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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

MARY MARGARET (PEGGY) HUNT, in
her capacity as court-appointed receiver for
Traffic Monsoon, LLC, and Charles D.
Scoville,

Plaintiff,

vs.

IMTIAZ ASLAM, PIOTR CHAJKOWSKI,
VINCENT BOUTIN, MAURIZIO LONGO,
ERNEST GANZ, DAVID BARKER,
MOHAMMED YASIN, ADIL KHAN,
JAVEDIQBAL NAEEM, LIMITED BY
INVITATION, and SHARON JAMES,

Defendants.

**MOTION TO SERVE DEFENDANT
IMTIAZ ASLAM BY ALTERNATIVE
SERVICE OF PROCESS**

2:19-cv-00275-JNP-CMR

The Honorable Jill N. Parrish

Plaintiff Peggy Hunt, solely in her capacity as Court-appointed Receiver (the “Receiver”) for Traffic Monsoon, LLC (“Traffic Monsoon”), and all assets of Charles D. Scoville (“Scoville”) obtained directly or indirectly from Traffic Monsoon in the case styled as *Securities and Exchange Commission v. Traffic Monsoon, LLC, et al.*, Case No. 2:16-cv-00832-JNP (D. Utah) (Parrish, J.) (the “SEC Case”), by and through counsel, respectfully submits this motion

requesting an order from this Court permitting alternative service by mail, email, and WhatsApp on Defendant Imtiaz Aslam (“Aslam”) in the above-captioned case, pursuant to Federal Rule of Civil Procedure 4(f)(3). A proposed order is attached hereto as **Exhibit A**.

BACKGROUND AND RELIEF REQUESTED

The Receiver brought this action to recover funds Traffic Monsoon fraudulently transferred to the above-named defendants prior to her appointment, including Aslam, who is believed to have profited by over \$5 million from his involvement in Traffic Monsoon. The Receiver has diligently attempted to personally serve the Summons and Complaint in this case on Aslam, but he has been elusive, and service has not been possible. It is believed Aslam currently resides in a jurisdiction that is not part of the Hauge Convention on the Service Abroad of Judicial and Extrajudicial Documents. The Receiver thus requires authority to serve Aslam by alternative service under Federal Rule of Civil Procedure 4(f)(3) by sending Aslam a copy of the Summons and Complaint at all physical addresses, email accounts, and WhatsApp accounts that the Receiver has identified as being associated with Aslam.

FACTS

1. In 2019, the Receiver had reason to believe from numerous third-party sources, including a professional asset report obtained by the Receiver, that Aslam was living in Manchester, England. Initial attempts to personally serve Aslam with the Summons and Complaint, however, were not successful. It was believed that Aslam was evading service.

2. Because of the pandemic it became difficult to obtain ongoing information from government agencies or to conduct surveillance on Aslam in early to mid-2020.

3. In or about early Summer 2020, the Receiver through her counsel engaged a more specialized investigative firm to assess the location of Aslam for the purpose of serving him with

the Summons and Complaint and the firm informed her that at least through late October 2020, Aslam had numerous points of presence in Manchester. Although it was strongly believed that Aslam was located Manchester, service could not be effectuated.

4. In October 2021 it was reported that Aslam had been located in the Middle East, and in January 2022, the Receiver was informed that Aslam was living in Dubai, United Arab Emirates.

5. Despite her ongoing efforts, to date, the Receiver has been unable to serve Aslam with the Complaint and Summons.

6. Through her investigation, the Receiver has obtained numerous potential physical addresses, email accounts, and at least one WhatsApp address for Aslam.

APPLICABLE LAW

Federal Rule of Civil Procedure 4(f) governs service of an individual in a foreign country. If there is not an internationally agreed means of service, such the Hague Convention on the Service Abroad of Judicial and Extrajudicial Service, a person in a foreign country may be served under either Rule 4(f)(2) or 4(f)(3). Subsection (f)(2) provides for a means of service that is reasonably calculated to give notice as provided for therein, including through letters rogatory or the foreign country's law. Subsection (f)(3) states that individuals in foreign countries may be served "by other means not prohibited by international agreement, as the court orders." Fed. R. Civ. P. 4(f)(3).

The United Arab Emirates is "not a party to the Hague Service Convention or any other treaty related to service of process." *Color Switch LLC v. Fortafy Games DMCC*, 2018 WL 2298401, at *3 (Ed. Cal. May 21, 2018). Because there are no internationally agreed means of service in the present case, service of process may either be effectuated by Rule 4(f)(2) or

4(f)(3). *See* Fed. R. Civ. P. 4(f). Because service in the United Arab Emirates is not available or not easily effectuated under the provisions of Rule 4(f)(2), the Receiver makes this Motion under Rule 4(f)(3). The Ninth Circuit has clarified:

As obvious from its plain language, service under rule 4(f)(3) must be (1) directed by the court; and (2) not prohibited by international agreement. No other limitations are evidence from the text. In fact, as long as court-directed and not prohibited by an international agreement, service of process ordered under Rule 4(f)(3) may be accomplished in contravention of the laws of the foreign country.

