

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

SALITA PROMOTIONS CORP.,

Plaintiff,

Case No. 2:20-cv-12547-LJM-EAS

Hon. Laurie J. Michelson

v.

SHOHJAHON ERGASHEV and
OLEG BOGDANOV,

Defendants.

CLARK HILL PLC
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Attorneys for Plaintiff

**PLAINTIFF'S EX-PARTE MOTION FOR AN ORDER
EXTENDING SUMMONSES AND FOR ALTERNATIVE SERVICE**

NOW COMES Plaintiff Salita Promotions Corp. (“Plaintiff”), by its attorneys, CLARK HILL PLC, and for its Ex-Parte Motion for an Order Extending Summonses and for Alternative Service, hereby states as follows:

1. Plaintiff filed its Verified Complaint on September 16, 2020 [ECF No. 1].

2. The Court issued Summonses on September 17, 2020 for Defendant Shohjahon Ergashev (“Ergashev”) [ECF No. 3] and Defendant Oleg Bogdanov (“Bogdanov”) [ECF No. 4] (together, Ergashev and Bogdanov are hereinafter referred to as “Defendants”).

3. Pursuant to Fed. R. Civ. P. 4(m), the time for service of the summonses expires 90 days after the filing of the Complaint (December 17, 2020).

4. However, Fed. R. Civ. P 4(m) does not apply to service in a foreign country under Fed. R. Civ P. 4(f).

5. Since the filing of this matter, Defendants have been in Russia. Although as recently as December 1, 2020 it appears from Instagram posts that Ergashev may be, at least temporarily, in Uzbekistan:



6. Since filing this case, Plaintiff has attempted on numerous occasions to reach Defendants.

7. First, in regard to Plaintiff's Emergency Ex-Part Motion for Entry of a Temporary Restraining Order [ECF No. 2], Plaintiff emailed a copy of the Verified Complaint and Emergency Ex-Parte Motion for Temporary Restraining Order to

Defendant Ergashev's WhatsApp email at ShohjahonUSA and Defendant Ergashev opened the email based upon the blue markings of the WhatsApp program. Plaintiff also spoke directly to Defendant Bogdanov by telephone and he acknowledged being apprised of the Motion. *See also* Plaintiff's Supplemental Certification Regarding Notice [ECF No. 7].

