

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA**

Timeless Production FZ LLC v. VieConnect

No. 25-cv-03639-NW, United States District Court for the Northern District of California (June 17, 2025)

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7
TIMELESS PRODUCTION FZ LLC, Case No. 25-cv-03639-NW 8 Plaintiff, ORDER DENYING
WITHOUT 9 v. PREJUDICE PLAINTIFF’S MOTION FOR ALTERNATIVE SERVICE 10
VIECONNECT, et al., Re: ECF No. 18 Defendants. 11 12 13 Before the Court is Timeless
Production FZ LLC’s (“Timeless”) motion for alternative 14 service of process on Defendants
Tran Van Ha, Pham Tien Dong, Vieconnect Vietnam 15 Technology and Services Investment
Company Limited (“Vieconnect”), and Does 1-10 16 (collectively “Defendants”).

Mot., ECF No. 18. The Court DENIES the motion without 17 prejudice. However, unless Plaintiff
files a motion seeking alternative service that includes 18 reasonable, documented, repeated
attempts to serve Defendants and gives them notice of this 19 action, consistent with the Hague
Convention and the spirit of due process, the Court will not 20 grant a request for alternative
service.

21 I. BACKGROUND 22 A. Factual Background 23 “Plaintiff is a widely recognized and
monetized YouTube channel” with “a substantial 24 global audience.” First Amended Complaint
 (“FAC”) ¶ 21, ECF No. 10. Plaintiff alleges that 25 Defendants, all of whom are in Vietnam,
 “unlawfully reproduce[d] Plaintiff’s works in multiple 26 videos uploaded to the WOW Tech &
 WOW TV YouTube channel[s].” Id. ¶ 24.

Specifically, 27 Plaintiffs allege that Defendants infringed on exclusive copyrights belonging to
Plaintiff by 1 “systematically reproduc[ing], cop[y]ing, display[ing], and distribut[ing] Plaintiff’s
copyrighted 2 videos and unlawfully featur[ing] an [sic] copyrighted 2D Artwork- photograph as
the thumbnail 3 of their infringing video without authorization.” Id. ¶ 23.

Those “actions directly infringe[d] on 4 Plaintiff’s exclusive rights, diverting viewers, subscribers,
and revenue while profiting from 5 Plaintiff’s original content without consent.” Id. 6 On April 21,
2025, Plaintiff submitted three “DMCA [Digital Millennium Copyright Act] 7 takedown notices”
to YouTube requesting the removal of three specific videos for copyright 8 infringement.

Id. ¶ 26 & Exs. C-E. As appears to be YouTube’s process, YouTube reached out to 9 the infringing
channels about Plaintiff’s allegations. Id. ¶ 26 & Exs. F-H. In response, the 10 infringing channels
“falsely represented ownership of Plaintiff’s content” in each instance. Id. 11 ¶ 26. YouTube

temporarily removed the infringing videos from Defendants' channels, but 12 Defendants' false counternotices "forced Plaintiff to take legal action to prevent the infringing 13 videos from being reinstated." Id. ¶ 27.

14 B. Procedural Background 15 On April 30, 2025, Plaintiff filed a complaint and ex parte motion for temporary 16 restraining order and preliminary injunction, which included an initial request to serve Defendants 17 via alternative means pursuant to Federal Rule of Civil Procedure 4(f)(3). See ECF Nos. 1, 2.

On 18 May 2, 2025, the Court denied the motion, and Plaintiff's request to "serve Defendants according 19 to the terms of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in 20 Civil and Commercial Matters (the "Hague Convention")." See TRO Order at 4, ECF No. 6. 21 The Court indicated that Plaintiff could "file a request to serve by an alternative method" provided 22 "Plaintiff is unsuccessful in its attempts to serve Defendants using the methods required under the 23 [Hague] Convention, or for good cause.

Id. at 5. If Plaintiff elected to renew the request for 24 alternative service, the motion was to "detail Plaintiff[']s efforts at service as well as its attempts 25 to understand and comport with the law governing service of process in the relevant countries." 26 Id. 27 The Court issued Summons on May 8, 2025. ECF No. 12.

The following day, Plaintiff 1 deadline to June 14, 2025. ECF Nos. 13, 14. On June 5, 2025, Plaintiff renewed its motion to 2 authorize alternative service of process under Rule 4(f)(3). Fed. R. Civ. P. 4(f)(3); Mot. 3 II. LEGAL STANDARD 4 Plaintiff's motion is governed by Federal Rule of Civil Procedure 4(f), which addresses 5 "Serving an Individual in a Foreign Country." Plaintiff specifically invokes Rule 4(f)(3), which 6 permits service on a foreign defendant through an alternate method of service that is (1) directed 7 by the court and (2) is not prohibited by international agreement.