Rio Props., Inc. v. Rio Internat'l Interlink, 284 F.3d 1007, 1015 (9th Cir. 2002).

Using the standard in subsection (f)(3) instead of those in subsection (f)(2) is permissible as “[b]y all indications, court-directed service under Rule 4(f)(3) is as favored as service available under Rule 4(f)(1) or Rule 4(f)(2).” *Rio Props.*, 284 F.3d at 1015). Indeed, “Rule 4(f)(3) is not subsumed within or in any way dominated by Rule 4(f)’s other subsections; it stands independently, on equal footing.” *Id.* And, this Court has held that Rule 4(f) does “not create a hierarchy of preferred methods of service of process.” *Neck Hammock, Inc. v. Danezen.com*, 2020 WL 6364598, at *3 (D. Utah Oct. 29, 2020) (Kimball, J.). Thus, “service of process under Rule 4(f)(3) is neither a ‘last resort’ nor ‘extraordinary relief’”; “[i]t is merely one means among several which enables service of process on an international defendant[,]” *Rio Props.*, 284 F.3d at 1015, and “[e]xhaustion of the other provisions of Rule 4(f) is not required before a plaintiff seeks court-ordered service.” *U.S. v. Besneli*, 2015 WL 4755533, at *1 (S.D.N.Y. Aug. 12, 2015).

In addition, “[e]ven if facially permitted by Rule 4(f)(3)”, the proposed means of service “must also comport with constitutional notions of due process”, *Rio Props.*, 284 F.3d at 1016, which require “notice reasonably calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.”

Luessenhop v. Clinton County, N.Y., 466 F.3d 259, 269 (2d Cir. 2006) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950)).

“The decision of whether to order service of process under Rule 4(f)(3) is committed to the sound discretion of the district court.” *Stream SICAV v. Wang*, 989 F. Supp. 2d 264, 278 (S.D.N.Y. 2013) (collecting cases). Some courts, in exercising discretion under Rule 4(f)(3), “may require the plaintiffs to show that they have reasonably attempted to effectuate service on defendant and that the circumstances are such that the district court’s intervention is necessary to obviate the need to undertake methods of service that are unduly burdensome or that are untried but likely to be futile.” *FMAC Loan Receivables v. Dagra*, 228 F.R.D. 531, 534 (E.D. Va. 2005).

ARGUMENT

Under the above standards, alternative service on Aslam under Rule 4(f)(3) through all physical addresses, emails and WhatsApp accounts identified as being associated with Aslam is appropriate. First, the proposed means of service on Aslam are not prohibited by any international agreement or law. Second, the proposed means of service comport with constitutional notions of due process. Finally, as set forth above, the Receiver has diligently attempted to serve Aslam but has not been able to do so—a factor that several courts have weighed in favor of permitting alternative service under Rule 4(f)(3).

I. The Proposed Means of Alternative Service on Aslam are not Prohibited by any International Agreement or Law.

Rule 4(f)(3) expressly grants courts the authority to order service by *any* means that are “not prohibited by international agreement.” Fed. R. Civ. P. 4(f)(3). Because there are no agreements between the United States and the United Arab Emirates that speak to service of process, (*see, e.g., Color Switch LLC* 2018 WL 2298401, at *3), it follows that there are also no prohibitions on providing service of process via mail or email. Further, no international law

prohibits the Receiver from effectuating service of process via mail, email, or WhatsApp. *See, e.g., Williams v. Doe*, 2021 WL 4975742, at *2 (W.D. Mo. Oct. 26, 2021) (“[e]lectronic service of process by e-mail and/or Whatsapp does not appear to be prohibited by international agreement”); *Montana Trucks, LLC v. UD Trucks North America, Inc.*, 2013 WL 3928634, at *3 (D. Mont. July 29, 2013) (“Service by mail is consistent with international law”). Accordingly, the Court should find that the proposed means of alternative service are appropriate under Rule 4(f)(3) in this case.

