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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CLERK U.S. DISTRICT COURT
WEST. DIST. OF PENNSYLVANIA

DOGGIE DENTAL INC., *et al.*,

Plaintiffs,

Civil Action No. 19-682

v.

ANYWILL, *et al.*,

Defendants.

FILED UNDER SEAL

**PLAINTIFFS' EX PARTE MOTION FOR AN ORDER
AUTHORIZING ALTERNATIVE SERVICE ON DEFENDANTS
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 4(f)(3)**

Plaintiffs Doggie Dental Inc. ("Doggie Dental") and Peter Dertsakyan ("Dertsakyan") (collectively, "Plaintiffs"), hereby move this Court on an *ex parte* basis,¹ for an order authorizing alternate service of process on Defendants, the Individuals, Partnerships, and Unincorporated Associations identified on **Schedule "A"** hereto (collectively "Defendants"), brought pursuant to Federal Rule of Civil Procedure 4(f)(3). In support thereof, Plaintiffs submit the following:

¹ Plaintiffs are moving for alternate service *ex parte* as Plaintiffs have yet to provide Defendants with notice of this action. Contemporaneously herewith, Plaintiffs have filed their *Ex Parte* Application for Temporary Restraining Order, Preliminary Injunction, and Order Restraining Transfer of Assets ("*Ex Parte* Application for Temporary Restraining Order"), together with the supporting Declarations and Exhibits. The present Motion makes reference to Plaintiffs' *Ex Parte* Application for Temporary Restraining Order, and as such, Plaintiffs seek to prevent premature disclosure of that filing. (See Declaration of Stanley D. Ference III in Support of Plaintiffs' *Ex Parte* Motion for Order Authorizing Alternate Service of Process on Defendants ["*Ference Dec.*"] ¶ 1, n.1, filed herewith.) However, Plaintiffs are filing this Motion so that, in the event Plaintiffs' *Ex Parte* Application for Temporary Restraining Order and the instant Motion are granted, Plaintiffs can effectuate service of process pursuant to Rule 4 of the Federal Rules of Civil Procedure simultaneously with providing notice of the Court's order on Plaintiffs' *Ex Parte* Application for Temporary Restraining Order. (See *id.*)

I. INTRODUCTION

Plaintiffs are suing Defendants for federal unfair competition in violation of Section 43(a) of the Trademark Act of 1946, as amended; copyright infringement of Plaintiffs' federally registered copyrights in violation of the Copyright Act of 1976; common law unfair competition; and common law trademark infringement pursuant to 15 U.S.C. § 1125(a), 17 U.S.C. §§ 101 *et seq.*, and The All Writs Act, 28 U.S.C. § 1651(a). Defendants are knowingly and intentionally promoting, advertising, distributing, offering for sale, and selling knock-off versions of Plaintiffs' BRISTLY™ dog toothbrush (the "Infringing Product") which closely mimic the appearance of Plaintiffs' genuine product within this district and throughout the United States by operating e-commerce stores established at least via the Internet marketplace website Amazon.com under their Store Names and Seller Names identified on Schedule "A" hereto (the "Seller IDs"). Defendants have infringed upon Plaintiffs' common law trade dress rights; Defendants have infringed upon Plaintiffs' federally registered copyrights; and Defendants have used Plaintiffs' copyrighted photographs and/or common law BRISTLY trademark while marketing their knock-off products in a willful attempt to pass them off as genuine BRISTLY™ products.

Pursuant to Federal Rule of Civil Procedure 4(f)(3), Plaintiffs request an order authorizing service of process on Defendants via electronic communication ("e-mail") and via website publication. E-mail and website publication service are appropriate and necessary in this case, because Defendants (1) operate via the Internet, and (2) rely on electronic communications to operate their businesses. As such, Plaintiffs have the ability to contact Defendants directly and provide notice of Plaintiffs' claims against them electronically via e-mail. Additionally, Plaintiffs have created a publication website and will be posting copies of the Complaint,

Plaintiffs' *Ex Parte* Application for Temporary Restraining Order, this instant Motion, and all other documents filed in this action. Plaintiffs respectfully submit that an order allowing service of process and future filings² via e-mail and by publication on a designated website will benefit all parties and the Court by ensuring Defendants receive immediate notice of the pendency of this action and allowing this action to move forward expeditiously. Absent the ability to serve Defendants by email and/or website publication, Plaintiffs will almost certainly be left without the ability to pursue a remedy.

II. STATEMENT OF FACTS

A. Defendants Have Valid and Operational Means of Electronic Contact.

Defendants operate Internet-based businesses and use electronic means of communication such that Plaintiff will be able to provide Defendants with notice of this action via e-mail and website publication. As a practical matter, it is necessary for merchants who operate entirely online, such as Defendants, to provide customers with valid electronic means by which customers may contact the merchants to ask questions about the merchants' products, place orders from the merchants, and receive information from the merchants regarding the shipments of orders. Further, e-commerce defendants generally must maintain accurate e-mail addresses where their marketplace platforms and payment processor may communicate with them regarding issues related to their e-commerce store accounts and transfer of funds for the payment for goods. Plaintiff has also created a webpage on www.ferencelaw.com ("Plaintiffs'

² Fed. R. Civ. P. 5 governs service of pleadings and other papers once service of process has been made. Service is not required on any party that fails to appear. *See* Fed. R. Civ. P. 5(a)(2). Nonetheless, Plaintiffs propose to continue to serve pleadings and other papers via e-mail and by posting on a designated website.

