Rule 4(f), a plaintiff may serve foreign corporations in three different ways: 28 (1) by any internationally agreed means of service reasonably calculated to give notice, 1 such as those means authorized by the Hague Convention; (2) in the manner prescribed by 2 the law of the foreign country for service in that country in an action in any of its courts of 3 general jurisdiction

or as directed by the foreign authority in response to a letter rogatory 4 or a letter of request; or (3) by other means not prohibited by international agreement, as 5 the court orders. Fed. R. Civ. P. 4(f).

6 III. ANALYSIS

7 To authorize alternative service under Rule 4(f)(3), the Court must find that (1) the 8 proposed method does not violate an international agreement; (2) it satisfies due process; 9 and (3) it is necessary under the present circumstances. See *Rio Props., Inc. v. Rio Intern. Interlink*, 284 F.3d 1007, 1014–17 (9th Cir. 2002). 11 A. International Agreement 12 Service by email is a permissible means of alternative service where it does not 13 violate an international agreement. *Id.* at 1014. The Hague Convention governs service in 14 China, which is a signatory. *Juicero, Inc. v. Itaste Co.*, No. 17-cv-1921-BLF, 2017 WL 15 3996196, at *2 (N.D. Cal. June 5, 2017). However, the Hague Convention does not 16 expressly forbid service by email, and Courts in this Circuit have repeatedly held that email 17 service does not violate the Hague Convention and have granted motions permitting it. 18 See, e.g., *Liberty Media Holdings, LLC v. March*, No. 10cv1809 WQH (BLM), 2011 WL 19 197838, at *2 (S.D. Cal. Jan. 20, 2011); see also *Williams-Sonoma, Inc. v. Friendfinder 20 Inc.*, No. C 06-06572 JSW, 2007 WL 1140639, at *2 (N.D. Cal. Apr. 17, 2007). 21 Accordingly, NJOY’s proposed method of service via email is not precluded by 22 international agreement. 23 B. Due Process 24 NJOY seeks to serve Shenzhen Han via the email address 25 support@lostmaryofficialsite.com, which is displayed on the company’s public-facing 26 website as a point of contact for consumers. (*Iliopoulos Decl.* ¶ 11.) Nonetheless, even 27 where a method is facially permissible under Rule 4(f)(3), the method “must also comport 28 with constitutional notions of due process” and be “reasonably calculated” to provide 1 notice to the relevant party. *Rio Props.*, 284 F.3d at 1016–17 (quoting *Mullane v. Cent. 2 Hanover Bank & Tr. Co.*, 339 U.S. 306, 318 (1950)). Courts have held that email satisfies 3 due process where the address is regularly used for business. *Juicero*, 2017 WL 3996196, 4 at *3. 5 Here, Shenzhen Han is engaged in the manufacture and distribution of Elf Bar- 6 branded products for sale in the United States and maintains a public website, providing an 7 email for parties seeking to contact it. (*Iliopoulos Decl.* ¶ 11, Ex. 1.) Plaintiff’s counsel 8 transmitted service documents to the proposed email without receiving any bounce-back 9 or delivery failure notification, supporting the conclusion that the email is active. (*Id.* 10 ¶¶ 12–13, Exs. 2, 3.) NJOY further contends that the website hosting this email address 11 is central to Shenzhen Han’s commercial operations, as it serves both as a platform for 12 product sales and information, and the email address is the only known means of directly 13 contacting the company. (*Id.* ¶¶ 9–10.) Under these circumstances, the proposed method 14 of service via email is reasonably calculated to provide Shenzhen Han with notice and an 15 opportunity to respond, and thus satisfies the requirements of due process. 16 C. Necessity 17 It is within “the sound discretion of the district court . . . [to] determin[e] when the 18 particularities and necessities of a given case require alternative service of process under 19 Rule 4(f)(3).” *Rio Props.*, 284 F.3d at 1016. “District courts have used their discretionary

20 powers to determine circumstances where ‘necessity’ is met.” *Leo Middle E. FZE v. 21 Zhang*, No. 21-CV-03985-CRB, 2021 WL 11593016, at *5 (N.D. Cal. Nov. 2, 2021). Such 22 circumstances include instances where the plaintiff has shown an “inability to serve an 23 elusive international defendant.” *Rio Props.*, 284 F.3d at 1016. 24 Here, Plaintiff has made diligent but unsuccessful attempts to serve Shenzhen Han 25 through the Hague Convention, as previously ordered by the Court. (Iliopoulos Decl. ¶¶ 4– 26 9; Ingalls Decl. ¶¶ 8–14, Exs. 1–3.) Despite initiating service under the Hague Convention 27 on June 4, 2024, and utilizing Crowe Foreign Services, a professional service vendor, 28 NJOY was notified on November 13, 2024, that service had failed due to an invalid 1 || physical address and would not be reattempted by Chinese authorities. (Iliopoulos Decl. 2 6-7; Ingalls Decl. § 13.) Plaintiff contends it has been unable to locate an alternate 3 ||physical address for Shenzhen Han, rendering further attempts under the Hague 4 ||Convention impracticable. (Iliopoulos Decl. § 9.) Furthermore, Courts recognize that 5 service in China under the Hague Convention can be exceedingly slow, often taking six 6 months to over a year, and may still fail. See, e.g., *Sec. & Exch. Comm’n v. China Sky One 7 || Med., Inc.*, No. CV 12-07543—MWE (MANx), 2013 WL 12314508, at *1 (C.D. Cal. Aug. 8 2013) (noting an estimate of six months or longer for service in China). 9 In light of Plaintiff’s documented efforts to comply with the Court’s directive to 10 || pursue service through the Hague Convention, authorizing alternative service by email is 11 ||necessary to avoid further delay and to ensure that Shenzhen Han receives timely and 12 || effective notice of this action.

13 CONCLUSION

14 For the foregoing reasons, the Court finds that service by email on Shenzhen Han 15 || satisfies the requirements of Federal Rule of Civil Procedure 4(f)(3). The proposed method 16 service is not prohibited by international agreement, comports with due process, and is 17 ||necessary given the circumstances. Accordingly, the Court GRANTS NJOY’s Renewed 18 || Motion for Leave to Serve Shenzhen by Email. (ECF No. 179.) 19 NJOY may serve this Order, the Summons, and Complaint on Shenzhen Han by 20 || sending email messages, return receipt requested, to the email address listed on Shenzhen 21 ||Han’s public-facing website: support@lostmaryofficialsite.com. NJOY must serve 22 Shenzhen Han and file proof of service on or before May 16, 2025. 23 Additionally, because NJOY has voluntarily dismissed all claims against 24 || Guangdong (ECF No. 158), the Court TERMINATES AS MOOT Guangdong’s Motion 25 ||to Dismiss and Joinder (ECF No. 143). 26 IT IS SO ORDERED. 27 28 ||DATED: May 2, 2025 (yatta Bahan ☐☐ Hon. Cynthia Bashant, Chief Judge _«&. £JUnited States District Court