

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

#42

CIVIL MINUTES - GENERAL

Case No.	CV 11 - 9495 PSG (JCGx)	Date	November 30, 2012
Title	<i>Vanleeuwen, et al. v. Keyuan Petrochemicals, Inc., et al.</i>		

Present:	The Honorable Philip S. Gutierrez, United States District Judge
----------	---

Wendy K. Hernandez	Not Present	n/a
Deputy Clerk	Court Reporter	Tape No.

Attorneys Present for Plaintiff(s):

Attorneys Present for Defendant(s):

Not Present

Not Present

Proceedings: (In Chambers): Order GRANTING Plaintiffs' motion to effect service on Defendant Chungfeng Tao by serving Defendant Keyuan Petrochemicals, Inc.'s U.S. registered agent or counsel

Before the Court are two motions by Plaintiffs Neil Vanleeuwen and Rodney Omanoff ("Plaintiffs"): (1) a motion for an order permitting Plaintiffs to execute service on Defendant Chungfeng Tao ("Tao") by serving the U.S. registered agent or counsel for Defendant Keyuan Petrochemicals, Inc. ("Keyuan") and (2) a motion to lift a discovery stay that was in place at the time of filing. *See* Dkt. # 42. Because the discovery stay is no longer in place, Plaintiffs' motion to lift the stay is rendered moot. As such, the Court only considers the motion to permit service on Keyuan's registered agent.

The Court finds Plaintiffs' motion appropriate for decision without oral argument. *See* Fed. R. Civ. P. 78; L.R. 7-15. After considering the arguments in the moving papers, the Court GRANTS Plaintiffs' motion.

I. Background

On May 29, 2012, Plaintiffs filed a class action suit alleging various violations of the Securities Act of 1933 and Securities Exchange Act of 1934 against Keyuan, Tao, and several other defendants. Tao is the Chairman, President, CEO, and Director of Keyuan. *Horne Decl.*, Ex. 1 at 2. To date, Tao has not yet been served with summons and complaint, as required by Federal Rule of Civil Procedure 4. Plaintiffs now seek the Court's permission pursuant to Federal Rule of Civil Procedure 4(f)(3) to effect service on Tao, a resident of China, by serving Keyuan's registered agent or counsel in the United States.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

#42

CIVIL MINUTES - GENERAL

Case No.	CV 11 - 9495 PSG (JCGx)	Date	November 30, 2012
Title	<i>Vanleeuwen, et al. v. Keyuan Petrochemicals, Inc., et al.</i>		

II. Discussion

Federal Rule of Civil Procedure 4(f) governs service of process outside the United States. Specifically, Rule 4(f)(3) provides that an individual may be served in a foreign country “by other means not prohibited by international agreement, as the court orders.” Fed. R. Civ. P. 4(f)(3). “As obvious from its plain language, service under Rule 4(f)(3) must be (1) directed by the court; and (2) not prohibited by international agreement.” *Rio Props., Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1014 (9th Cir. 2002). Court-ordered “service of process under 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.” *Id.* at 1015 (internal citations omitted). Courts may direct service when “the particularities and necessities of a given case require alternate service of process.” *Id.* at 1016. However, any method of service ordered by the Court must comport with due process, meaning that it is “reasonably calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to respond to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950); *see also Rio Props.*, 284 F.3d at 1016. Thus, the Court must determine first whether the “particularities and necessities” of this case require alternative service; second, whether the proposed form of service is prohibited by international agreement; and third, whether service on Keyuan’s registered agent or counsel in the United States comports with due process requirements. *See Rio Props.*, 284 F.3d at 1014-18; *Brown v. China Integrated Energy, Inc.*, No. 11-2559 MMM (PLAx), 2012 WL 2913537, at *1-4 (C.D. Cal. July 17, 2012).