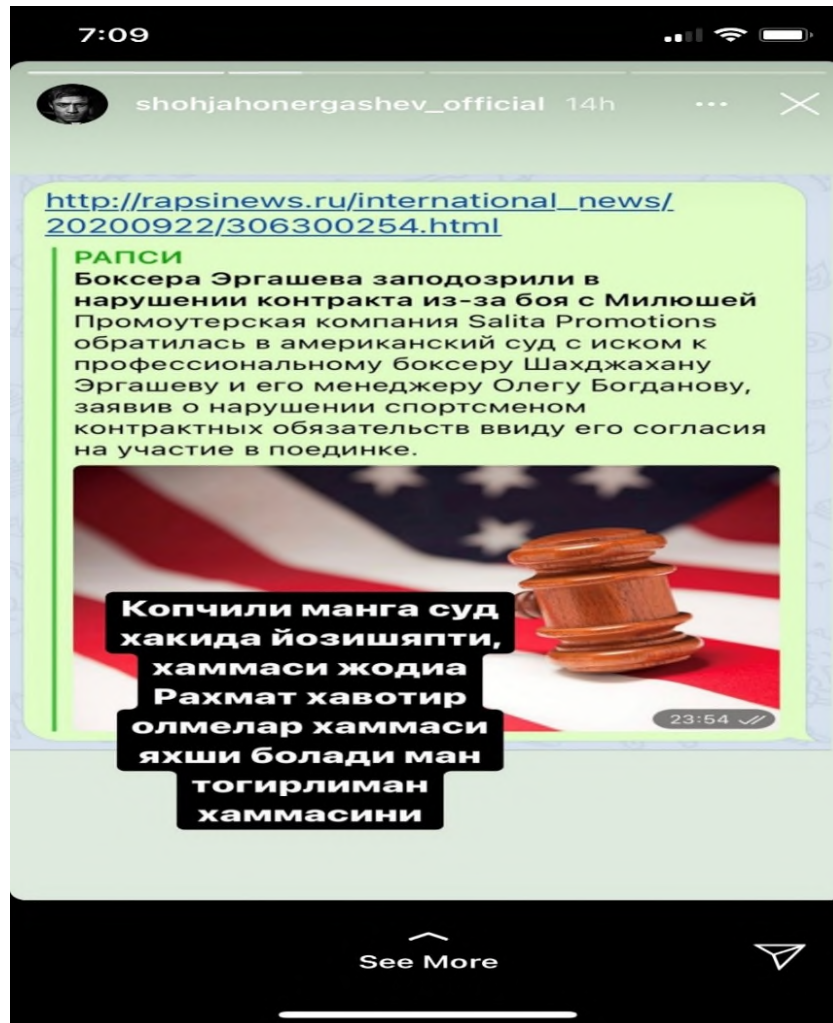
8. Plaintiff next attempted to reach Defendants after this Court entered its September 18, 2020 Opinion and Order Granting in Part Ex Parte Motion for Temporary Restraining Order [ECF No. 8]. Specifically, Plaintiff's counsel emailed Bogdanov at his last known email address, ice99@inbox.ru on September 18, 21, 23, 24, and 25 with a copy of the Court's Order and request to meet and confer. In addition, Dmitriy Salita, president of Plaintiff, sent Ergashev messages on September 18, 21, 24, and 25th asking for a meet and confer via WhatsApp. Those messages appear to have been read, but Ergashev failed and/or refused to respond. *See also* Plaintiff's Report Regarding Good-Faith Attempts to Meet and Confer with Defendants [ECF No. 10].

9. Plaintiff again attempted to contact Defendants in regard to its Motion for Preliminary Injunction [ECF No. 11].

10. By that time, it was clear that Defendants were aware of the lawsuit. Specifically, Defendants are believed to have complied with this Court's TRO and

Defendant Ergashev did not engage in the September 21, 2020 boxing bout in St. Petersburg, Russia as a result of being served with the Court's Order.

11. Moreover, Ergashev posted a reference to this case and the Court's Order in the Uzbek language on his Instagram account webpage:



Salita Promotions obtained two translations of Defendant Ergashev's Instagram post from persons fluent in Uzbek:

“Kochipi (a noun, perhaps a person’s name) is writing about me about to the court, everything is fine, thank you, don't worry, everything will be fine, I will fix everything”

“Many people are asking me about the lawsuit, don’t worry everything will be ok, everything will be fine, I will take care of everything here.”

12. In regard to Plaintiff’s Motion for a Preliminary Injunction [ECF No. 11], both Plaintiff and the Court emailed Defendants a Notice of Hearing.

13. Plaintiff also emailed Defendants a copy of the Motion and Notice of Hearing to Bogdanov at ice99@inbox.ru and Ergashev at shahjahon1991@mail.ru and had Ergashev personally served at his Gym, located at Kostomarovsky Lane 3c4, Moscow, Russia

14. During the pendency of this matter, counsel for Plaintiff has also been in contact with Adam Moralle, Ergashev’s attorney. However, Mr. Morallee has made it clear that he will not accept service on behalf of Ergashev.

15. Despite these numerous attempts, Plaintiff has not been able to discuss this lawsuit with Defendants or properly serve Defendants with a copy of the Summonses and Complaint.

16. For the reasons set forth in this Motion and the accompanying Brief in Support, Plaintiff respectfully requests that this Court extend the Summons and order that Defendants be served by alternative methods, as more particularly

identified in the accompanying proposed order, which is attached hereto as **Exhibit**

1.