Website”), such that anyone accessing Plaintiffs’ Website will find copies of documents filed in this action. (See *Ference Dec.*, ¶¶ 5 - 6.)

Amazon.com, Inc., which operates the Amazon.com marketplace maintains contact e-mail addresses for sellers operating via their marketplaces, and based upon past actions, Amazon.com, Inc. identifies these contact e-mail addresses for Defendants at issue upon compliance with a temporary restraining order, such as the temporary restraining order Plaintiffs are requesting in the instant case. (See *Ference Dec.*, ¶ 3.) Additionally, Defendants operating their respective e-commerce stores via the Internet marketplace website Amazon.com have provided an electronic form of contact in the form of Amazon’s messaging system. (*Id.*) Amazon’s messaging system facilitates communication between customers and merchants in the Amazon.com marketplace. (*Id.*)

1. Furthermore, sellers operating via Amazon.com use money transfer and retention services with Amazon Payments, Inc. d/b/a Pay.amazon.com (“Amazon Pay”), as a method to receive monies generated through the sale of Infringing Products. Defendants have provided at least one accurate contact email address to Amazon Pay in order to conduct business via their respective Seller IDs. (See *Ference Dec.*, ¶ 4.) Defendants’ Amazon Pay account e-mail addresses must necessarily be valid, working e-mail addresses; otherwise, Defendants would not be able to process payments through their Amazon Pay accounts.³ (See *Id.*) Moreover, pursuant to Amazon Payments, Inc.’s Customer Agreement, Amazon Pay account holders consent to receive all communication electronically, including via e-mail, and are required to maintain a valid e-mail address. If Amazon Pay discovers an e-mail address has

³ See Amazon Payments, Inc. Customer Agreement, available at <https://pay.amazon.com/us/help/201212430> (last visited May 21, 2019).

become invalid such that electronic communications sent to the e-mail address by Amazon Pay are returned, Amazon Pay may deem the account to be inactive and disable transaction activity until a valid, working e-mail address is provided. Based upon past actions, Amazon Pay identifies these contact e-mail address for all Defendants at issue upon compliance with a temporary restraining order, such as the temporary restraining order Plaintiffs are requesting in the instant case.

Accordingly, each Defendant will be provided with notice of this action electronically by providing the address to Plaintiffs' Website (discussed *supra*) to their corresponding e-mail addresses and/or direct messaging or inquiry system that Defendants use to conduct their commercial transactions via the Sellers IDs. (*Ference Dec.*, ¶ 5.) In this manner, Defendants will receive a web address at which they can access all electronic filings to view, print, or download any document filed in the case similar to the court's CM/ECF procedures.

Finally, Plaintiffs will be able to provide each Defendant notice of this action via public announcement on Plaintiffs' designated website. Plaintiffs have created a publication website that will be appearing on www.ferencelaw.com ("Plaintiffs' Website"), whereupon copies of the Complaint, Plaintiffs' *Ex Parte* Application for Temporary Restraining Order, this Motion, discovery, and other filings, and orders issued in this action will be posted, such that anyone accessing Plaintiffs' Website will find copies of documents filed in this action similar to the Court's CM/ECF procedures. (*Ference Dec.*, ¶ 6.) The address for Plaintiffs' Website will be provided to Defendants via their e-mail accounts provided by Amazon and/or Amazon Pay, or through Amazon's direct messaging or inquiry system, and will be included as part of service of process in this matter. (*Id.*)

B. Defendants Rely on Electronic Communications.

Defendants have structured their e-commerce store businesses so that the sole means for customers to purchase Defendants' goods at issue is by placing an order electronically. Defendants take and confirm orders online and rely on electronic means to receive a payment. (See Declaration of Amy Cline in Support of Plaintiffs' *Ex Parte* Application for Entry of Temporary Restraining Order, Preliminary Injunction, and Order Restraining Transfer of Assets [*Cline Dec.*] ¶ 2 and Comp. Ex. 1 thereto.) During the investigation, Plaintiffs were able to view Defendants' Infringing Products, add products to the online shopping cart, proceed to a point of checkout, add a shipping address in this judicial district and payment information and otherwise actively exchange data with each Merchant Storefront. (*Id.*) Clearly, Defendants rely on electronic means as reliable forms of contact.

III. ARGUMENT

Pursuant to Federal Rule of Civil Procedure 4(h)(2), a foreign partnership or other unincorporated association may be served with process in any manner prescribed by Rule 4(f) for serving foreign individuals. Federal Rule of Civil Procedure 4(f)(3), allows a district court to authorize an alternate method for service to be effected upon a foreign defendant, provided that it is not prohibited by international agreement and is reasonably calculated to give notice to the defendant. In the present matter, alternate service of process via e-mail and website publication are appropriate given that Defendants have established Internet-based businesses by which they rely on electronic communications for their operation. Accordingly, this Court should permit service on Defendants by e-mail and website publication.