II. The Proposed Means of Alternative Service Comport with Constitutional Notions of Due Process.

The Supreme Court has repeatedly held that service by registered mail satisfies the requirements of due process. *See, e.g., Dusenbery v. United States*, 534 U.S. 161, 169–70 (2002); *Tulsa Prof'l Collection Servs., Inc. v. Pope*, 485 U.S. 478, 490 (1988); *Hess v. Pawloski*, 274 U.S. 352, 355–57 (1927). Further, this Court, as well as numerous others, have found that service by email comports with due process. *See, e.g., DP Creations, LLC v. Reborn Baby Mart*, 2:21-cv-00574-JNP, at *15 (D. Utah Nov. 22, 2021) (Parrish, J.); *Blackbird Capital LLC v. Worth Group Capital, LLC*, 2022 WL 464234 (D. Utah Feb. 5, 2022) (Oberg, J.); *Ferrarese v. Shaw*, 164 F.Supp.3d 361, 367 (E.D.N.Y. 2016) (“Service by email alone comports with due process where a plaintiff demonstrates that the email is likely to reach the defendant”); *F.T.C. v. Pecon Software Ltd.*, 2013 WL 4016272, at *5 (S.D.N.Y. Aug. 7, 2013) (citing *Gurung v. Malhotra*, 279 F.R.D. 215, 220 (S.D.N.Y. Nov. 22, 2011)); *see also Rio Props.*, 284 F.3d at 1016–19. Similarly, various courts have permitted service of process via online messaging or text messaging, including service via WhatsApp. *See, e.g., Marvici v. Roche Facilities Maintenance LLC*, 2021 WL 5323748, at *3–5 (S.D.N.Y. Oct. 6, 2021); *Citizens Bank, N.A. v. Global, LLC*, 2020 WL 9600783, at *5–6 (E.D. Mich. June 9, 2020); *see also F.T.C. v. PCCare247 Inc.*,

2013 WL 841037, at *5 (S.D.N.Y. Mar. 7, 2013) (permitting service of process through electronic Facebook messages as a supplement to electronic service by email); *Williams*, 2021 WL 4975742, at *2.

In this case, the Receiver, through the specialized investigative firm she retained, has several potential physical addresses, email accounts, and at least one WhatsApp address for Aslam. Accordingly, alternative service via mail, email, and WhatsApp comport with constitutional notions of due process because all of these methods would adequately provide “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*, 70 S.Ct. at 657. Consistent with the caselaw cited above, this Court should find that service by mail, email, and WhatsApp would comport with constitutional notions of due process in this instance.

III. Plaintiff Has Diligently Attempted to Effectuate Service on the Defendant, and Circumstances Necessitate the Court’s Intervention.

As described above, the Receiver has made considerable effort to locate and serve Aslam. These efforts include retaining a specialized investigative firm, attempting to serve Aslam multiple times in England via personal service, and gathering potential physical addresses, email accounts, and social media accounts (including WhatsApp) that are connected to Aslam. Further, because Aslam has proven to be elusive, other methods of service available to the Receiver (mainly under Rule 4(f)(2)) would be unduly burdensome or likely to be futile. Thus, the Receiver believes that in this case, “the circumstances are such that the district court’s intervention is necessary to obviate the need to undertake methods of service” to obviate efforts to serve Aslam “that are unduly burdensome or ... but likely to be futile.” *FMAC Loan Receivables*, 228 F.R.D. at 534. Accordingly, this Court should find the Receiver’s prior efforts to locate and serve Aslam weigh in favor of allowing the proposed alternative service of process.

CONCLUSION

For the reasons set forth herein, the Receiver respectfully requests that the Court grant this Motion and authorize the Receiver to serve Aslam by alternative service as set forth above.

A copy of the proposed Order is attached hereto as **Exhibit A**.

Dated this 19th day of July, 2022

GREENBERG TRAURIG, LLP

/s/ Peggy Hunt

Peggy Hunt
Michael F. Thomson
Alexander Baker
Attorneys for Receiver Peggy Hunt

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **MOTION TO SERVE DEFENDANT IMTIAZ ASLAM BY ALTERNATIVE SERVICE OF PROCESS** was filed with the Court on this 19th day of July, 2022, and served on all parties entitled to electronic service.

I **ALSO CERTIFY** that on this 19th day of July, 2022, a true and correct copy of the foregoing was served via U.S. Mail, prepaid and via email.

Imtiaz Aslam
21 Emirates Hills
Dubai, United Arab Emirates

Emails: imyaslam@yahoo.co.uk
imyaslam@gmail.com

/s/ Candy Long_____

EXHIBIT A

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IMTIAZ ASLAM, PIOTR CHAJKOWSKI,
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Defendants.

**ORDER GRANTING MOTION TO
SERVE DEFENDANT IMTIAZ ASLAM
BY ALTERNATIVE SERVICE OF
PROCESS**

2:19-cv-00275-JNP-CMR

The Honorable Jill N. Parrish

The matter before the Court is the *Motion to Serve Defendant Imtiaz Aslam by Alternative Service of Process* [Dkt. No. ____] (the “Motion”) filed by Plaintiff, Peggy Hunt, in her capacity as court-appointed receiver for Traffic Monsoon, LLC and the assets of Charles D. Scoville (the

“Receiver”). The time object to the Motion has expired and no objections have been filed with the Court or served on the Receiver.

The Court has considered the Motion, the record in this case and the applicable law, and for the reasons stated therein and for good cause appearing:

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED**; and
2. The Receiver is **AUTHORIZED** to serve Defendant Imtiaz Aslam as set forth in the Motion.

Dated this ____ day of _____, 2022.

BY THE COURT:

The Honorable Jill N. Parrish
United States District Court Judge