

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ORRIN WOODWARD and
CHRIS BRADY,

Plaintiffs,

vs

Case No. 13-cv-11943
Honorable Gerald E. Rosen
Magistrate Mona Majzoub

EVGENIY CHETVERTAKOV, GLOBAL
GURUS, INC., and JOHN DOE.

Defendants.

**MOTION FOR SUBSTITUTED SERVICE AND
FOR LEAVE TO TAKE DISCOVERY THROUGH SERVICE OF SUBPOENA**

Plaintiffs Orrin Woodward and Chris Brady, through their undersigned attorneys, move pursuant to Fed. R. Civ. P. 4(f) and (h), for leave to serve Defendants Evgeniy Chetvertakov and Global Gurus, Inc. using the email address listed in Chetvertakov's domain registration information for the Global Gurus Leadership Gurus website and via a "message" to the Global Gurus Facebook page. Chetvertakov and Global Gurus operate a "Leadership Gurus" website, which displays false and defamatory statements about Plaintiffs Orrin Woodward and Chris Brady.

An extensive private investigation has determined that the address given by Chetvertakov upon registration of the Leadership Gurus website is not (and apparently has never been) occupied by Chetvertakov, who has identified himself as a citizen of the United Kingdom. The address listed on the Leadership Gurus website, which is registered to Chetvertakov, and the Global Gurus' Facebook page is completely fictitious and does not exist. Without proper addresses, service in accordance with the *Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents* is not required and is not possible. Serving Chetvertakov and Leadership Gurus through the email address listed on the website registration form and via

Facebook is not prohibited by international agreement and is reasonably calculated to give them notice of this action.

Woodward and Brady also seek leave, pursuant to Fed. R. Civ. P. 16 and 26, to take discovery by subpoena upon the Leadership Gurus website hosts, AN Hosting and its affiliated entities, Hosting Services, Inc. and UK2 Group (“AN Hosting/Hosting Services, Inc./UK2 Group”) and the domain name registrar, NameSilo, LLC, to obtain personal contact and address information for Chetvertakov and Global Gurus and to determine the identity of the John Doe defendant.

This motion is based upon the facts and law recited in the attached Memorandum of Law in Support of Motion for Substituted Service and For Leave to Take Discovery Through Issuance of Subpoena, which is incorporated herein by reference. Because defendants cannot be located, concurrence cannot be sought. For these reasons, Woodward and Brady respectfully request that they be permitted: (1) to serve Chetvertakov and Global Gurus by email and Facebook; and (2) to take discovery in advance of the Rule 16 conference through the service of subpoenas upon AN Hosting/Hosting Services, Inc./UK2 Group and NameSilo, LLC.

Respectfully submitted,

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**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUBSTITUTED SERVICE
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CONCISE STATEMENT OF ISSUES PRESENTED

1. Whether alternative service upon Defendants Evgeniy Chetvertakov and Global Gurus, Inc. should be allowed through the email address they have identified on the Global Gurus website registration information and through a message on the Global Gurus' Facebook page, when service in this manner is not prohibited by international agreement and is reasonably calculated to give Defendants notice of this proceeding?

2. Whether discovery should be permitted to allow Plaintiffs Orrin Woodward and Chris Brady to subpoena the Global Gurus website host and affiliated entities and domain name registrar to obtain accurate personal contact and address information for Chetvertakov and Global Gurus, and to determine the identity and address of the John Doe defendant?

CONCISE STATEMENT OF THE FACTS

A. The Parties

Defendant Evigeniy Chetvertakov is the registrant of an Internet domain known as Global Gurus. The registrant email for this domain is info@globalgurus.org and it is hosted by AN Hosting.¹ Chetvertakov listed his address as 121 Arundel Road, Birmingham, Great Britain, B14 5UE. As the domain registrant, it is believed that Chetvertakov operates a website known as Global Gurus Top 30 Leadership (“the Global Gurus Website”), which can be found at <http://leadershipgurus.net>. The Global Gurus Website lists an address at 35 Pendwyallt Road, Burnside DD8 5QN and a phone number of 077 1823 4020. The Global Gurus Website “privacy policy” also refers to an Internet address at www.globalgurus.org and its “terms of use” welcome users to the “Global gurus, Inc. web site.”