A. The Court May Authorize Service via Electronic Mail and Website Publication Pursuant to Federal Rule of Civil Procedure 4(f)(3).

Fed. R. Civ. P. 4(f)(3) enables a foreign business entity to be served with process using an alternative method of service so long as the alternative method: (1) “is not prohibited by international agreement” and (2) “comports with constitutional notions of due process”. *Henry F. Teichmann, Inc. v. Caspian Flat Glass OJSC*, No. 13-cv-458, 2013 WL 1644808 at *1, *2 (W.D. Pa. April 16, 2013) (Hornak, J.). Notably, “[s]ervice under subsection [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.” *Sulzer Mixpac AG v. Medenstar Indus. Co.*, 312 F.R.D. 329, 330 (S.D.N.Y. 2015) (quoting *Advanced Aerofoil Techs., AG v. Todaro*, 2012 U.S. Dist. LEXIS 12383, at *1 (S.D.N.Y. Jan. 31, 2012) (internal citations omitted)). Since third-party merchants on Internet marketplaces, like Defendants, have been known to use aliases, false addresses and other incomplete identification information to shield their true identities and there are, in fact, no physical addresses whatsoever associated with the majority of Defendants’ User Accounts, this is exactly the circumstance where the courts should exercise, as they previously have exercised, the authority to grant alternative methods of service. *See Id.* (quoting *Madu, Edozie & Madu, P.C. v. SocketWorks Ltd. Nigeria*, 265 F.R.D. 106, 115 (S.D.N.Y. 2010) (“The decision whether to allow alternative methods of serving process under Rule 4(f)(3) is committed to the sound discretion of the district court.”) (internal quotation marks omitted)); *see also Ference Dec.*, ¶¶ 3 - 6.

Fed. R. Civ. P. 4(f)(3) permits service in a place not within any judicial district of the United States⁴ “by any internationally agreed means of service that is reasonably calculated to

⁴ In the unlikely event a defendant for whom Plaintiff does not have an address was located in the United States, service would be governed by Fed. R. Civ. P. 4(e)(1), which provides for “following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located”. Pa. R. Civ. Pro. 430 provides “[i]f service cannot be made under the applicable rule the plaintiff may move the

give notice”. See *Rio Props. v. Rio Intern. Interlink*, 284 F. 3d 1007, 1014 (9th Cir. 2002). The Ninth Circuit in *Rio Props.* held, “without hesitation,” that e-mail service of an online business defendant “was constitutionally acceptable.” *Id.* at 1017. The Court reached this conclusion, in part, because the defendant conducted its business over the Internet, used e-mail regularly in its business, and encouraged parties to contact it via e-mail. *Id.*

Rule 4 does not require that a party attempt service of process by other methods enumerated in Rule 4(f) before petitioning the court for alternative relief under Rule 4(f)(3). *Rio Props.*, 284 F. 3d at 1014-15. As the *Rio Properties* Court explained, Rule 4(f) does not create a hierarchy of preferred methods of service of process. *Id.* at 1014. To the contrary, the plain language of the Rule requires only that service be directed by the court and not be prohibited by international agreement. There are no other limitations or requirements. *Id.* Alternative service under Rule 4(f)(3) is neither a “last resort” nor “extraordinary relief,” but is rather one means among several by which an international defendant may be served. *Id.* As such, this Court may allow Plaintiff to serve the defendants via electronic publication and/or e-mail.

Additionally, the Constitution itself does not mandate that service be effectuated in any particular way. Rather, Constitutional due process considerations require only that the method of service selected 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.” *Brookshire Bros., Ltd. v. Chiquita Brands Int’l*, Case No. 05-CIV-21962, 2007 WL 1577771, at *1 (S.D. Fla. May 31, 2007) (quoting *Mullane v. Cent. Hanover Bank & Trust 10 Co.*, 339 U.S.

court for a special order directing the method of service.” Thus, service by electronic means would also be sufficient in the event any Defendant is located in the United States. See *Power Corp. of Canada v. Power Financial*, No. 4:09-cv-0510, 2009 WL 982750 (M.D. Pa., April 13, 2009) (service by email is permitted under Rule 430 when defendant uses online service that shields owner’s identity).

306, 314 (1950)); *see also TracFone Wireless, Inc. v. Bitton*, 278 F.R.D. 687, 692 (S.D. Fla. Jan. 11, 2012); *Rio Props., Inc.*, 284 F.3d at 1016. Accordingly, federal courts have allowed a variety of alternative service methods, including service by e-mail and publication on a designated website, where a plaintiff demonstrates the likelihood that the proposed alternative method of service will notify a defendant of the pendency of the action. *See, e.g., Rio Props., Inc.*, 284 F.3d at 1017 (holding, “without hesitation,” that e-mail service of an online business defendant “was constitutionally acceptable”); *In re Int’l Telemedia Assocs.*, 245 B.R. 713, 721 (N.D. Ga. 2000) (“If any methods of communication can be reasonably calculated to provide a defendant with real notice, surely those communication channels utilized and preferred by the defendant himself must be included among them.”); *National Association for Stock Car Auto Racing, Inc. v. Does*, 584 F. Supp. 2d 824, 826 (W.D.N.C. 2008) (in “acknowledging the realities of the twenty-first century and the information age, the Court determined that the most appropriate place for publication was [Plaintiff’s Website].”).

