

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MASTER DOCKET NO. 19-21551-CIV-ALTONAGA

IN RE FARM-RAISED SALMON
AND SALMON PRODUCTS
ANTITRUST LITIGATION

**PLAINTIFF SCHNEIDER'S FISH AND SEA FOOD CORP.'S SUPPLEMENTAL
MEMORANDUM IN SUPPORT OF EUCLID FISH COMPANY'S MOTION FOR
APPROVAL OF PLAN FOR ALTERNATIVE SERVICE OF PROCESS ON
NORWEGIAN DEFENDANTS AND INCORPORATED MEMORANDUM OF LAW**

As requested by the Court at the recent Status Conference Hearing conducted on May 9th, Plaintiff Schneider Fish and Sea Food Corp. ("Plaintiff" or "Schneider's Fish") hereby files this Supplemental Memorandum in support of Euclid Fish Company's motion for approval of plan for alternative service of process on Norwegian Defendants (the "Motion"), mainly to include a discussion of the Order entered by this Court last year providing guidance on these specific issues and providing support for the Court to approve digital publication.¹ *See Euclid Fish Co. v. Mowi ASA, et al.*, Case No. 19-cv-21551, (S.D. Fla. 2019), [ECF 18].² Attached in support of Plaintiff's supplement is the Declaration of Adam A. Schwartzbaum.

LEGAL ARGUMENT

While the Motion persuasively and accurately explains why this Court should allow service on the Norwegian Defendants by e-mail and substituted service, it did not mention this Court's highly-analogous decision in *Karsten Manufacturing Corp. v. Store*, No. 18-61624-CIV, 2018 WL

¹ Schneider's Fish will serve a courtesy copy of this supplemental memorandum on Podhurst Orseck, P.A., which recently advised the Court that it will be filing a third complaint concerning the matters in this case. Additionally, Schneider's Fish will serve a courtesy copy on Akerman LLP, as Undersigned Counsel have been informed by Larry Silverman and Diane Fisher that Akerman will soon enter an appearance on behalf of Defendants.

² This Court has consolidated the *Euclid* and *Schneider* cases. *See* ECF 15.

8060707 (S.D. Fla. July 26, 2018) (Altonaga, J.). This Court's recent *Karsten* decision provides excellent and specific guidance, reasoning and support for e-mail and substituted service on the Norwegian Defendants, as well as a third acceptable method of service—digital publication—proposed by Schneider's Fish and previously accepted by this Court.

Karsten demonstrates that service by e-mail and digital publication is permissible where, as here, the defendants have not expressly objected to service by those means. The *Karsten* defendants were located overseas (in China, Indonesia, and other Asia-Pacific nations), but had done business within the Southern District of Florida. *Id.* at *1. In support of their motion for alternative service, the *Karsten* plaintiffs submitted a declaration explaining that China was a signatory to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the "Hague Convention"), but that China had declared that it opposes the service of documents in its territory by the alternative means of service outlined in Article 10 of the Hague Convention, which does *not* mention e-mail or digital publication. *See Karsten*, ECF No. 9-2, ¶ 9. Explaining that "[w]here a signatory nation has objected to the alternative means of service provided by the Hague Convention, that objection is expressly limited to those means and does not represent an objection to other forms of service, such as e-mail or publication[.]" this Court concluded that "[a] court acting under [Federal] Rule [of Civil Procedure] 4(f)(3) therefore remains free to order alternative means of service" based on "e-mail or internet communication." *Id.* Building on this conclusion, this Court concluded that service by e-mail and publication was "reasonably calculated to give notice to Defendants . . . where, as here: (1) the defendants conducted their businesses over the Internet; (2) the defendants used e-mail regularly in their businesses; and (3) the plaintiff shows email is likely to reach defendants." *Id.* at *2 (citing *Rio Props. Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1017–18 (9th Cir. 2002)).

The Court should authorize alternative service on the Norwegian Defendants for the same reasons it permitted service by email and publication on the *Karsten* defendants. Norway and the United States are both signatories to The Hague Convention and, like China, Norway has not specifically objected to service via e-mail, publication, or through a subsidiary. *See* Decl. of Adam A. Schwartzbaum (“Schwartzbaum Decl.”), ¶ 11. Although domiciled in Norway, the Norwegian Defendants conduct business activities (such as the marketing, shipping, and sale of farm-raised Atlantic salmon) that reach into markets in the United States, including the Southern District of Florida. *See* Compl. [ECF 1], ¶ 2. As in *Karsten*, the Court should conclude that “service by e-mail or internet communication does not violate an international agreement.” 2018 WL 8060707, at *1.