The info@globalgurus.org email address is valid and effective. Smtpdig, a troubleshooting tool designed to diagnose configuration and connection issues with email transfers, was used to determine the validity of the info@globalgurus.org address. The results show that it is a valid email address that accepts email messages. See Declaration of Joseph LaPalme (Exhibit A). Additionally, the Leadership Gurus Website contains a “Contact Us” page, which permits visitors to the site to direct messages to the site operator. Visitors are encouraged to use that same “Contact Us” page when responding to the Website’s invitation to become a Global Gurus judge or to submit “unique content” for publication. The Website also contains a link to the Global Gurus Facebook page at <https://www.facebook.com/GlobalGurus>, which was apparently initiated in January 2013 and continues to be active. The Facebook page lists the same Pendwayallt Road, Burnside address and telephone number listed on the Global Gurus Top 30 Leadership Gurus Website, and contains a link to the <http://globalgurus.org> website address.

¹ AN Hosting is an affiliate of Hosting Services, Inc. Hosting Services, Inc. is registered to do business in Utah as a for-profit corporation. AN Hosting and Hosting Services, Inc. are affiliated with UK2 Group, which also has an office in Utah.

The Facebook page also has a message feature that permits members of the public to send messages and attachments to Global Gurus via the Facebook page. See Screenshot of Facebook Page (Exhibit B). Global Gurus also has a link to Twitter.

The Global Gurus Website identifies and promotes the Top 30 Gurus in the leadership field, as well as in the areas of management, communication, sales, coaching, hospitality and brand. It claims to have “over 22,000 monthly visitors” to the Leadership Gurus site and “over 50,000 monthly visitors across all guru sites.” When persons navigate the Website, they are exposed to various advertisements which encourage them to purchase the products or services of advertisers. They are also exposed to various other promotions and enticements. Members of the public are encouraged to log-in to the Website to vote for Gurus’ candidates.²

Plaintiffs Orrin Woodward and Chris Brady are highly regarded in the fields of leadership, business and community-building as speakers, authors, mentors, coaches and motivational trainers both individually and as leaders of Signature Management Team, LLC (“TEAM”) and Living for Excellence, LLLP (“LIFE”). Their influence extends throughout Michigan and to every state in the United States.

Woodward’s and Brady’s success is built upon their reputation, character, intellect, leadership and achievement. Their book *Launching a Leadership Revolution* is a New York Times Business, Wall Street Journal, USA Today and Business Week best-seller. Together and individually, they have authored numerous other books on the subject of leadership, self-improvement, motivation, business development and related fields. Most recently, *Leadershift: A Call for Americans to Finally Stand Up and Lead*, which Woodward coauthored with Oliver

² Upon information and belief, Defendant John Doe is an individual associated with Chetvertakov, with Global Gurus, Inc., and/or with the Global Gurus Website. Chetvertakov and/or Global Gurus, Inc. may be the pseudonym and/or alter ego of John Doe and/or John Doe may be doing business as Chetvertakov and/or Global Gurus, Inc. John Doe’s actual name and address is unknown to Plaintiffs.

DeMille, reached number 12 on the New York Times best-seller list and number two on the Wall Street Journal best-seller list in just a week or so of *Leadershift*'s release.

B. The Claims

The Global Gurus Website states that candidates are identified by sending emails to 22,000 business people, consultants, academics and MBAs around the world and through public opinion polls. The criteria purportedly focuses on public opinion, originality of ideas, impact of original ideas, practicality of ideas, presentation style, number of publications and writings, and the "Guru factor." See <http://globalgurus.org/index.php> (Exhibit C). See also <http://leadershipgurus.net/leadershipgurus30.php>.

In 2010, Global Gurus identified Woodward and Brady as potential candidates for its Top 30 Global Gurus Leadership list. Woodward and Brady were elected to the Top 30 Global Gurus Leadership list in 2010 (Exhibit D), in 2011 (Exhibit E) and in 2012, and in fact were recently among the top 15 leaders on that list (Exhibit F). Global Gurus encourages persons elected to the Top 30 Global Gurus Leadership list to use the Top 30 designation as an endorsement on biographical, promotional and published materials, and to solicit votes from supporters.³

In or about January 2013, the Global Gurus Website abruptly removed Woodward and Brady from the Top 30 Global Gurus Leadership list and broadcast the following false and defamatory statement about them on the Global Gurus Website ("the Initial Statement"):

³ To drive traffic to the site for voting, Global Gurus sends emails to leadership candidates which state the following:

Dear Global Guru Candidates

We are finalizing the ranking for 2012. And your originality, works and impact have qualified you as one of the world's top 30 Leadership gurus. And as you know, 40% of the ranking is based on peer voting.

So, please get your fans to vote for you at: www.leadershipgurus.net. The final calculations will be completed by March 1st. We will inform you individually when we tabulate the results.

