IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

WHIRLPOOL CORPORATION, *Plaintiff,* v. THE INDIVIDUALS, PARTNERSHIPS, AND UNINCORPORATED ASSOCIATIONS THAT OWN OR OPERATE WWW.FILTER1PRO.COM, *Defendants.*	§ § § § § § § § § § § § § §	CIVIL ACTION NO. 2:23-cv-0117-JRG-RSP

ORDER

Before the Court, plaintiff Whirlpool Corporation moves *ex parte* for leave to effect alternative service and for an extension of time to serve. Dkt. No. 8.

According to Whirlpool, the defendants' whereabouts are unknown. Dkt. No. 8 p 3-4. The website www.filter1pro.com includes a refund policy page which provides a Chinese address and phone number. *Id.* Whirlpool engaged Chinese counsel who determined that the location belonged to another business which was not affiliated with the website www.filter1pro.com and which did not manufacture, sell, or distribute water filters. *Id.* The investigation also determined that the associated phone number was no longer in service. *Id.*

Federal Rule of Civil Procedure 4(f), "Serving an Individual in a Foreign Country," governs service on defendants located outside the United States. Rule 4(f) provides that unless federal law requires otherwise, a foreign defendant may be served (1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those means authorized by the Hague Convention; (2) if there is no internationally agreed means, by one of several methods outlined by the Rule which is "reasonably calculated to give notice;" or (3) "by other means not

prohibited by international agreement, as the court orders." Fed. R. Civ. P. 4(f)(1)-(3). Importantly, "Rule 4(f)(3) is not subsumed within or in any way dominated by Rule 4(f)'s other subsections; it stands independently, on equal footing." *In re OnePlus Tech. (Shenzhen) Co., Ltd.*, 2021-165, 2021 WL 4130643, at *4 (Fed. Cir. 2021) (quoting *Nuance Commc'ns, Inc. v. Abbyy Software House*, 626 F.3d 1222, 1239 (Fed. Cir. 2010)).

The Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters ("the Hague Convention") is an international treaty intended to provide litigants a means for service of legal documents on individuals who reside in another country. Importantly for this case, the Hague Convention does not apply if the address of the person to be served is not known. 20 U.S.T. 361, T.I.A.S. 6638, Art. 1; see *RPost Holdings, Inc. v. Kagan*, No. 2:11-cv-238-JRG, 2012 WL 194388, at *1 (E.D. Tex. Jan. 23, 2012) (noting the Hague Convention does not apply where the defendant's address is not known); see also *Whirlpool Corp. v. YiHangGou Trading Co., Ltd.*, No. 2:20-cv-00341-JRG-RSP, 2021 WL 1837544, at *2 (E.D. Tex. May 7, 2021) (same).

Although Whirlpool has expended significant efforts to discover Defendants' whereabouts, Defendants' location remains unknown. *See* Exhibit 5 (Declaration of Li Qian) at ¶ 6. Whirlpool therefore cannot serve Defendants pursuant to the provisions of the Hague Convention because Defendants cannot be located. The Hague Convention is therefore inapplicable and service of process under Rules 4(f)(3) and (h)(2) is not prohibited by international agreement.

Service of process under Rule 4(f)(3) must be consistent with procedural due process. Due process requires that notice 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." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). This Court

and others have found that alternative service via email is proper where a defendant has "embraced" the e-commerce platform for its business, as Defendants are doing here. See, *e.g.*, *Individuals, Partnerships, and Unincorporated Associations that own or operate www.dfilters.com*, 2022 WL 329879, at *3 (finding "it appears the electronic mail addresses [on the defendants' websites] may be the only method to effect service."); *Rio Props*, 284 F.3d at 1017; *Chanel, Inc. v. Song Xu*, No. 2:09-cv-02610, 2010 WL 396357, at *4 (W.D. Tenn. Jan. 27, 2010) (noting service by email was the method of service most likely to reach defendants where defendants were e-commerce retailers who organized their online business so that customers could only contact them by email).

Further, these circumstances justify an extension of time to effectuate service. *Lozano v. Bosdet*, 693 F.3d 485, 490 (5th Cir. 2012).

Accordingly, Whirlpool's motion for leave to effect alternative service upon defendants' email address service@filter1pro.com is **GRANTED**, and Whirlpool's motion for an extension of time up to and including fourteen (14) days following this Order to effect alternative service is **GRANTED**.

SIGNED this 4th day of May, 2023.

ROY S. PAYNE
UNITED STATES MAGISTRATE JUDGE