Additionally, the Court should conclude that “[e]-mail and publication service is reasonably calculated to give notice to Defendants.” *Id.* at *2. As in *Karsten*, Schneider’s Fish has created a publication website where copies of the Complaint and all other documents on file in this action will be displayed. *Id.*, ¶ 7. Service via publication will be an additional source of reliability as Defendants may view the Complaint and all other documents in this matter via internet browser. *Id.* Additionally, as in *Karsten*, Schneider’s Fish has submitted a declaration verifying that each Norwegian Defendant has at least one operational means of electronic 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. *See* Schwartzbaum Decl., ¶¶ 8–10. This declaration supplements the Tropin Declaration, which provides detailed information concerning the e-mail contacts for all the Norwegian Defendants. *See Euclid*, ECF 18-1, ¶¶ 3–15.

This Court’s *Karsten* decision—which should guide the Court’s decision here—is well-supported by federal law. Federal courts have repeatedly authorized alternative service methods, including service by e-mail and website publication, 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.*, 284 F.3d at 1017 (holding, “without hesitation,” that e-mail service of an online business defendant “was constitutionally acceptable”); *Nat’l Ass’n for Stock Car Auto Racing, Inc. v. Does*, 584 F. Supp. 2d 824, 826 (W.D.N.C. 2008) (“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.]”); *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); *In re Int’l Telemedia Assocs., Inc.*, 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.”). Furthermore, this Court has frequently authorized foreign service process via e-mail, publication, and through a subsidiary. *See, e.g., Karsten*, 2018 WL 8060707, at *2; *Tiffany (NJ) LLC v. Dorapang Franchise Store*, No.18-cv-61590, 2018 WL 4828430, at *3 (S.D. Fla. July 17, 2018) (authorizing service of process via e-mail and publicly posting copies of the summons, complaint, and all future filings on the internet); *Chanel, Inc. v. Individual, P’ship, or Unincorporated Ass’n*, No. 18-61233-CIV, 2018 WL 7253306, at *1 (S.D. Fla. June 7, 2018)

(Dimitrouleas, J.) (authorizing service of process via e-mail and publication where defendant had an internet-based business and utilized e-mail as a reliable form of contact); *Stat Medical Devices, Inc. v. HTL-STREFA, Inc.*, No. 15-20590-CIV, 2015 WL 5320947, at *4 (S.D. Fla. Sept. 14, 2015) (concluding that “service by email on the foreign defendant . . . as well as serving the domestic defendant’s attorney is reasonably calculated to notify the foreign defendant of the pendency of this action and provide it with an opportunity to defend”).

Finally, the Court should grant Euclid’s proposal to serve the Norwegian Defendants through service on their wholly-owned subsidiaries. *See* Schwartzbaum Decl., Ex. A (the Chart that was provided to the Court and counsel during the recent Status Conference hearing that illustrates the relationship between all of the Norwegian Defendants and their subsidiaries). At the time of this filing, Plaintiff has already served the Complaint on all the domestic corporations with 2 returns of service and 3 pending return. Service through a subsidiary is also permissible under Rule 4(f) and should be approved under the facts of this case. *See Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 707 (1988) (holding that service on foreign defendants, even those who are signatories to The Hague Convention, is proper under Rule 4(f)(3) where the foreign defendants have domestic subsidiaries and/or counsel and where service does not require transmittal abroad); *In re LDK Solar Sec. Litig.*, No. 07–5182, 2008 WL 2415186, at *3 (N.D. Cal. June 12, 2008) (stating “nothing in the [Hague] Convention bars the requested means of service” under Rule 4(f)(3) upon a domestic subsidiary).

CONCLUSION

The Norwegian Defendants’ maintenance of websites, web presence, and use of e-mail as a prevailing form of communication, as well as the fact that all of the subsidiary defendants are wholly owned by one or more of the Norwegian Defendants, make service via e-mail, virtual

publication, and through subsidiaries, the superior forms of service in this case. Accordingly, the Court should approve the alternative methods of service proposed in the Motion and this supplemental memorandum.