And, when we added an IP address checker to our system this year, two Guru candidates listed in the top 15, Orrin Woodward and Chris Brady, who have had substantial votes since 2010 were **disqualified** and removed from the list because more than 98% of their votes came from only three IP addresses, meaning that only three people voted for them over and over again. This accounted for almost 2000 of their votes.

Subsequently, a modified version of the Statement (“Modified Statement”) appeared on the Global Gurus Website, and continues on the site as follows:

And, when we added an IP address checker to our system this year, two Guru candidates listed in the top 15, Orrin Woodward and Chris Brady, who have had substantial votes since 2010, were **disqualified** and removed from the list because during the months of August to October more than 98% of their votes came for [sic] only three IP addresses, meaning that only three people voted for them over and over again. Each had more than 900 votes from these IPs during the specified time.

But 2013 is a new year, with great promise for those Global Gurus who would make our work and world a better place with works that propel our leadership to greater heights.

<http://leadershipgurus.net/leadershipgurus30.php> (Exhibit G). The Initial Statement and the Modified Statement are sometimes collectively referred to as “Statements.”

The Modified Statement remains in plain view of what the Global Gurus Website alleges to be its over 22,000 monthly visitors to the Leadership site and over 50,000 monthly visitors across all Gurus sites. The Statements were picked up from the Global Gurus Website and re-broadcast on other Internet websites as well, including an anonymous blogger who has linked to the Global Gurus Website and/or to a snapshot of the Statements on the Global Gurus Website, and who has made such further untrue and injurious statements as the following, among others:

Clearly, the people responsible for the Leadership Gurus site learned that they’ve been hoodwinked by Orrin Woodward, Chris Brady, and their followers. Good for them!

See e.g., <http://amthrax.wordpress.com/2013/01/09/paging-orrin-woodward-iab-shut-down-by-the-ftc-and-leadership-guru-status-revoked/>. One or more persons have also sent Facebook messages to the effect that they had “just read that Orrin and Chris were deleted from the Leadership Guru site for fraudulently voting themselves on...”

The Statements wrongfully and maliciously impute dishonest, fraudulent, and improper behavior to Woodward and Brady with respect to the votes they received for election to the Top 30 Gurus Leadership list, and imply that Woodward and Brady achieved their places on the Top 30 Global Gurus Leadership list dishonestly, through fraudulent and improper behavior. The Statements are false, defamatory, and highly injurious to their reputation and business interests, and Defendants are not privileged to make the Statements.

C. Demand, Complaint, and Verification of Addresses

Through a letter to Chetvertakov dated January 23, 2013 (Exhibit H), Woodward and Brady demanded an immediate retraction and removal of the Statements in writing but the Statements have not been retracted or removed. Woodward and Brady also requested proof regarding the allegations made in the Statements but no proof has been provided. Chetvertakov did not respond at all to the January 23, 2013 letter, which Federal Express purports to have delivered to “T. Thomas” at a “reception desk” at 121 Arundel Road, Birmingham, Great Britain, B14 5UE, the address Chetvertakov gave when registering for the domain.

On May 1, 2013, Woodward and Brady commenced this action for defamation and injunctive relief.⁴ In order to expeditiously serve process upon Defendants in the United Kingdom through the *Hague Convention on the Service Abroad of Judicial and Extrajudicial*

4 The request for relief asks this Court to do the following:

a. Grant preliminary and permanent injunctive relief requiring Defendants Evgeniy Chetvertakov, Global Gurus, Inc. and John Doe to expressly retract and remove the Statements from the Global Gurus Website and enjoining them and all persons and entities who act in concert with them from making such Statements or similar Statements;

b. Directing Defendants Evgeniy Chetvertakov, Global Gurus, Inc. and John Doe to arrange for and direct the removal and retraction of the Statements and any other postings, text, language, comments or descriptions which refer to the Statements from any other Internet website, social media site or domain at which they appear;

c. Grant preliminary and permanent injunctive relief requiring other website hosts, operators, entities and others who have published, summarized, or referenced the Statements (“Others”) to expressly retract and remove them, and enjoining the Others and all persons and entities who act in concert with them from making such Statements or similar Statements;

Documents, Woodward and Brady retained Page Corporate Investigations Ltd. in London (“Page”) to verify the Arundel Road address listed by Chetvertakov in conjunction with the domain registration of the Global Gurus site and the Pendwyallt Road address contained on the Global Gurus Website and on the Global Gurus Facebook page. As explained in the Declarations of Sharon Leahy-Clark (Exhibit I), Keith French (Exhibit J), and Gary Rippin (Exhibit K), neither address is valid.