Respectfully submitted,
CLARK HILL PLC

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Dated: December 7, 2020

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**BRIEF IN SUPPORT OF PLAINTIFF'S
EX-PARTE MOTION FOR AN ORDER EXTENDING
SUMMONSES AND FOR ALTERNATIVE SERVICE**

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**BRIEF IN SUPPORT OF PLAINTIFF'S
EX-PARTE MOTION FOR AN ORDER EXTENDING
SUMMONSES AND FOR ALTERNATIVE SERVICE**

Through the first two rounds of this fight, Plaintiff has laid out the factual basis for its claims against Defendants. Before Plaintiff can continue with this bout though, it must formally serve Defendants; both of whom are believed to be in foreign countries. Specifically, Bogdanov is believed to be in Moscow while Ergashev appears to be, at least for the moment, in Uzbekistan.

Fed. R. Civ. P. 4(f) provides that 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 on the Service Abroad of Judicial and Extrajudicial Documents; (2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice ... or (3) by other means not prohibited by international agreement, as the court orders.”

Although Russia is a signatory of the Hague Convention, Russia unilaterally suspended all judicial cooperation with the United States in civil and commercial matters in 2003. *See* Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (“Hague Convention”), Nov. 15, 1965, 20 U.S.T. 361, T.I.A.S. No. 6638; HCCH, available at

<https://www.hcch.net/en/instruments/conventions/status-table>; *see Epic Games, Inc. v. Mendes*, 2018 WL 582411, at *2 (N.D. Cal. Jan. 29, 2018) (“Russia is a signatory to the Hague Convention, but it has stopped completing service of process from U.S. courts.”); *see also Fisher v. Petr Konchalovsky Found.*, 2016 WL 1047394, at *1 (S.D.N.Y. Mar. 10, 2016) (“Russia no longer effects service through its Central Authority, the method prescribed under the [Hague Convention].”). In addition, before Russia's unilateral suspension, Russia objected to Article 10 of the Hague Convention, which permits service by sending judicial documents through “postal channels, directly to persons abroad.” See Hague Convention, art. 10; *see also AMTO, LLC v. Bedford Asset Management, LLC*, 2015 WL 3457452, at *7 (S.D.N.Y. June 1, 2015) (“[B]efore [its] unilateral suspension, Russia objected to Article 10 of the Hague Convention, and Russia's failure to abide by the Convention ... does not change the fact that Russia does not agree to service by mail.”) (quotations and citation omitted). Russia therefore does not permit service of documents by mail. See *Epic Games, Inc.*, 2018 WL 582411, at *2. As a result, many district courts have allowed alternative methods of service for defendants located in Russia. See, e.g., *Bidonthecity.com LLC v. Halverston Holdings Ltd.*, 2014 WL 1331046, at *9 (S.D.N.Y. Mar. 31, 2014) (collecting cases).

Uzbekistan, on the other hand, is a signatory to the Hague Convention. However, it is believed that Ergashev is merely visiting family in Uzbekistan and is not residing there. Moreover, through various Instagram postings that show locations Ergashev has visited, Plaintiff has no knowledge of any address in Uzbekistan for Ergashev. ‘The Hague Convention does not apply in cases where the address of the foreign party to be served is unknown.’ *BP Prods. N. Am. v. Dagra*, 236 F.R.D. 270, 271 (E.D. Va. 2006). As such, it would be futile to try and serve Ergashev in Uzbekistan. As noted, Fed. R. Civ. P. 4(f)(3) explicitly allows alternative means of service that are “not prohibited by international agreement.” When seeking alternative service under Rule 4(f)(3), “the chosen method must comport with constitutional notions of due process, namely that the service of process be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Lexmark Int’l, Inc. v. Ink Techs. Printer Supplies, LLC*, 291 F.R.D. 172, 174 (S.D. Ohio 2013) (internal citation and quotation marks omitted). Although “the Sixth Circuit has not addressed whether there is a hierarchy or preference among Rule 4(f)'s methods of service... a district court within the Sixth Circuit agreed that ‘Rule 4(f)(3) is neither a last resort nor extraordinary relief. It is merely one means among several which enables service of process on an international defendant.’” *Versah, LLC v UI Amin Industries*, 2020 WL 6198472