Dated: May 13, 2019

Respectfully submitted,

By: s/ Adam M. Moskowitz
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed on May 13, 2019, with the Court via CM/ECF system, which will send notification of such filing to all attorneys of record.

By: Adam M. Moskowitz, Esq.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

MASTER DOCKET NO. 19-21551-CIV-ALTONAGA

**IN RE FARM-RAISED SALMON
AND SALMON PRODUCTS
ANTITRUST LITIGATION**

**DECLARATION OF ADAM A. SCHWARTZBAUM IN SUPPORT OF
PLAINTIFF'S SUPPLEMENTAL MEMORANDUM IN SUPPORT
OF EUCLID'S MOTION FOR APPROVAL OF PLAN OF
ALTERNATIVE SERVICE ON NORWEGIAN DEFENDANTS**

I, Adam A. Schwartzbaum, declare and state as follows:

1. I am an attorney duly authorized and licensed to practice before all courts in the State of Florida and the Southern District of Florida. I am counsel of record for Plaintiff, Schneider's Fish and Sea Food Corporation ("Plaintiff"), in the above-captioned action. I submit this declaration in support of Plaintiff's supplemental memorandum in support of Euclid Fish Company's ("Euclid") motion for approval of plan for alternative service of process on Norwegian Defendants ("Plaintiff's Supplement"). I am personally knowledgeable of the matters set forth in this declaration and, if called upon to do so, I could and would competently testify to the following facts set forth below.

2. On May 7, 2019, Euclid Fish Company filed its motion for approval of plan for alternative service of process on Norwegian Defendants and incorporated memorandum of law (the "Motion").

3. I hereby incorporate the facts averred in the Motion and the facts averred in the Declaration of Daniel Tropin attached thereto.

4. Timely service of Defendants, Mowi ASA, Grieg Seafood ASA, Ocean Quality AS, Bremnes Seashore AS, Salmar ASA, and Leroy Seafood Group ASA (collectively

“Norwegian Defendants”, would be frustrated if Plaintiff is required to conduct service according to Section 5 of The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

5. On May 9, 2019, the Court held a status conference where counsel for Plaintiff brought to the Court’s attention its order granting a motion for order authorizing alternate service of process filed in *Karsten Manuf. Corp. v. Store*, No. 18-61624-CIV ALTONAGA/SELTZER, (S.D. Fla. July 26, 2018). The Court granted Plaintiff’s request to submit a supplemental memorandum concerning *Karsten*’s relevance to the Motion.

6. The Court’s order in *Karsten* permitted service through a publication website where the complaint, and all other pleadings and documents would be posted, such that anyone accessing the website would find all documents filed in *Karsten*. See *Karsten Manufacturing Corp. vs. Janit-Store, et al., Serving Notice*, (last visited May 10, 2019), <http://servingnotice.com/Fmuvsx/index.html>.

7. In addition to the Euclid plaintiff’s proposed service plan, Plaintiff will notify the Norwegian Defendants of this action via website publication. Plaintiff has created a publication website and will be posting copies of its Complaint, and all other pleadings and documents on file on its publication website located at <https://moskowitz-law.com/schneider-fish>, such that anyone accessing the website will find copies of all documents filed in this action. The address to the publication website will be provided to the Norwegian Defendants via their known e-mail accounts and will be included upon service of process in this matter.

8. Plaintiff has investigated the Norwegian Defendants and determined their illegal conduct is most likely based in and/or shipping from Norway. Plaintiffs’ investigation looked at multiple connection data points, such as information contained on the Norwegian Defendants’

websites operating under their umbrella. *See* Ex. A (illustrating the relationships between each Norwegian Defendant and its subsidiary). While many of the Norwegian Defendants' operations reach into the United States, Plaintiff has good cause to believe that the Norwegian Defendants are not residents of the United States. *Id.* Importantly, much of the Norwegian Defendants' marketing and sales information within the United States is provided on their websites in English directing consumers to e-mail sales teams in the U.S. or English speaking agents abroad. *See e.g.* Contact, Leroy Seafood USA Inc., (last visited May 11, 2019), <https://www.leroyseafood.com/en/contact/our-offices/>; Contact Us, Bremnes Seashore, (last visited May 11, 2019), <https://www.seashore.no/en/>; Sales Offices, Ocean Quality, (last visited May 11, 2019) <https://oceanquality.com/contact/>; Contact Us, Mowi, (last visited May 11, 2019) <https://mowi.com/contact/>; Sales, Grieg Seafood, (last visited May 11, 2019), <https://www.griegseafood.no/en/>; Sales & Distribution, SalMar, (last visited May 11, 2019), <https://www.salmar.no/en/contact-us/>.