Page conducted a search of various UK public record sources and found no mention of Chetvertakov and nothing to connect him to the Arundel Road address. The phone number listed by Chetvertakov was dialed but does not exist. See Leahy-Clark Declaration at ¶¶ 5-8. The Page investigator visited the Arundel Road site on Friday, May 17, 2013. Chetvertakov does not currently live at the address and has not been known to have ever lived there. After lying vacant for approximately 10 years, the Arundel Road property was purchased by Martin and Ann Ambler-Green in August 2012 and is currently occupied by Martin’s daughter. None of the neighbors had ever heard of Chetvertakov. See French Declaration at ¶¶ 3-4.

The Page agent also attempted to locate and visit the Pendwyallt address listed on the Leadership Gurus website and to dial the listed phone number. The phone number was non-existent and actual visits to the area, attempted on May 10 and May 13, revealed that no such address exists. The Page Group agent visited the area for the postal code listed on the Website for Burnside. The area encompassed by the postal code is located in the village of Kirriemuir, Scotland and includes a small industrial estate known as Muirhead Industrial Estate. There is no Burnside or Pendwyallt Road in that area. The source visited a Burnside Farm known locally as Burnside of Memus in another postal code, and Burnside of Dunshune, a tiny village with 20

d. Enter judgment against Defendants Evgeniy Chetvertakov, Global Gurus, Inc. and John Doe in favor of Orrin Woodward and Chris Brady with interest, costs and attorney fees as allowed by law; and

e. Grant such further and other relief as the Court deems proper.

residential properties. There was no Pendwyallt Road in either area. See Rippin Declaration at ¶s 4-8.

Plaintiffs requested that Federal Express investigate the purported delivery of the January 23, 2013 letter directed to Chetvertakov to a purported T. Thomas at the Arundel Road address. Plaintiffs were advised that the Federal Express courier had no memory regarding the circumstances of delivery. See June 6, 2013 letter from Federal Express (Exhibit L). Plaintiffs have now exhausted all avenues of service by traditional means because an actual physical address cannot be found.

ARGUMENT

I. Given the Fictitious Addresses and Phone Numbers Defendants Have Listed on the Domain Registration Form, Leadership Gurus Website, and Global Gurus Facebook Page, And the Inability to Obtain A Valid Physical Address for Defendants, Substituted Service By Email and Facebook Should Be Allowed.

In this age of electronic communications, courts have not hesitated to permit alternate forms of Internet-based service when a plaintiff cannot serve by traditional means. In this case, Plaintiffs have done everything possible to attempt service upon Defendants by traditional means but have been stymied in their efforts to locate a valid physical address. Private investigators retained by Plaintiffs have thoroughly researched the addresses listed on the domain registration form, Leadership Gurus Website and Facebook page and determined that neither is valid. Listed phone numbers are not working numbers. An extensive investigation of records in the UK, such as Companies House (government registry of UK companies), Land Registry, Bankruptcy and County Court Judgment Register, electoral roll, litigation records, media, and various Internet searches reveal nothing about Chetvertakov or Global Gurus. To properly effectuate service in a timely manner, Woodward and Brady now seek leave of this Court to serve by alternative means, as allowed in Fed. R. Civ. P. 4(f)(3), and to simultaneously direct pre-discovery conference subpoenas to the Global Gurus web-hosting and domain registration entities to obtain identifying and contact information for Chetvertakov, Global Gurus and the John Doe Defendant.

A. Personal Service Through the Hague Is Not Possible.

Typically, service of process upon a foreign citizen whose country of origin is a signatory to the *Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* (the “Hague Convention”) must be accomplished – if possible – by the means of service authorized therein. However, Article I of the Hague Convention exempts from its provisions service upon persons whose address is not known.

Article I states:

The present Convention shall apply in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad.

This Convention shall not apply where the address of the person to be served with the document is not known.

Hague Convention, Art. 1 (emphasis added). In *Thomas v. PNS Stores, Inc.*, the United States District Court for the District of Arizona authorized service by email where it appeared that this Article 1 exception applied. No. 12-00276-PHX-DKD, 2013 U.S. Dist. LEXIS 49656 (D. Ariz., April 5, 2013). The Court explained:

Plaintiffs’ application includes the affidavit of the owner of the process serving company Plaintiffs retained which includes the attestation that the address furnished by the Chinese Central Authority for the Chinese Defendant does not match the physical address the process server has identified as being the business location of this Defendant. Thus it appears that the exception to the Hague Convention set forth in Article 1 may apply ... In such circumstances a court may authorize alternative service pursuant to Rule 4(f)(2)-(3) of the Federal Rules of Civil Procedure. *Rio Properties, Inc. v. Rio International Interlink*, 284 F.3d 1007 (9th Cir. 2002); *Chanel, Inc. v. Song Xu*, 2010 U.S. Dist. LEXIS 6734, 2010 WL 396357 (W.D. Tenn. 2010). Plaintiffs’ request also comports with due process because the Plaintiffs’ submission includes evidence that the Chinese Defendant conducts business via the internet and that this entity has responded to Plaintiffs’ email inquiries.