Here, service on Defendants by e-mail and/or by publication on Plaintiffs’ Website will satisfy due process by apprising them of the action and giving them the opportunity to answer Plaintiffs’ claims. Based upon Plaintiffs’ investigation, each Defendant has at least one form of electronic means of contact, demonstrating that this means of contact is not just effective, but the most reliable means of communicating with that Defendant, and consequently, the most reliable means of providing Defendants with notice of this action. (*Ference Dec.*, ¶¶ 5 - 6.) Moreover, service by publication on Plaintiffs’ Website will be an additional source of reliability as Defendants will be able to see copies of the Complaint and all other documents in this matter electronically via their Internet browser. (*Id.*)

E-mail service on an online business defendant is appropriate and constitutionally acceptable in a case such as this when the plaintiff has proven that e-mail is the most effective means of providing the defendant notice of the action. *See Rio Props., Inc.*, 284 F.3d at 1017 (concluding “not only that service of process by e-mail was proper—that is, reasonably calculated to apprise [the defendant] of the pendency of the action and afford it an opportunity to respond— but in this case, it was the method of service most likely to reach [the defendant].”). *See also Popular Enters., LLC v. Webcom Media Group, Inc.*, 225 F.R.D. 560, 562 (E.D. Tenn. 2004) (“Under the facts and circumstances presented here, Rule 4(f)(3) clearly authorizes the court to direct service upon defendant by e-mail. The rule is expressly designed to provide courts with broad flexibility in tailoring methods of service to meet the needs of particularly difficult cases. Such flexibility necessarily includes the utilization of modern communication technologies to effect service when warranted by the facts”) (citation omitted). The *Rio Properties, Inc.* and *Popular Enters., LLC* courts each determined e-mail service to be appropriate in part because, as in this case, the defendants conducted their businesses online, used e-mail regularly in their businesses, and encouraged parties to contact them via e-mail. *See Id.*

In cases that are factually similar to this one, a number of Courts have held that alternate forms of service pursuant to Rule 4(f)(3), such as e-mail service, are appropriate and may be the only means of effecting service of process “when faced with an international e-business scofflaw.” *Rio Properties, Inc.*, 284 F.3d at 1018; *see also Chanel, Inc. v. Zhixian*, Case No. 09-cv-02835, 2010 WL 1740695, at *3 (W.D. Tenn. March 17, 2010) (e-mail service “reasonably calculated to notify Defendants of the pendency of this action and provide him with an opportunity to present objections.”); *TracFone Wireless, Inc.*, 278 F.R.D. at 693 (finding that

service of process by e-mail was reasonably calculated to apprise the defendants of the action and give it an opportunity to respond); *Popular Enters., LLC*, 225 F.R.D. at 563 12 (same); *In re Int'l Telemedia Associates*, 245 B.R. at 722 (“A defendant should not be allowed to evade service by confining himself to modern technological methods of communication not specifically mentioned in the Federal Rules. Rule 4(f)(3) appears to be designed to prevent such gamesmanship by a party” (concluding e-mail and facsimile service to be appropriate)); *Chanel, Inc. v. Zhibing*, 2010 WL 1009981, at *4 (stating that e-mail service has the “greatest likelihood” of reaching e-commerce merchants and noting, “The federal judiciary’s own CM/ECF system alerts parties . . . by e-mail messages.” Alternate service via e-mail granted).⁵