9. All of the Norwegian Defendants wholly own (or jointly own) all of the subsidiary defendants (Marine Harvest USA, LLC, Marine Harvest Canada, Inc., Ducktrap River of Maine LLC, Grieg Seafood BC Ltd., Ocean Quality AS, Ocean Quality North America, Inc., Ocean Quality USA, Inc., Ocean Quality Premium Brands, Inc., Scottish Sea Farms Ltd., Leroy Seafood USA, Inc.). *See* Ex. A.

10. The Norwegian Defendants engage in invoicing, client communication, and contracting via e-mail or through their American subsidiaries (who also utilize e-mail as the best form of communication).

11. Additionally, I reviewed the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil and Commercial Matters (“Hague Convention”)¹ to which the United States and Norway are signatories. Norway has declared that it opposes the service of documents in its territory by the alternative means outlined in Article 10 of the Convention.² However, the Hague Convention does not preclude service by e-mail, publication or through a subsidiary. And the declarations to The Hague Convention filed by Norway does not expressly prohibit service via e-mail, publication, or through a subsidiary. Additionally, the U.S. Department of State lists no treaties between the United States and Norway which govern service of process in a civil matter. *See* United States Department of State, Treaties in Force, available at <http://www.state.gov/s/l/treaty/tif/index.htm> (last visited May 11, 2019). Thus, there are no international agreements prohibiting service by e-mail, website publication, or through a subsidiary.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 13th day of May, 2019, at Miami, Florida.

/s/ Adam A. Schwartzbaum
Adam A. Schwartzbaum

¹ *See also* Hague Service Convention, November 15, 1965, 20 U.S.T. 361, (last visited May 11, 2019), <https://www.hcch.net/en/instruments/conventions/full-text/?cid=17> (full text of the Hague Service Convention); <https://www.hcch.net/en/instruments/conventions/status-table/?cid=17> (last visited May 11, 2019) (Status Table: listing the current contracting states).

² Declaration/Reservation/Notification, HCCH, (last visited May 11, 2019), <https://www.hcch.net/en/instruments/conventions/status-table/notifications/?csid=414&disp=resdn>

EXHIBIT A

SCHNEIDER'S FISH AND SEA FOOD CORP., v. MOWI ASA et al.

1:19-CV-21652-CMA

Fifteen Defendants



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MASTER DOCKET NO. 19-21551-CIV-ALTONAGA

IN RE FARM-RAISED SALMON
AND SALMON PRODUCTS
ANTITRUST LITIGATION

[PROPOSED] ORDER

THIS CAUSE came before the Court on Plaintiff, Euclid Fish Company's ("Euclid") motion for approval of plan for alternative service of process on Norwegian Defendants and Plaintiff, Schneider's Fish and Seafood Corp. ("Schneider"), supplemental memorandum in support of Euclid's motion [ECF No. 28] ("Pl.'s Supp.").

The Norwegian Defendants are all residents of Norway. Defendants operate numerous websites that are accessible to current and prospective buyers of farm-raised Atlantic Salmon and the Defendants utilize electronic means as a reliable forms of contact. *See* Tropin Decl. [ECF 18-1], ¶¶ 3–16; Schwartzbaum Decl. [ECF 28-1] ¶ 8, 10. Defendants' e-mail addresses are operational and reliable means of communicating with them. Schwartzbaum Decl., ¶ 8, 10; Tropin Decl., ¶¶ 4, 11, 13–15. Additionally, Plaintiff has created a publication website located at <https://moskowitz-law.com/schneider-fish>, where copies of the Complaint and all other documents on file in this action will be displayed. Schwartzbaum Decl., ¶ 7.