Rio Props., Inc. v. Rio Int'l 8 Interlink, 284 F.3d 1007, 1014 (9th Cir. 2002). 9 In evaluating motions for alternative service under Rule 4(f)(3), district courts apply a 10 three-step analysis. First, courts assess whether the proposed method of service is prohibited by 11 international agreement. Id. Second, courts determine whether Plaintiff has demonstrated "that 12 the facts and circumstances of the present case necessitate[] the district court's intervention." Id. 13 at 1016.

Third, the court must confirm that the proposed method of service comports with 14 constitutional notions of due process by being "reasonably calculated, under all the circumstances, 15 to apprise interested parties of the pendency of the action and afford them an opportunity to 16 present their objections." Id. (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 17 314 (1950) (Jackson, J.)).

18 Defendants are in Vietnam, a signatory to the “Hague Convention”; Plaintiff must serve 19 Defendants accordingly. While “[n]othing in the Hague Convention itself prohibits alternative 20 service by email,” *Google LLC v. Does 1-3*, No. 23-CV-05823-VKD, 2023 WL 8851619, at *2 21 (N.D. Cal. Dec. 21, 2023), district courts “generally require a showing [that] service by email is 22 necessary,” not just preferred, *Astral IP Enterprise Ltd.*, 2023 WL 5498730, at *2 (N.D.

Cal. 23 August 23, 2023). These circumstances arise where, for example, an address cannot be located, 24 see *id.*, or where there is evidence a defendant is attempting to “evade” service, see *Rubie’s 25 Costume Co. v. Yiwu Hua Hao Toys Co.*, 2019 WL 6310564, at *3 (W.D. Wash. November 25, 26 2019). Service by email may be proper only when (1) international agreement does not prohibit 27 service by email, and (2) service by email is reasonably calculated to provide actual notice to the 1 defendant.

See *D.Light Design, Inc. v. Boxin Solar Co.*, No. C–13–5988 EMC, 2015 WL 526835, 2 at *1 (N.D. Cal. Feb. 6, 2015) (collecting cases). 3 III. DISCUSSION 4 Plaintiff fails to demonstrate the necessity of alternative service. Beyond once attempting 5 to serve Defendants by mail, Plaintiffs have made no other attempts to notify Defendants of this 6 case. See Mot. at ¶¶ 12-13.

The document packages that Plaintiff sent “were not successfully 7 delivered,” which, Plaintiff alleges, “reflect[s] a pattern of evasion or willful noncompliance.” *Id.* 8 The Court disagrees. A single failed attempt to serve Defendants via mail is not enough to suggest 9 Defendants are evading service; Defendants simply may not have been there when the package 10 was attempted to be delivered.

Plaintiff has not made the repeated, concerted effort courts look for 11 when permitting alternative service. Cf. *S.E.C. v. Anticevic*, No. 05 Civ. 6991, 2009 WL 361739, 12 at *4 (S.D.N.Y. Feb. 13, 2009) (permitting alternative service after plaintiff twice attempted to 13 serve defendant in two different countries); *S.E.C. v. China Sky One Med., Inc.*, No. CV 12– 14 07543–MWF (MANX), 2013 WL 12314508, at *3 (C.D.

Cal. Aug. 20, 2013) (allowing 15 alternative service where plaintiff “attempted service through the Hague Convention for nine 16 months without success); *Laborers Dist. Council Constr. Indus. Pension Fund v. Sea Ltd.*, 345 17 F.R.D. 623, 625 (D. Ariz. 2024) (granting service via email after private investigator 18 unsuccessfully attempted to locate defendants’ addresses).

19 Even if the Court were inclined to permit alternative service, Plaintiff’s motion fails to 20 demonstrate that Plaintiff’s proposed means of service “comport with constitutional notions of due 21 process.” *Rio Props.*, 284 F.3d at 1015.

As an initial matter, throughout the motion Plaintiff asks 22 for myriad types of alternative service, making it unclear what type of service Plaintiff actually 23 wants. The face of the motion

requests that the Court authorize service via email, “YouTube 24 direct messaging” to the infringing channels, and through Defendant “Vieconnect’s online contact 25 portal.” Mot. at ii.

Plaintiff’s conclusion in the memorandum in support of the motion, however, 26 requests that the Court authorize service only by email and WhatsApp messaging. Id. ¶ 31. Then 27 Plaintiff’s memorandum contemplates “[s]ervice by posting on a designated legal notice website” 1 make further reference to service by this manner of posting. See id. ¶ 22. Plaintiff fails to clarify 2 the specific means of service it purportedly requires, much less the basis for those requests, or how 3 those requests, as opposed to others, comport with due process.

