UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE No: 18-cv-80086-MIDDLEBROOKS

IN RE BITCONNECT SECURITIES LITIGATION,
_____/

ORDER

THIS CAUSE comes before the Court upon Plaintiffs' Renewed Motion for Leave to Effect Alternative Service on Unserved Foreign Defendants. (DE 145). For the following reasons, the Motion is denied.

On January 24, 2018, Plaintiffs initiated this action, which subsequently evolved into a putative class action composed of six different lawsuits brought on behalf of investors allegedly defrauded by a cryptocurrency Ponzi scheme. Pursuant to the Private Securities Litigation Reform Act of 1995, I previously consolidated these cases and appointed Albert Parks and Faramarz Shemirani, who together comprise the "BitConnect Investor Group," as Co-Lead Plaintiffs. (DE 46). Plaintiffs filed their Amended Consolidated Class Action Complaint (the "Consolidated Complaint") on October 11, 2018. (DE 78).

On August 23, 2019, I dismissed the Consolidated Complaint as to Defendants Arcaro, Maasen, and YouTube upon their respective motions. (DE 115). I also directed Plaintiffs to file a Second Amended Complaint by September 13, 2019. Shortly after entering that order, I entered an order to show cause regarding the status of service of process upon several of the defendants. (DE 116). I entered this order because pursuant to Federal Rule of Civil Procedure 4(m), a plaintiff has 90 days from the filing of a complaint to serve a defendant. And Plaintiffs had failed to file summonses returned executed as to several Defendants, even though this ninety-day deadline passed long ago.

That order specifically directed Plaintiffs to 1) file proof of service indicating that all Defendants were timely served, or 2) show good cause supported by specific facts to excuse the failure to comply with Rule 4(m), and any justification which may exist for an extension of time to serve process on any particular defendant. (*Id.*). On September 6, 2019, Plaintiffs filed a status report regarding the service of process issues.

In this status report, Plaintiffs noted that several of the Defendants are located in foreign jurisdictions and argued that Rule 4(m) does not apply to those Defendants. (DE 117 at 3-4). Plaintiffs identified these Defendants as 1) Defendant Bitconnect; 2) the Developer Defendants; and 3) the Foreign Promoter Defendants. Plaintiffs stated that they have had difficulty locating these Defendants because they have allegedly "fled their home countries to escape international and regional criminal authorities." (*Id.* at 3 ¶ 4). Plaintiffs also asserted that they intended "to file a motion for leave to effect alternative service on [these defendants]. Plaintiffs anticipate[d] seeking leave of Court to effectuate such service shortly after submitting" a Second Amended Complaint on September 13, 2019. (*Id.* at 3-4 ¶ 4).

Because it had been over two months since Plaintiffs filed the Second Amended Complaint (and one year since the Consolidated Class Action Complaint was filed) and Plaintiffs had failed to seek such leave of Court, I directed them to move for alternative service by December 5, 2019. (DE 134). Plaintiff filed that Motion on December 5, 2019. (DE 138). In the Motion, Plaintiffs asked for approval to serve various foreign defendants by registered mail. (*Id.*). I denied the Motion because without additional information it was unclear whether the proposed method(s) of service would reasonably apprise Defendants of this litigation. (DE 140).

Plaintiffs now renew the Motion for Leave to Effect Alternative Service. (DE 145). Almost every unserved Defendant is located in a country which is a party to the Hague Convention.

"Compliance with the [Hague] Convention is mandatory in all cases to which it applies." *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 705 (1988). "The primary means by which service is accomplished under the Convention is through a receiving country's Central Authority." *Brockmeyer v. May* 383 F.3d 798, 801 (9th Cir. 2004); *see also* Hague Convention art. 2. Each signatory country is required to designate a Central Authority to receive documents from other member countries. *Id.* The Central Authority is required to effect service in its country once it receives compliant service documents. *Id.* This is not the only method of service permitted by the Convention. While the Convention does not prohibit service of process by mail, it does not affirmatively authorize service by mail either. *See Water Splash, Inc. v. Menon*, 137 S. Ct. 1504 (2017). "In other words, in cases governed by the Hague Service Convention, service by mail is permissible if two conditions are met: first, the receiving state has not objected to service by mail; and second, service by mail is authorized under otherwise-applicable law." *Id.* at 1513 (citing *Brockmeyer*, 383 F.3d at 803–804). "Any affirmative authorization of service by international mail, and any requirements as to how that service is to be accomplished must come from the law of the forum in which the suit is filed." *Brockmeyer*, 383 F.3d at 804.