Federal Rule of Civil Procedure 4(f)(3) authorizes a district court to order an alternate method for service to be effected upon foreign defendants, provided it is not prohibited by international agreement and is reasonably calculated to give notice to the defendants. Fed. R. Civ. P. 4(f)(3). *See also Karsten Manuf. Corp. v. Store*, No. 18-CIV-61624, 2018 WL 806707, at *1 (S.D. Fla. July 26, 2018) (authorizing alternative service of process via e-mail and digital publication); *Brookshire Bros. Ltd. v. Chiquita Brands Int'l, Inc.*, No. 05-CIV-21962, 2007 WL

1577771, at *2 (S.D. Fla. May 31, 2007) (“[D]istrict courts have broad discretion under Rule 4(f)(3) to authorize other methods of service that are consistent with due process and are not prohibited by international agreements.”) (citing *Prewitt Enters., Inc. v. Org. of Petroleum Exporting Countries*, 353 F.3d 916, 921, 927 (11th Cir. 2003)).

Service by e-mail or publication is not prohibited under international agreement in this case. Both the United States and Norway are signatories to The Hague Convention on the Service Abroad of Extra-Judicial Documents in Civil and Commercial Matters, Nov. 15, 1965, 20 U.S. T. 361 (the “Hague Convention”), which does not specifically preclude service by e-mail or publication. Where a signatory nation has objected to the alternative means of service provided by Section 10 of The Hague Convention, that objection is expressly limited to those means listed in the objection and does not represent a blanket objection to other forms of service, such as e-mail or publication. *See Karsten*, 2018 WL 806707, at *2 (authorizing service by e-mail and publication) (citing *Stat Med. Devices, Inc. v. HTL-Strefa, Inc.*, Case No. 15-cv-20590, 2015 WL 5320947, at *3 (S.D. Fla. Sept. 14, 2015) (authorizing service by e-mail)). A court acting under Rule 4(f)(3) therefore remains free to order alternative means of service where a signatory nation has not expressly objected to those means. *See Karsten*, 2018 WL 806707, at *2 (citing *Gurung v. Malhotra*, 279 F.R.D. 215, 219 (S.D.N.Y. 2011)) Accordingly, service by e-mail, publication, or through a subsidiary does not violate an international agreement.

Service through a subsidiary is also sufficient to satisfy Rule 4(f) because it does not violate The Hague Convention. *See In re Cathode Ray Tube Antitrust Litig.*, No. 07-cv-5944, 2008 WL 4104341 (N.D. Cal. Sept. 3, 2008) (authorizing service of foreign defendant through domestic subsidiary and counsel); *LDK Solar Securities Litig.*, No. 07-cv-05182, 2008 WL 2415186 (N.D. Cal. June 12, 2008) (authorizing service on local subsidiary). Here, all of the subsidiary Defendants

are wholly owned by one or more of the foreign defendants. *See* Schwartzbaum Decl. at ¶ 9, Ex. A.

Plaintiffs' service plan is reasonably calculated to give notice to the foreign Defendants. Plaintiffs cite numerous cases where courts have authorized plaintiffs to serve by e-mail, publication, and through a subsidiary. *See* Pl.'s Supp. at 2–5; *See Euclid*, [ECF 18:7–10] (listing cases authorizing service via e-mail then listing cases authorizing service on a subsidiary). As in this case: (1) defendants conduct a majority of their business over the Internet; (2) the defendants routinely use e-mail to conduct their business; (3) the defendants have subsidiaries in the United States that have a sufficiently close relationship to the defendant parent companies; and (4) the plaintiff shows that email is likely to reach the defendants. *See e.g. Karsten*, 2018 WL 806707, at *2 (citing *Rio Props. Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1017–18 (9th Cir. 2002)).

Plaintiff has shown good cause why leave should be granted to allow service of summonses, the Complaint, and all subsequent filings in this matter upon Defendants via e-mail or publication service.

For the foregoing reasons, it is

ORDERED AND ADJUDGED that *Euclid's* Motion, as supplemented by Schneider Fish's supplemental memorandum, is **GRANTED** as follows:

1. Plaintiff may serve summons, a copy of the Complaint, and all other future filings in this matter upon each Norwegian Defendant via the e-mail addresses provided by that Defendant (i) as part of the data related to its online marketing, advertising, sales and website, including customer service e-mail address and onsite contact form; or (ii) via their sales agents in the United States listed on their website for each of their domain names; and

2. Plaintiff may serve summons, a copy of Schneider's Complaint, and all other future filings in this matter upon the Norwegian Defendants via publication by posting a copy of the same on the website available at <https://moskowitz-law.com/schneider-fish>.

DONE AND ORDERED in Miami, Florida, this ____ day of _____, 2019.

CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: counsel of record