(E.D. Mich. Oct. 22, 2020) citing *Gamboa v. Ford Motor Co.*, 414 F.Supp.3d 1035, 1039 (E.D. Mich. 2019) (quoting *Slay v. IB Travelin, Inc.*, 2019 WL 572877, at *2 (W.D. Tenn. Feb. 12, 2019); *Lexmark Int'l, Inc. v. Ink Techs. Printer Supplies, LLC*, 291 F.R.D. 172, 174 (S.D. Ohio 2013)).

The Court is afforded wide discretion in ordering service of process under Rule 4(f)(3), which “provides the Court with ... flexibility and discretion ... empowering courts to fit the manner of service utilized to the facts and circumstances of the particular case.” *In re International Telemedia Assoc., Inc.*, 245 B.R. 713, 719 (Bankr.N.D.Ga.2000)(granting Rule 4(f)(3) motion approving service to defendant's last-known email address). When exercising that discretion courts “should indeed make ‘an earnest effort ... to devise a method of communication that is consistent with due process and minimizes offense to foreign law.’ ” *Export–Import Bank of the United States v. Asia Pulp and Paper Co.*, 2005 WL 1123755, *272, 2005 U.S. Dist. LEXIS 8902 (S.D.N.Y.2005)(quoting Fed. R. Civ. P. 4, advisory committee's note, 1993 amendment). In order to fulfill due process requirements under Rule 4(f)(3), the Court must approve a method of service that is “reasonably calculated, under all the circumstances” to give notice to defendant. *See Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865, 873 (1950); *see also BP Prods. N. Am., Inc. v. Dagra*, 236 F.R.D. 270, 271 (E.D.Va.2006)).

Here, Plaintiff proposes to continue to utilize the same methods that have served to inform Defendants of the injunction motions. Namely, Plaintiff proposes serving Defendants via email. “[C]ourts in the majority of circuits to consider this issue, including the Second, Fourth, Sixth, Seventh, and Ninth circuits, have determined that e-mail service can be a valid method of serving process on foreign defendants without valid addresses and with proof that the e-mail addresses are valid.” *Liberty Media Holdings, LLC v. Marione*, 2010 WL 11545316 (E.D. Mich. April 15, 2010). As discussed during the preliminary injunction hearing, both email addresses appear to be valid. Plaintiff also proposes that if, and when, Ergashev returns to his gym in Russia, to have him personally served.

As part of this Motion, Plaintiff also believes it is necessary to address the expiration date of the summonses. Ordinarily, Defendants must be served within 90 days after the complaint was filed, but that deadline “does not apply to service in a foreign country under Rule 4(f).” Fed. R. Civ. P. 4(m). “[T]here is a considerable difference of opinion among circuits regarding what—if any—time limits apply to service of process on a foreign defendant.” *Harris v. Orange S.A.*, 636 F. App’x 476, 485 (11th Cir. 2015). Many circuits having addressed this issue, note that a flexible due diligence standard applies in determining whether service of process was timely. *Burda Media, Inc. v. Blumenberg*, 2004 WL 1110419, at *6 (S.D.N.Y. May 18, 2004). As demonstrated above, Plaintiff has and continues to

demonstrate reasonable diligence in attempting service of Defendants. To that end, Plaintiff has also had the Complaint translated to Russian [ECF No. 18] and is diligently pursuing alternative methods for service as set forth above. However, Plaintiff wants to ensure that its summonses do not expire while it continues to try and serve Defendants in Russia.

WHEREFORE, Plaintiff respectfully requests that this Court extend the Summonses and order that Defendants be served by alternative methods, as more particularly identified in the accompanying proposed order, which is attached hereto as **Exhibit 1**.

Respectfully submitted,
CLARK HILL PLC

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