Plaintiff argues that Rule 4(f)(3) provides affirmative authorization. (DE 145 at 16). The rule states that unless federal law provides otherwise, an individual or corporation "may be served at a place not within any judicial district of the United States . . . by other means not prohibited by international agreement, as the court orders." Fed. R. Civ. P. 4(f)(3); *see also* Fed. R. 4(h)(2) (applicable to foreign corporations). The Court has discretion to permit or not permit service of process pursuant to Rule (4)(f)(3). *See Prewitt Enterprises, Inc. v. Organization of Petroluem Exporting Countries*, 353 F.3d 916, 926–927 (11th Cir. 2003). Courts have authorized many

alternative methods of service abroad under Rule 4(f)(3). *See Brockmeyer*, 383 F.3d at 805–06 (collecting cases).

Service must afford any defendant due process. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice 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. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

Service Upon Defendants Located in India. Almost every Defendant which Plaintiffs seek to serve is currently located in India; many of those Defendants are incarcerated in Indian jail. (*See* DE 145 at 10-16). Plaintiffs argue that service by mail upon these Defendants should be approved under Rule 4(f)(3). This argument fails. India is a signatory to the Hague Convention, Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the "Hague Service Convention"). As India is a signatory to the Hague Service Convention, service of process should be effectuated in compliance with the applicable Articles of the Convention. Article II provides that "[e]ach Contracting State shall designate a Central Authority which will undertake to receive requests for service coming from other Contracting States and to proceed in conformity with the provisions of Articles 3 to 6." Article III through VI then describe the appropriate procedures to effectuate service under the Convention.

However, as discussed, alternative service is available (including service by mail) when not otherwise prohibited by federal or international law. Here, international law prohibits the requested service. India has objected service by postal channels, meaning Plaintiff's request to serve Defendants located in India by postal channels must be denied. *See* HCCH, India-Central Authority & Practical Information, https://www.hcch.net/en/states/authorities/details3/?aid=712

(last visited January 8, 2020) (indicating that India has objected to Article 10 of the Hague Service Convention, which authorizes service via postal channels); MINISTRY OF EXTERNAL AFFAIRS: GOVERNMENT OF INDIA, *Service of Summons Abroad*, https://www.mea.gov.in/service-of-summons-abroad.htm (last visited January 8, 2020) ("The declarations made by India while signing the [Hague Service] Convention include [that] . . . [d]ocuments cannot be served via mail."); *see also Cephalon, Inc. v. Sun Pharmaceutical Indus., Inc.*, No. 11-5474, 2011 WL 6130416, at *2 (D.N.J. Dec. 7, 2011) ("Moreover, India has made a reservation to the Convention objecting to service of process by mail, or directly through judicial officers in India without the involvement of the Central Authority." (internal citation and quotation omitted)).

I will dismiss the Defendants located in India. Plaintiffs initially filed this case in 2018 and have not even begun to serve process under the Hague Convention, which is a very lengthy process. Specifically, Plaintiffs initiated this lawsuit on January 24, 2018. (*See* DE 1). The lawsuit was subsequently consolidated, and Plaintiffs filed a Consolidated Class Action Complaint on July 3, 2018. (DE 48). At the very least, Plaintiffs should have begun attempting to serve the Defendants located in India by that day. However, as of August 28, 2019, Plaintiffs had not filed any proof of service as to these Defendants, prompting the entry of an Order to Show Cause regarding the status of service and why service had not been effectuated as to all Defendants. (DE 116). In response to this Order, Plaintiffs filed a status report indicating that it would seek leave to effectuate alternative service upon the Defendants located in India (and the other foreign Defendants). (DE 117). Months passed without Plaintiffs filing that Motion; and, as a result, I set a deadline for Plaintiffs to file the motion to effectuate alternative service. It was only then that Plaintiff moved for such alternative service. (DE 138, Initial Motion; DE 145, Renewed Motion).