⁵ Courts in the Southern District of New York are also very experienced in handling cases against merchants on Internet marketplaces and have consistently permitted alternate electronic service. *See, e.g. Intenze Products, Inc. v. 1586, et al.*, No. 18-cv-4611-RWS (S.D.N.Y. May 24, 2018); *Allstar Marketing Group, LLC v. 158, et al.*, No. 18-cv-4101-GHW, Dkt. 22 (S.D.N.Y. May 17, 2018); *William Mark Corporation v. 1&cc, et al.*, No. 18-cv-3889-RA, Dkt. 18 (S.D.N.Y. May 2, 2018); *WOW Virtual Reality, Inc. v. Bienbest, et al.*, No. 18-cv-3305-VEC, Dkt. 9 (S.D.N.Y. April 16, 2018); *Ideavillage Products Corp. v. abc789456, et al.*, No. 18-cv-2962-NRB, Dkt. 11 (S.D.N.Y. April 11, 2018); *Ideavillage Products Corp. v. Aarhus, et al.*, No. 18-cv-2739-JGK, Dkt. 22 (S.D.N.Y. March 28, 2018); *Moose Toys Pty Ltd. et al., v. 963, et al.*, No. 18-cv-2187-VEC, Dkt. 16 (S.D.N.Y. April 2, 2018); *Off-White, LLC v. A445995685, et al.*, No. 18-cv-2009-LGS, Dkt. 5 (S.D.N.Y. March 27, 2018); *Spin Master Ltd. and Spin Master, Inc. v. 158, et al.*, No. 18-cv-1774-PAE, Dkt. 18 (Feb. 27, 2018); *JLM Couture, Inc. v. Aimibridal, et al.*, No. 18-cv-1565-JMF, Dkt. 18 (S.D.N.Y. Feb. 21, 2018); *Spin Master Ltd. and Spin Master, Inc. v. Alisy, et al.*, No. 18-cv-543-PGG, Dkt. 16 (S.D.N.Y. Jan. 22, 2018); *WowWee Group Limited, et al. v. Meirly, et al.*, No. 18-cv-706-AJN, Dkt. 11 (S.D.N.Y. Jan. 26, 2018); *Ideavillage Products Corp. v. Dongguan Shipai Loofah Sponge Commodity Factory, et al.*, No. 18-cv-901-PGG, Dkt. 20 (S.D.N.Y. Feb. 1, 2018); *WowWee Group Limited, et al. v. A249345157, et al.*, No. 17-cv-9358-VEC, Dkt. 18 (S.D.N.Y. Dec. 11, 2017); *HICKIES, Inc. v. Shop1668638 Store, et al.*, No. 17-cv-9101-ER, Dkt. 14 (S.D.N.Y. Dec. 6, 2017); *Ideavillage Products Corp. v. Dongguan Opete Yoga Wear Manufacturer Co., Ltd., et al.*, No. 17-cv-9099-JMF, Dkt. 19 (S.D.N.Y. Nov. 27, 2017); *Ideavillage Products Corp. v. Shenzhen City Poly Hui Foreign Trade Co., Ltd., et al.*, No. 17-cv-8704-JGK. (S.D.N.Y. May 24, 2017); *Moose Toys Pty LTD et al. v. Guangzhou Junwei Trading Company d/b/a Backgroundshop et al.*, No. 17-cv-2561-LAK, Dkt. 12 (S.D.N.Y. May 11, 2017); *Rovio Entertainment Ltd. and Rovio Animation OY v. Angel Baby Factory d/b/a Angelbabyfactory et al.*, No. 17-cv-1840-KPF, Dkt. 11 (S.D.N.Y. March 27, 2017); *Ontel Products Corporation v. Airbrushpainting Makeup Store a/k/a Airbrushespainting et al.*, No. 17-cv-871-KBF, Dkt. 20 (S.D.N.Y. Feb. 6, 2017); *Ideavillage Products Corp. v. Bling Boutique Store, et al.*, No. 16-cv-09039-KMW, Dkt. 9 (S.D.N.Y. Nov. 21, 2016); *Gucci America, Inc., et al v. Alibaba Group Holding LTD, et al.*, No. 1:15-cv-03784-PKC (S.D.N.Y. June 23, 2015) (unpublished); *Chanel, Inc. v. Conklin Fashions, Inc.*, No. 3:15-cv-893-MAD/DEP, 2015 U.S. Dist. LEXIS 109886, at *10-13 (N.D.N.Y. Aug. 14, 2015); *Belstaff Grp. SA v. Doe, No.*

This Court has also authorized electronic service of process on merchants on Internet marketplaces in cases that are factually similar to the present case. *See, e.g., Rapid Slicer v. Buyspry*, No. 19-cv-249 (Order Authorizing Alternative Service entered on March 11, 2019) (Horan, J.); *Airigan Solutions, LLC v. Babymove*, No. 19-cv-166 (Order Authorizing Alternative Service entered on February 14, 2019) (Fischer, J.); and *Airigan Solutions, LLC v. Artifacts_Selling*, No. 18-cv-1462 (Order Authorizing Alternative Service entered on November 2, 2018) (Fischer, J.). Plaintiffs submit that allowing e-mail service in the present case is appropriate and comports with constitutional notions of due process, particularly given Defendants’ decision to conduct their illegal businesses using the Internet and utilizing e-mail as a primary means of communication.

Additionally, service of a defendant by publication on a designated website,⁶ such as Plaintiffs’ Website, has been deemed appropriate service “so long as the proposed publication is ‘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.’” *National Association for Stock Car Auto Racing, Inc. v. Does*, 584 F. Supp. 2d 824, 826 (W.D.N.C. 2008) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315-16 (1950)). In *National Association for Stock Car Auto Racing, Inc. v. Does*, the United States District Court for the

15-cv-2242-PKC/MHD, 2015 U.S. Dist. LEXIS 178124, at *2 (S.D.N.Y. June 18, 2015); *AW Licensing, LLC v. Bao*, No. 15-cv-1373, 2015 U.S. Dist. LEXIS 177101, at *2-3 (S.D.N.Y. Apr. 1, 2015); *Klipsch Grp., Inc. v. Big Box Store Ltd.*, No. 1:12-cv-06283-VSB, 2012 U.S. Dist. LEXIS 153137, at *3-4 (S.D.N.Y. Oct. 24, 2012); *True Religion Apparel, Inc. et al. v. Xiaokang Lee et al.*, No. 1:11-cv-08242-HB (S.D.N.Y. Nov. 15, 2011) (unpublished); *N. Face Apparel Corp. v. Fujian Sharing Imp. & Exp. Ltd. Co.*, No. 1:10-cv-1630-AKH, 2011 U.S. Dist. LEXIS 158807 (S.D.N.Y. June 24, 2011).