A. Whether the Particularities and Necessities Require Alternative Service

Court-ordered service under Rule 4(f)(3) is equal with other forms of service. *Rio Props.*, 284 F.3d at 1016. As such, a plaintiff requesting an order pursuant to Rule 4(f)(3) need not prove that other methods of service have been impossible or unduly burdensome, though courts in this jurisdiction have typically granted Rule 4(f)(3) motions when plaintiffs have shown some measure of difficulty in effecting service by usual means. *See, e.g., Rio Props.*, 284 F.3d at 1016 (concluding that service under Rule 4(f)(3) was appropriate when plaintiff had proven its “inability to serve an elusive international defendant [who was] striving to evade service of process”); *Brown*, 2012 WL 2913537, at *1-4 (permitting service under Rule 4(f)(3) when plaintiffs had been unable to locate the foreign defendants after conducting an independent investigation and requesting the necessary information from counsel for the company affiliated with defendants); *Rose v. Deer Consumer Prods., Inc.*, No. 11-3701 DMG (MRWx), 2011 WL 6951969, at *1-3 (C.D. Cal. Dec. 29, 2011) (permitting alternative service under Rule 4(f)(3) after plaintiffs “diligent endeavor to obtain the defendant’s residential addresses and identification numbers in China” had failed).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

#42

CIVIL MINUTES - GENERAL

Case No.	CV 11 - 9495 PSG (JCGx)	Date	November 30, 2012
Title	<i>Vanleeuwen, et al. v. Keyuan Petrochemicals, Inc., et al.</i>		

Here, Plaintiffs appear to request alternative service primarily because of difficulties associated with effecting service in China. *See Mot.* 3:21-4:1. Plaintiffs' ability to effect service on Tao personally also appears to have been impeded by a discovery stay that was in place from July 27, 2012, through November 1, 2012. *Id.* 1:8-19; 4:13-5:21; 6:12-13. Pursuant to the Private Securities Litigation Reform Act ("PSLRA"), discovery is stayed during the pendency of any motion to dismiss. 15 U.S.C. § 78u-4(b)(3)(B). On July 27, 2012, Defendants filed a motion to dismiss, thus imposing a discovery stay. *See Dkt.* # 33. The motion was pending until November 1, 2012, when the Court issued an order granting in part and denying in part the motion and automatically lifting the stay. *See Dkt.* # 46. The discovery stay appears to have prevented Plaintiffs from obtaining Tao's address and government identification number, or at least made it more difficult for them to do so. *See Mot.* 6:10-13. Moreover, as Plaintiffs note, the Court has ordered Plaintiffs' counsel to "avoid duplicative or unproductive activities." *See Dkt.* # 29 (order granting motion for appointment of counsel). While it may be possible for Plaintiffs to serve Tao in China through ordinary procedures, doing so may be an unproductive and unnecessary exercise. As such, in the present circumstances, the Court finds it appropriate to permit alternative service under Rule 4(f)(3).

B. Whether Service Is Prohibited by International Agreement

Defendants contend that service on Keyuan's registered agent or counsel in the United States is prohibited by international agreement, specifically the Convention on the Service Abroad of Judicial and Extrajudicial Documents ("Hague Convention"), to which both the United States and China are signatories. *Opp.* 1:9-14, 2:18-3:5, 6:6-7:15. The Hague Convention sets out means by which service may be effected against foreign defendants in international civil suits. *Brockmeyer v. May*, 383 F.3d 798, 801 (9th Cir. 2004). "[C]ompliance with the [Hague] Convention is mandatory in all cases to which it applies." *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 705 (1988); *see also Brockmeyer*, 383 F.3d at 801 ("Because service of process was attempted abroad, the validity of that service is controlled by the [Hague] Convention, to the extent that the Convention applies."); *Brown*, 2012 WL 2913537, at *2-3 (examining whether the Hague Convention applied to service on foreign defendants via their corporate agents in the United States).