Id. at *1-2. See also, *BP Prods, N. Am. Inc. v. Dagra*, 236 F.R.D. 270, 271 (E.D.Va. 2006) (“[T]he Hague Convention does not apply in cases where the address of the foreign party to be served is unknown”); *Popular Enters., LLC v. Webcom Media Group, Inc.*, 225 F.R.D. 560, 561

(E.D. Tenn. 2004) (“Since defendant’s address is not known, the Hague convention does not apply”).

Even if the *Hague Convention* were to apply, personal service cannot be accomplished if the address of the person to be served is unknown. Under the *Hague*, each signatory is to designate a Central Authority to receive requests for service. *Hague Convention*, Art. 2. The Central Authority shall then either serve the document itself or arrange to have it served by an appropriate agency using “a method prescribed by its internal law for the service of documents in domestic actions upon persons who are within its territory,” or using “a particular method requested by the applicant, unless such a method is incompatible with the law of the State addressed.” *Hague Convention*, Art. 5. Further,

Provided the State of destination does not object, the present Convention shall not interfere with –

- a) the freedom to send judicial documents, by postal channels, directly to persons abroad,
- b) the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination,
- c) the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination.

Hague Convention, Art. 10. Similarly, if the internal law of a signatory “permits methods of transmission, other than those provided for in the preceding Articles, of documents coming from abroad, for service within its territory, the present Convention shall not affect such provisions.”

Hague Convention, Art. 19.

If service through the *Hague* would be futile, it needn’t be attempted. See *Teichmann, Inc. v. Caspian Flat Glass OJSC*, No. 13-cv-458, 2013 U.S. Dist. LEXIS 54299 at *3 (W.D. Pa., Apr. 16, 2013) (“Because it would be futile, Plaintiff need not first attempt service through the Hague Service Convention”). Here, because a valid address for Chetvertakov and Leadership

Gurus cannot be obtained, service through the Central Authority is not possible. An alternative form of service should be allowed. See *Teichmann, supra*, 2013 U.S. Dist. LEXIS 54299 at *1-2 (under Rule 4(f)(3), “a Court may direct service on an individual in a foreign country by any ‘means not prohibited by international agreement’”). The *Hague Convention* does not affirmatively prohibit service by email. *Chanel, Inc. v. Song Xu*, No. 09-cv-02610-cgc, 2010 U.S. Dist. LEXIS 6734 at *9, n. 3 (W.D. Tenn. Jan. 27, 2010) .

B. Email Delivery to the Address Listed With the Domain Registration Information Is a Permissible Method of Service.

Delivery by email is a permissible form of alternate service and is facially permitted by Fed. R. Civ. P. 4(f)(3). See *Popular Enters., supra*, at 562 (“Rule 4(f)(3) clearly authorizes the court to direct service upon defendant by email. 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.”).⁵ In *McCluskey v. Belford High Sch.*, No. 09-14345, 2010 U.S. Dist. LEXIS 62608 (E.D. Mich., June 24, 2010), Judge Zatkoff permitted service by email where plaintiffs were unable to serve defendants personally or by registered mail. Defendants were alleged to have operated a sophisticated internet “ripoff scheme” involving ostensibly legitimate high school diplomas available through various websites. Defendants listed addresses in Texas and California, but neither location had a physical office or agent to accept service, and plaintiffs suspected that the individual defendants’ names were fictitious. An email tracking service determined that emails sent to the address were received. The Court held that service by email was “reasonably calculated to give defendants actual notice of the proceedings and an opportunity to be heard”. *Id.* at *10.

⁵ Service of process upon a foreign business entity is governed by Fed. R. Civ. P. 4(h)(2), which permits service in the manner prescribed by Fed. R. Civ. P. (4)(f) for individuals. As a result, the same analysis of permissible service upon Chetvertakov applies to service upon Leadership Gurus.

Similarly in *Elcometer, Inc. v. TQC-USA, Inc.*, No. 12-cv-14628, 2013 U.S. Dist. LEXIS 19874 (E.D. Mich. Feb. 14, 2013), Judge Drain permitted service upon an individual and business entity in Panama conducting their business on the Internet and through email. Emails to that address had not been returned undeliverable and a response to prior email correspondence had been received. *Id.* at *6-7. Similarly, allowing email service in *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1014 (9th Cir. 2002), the Court explained that email service comports with due process if it provides 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.” *Id.* at 1017 (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 94 L.Ed. 865 (1950)).