⁶ The Ference firm is prepared to provide notice via website publication if permitted by the Court. Through the email addresses received from the Third Party Service Providers and Financial Institutions, Ference would provide the named Defendants with a link to a web page accessible at www.ferencelaw.com that includes all of the relevant filings for the lawsuit. *See Ference Dec.*, ¶¶ 5 - 6.

Western District of North Carolina determined that the plaintiff could serve “Doe” defendants and apprise those defendants of a pending preliminary injunction hearing by publishing on the plaintiff’s website. *Id.*

Accordingly, Plaintiffs have created a publication website on www.ferencelaw.com whereon copies of the Complaint, Plaintiffs’ *Ex Parte* Application for Temporary Restraining Order, this instant Motion, discovery, and other documents filed in this action will be posted. (*Ference Dec.*, ¶¶ 5 - 6). The address for Plaintiffs’ Website will be included as part of service of process in this matter. (*Id.*) Posting the Summonses, Complaint, and Plaintiffs’ *Ex Parte* Application for Temporary Restraining Order on Plaintiffs’ Website will provide notice sufficient to meet the due process requirements for service of process and notice pursuant to Federal Rule of Civil Procedure 4, apprise Defendants of the pendency of this action, and afford Defendants and any other interest parties an opportunity to present their answers and objection.

B. E-mail and Publication Service Are Not Prohibited by International Agreement.

Service via e-mail and website publication is not prohibited by international agreement. Based upon the information contained on Defendants’ actual e-commerce marketplace stores, such as shipping information, and the data provided thereunder, Plaintiff has good cause to suspect some Defendants may be residing in the People’s Republic of China (“China”), or other foreign jurisdictions, and/or redistribute products from sources in those locations. (*Ference Dec.* ¶ 7.) Both China and the United States are signatories to the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil and Commercial Matters (the “Hague Service Convention”). (*See Ference Dec.* ¶ 8 and Comp. Ex. 1 thereto, Hague Service Convention and list of signatory Members.) However, the Hague Service Convention does not preclude the Court from authorizing service of process via e-mail or website publication.

Alternative means of service, such as e-mail and website publication, are not prohibited by the Hague Service Convention where a signatory nation has not expressly objected to those means. *See Stat Med. Devices, Inc. v. HTL-Strefa, Inc.*, Case No. 15-cv-20590-FAM, 2015 U.S. Dist. LEXIS 122000 (S.D. Fla. Sept. 14, 2015) (noting that an objection to the alternative forms of service set forth in the Hague Convention is limited to the forms of service expressly objected to). Article 10 to the Hague Service Convention allows service of process through means other than a signatory's Central Authority, such as "postal channels" and "judicial officers," provided the State of destination does not object to those means. *See Hague Convention*, Art. 10, 20 U.S.T. 361 (1969). China has objected to the alternative means of service outlined in Article 10 of the Convention. (*Ference Dec.*, ¶ 8.) However, that objection is specifically limited to the means of service enumerated in Article 10, and China has not expressly objected to service via e-mail or website publication. (*See id.* and Comp. Ex. 1 thereto, which includes a true and correct printout of China's Declaration/Reservation/Notification in regards to the Hague Convention.) Because the declaration to the Hague Convention filed by China does not object to e-mail and website publication service, "a court acting under Rule 4(f)(3) remains free to order alternative means of service that are not specifically referenced in Article [10]." *Gurung v. Malhotra*, 279 F.R.D. 215, 219 (S.D.N.Y. 2011); *see also WhosHere, Inc. v. Orun*, Case No. 13-cv-00526-AJT, 2014 U.S. Dist. LEXIS 22084, at *9 (E.D. Va. Feb. 20, 2014) (authorizing e-mail service, noting objection to means of service listed in Article 10 "is specifically limited to the enumerated means of service in Article 10."). Moreover, an objection to the alternative means of service provided in Article 10 does not represent a per se objection to other forms of service, such e-mail or website publication. *See In re S. African Apartheid Litig.*, 643 F. Supp. 2d 423, 434, 437 (S.D.N.Y. 2009) (requiring express objection to alternative method of service by signatory nation

to preclude that particular means of service). Consequently, China's objections to the means of alternative service provided in Article 10 are no bar to court-directed service and do not prevent this Court from authorizing alternative service of process via e-mail or website publication. *See, e.g., Gurung*, 279 F.R.D. at 220 (approving service of process on foreign defendants via e-mail despite India's objection to Article 10, stating that an "objection to service through postal channels does not amount to an express rejection of service via electronic mail."); *Stat Med Devices, Inc.*, 2015 U.S. Dist. LEXIS 122000, at *8-9 (permitting service of process on foreign defendants via e-mail and substituted service on domestic counsel despite Poland's objection to Article 10, noting "This Court and many other federal courts have permitted service by electronic mail and determined that an objection to Article 10 of the Hague Convention . . . does not equate to an express objection to service via electronic mail."); *FTC v. PCCare247 Inc.*, Case No. 12-cv-7189-PAE, 2013 U.S. Dist. LEXIS 31969, at *10 (S.D.N.Y. March 7, 2013) (authorizing service of process via e-mail and Facebook, explaining that "Numerous courts have held that service by email does not violate any international agreement where the objections of the recipient nation are limited to those means enumerated in Article 10."); *WhosHere, Inc.*, 2014 U.S. Dist. LEXIS 22084 (authorizing service of process on foreign defendants via e-mail despite Turkey's objection to Article 10); *Richmond 17 Techs., Inc. v. Aumtech Bus. Solutions*, Case No. 11-CV-02460-LHK, 2011 U.S. Dist. LEXIS 71269 (N.D. Cal. July 1, 2011) ("[N]umerous courts have authorized alternative service under Rule 4(f)(3) even where the Hague Convention applies. This is true even in cases involving countries that, like India, have objected to the alternative forms of service permitted under Article 10 of the Hague Convention.").