Article 1 of the Hague Convention provides that the procedures set forth in the agreement "shall apply in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad." Hague Convention, Art. 1; *see also Brown*, 2012 WL 2913537, at *3. The Hague Convention does not apply to service effected within the United States, such as when "service on a domestic agent is valid and complete under both state law and the Due Process Clause." *Schlunk*, 486 U.S. at 707. When there is no

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

#42

CIVIL MINUTES - GENERAL

Case No.	CV 11 - 9495 PSG (JCGx)	Date	November 30, 2012
Title	<i>Vanleeuwen, et al. v. Keyuan Petrochemicals, Inc., et al.</i>		

international transmission of documents, the “inquiry ends and the Convention has no further implications.” *Id.*

Here, Plaintiffs request that the Court authorize service on Keyuan’s U.S. agent or counsel, which is a method of service that can be effectuated within the United States. *Mot.* 1:4-7. The proposed method of service does not require the transmittal of any documents for service abroad. As such, the Hague Convention does not apply in this case and so the method of service need not comply with its requirements. *See* Hague Convention, Art. 1; *Brown*, 2012 WL 2913537, at *3.

The Court’s conclusion that the Hague Convention does not apply to service effected in the United States is consistent with the conclusions of several other courts in this jurisdiction that have faced nearly identical facts to those in the present case. *See, e.g., Brown*, 2012 WL 2913537, at *3 (“The Hague Convention does not prohibit authorizing plaintiffs to serve the foreign individual defendants by serving them through China Integrated’s agent for service of process or its attorneys in the United States.”); *Rose*, 2011 WL 6951969, at *2 (finding that proposed service on a company’s registered agent in Nevada was not controlled by the Hague Convention); *In re LDK Solar Sec. Litig.*, No. 07-5182 WHA, 2008 WL 2415186, at *3 (finding that the Hague Convention did not apply when plaintiffs did not “request to effect service in China via mail [but rather] to serve the remaining six unserved defendants through [the company’s] California office”). Because the Hague Convention neither addresses nor prohibits the service of foreign individuals by serving agents within the United States, the proposed method is not prohibited by international agreement.

C. Whether the Proposed Service Comports With Due Process

Finally, the Court has no trouble concluding that the proposed method of service—effecting service on Keyuan’s registered agent or counsel in the United States—is “reasonably calculated, under the circumstances, to apprise [Tao] of the pendency of the action and afford [him] an opportunity to respond to present [his] objections.” *See Mullane*, 339 U.S. at 314. Tao is the Chairman, President, CEO, and Director of Keyuan. Many courts in this district have concluded that a plaintiff may properly serve a foreign defendant by effecting service on the domestic counsel or registered agent for a company in which the defendant is an officer or director. *See, e.g., Brown*, 2012 WL 2913537, at *4 (permitting service on foreign defendants through the authorized agent or counsel of the company in which the defendants were officers); *In re China Educ. Alliance, Inc. Sec. Litig.*, No. 10-9239 CAS (JCx), 2011 WL 6846214, at *2-3 (finding service on company’s registered domestic agent sufficient for service on foreign directors of the company); *Rose*, 2011 WL 6951969, at *2 (“[T]he Court finds that

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

#42

CIVIL MINUTES - GENERAL

Case No.	CV 11 - 9495 PSG (JCGx)	Date	November 30, 2012
Title	<i>Vanleeuwen, et al. v. Keyuan Petrochemicals, Inc., et al.</i>		

service of the Individual Defendants by service on Deer [C]onsumer's registered agent for service of process comports with the constitutional notions of due process and is appropriate under the circumstances."); *LDK*, 2008 WL 2415186, at *4 (permitting service on foreign defendants through the California office of the company in which they were sophisticated officers and directors). Tao's status as Chairman, CEO, President, and Director of Keyuan "makes it all but certain that when [he is] served through the company's counsel or its agent, [he] will receive notice of the suit." *See Brown*, 2012 WL 2913537, at *4. Therefore, such service under the circumstances comports with due process and is an appropriate means of service on Tao.

III. Conclusion

For the foregoing reasons, the Court GRANTS Plaintiffs' motion to effect service on Tao via Keyuan's registered agent or counsel in the United States.

_____: _____
Initials of Deputy Clerk _____

cc: