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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

craigslist, Inc.,

NO. C 09-04738 JW

Plaintiff,

**ORDER GRANTING PLAINTIFF’S
MOTION FOR ALTERNATE SERVICE
AND CONTINUING CASE
MANAGEMENT CONFERENCE**

v.

Eddie Temple, et al.,

Defendants.

Presently before the Court is Plaintiff’s Motion for Leave to Serve Defendant Eddie Temple by Alternate Means.¹ The Court finds it appropriate to take the matter under submission without oral argument. See Civ. L.R. 7-1(b).

A. Background

On October 5, 2009, Plaintiff filed its Complaint. (See Docket Item No. 1.) On February 9, 2010, the Court granted Plaintiff’s Motion for Extension of Time to Serve Defendant Eddie Temple and denied Plaintiff’s Motion for Leave to Conduct Expedited Discovery. (See Docket Item No. 13.) On May 14, 2010, Plaintiff filed its First Amended Complaint. (See Docket Item No. 20.)

B. Plaintiff’s Motion

Plaintiff moves the Court *ex parte* for an order allowing Plaintiff to serve Defendant Temple by email. (Motion at 1.)

¹ (Plaintiff’s Motion for (1) Leave to Serve Defendant Eddie Temple by Alternate Means and (2) Extension of Time to Serve Defendants and Relief From the Order Setting Initial Case Management Conference and ADR Deadlines, hereafter, “Motion,” Docket Item No. 16.)

1 Federal Rule of Civil Procedure 4(f)(3) provides for service on individuals in a foreign
2 country as follows:

3 Unless otherwise provided by federal law, service upon an individual from whom
4 a waiver has not been obtained and filed . . . may be effected in a place not within any
5 judicial district of the United States: . . . (3) by other means not prohibited by
6 international agreement as may be directed by the court.

7 In examining Rule 4(f)(3) at length, the Ninth Circuit has explained:

8 [S]ervice under Rule 4(f)(3) must be (1) directed by the court; and (2) not
9 prohibited by international agreement. No other limitations are evident from the text. In
10 fact, as long as court-directed and not prohibited by an international agreement, service of
11 process ordered under Rule 4(f)(3) may be accomplished in contravention of the laws of
12 the foreign country. [As to international agreements, a] federal court would be prohibited
13 from issuing a Rule 4(f)(3) order in contravention of . . . the Hague Convention
14 referenced in Rule 4(f)(1). . . .

15 Rule 4(f)(3) includes no qualifiers or limitations which indicate its availability
16 only after attempting service of process by other means. . . . Rule 4(f)(3) is an equal
17 means of effecting service of process under the Federal Rules of Civil Procedure, and we
18 commit to the sound discretion of the district court the task of determining when the
19 particularities and necessities of a given case require alternate service of process under
20 Rule 4(f)(3).

21 Rio Properties, Inc. v. Rio Int'l Interlink, 284 F.3d 1007, 1014-16 & n.4 (9th Cir. 2002). Thus, the
22 Ninth Circuit has approved service on international defendants by email pursuant to Rule 4(f)(3)
23 where the defendants were either unreachable by other means or had no known physical address.
24 See id. at 1017. District courts in the Northern District of California have approved similar
25 applications. See Chanel, Inc. v. Dodd, No. C 09-03958 VRW, Docket Item No. 32 (N.D. Cal. Sept.
26 15, 2009); Chanel, Inc. v. Zhang, No. C 09-01977 MMC, Docket Item No. 18 (N.D. Cal. Aug. 27,
27 2009); Chanel, Inc. v. Bosini, No. C 09-01972 MHP, Docket Item No. 18 (N.D. Cal. July 30, 2009).
28 The Court has previously permitted service by email on a foreign defendant who was unreachable by
physical address. (See Chanel, Inc. v. Zhou Guodong, et al., C 09-05593-JW Docket Item No. 21.)

Here, Plaintiff submitted evidence that the physical addresses Plaintiff identified as
associated with Defendant Temple were invalid or unreachable for service, that Defendant Temple


1 likely resides in Canada,² that Defendant Temple does not rely on a physical address to operate his
2 business but rather operates his business entirely through email and other electronic methods of
3 communication, and that the only contact information available on Defendant Temple's website is
4 an email address.³ In light of Plaintiff's submissions, the Court finds that Defendant Temple has no
5 known physical address and that email is the most reasonable way for Plaintiff to provide notice to
6 Defendant Temple. Thus, the Court finds that service by alternate means under Rule 4(f)(3) is
7 warranted in this case.

8 **C. Conclusion**

9 In sum, the Court orders as follows:

- 10 (1) The Court GRANTS Plaintiff's Motion for Alternate Service. Plaintiff shall serve
11 this Order, the Summons, and Amended Complaint on Defendant Eddie Temple by e-
12 mail at the e-mail address "thematrixfactor@gmail.com" on or before **May 28, 2010**.
- 13 (2) The Court CONTINUES the scheduled May 24, 2010 Case Management Conference
14 to **June 28, 2010 at 10 a.m.** On or before **June 18, 2010**, the parties shall file a Joint
15 Case Management Statement. The Statement shall include, among other things, a
16 good faith discovery plan and a proposed date for the close of all discovery.

17
18 Dated: May 20, 2010



JAMES WARE
United States District Judge

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23 _____
24 ² At least one court in this district has approved service by email on a defendant located in
25 Canada. See Williams-Sonoma Inc. v. Friendfinder Inc., No. C 06-06572 JSW, 2007 WL 1140639,
26 at *2 (N.D. Cal. Apr. 17, 2007).

27 ³ (See Declaration of Brian P. Hennessy in Support of Plaintiff Craigslist, Inc.'s Motion for
28 (1) Leave to Serve Defendant Eddie Temple by Alternate Means, Including by Email and Other
Electronic Means, and (2) Extension of Time to Serve Defendants and Relief From the Order Setting
Initial Case Management Conference and ADR Deadlines ¶¶ 4-26, Docket Item No. 17.)

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 Brian Patrick Hennessy bhennessy@perkinscoie.com
3 Elizabeth L. McDougall EmcDougall@perkinscoie.com

4 **Dated: May 20, 2010**

Richard W. Wieking, Clerk

6 **By: /s/ JW Chambers**
7 **Elizabeth Garcia**
8 **Courtroom Deputy**

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