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request this Court grant the present motion and authorize service of the Summonses, the Complaint, discovery, and future filings in this matter upon each Defendant in this action:

(1) via e-mail by providing the address to Plaintiffs' Website to Defendants via (i) the e-mail accounts provided by Defendants as part of the data related to their respective e-commerce stores, or (ii) via the e-commerce marketplace for each of the e-commerce stores; or

(2) via website publication by posting a copy of the Summonses, Complaint, Plaintiffs' *Ex Parte* Application for Temporary Restraining Order, discovery, and all filings in this matter on Plaintiffs' Website appearing on www.ferencelaw.com.

A Proposed Order granting this motion is submitted herewith.

Respectfully submitted,

Dated: June 12, 2019

/s/ Stanley D. Ference III

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Attorneys for Plaintiffs

Schedule “A”
Defendants With Store Name and Seller ID

Def. No.	Defendant/ Amazon Store Name	Amazon Seller ID	Amazon ASIN
1	Anywill	A1KGXS6694KK0F	B07M6PNDMZ
2	AHuShi	AWX8XMIYVF7QQ	B07L68R2YK
3	AikoPets	A2M36Z0WA1TNMA	B07N44Z994
4	Ale's Store	A28FLU0ZJO0Q51	B07ML3RQ4Q
5	AMZself	A2LTKBZ1LUKKD2	B07PBKMCJV
6	AODINI	A1I1CT9W6WSKTS	B07QF6WM9J
7	AONOKOY	A375T0B2QOEFPG	B07M5WJ2YQ
8	Artem Store	A9RASDMHEJUHR	B07P5Z1GQQ
9	Aya-Chic	AV58HO4Y4YG5	B07LCJQ6W2
10	BAEBae	A2KLASD3UEONMJ	B07P43R47L
11	BAMOMBY-US	A3DRS8SMN9S1AY	B07MYBZN3R
12	Best Trendy	A1FMUH0TW8L0ZN	B07MZLF7F8
13	Big Elephant	A3AZJ9TNMIEGD	B07MBP1CND
14	BYBELLA	A3N4X0QAELZ7CQ	B07PNDMLZ8
15	CAReeN	AJS8TU36JRLYQ	B07MPTS696
16	De Lon	A2H9OA2IB881NB	B07M8D6FVK
17	dealcase	A3EUBWGV9HRAAF	B07PFQ42WV
18	E.L. Solutions	A3CNAJSCZDB917	B07LH6YK1K

Def. No.	Defendant/ Amazon Store Name	Amazon Seller ID	Amazon ASIN
19	Ecolines	A2VOPXI5HC2XXG	B07KVF9CTZ
20	Elegant kiss	AX9B8JO3UEO1U	B07KZNSYZW
21	Extechnico	A20NZHTNL4PTXD	B07PRPHT7S
22	FairyMe	A3T80QRV3HCEL5	B07PBT5FP9
23	Fairytale postman	A30BRIDEQQQYLC	B07HH2626J
24	Fancy Toys CO., Ltd	A300OADGLGQN5C	B07MBY5FFV
25	Fangchal	A396YX0HT6M56V	B07JJF8MZX
26	Goodforall81	ARAF6K7X3TDX9	B07KVF9CTZ
27	Happy Marie	A20ZIABWRFKMA9	B07NLZD3SF
28	horseshoe1	A327N0M7NMJD7R	B07PKC1CXC
29	IJUSTBY	AXK5GAR5PRN6H	B07PMXMTCD
30	Inoble	A2BVOV00MRV4S7	B07MJLFP3J
31	J & T Jordan	A33AHOWEC4JYNC	B07KDSPTRH
32	JackPack Labs	A69BPJ5B9WCCL	B07N1271C7
33	JESSEPOUNDS	AEMFZDZF1ZXNE	B07JYL5QL9
34	kaerzi	A9L1E6PQM2978	B07PPYZ8KJ
35	KingYue US	A2BBTIDYCH97TN	B07LDQ5L61
36	Kunxuan	AITJW1MMOF5S0	B07M6C3H88
37	Lagita	A2MQTDAKKSEDXZ	B07JDY9843
38	LAROSA MEDICAL	A2PB7QKWA4H0S8	B07PNT4XJ7
39	less like	AIEBL9WMSMZ74	B07Q136QWQ