Numerous courts have authorized service by email where physical addresses could not be determined and/or false addresses had been given. *Chanel, Inc. v. Song Xu*, No. 09-cv-02610-cgc, 2010 U.S. Dist. LEXIS 6734 (W.D. Tenn. Jan. 27, 2010), is directly on point to the efforts Woodward and Brady have made to locate and serve defendants in the instant case. The defendants in *Chanel* were alleged to have sold, via their Internet business, products bearing exact copies of Chanel’s registered trademarks. Subsequent to filing suit, plaintiffs launched an investigation of their domain names, physical addresses, email addresses and other identifying information. WHOIS records identified the ostensible physical and email addresses associated with the website domain names and plaintiffs retained a private investigator to verify the accuracy of the information obtained. The investigator determined that none of the physical contact addresses were valid. Further, searches of public databases and directories in China failed to yield valid phone numbers or addresses for the defendants. However, pretextual emails sent to the addresses listed for the domain names were not returned as “undeliverable” and a return receipt established the date and time each email was received. Chanel therefore moved for leave to serve the defendants by email pursuant to Rule 4(f)(3). The Court first considered

whether it was necessary for plaintiffs to attempt service through the Hague Convention and concluded to the contrary. The Court explained:

Chanel has attempted to verify the addresses provided by Defendants on their websites and determined that each is fraudulent. Because the addresses of Defendants are not known, the Hague Service Convention does not apply to the present suit.

Id. at *8-9. The Court then determined that service by email “not only meets constitutional standards, but also is the method of service most likely to reach Defendants.” *Id.* at *10.

In *Rio Properties*, the Ninth Circuit permitted email service upon foreign defendants who were unreachable by other means and had no known physical address. The Court explained:

Although communication via email and over the Internet is comparatively new, such communication has been zealously embraced within the business community. RII particularly has embraced the modern e-business model and has profited immensely from it. In fact, RII structured its business such that it could be contacted *only* via its email address. RII listed no easily discoverable street address in the United States or in Costa Rica. Rather, on its website and print media, RII designated its email address as its preferred contact information.

Id. at 1017-1018.

Facebook, Inc. v. Banana Ads, LLC, No. 11-cv-03619 YGR, 2012 U.S. Dist. LEXIS 42160 (N.D. Cal. Mar. 27, 2012), is to the same effect. With respect to the actual notice requirement, the Court explained:

[T]he Foreign Defendants are involved in commercial internet activities. They registered internet domain names, which Facebook alleges the Defendants have used for commercial purposes... Second, the Foreign Defendants rely on electronic communications to operate their businesses and Facebook has valid email addresses for each of the Defendants. Finally, Facebook has demonstrated that it has made attempts to serve the Defendants at physical addresses that proved unsuitable for service. Based on the foregoing, service by email appears to be not only reasonably calculated to provide actual notice to the Foreign Defendants but the method most likely to apprise the Foreign Defendants of the action.

Id. at *5-6. The Court also found that email service was not prohibited by international agreement. The Foreign Defendants registered domain names to physical addresses in Anguilla and various other territories and countries, none of which prohibited service by email. As to

Anguilla, the Court expressly stated that Anguilla is “an overseas territory of the United Kingdom, which is a signatory to the Hague Service Convention” and the *Hague* does not expressly prohibit email service. *Id.* at *7, n. 4. *See also, JBR, Inc. v. Café Don Paco, Inc.*, No. 12-cv-02377 NC, 2013 U.S. Dist. LEXIS 65089 at *13-14 (N.D. Cal., May 6, 2013), explaining that “[c]ourts in the Northern District have authorized service via email when a defendant’s physical address is not an effective means of service, but when the plaintiff has a valid email address for defendant.”