In light of Plaintiffs' dilatory conduct, I will not permit them to further attempt to serve process. *See Harris v. Orange S.A.*, 636 F. App'x 476, 485-86 (11th Cir. 2015) ("We thus join the majority of circuits to have considered the issue in holding that a plaintiff's complaint may be dismissed upon a showing that she failed to exercise diligence in attempting to effectuate service on a foreign defendant."). Accordingly, the Defendants located in India are dismissed. These Defendants include: Nalin Kotadiya, Dhaval Mavani, Suresh Gorasiya, Guatam Lathiya, Satish Kumbhani, Divyesh Darji, Bitconnect, Ramadayal Purohit, Ranjeet Saxena, Sandip Balvantrai Naik, Smit Sandiphbhai Naik, and Raj Sandipobhai Naik.[1]

Service Upon Defendants Located in Vietnam. Next, Plaintiffs request to serve Defendants Nay Minh a/k/a Mr. Roberts and Le Thi Thannh Huy a/ka/ Ms. Helen via registered mail. (DE 145 at 20). Although service by mail may be appropriate in this instance, Plaintiffs have failed to sufficiently demonstrate that Roberts and Helen would actually receive the service at the provided address. The provided mailing address is apparently "the location of the first café Roberts and Helen opened with the funds they obtained from their promoting [of] Bitconnect." (DE 145 at 13 n.8). Plaintiffs provide an article, "The Amazing Coffee coffee chain open its third branch," as support for its contention that Helen and Roberts operate the café and will receive service if mailed to that address. *Id.*

Based upon the information provided, I do not find that the requested method of service will reasonably apprise Helen and Roberts of this lawsuit. Because Plaintiffs have had almost two years to serve those Defendants, I will dismiss Helen and Roberts.

---

[1]Even if the requested service was permissible, Plaintiffs' Motion suffers from other fatal flaws. For example, Plaintiffs seek to serve several Defendants at addresses for companies in which those Defendants serve as an "executive or director of as well as [through] electronic means." (DE 145 at 20). However, Plaintiffs have failed to offer any evidence that service through those methods would reasonably apprise the applicable Defendants of this litigation.

Service Upon Remaining Foreign Defendants. To the extent remaining unserved Foreign Defendants exist, I likewise find that they should be dismissed for the reasons stated in this Order regarding Plaintiffs' unjustifiable delay in effectuating service.

Remaining Defendants. The only Defendants that remain in this litigation are Defendants Trevor Brown, Ryan Hildreth, and Tanner Fox. On December 20, 2019, I entered an Order to Show Cause why those Defendants should not be dismissed. (DE 142). In the Order, I indicated that the allegations against those Defendants appeared similar to the allegations against Defendants Glenn Arcaro and Ryan Maasen. Because I had previously dismissed Arcaro and Maasen from this lawsuit (DE 133), I required Plaintiffs to show cause as to why Brown, Hildreth, and Fox should not be dismissed. Plaintiffs have responded to that Order and I will address the merits of that response by separate order.

Accordingly, it is hereby **ORDERED AND ADJUDGED** that:

1. Plaintiffs' Renewed Motion for Leave to Effect Alternative Service on Unserved Foreign Defendants (DE 145) is **DENIED.**
2. **ALL** remaining Defendants **EXCEPT** Defendants Trevor Brown, Ryan Hildreth, and Tanner Fox are **DISMISSED.**
3. The Clerk of Court shall terminate **ALL DEFENDANTS EXCEPT BROWN, HILDRETH, and FOX.**

SIGNED in Chambers at West Palm Beach, Florida, this 9 day of January, 2020.

DONALD M. MIDDLEBROOKS
UNITED STATES DISTRICT JUDGE