Def. No.	Defendant/ Amazon Store Name	Amazon Seller ID	Amazon ASIN
40	LONESON	A1M8E9D3R6YQVS	B07LG8N4SP
41	Mai jili	A10J1FL3W1CPU2	B07MX2XXC6
42	Maxtry	A268Z76NB5FLY4	B07QB3SSBT
43	MayMeyz	A2A5FZ04CXTTC6	B07ML3RQ4Q
44	NF Merchandise	A3JSCT3L9HWKV8	B07M6C3H88
45	Nisosy	A2F3LIBDPU8A3X	B07QB3SJNM
46	NO.1 Online	A2G5XJ2AQC9U9S	B07MJVHS7Q
47	NOTTODAY	A3S88F4ORA904G	B07PRSJZ5H
48	OutTop	A3PL36HVP5XE9	B07JK77YS9
49	Pandacn-Direct	A2I2OBJMB3M7N7	B07MTC7J9D
50	Pinaol	A1JK4GXUMS499Q	B07NVFHDSC
51	Qi master	A1GXT4DU651KUV	B07MXT5FR9
52	QuickBuyMart	AN0B2WD3PWYMC	B07KVF9CTZ
53	Quorum Value	ANS8B7J9GNA2W	B07NC54PVD
54	Rad Essentialz	A3UHXLO3HG2SIM	B07MQBWTXV
55	Riding Store	A13M1LWDHE1FS	B07M77JZ5S
56	Ruitx Store	A2RLONNTW8MLTW	B07MLKR43D
57	Samatoo	A3VD0VF1UXFDQ4	B07HK8J9DF
58	SHOR	A2O9F0SL2VOQJJ	B07M7TYT3B
59	Shuofeng	A252ISGGD173I1	B07P4Y14CR
60	Shydie	A15BY84OORTQF8	B07PJRFST2

Def. No.	Defendant/ Amazon Store Name	Amazon Seller ID	Amazon ASIN
61	Smvison	A110A6TETBVBZI	B07P7FY1V4
62	Sumai-Tech	A9Q2358TEE89B	B07N2WPZ68
63	Taylor(USA)	A36XVP1BD7NYRM	B07HH2626J
64	TOBABYFAT	A15BGP0GJL0F9Q	B07HHYWWNV
65	UPBASICN	A2FZ54PRNJQVG	B07LG8N4SP
66	Vanuoda	A3S1XK8QBM0LEQ	B07N2K727T
67	Vintage Zone	A35H7OXNN7K8FQ	B07PBB9H53
68	VST Group	A2V4ZV9PXST2EL	B07Q19TFYB
69	WINNUO	A3VFLP6P9D5Z1Y	B07MFNPBG3
70	YINGAR	AYN6FQZ5A10K6	B07MCCTHXS
71	youthink us	A3OM5LXEESP4E	B07KYH1PNJ
72	Yu Xingchen	A12GJ7ZZH2R7SR	B07PKPTVW5
73	Yuntech	A260EP94GRU9NF	B07L3K526N
74	zacheillo	A3KKXWTQSKBSVO	B07LCDWHCX
75	Zhongsi	AEG0KI3GGYTCK	B07MNF5GWK
76	zUOKIJU	A11URB4R2AC6HW	B07MGPWVNK
77	AOMEIQI	A23SYJJ1P2ZKRL	B07MJ8XLDL
78	BelivLioner-US	A22U5QOPDP05QZ	B07M78ZKTV
79	Big Desert	A2CQ3M4XU1WT8J	B07PHSB3GR
80	Big Wing Style	A3SHZFKHJCMJCN	B07NJ5HPR1
81	CANIKLINE MALL	A1KZVKZAM21NJW	B07N14SH8G

Def. No.	Defendant/ Amazon Store Name	Amazon Seller ID	Amazon ASIN
82	Cherubino	A18702GB5KM2DM	B07MHDBTHV
83	Dewinshop 168	A1DWLG2LHSJB8R	B07J9Z3D47
84	Diligent bee	A3DD0YE17W1LA3	B07M5DJDJX
85	Family Boutique Geyatu	A1NKVNSFK7PZOB	B07Q4VDXCM
86	Hunt Sr. Products	A336QI6AJFJY9S	B07QMC1D5Z
87	Jinbs	A3AF2TVZ8S7JFF	B07R46WH79
88	MagicMB	A3MSEY0LQPYO9S	B07QWP185D
89	Messagee	A3QYXJXBIVQ4X2	B07QRZRRDK
90	niuworld	A3DOF2HOZYWW1W	B07QYGRRG2
91	OMYGO	A2D68UA6C7B4Z0	B07NWNK3F
92	our tomorrow	A2EKHUHZ25L3BC	B07MR29Z4L
93	PLUS MI LIFE	A25LSUD2OUVS3T	B07MBMCS6Z
94	Realler	ASL612W0VED	B07LD4JB58
95	sweetypplain	AHDQEKHLS948P	B07QK63NFZ
96	Tosui	A1214SCEMDA211	B07P2SM38H
97	Uniounp	A311V1LZBOFWRQ	B07P8Z6RG8
98	Waroom	A1SKB4Y8LK6O12	B07Q4P5NYG
99	Zeusbrand	A184W8ATXSM55W	B07QJSDLX5
100	lagita	A2MQTDAKKSEDXZ	B07JDY9843
101	Shuofeng	A252ISGGD173I1	B07P4Y14CR
102	UPBASICN	A2FZ54PRNJQVG	B07LG8N4SP