Email service was deemed proper in *Bank Julius Baer & Co. Ltd v. Wikileaks*, No. 08-cv-00824 JSW, 2008 U.S. Dist. LEXIS 14758, *2 (N.D. Cal. Feb. 13, 2008), because plaintiffs could not locate valid physical addresses for defendants and defendants refused to accept service through purported agents. Plaintiffs demonstrated that “there are email accounts listed for defendants, which would serve the purposes of ensuring the defendants receive adequate notice of this action and an opportunity to be heard.” *Id.* at *5. *Williams-Sonoma Inc. v. Friendfinder, Inc.*, No. 06-cv-06572 JSW, 2007 U.S. Dist. LEXIS 31299, *1-2 (N.D. Cal. Apr. 17, 2007), is to the same effect. In *Williams-Sonoma*, physical addresses for foreign defendants could not be ascertained, but email communications had been effective. In allowing email service in *Teichmann*, the Court noted that the parties had communicated by email and that defendant proffered “an email address as a part of its contact information.” *Teichmann*, 2013 U.S. Dist. LEXIS 54299 at *5. *See also, Gaffigan v. Does 1-10*, 689 F. Supp.2d 1332, 1342 (S.D. Fla. 2009) (finding that plaintiff provided sufficient notice to defendants through emails that did not bounce back); *Thomas v. PNS Stores, Inc.*, 2013 U.S. Dist. LEXIS 49656 (D. Ariz. April 5, 2013) (permitting email service on a Chinese defendant that conducted business via the Internet and responded to plaintiff’s email inquiries).

Service via Facebook in conjunction with email service was deemed proper in *FTC v. PCCARE247 Inc.*, No. 12 Civ. 7189 (PAE), 2013 U.S. Dist. LEXIS 31969 (S.D.N.Y. Mar. 7,

2013). In *PCCARE247*, the Court allowed service by Facebook to “backstop the service upon each defendant at his, or its, known email address,” stating:

[H]istory teaches that, as technology advances and modes of communication progress, courts must be open to considering requests to authorize service via technological means of then-recent vintage, rather than dismissing them out of hand as novel.

Id. at *16-17.

Email and/or Facebook service upon Chetvertakov and Leadership Gurus should likewise be allowed in the present case. As the declarations of Leahy-Clark, Rippin and French demonstrate, the Arundel Road address Chetvertakov listed on the Leadership Gurus domain registration website is completely fictitious. There is no indication that Chetvertakov has ever been associated with that property, which had been vacant for the 10 or so years preceding its recent purchase by Martin and Ann Ambler-Green. The telephone number and 35 Pendwayallt Road, Burnside address listed on the Leadership Gurus’ website are also fictitious. No such address exists and the phone number is not a working number.

Chetvertakov provided an email address at info@globalgurus.org when he registered the Internet domain name for the Leadership Gurus Website. That email address is valid and effective. SntpDiag, a troubleshooting tool designed to diagnose configuration and connection issues, was used to determine if the info@globalgurus.org address was valid. The results show that it is a valid email address that accepts email messages. See Declaration of Joseph LaPalme (Exhibit A). Additionally, Chetvertakov and Leadership Gurus encourages communications by email and purportedly send thousands of emails designed to identify prospective candidates. The Leadership Gurus Website contains a “Contact Us” page, which permits visitors to the site to direct messages to the site operator. Visitors are encouraged to use that same “Contact Us” page when responding to the Website’s invitation to become a Global Gurus judge or to submit “unique content” for publication.

The Website also contains a link to the Global Gurus Facebook page at <https://www.facebook.com/GlobalGurus>, which was apparently initiated in January 2013 and continues to be very active. The Facebook page lists the same fictitious Pendwayallt Road, Burnside address and telephone number, and contains a link to the <http://globalgurus.org> website address. It contains a feature which allows visitors to send a message to Global Gurus with attachments. See Facebook Screenshot (Exhibit B).

Given the Internet and email based nature of Global Gurus' business activities, service by email and Facebook are reasonably calculated to give Chetvertakov and Global Gurus notice of the pending action and an opportunity to defend. Service in the traditional sense is impossible. Email and Facebook service is a reasonable and appropriate alternative.

II. Good Cause Exists to Conduct Pre-Rule 26(f) Conference Discovery to Learn the True Identity and Whereabouts of Chetvertakov, Leadership Gurus and John Doe.

Discovery in advance of a Rule 26(f) discovery conference is warranted if it will allow a plaintiff to determine the identity and address of the defendant. In *McCluskey, supra*, the defendants operated websites through which ostensibly legitimate high school diplomas could be obtained. Despite diligent efforts certain of the defendants could not be identified, located or served. Plaintiffs sought to serve subpoenas upon the internet domain name registration entities, service providers and web-hosting companies to obtain the defendants' identities and contact information. Finding good cause for pre-conference discovery, Judge Zatkoff allowed discovery for the limited purpose of discovering information needed to serve the individual defendants. 2010 U.S. Dist. LEXIS 62608 at *5-7. Quoting *UMG Recordings, Inc. v. Doe*, No. C-08-03999 RMW, 2008 U.S. Dist. LEXIS 79700 (N.D. Cal. Sept. 4, 2008), the Court explained:

Obviously, a plaintiff cannot have a discovery planning conference with an anonymous defendant. It follows that the discovery the [plaintiffs] are entitled to conduct to identify the defendant must take place before the discovery planning conference because such information will permit the [plaintiffs] to identify John Doe and serve the defendant ...