The Court cannot evaluate the 4 merits of a request for alternative service without that information. 5 Finally, even if the Court were to assume Plaintiff requests only service via email and via 6 WhatsApp as stated in Plaintiff’s proposed order, see ECF No. 18-2, 1 Plaintiff fails to demonstrate 7 that those mechanisms are “reasonably calculated, under all the circumstances, to apprise 8 interested parties of the pendency of the action and afford them an opportunity to present their 9 objections.” Rio Properties, 284 F.3d at 1016.

Plaintiff insists that Defendants have used email 10 and WhatsApp “in direct communications with Plaintiff,” Mot. ¶ 30, and therefore the email and 11 WhatsApp addresses available to Plaintiff are “credible and efficient channel[s] of 12 communication.” Id. 13 There are at least three problems with that contention.

First, the record currently before the 14 Court belies it. Plaintiff has not provided the Court with a document is aware of no document that 15 shows Defendants used email and WhatsApp to communicate with Plaintiff, as compared to 16 counternotices that may have been emailed from Defendants to YouTube, and in turn were sent 17 from YouTube to Plaintiff. See FAC, Exs.

F-H. The signature box at the bottom of all three 18 counternotices includes an email and a phone number for Defendant Pham Tien Dong 19 (presumably the address and number Plaintiff hopes to serve, among others), but he is only one of 20 three Defendants. Id. Further, there is no indication that the address or the phone number are 21 consistently used by Defendant Pham, or anyone else.

Notably, the email from YouTube to 22 Plaintiff with the counternotice does not include the email address from which Defendant Pham 23 corresponded with YouTube, so Plaintiff and in turn the Court, has no reliable information 24 25 1 The proposed order has its own issues. Proposed Order, ECF 18-2.

The order fails to identify the email addresses or telephone numbers to be used for alternative service and instead defines 26 them as those “identified in subpoena responses from Google LLC” or “identified by Google/YouTube in subpoena responses.” Id. The Court will not order service on any 27 undisclosed addresses or telephone numbers; the contact information that will be used for

1 regarding what working email address belongs to, or is otherwise used by, Defendant Pham let 2 alone the other named Defendants.

Id. 3 The second issue concerns Plaintiff's assertion that it has "verified" the addresses it intends 4 to serve. Plaintiff states that an undisclosed WhatsApp number associated with Defendants "is 5 still active and corresponds." Mot. ¶ 30. Similarly, Plaintiff states that the email addresses to be 6 served "remain active." Mot. ¶ 14.

The Court presumes that Plaintiff undertook some sort of 7 investigation to credibly make those assertions, but again, Plaintiff has not revealed that 8 investigation to the Court. If Plaintiff conducted such an investigation, Plaintiff should include all 9 the relevant details, with an explanation of the results, in a declaration or affidavit with supporting 10 documentation and record citations.

See N.D. Cal. Civ. L.R. 7-5 ("Factual contentions made in 11 support of... any motion must be supported by an affidavit or declaration and by appropriate 12 references to the record."). 13 Finally, Plaintiff appears to assume that service to the email address and WhatsApp 14 number identified in the counternotices will satisfy Plaintiff's obligations under Rule 4(f).

Fed. R. 15 Civ. P. 4(f); Proposed Order at 2. However, even if Plaintiff provided the Court with credible 16 information regarding Defendant Pham Tien Dong's usage of the email address and WhatsApp 17 number (which Plaintiff did not), at best, that alternative service would suffice for a single 18 Defendant, Pham Tien Dong, but no others. FAC, Exs. F-H.

The motion makes vague references 19 to "active email addresses and phone numbers," implying Plaintiff has other addresses it wishes to 20 serve, but Plaintiff has not provided the Court with that information. Mot. ¶ 6. Without credible 21 factual allegations, supported by declaration, and record citations, the Court has no information or 22 support to authorize alternative service on Defendants Vieconnect or Tran Van Ha.

23 * * * 24 On a different record, alternative service might be warranted in the future. But Plaintiff 25 "cannot merely leapfrog over those means authorized by the Hague Convention or other usual 26 methods deemed to be 'reasonably calculated to give notice,' as stated in Rule 4(f) (1) and (2), 27 without a sufficient reason to do so." *Virtual Point, Inc. v. Hedera AB*, No. 13-CV-5690 YGR, 1 IV.

CONCLUSION 2 Plaintiff's motion for alternative service is DENIED WITHOUT PREJUDICE. The 3 Preliminary Injunction hearing set for June 18, 2025, is VACATED and reset to September 10, 4 } 2025 at 9:00 a.m., to allow Plaintiff additional time to serve Defendants.

The Case Management 5 Conference set for August 19, 2025 is CONTINUED to that same September 10, 2025, date and 6 || time. A Joint Case Management Statement is due by August 27,

2025. 7 IT IS SO ORDERED. 8 Dated: June 17, 2025, 9. Noël Wise 10 United States District
Judge 1] as 12 «14 15 16 Oo Z 18 19 20 21 22 23 24 25 26 27 28

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