Id. at *6. See also, *Best Western Int'l v. Doe*, No. CV-06-1537-PHX-DGC, 2006 U.S. Dist. LEXIS 56014 (D. Ariz. July 25, 2006) (finding good cause for discovery in advance of the Rule 26(f) conference because plaintiff established by affidavit that it was unable to identify the John Doe defendant by means other than a subpoena); *Malibu Media, LLC v. Doe*, No. 12-CV-616, 2012 U.S. Dist. LEXIS 187559 (W.D. Mich. Aug. 13, 2012) (allowing issuance of a subpoena where “[t]he information that is the subject of Plaintiff’s subpoena is limited to the contact information of the individual or entity associated with each IP address identified in the Complaint, and there is no practicable means to obtain this information other than through the subpoena Plaintiff requests”); *Patrick Collins, Inc. v. Doe*, No. 12-cv-1259-JAM-EFB, 2012 U.S. Dist. LEXIS 96350 (E.D. Cal. July 11, 2012) (explaining that “[g]ood cause for expedited discovery is frequently found in cases involving claims of infringement and unfair competition or in cases where the plaintiff seeks a preliminary injunction”, citing *Semitoool, Inc. v. Tokyo Elec. Am., Inc.*, 208 F.R.D. 273, 276 (N.D. Cal. 2002) and *Pod-Ners, LLC v. N. Feed & Bean of Lucerne Ltd. Liab. Co.*, 204 F.R.D. 675, 676 (D. Colo. 2002)). In *Semitoool*, the Court explained, that good cause may be found “where the need for expedited discovery, in consideration of the administration of justice, outweighs the prejudice to the responding party.” 208 F.R.D. at 276. The court must make this evaluation in light of “the entirety of the record to date . . . and the reasonableness of the request in light of all the surrounding circumstances.” *Id.* at 275. See also, *Am. Legalnet, Inc. v. Davis*, 673 F. Supp.2d 1063, 1067 (C.D. Cal. 2009) (reciting the good cause standard expressed above).

Good cause exists to serve a pre-conference discovery subpoena upon the Global Gurus Website host, AN Hosting/Hosting Services, Inc./UK2 Group, which are located in Providence, Utah, and the domain name registrar, NameSilo, LLC in Arizona. The information to be subpoenaed will allow Plaintiffs to properly identify Defendants and to obtain accurate contact information. Defendants will not be prejudiced. Indeed, it is their conduct that has rendered the

subpoena necessary. Chetvertakov and Global Gurus have broadcast (and continue to broadcast) fictitious addresses and phone numbers on the Leadership Gurus' Website and Facebook page. The well-respected private investigative firm retained by Woodward and Brady has conducted an extensive search and has been unable to ascertain the whereabouts of these Defendants. At this point, Woodward and Brady cannot say whether Chetvertakov is itself a fictitious name and whether the real website operator is "John Doe." In the meantime, the defamatory and highly damaging statements Defendants have posted about Woodward and Brady remain on the Global Gurus Website. Injunctive relief cannot be obtained in this action until Defendants are identified and served.

If discovery is permitted, Woodward and Brady will issue a subpoena in a form similar to those attached as Exhibit M through the United States District Court in Salt Lake City, Utah for the web hosting entities, AN Hosting and its affiliated companies, and the District Court in Arizona for NameSilo, LLC. These entities should have information that will enable Plaintiffs to identify and locate the operator of the Global Gurus, Inc. websites, Chetvertakov and "John Doe". AN Hosting's Terms of Service, to which website operators agree, acknowledge that AN Hosting may be required to disclose personal information "as required by law, such as to comply with a subpoena, or similar legal process" or when necessary to protect "the safety of others" or to "investigate fraud." See AN Hosting's Terms of Service (Exhibit N). Similarly, Section 4(c) (vi)(b) of NameSilo.com's General Terms and Conditions states:

We reserve the right in our sole judgment to suspend, terminate and/or disclose your personal information in the event that any of the following occur:

(b) If necessary to comply with applicable laws, subpoenas, court orders . . .

(Exhibit O).

For these reasons, it is respectfully requested that this Court (1) allow service upon Defendants by email to info@globalgurus.org and by message to the Global Gurus Facebook page, and (2) allow Woodward and Brady to direct subpoenas to AN Hosting/Hosting Services,

Inc./UK2 Group and NameSilo, LLC to obtain identifying and contact information for Chetvertakoy, Global Gurus, Inc. and the John Doe Defendant.

Respectfully submitted,

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