

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

WILLIAM DEVITT,

Plaintiff,

v.

FLASHDOT LIMITED,

PEKEN GLOBAL LIMITED,

PHOENIXFIN PRIVATE LIMITED,

CHUN GAN, AND

KE TANG,

Defendants.

CIVIL ACTION NO. 24-cv-04944

JURY TRIAL DEMANDED

**PLAINTIFF’S MOTION FOR ORDER AUTHORIZING
ALTERNATE SERVICE OF PROCESS ON DEFENDANTS UNDER RULE 4(f)(3)**

Plaintiff William Devitt (“Plaintiff”) files this Motion for Alternate Service on Defendants, Flashdot Limited, Peken Global Limited, Phoenixfin Private Limited, Chun Gan, and Ke Tang (collectively, “Defendants;” the first three Defendants listed in this paragraph are sometimes referred to below as the “corporate Defendants”) as follows:

I. INTRODUCTION

Defendants stole cryptocurrency (17.8 Bitcoin “BTC,” worth approximately \$1,862,876) from Plaintiff pursuant to a sophisticated global internet cryptocurrency fraud and conversion scheme. Defendants were intentionally promoting, advertising, and facilitating cryptocurrency transactions within this district and throughout the United States through their operation of www.KuCoin.com. Plaintiff sued Defendants in this case for racketeering violations of 18 U.S.C.

§ 1961(4), violation of the Texas Deceptive Trade Practices Act, fraud, violation of the Texas Theft Liability Act, breach of contract, conversion, negligence, conversion, and imposition a constructive trust and disgorgement of funds.

Pursuant to Federal Rule of Civil Procedure 4(f)(3), Plaintiff requests an Order Authorizing Service of Process on Defendants via email and/or via website posting.

Alternate service by email is appropriate and necessary in this case because Defendants wholly operate in the United States via the Internet and rely on electronic communications to operate their businesses in this country. As such, Plaintiff can provide notice of Plaintiff's claims by contacting Defendants directly via email. Further, alternate service on the corporate Defendants' U.S. counsel of record via email is appropriate because the corporate Defendants are currently represented in another active litigation pending in the Southern District of New York.

Additionally, Plaintiff has created a webpage at www.wsltrial.com/KuCoin_notice and will post there complete copies of the Complaint and Summonses filed and issued to date in this case (the "Complaint and Summonses"). Plaintiff respectfully submits that an order allowing service of process and service via email and by posting on the aforementioned webpage will benefit all parties and the Court by ensuring that Defendants receive prompt and effective notice of the pendency of this action and allowing this case to move forward expeditiously. Without permission to serve Defendants as requested herein, Plaintiff will almost certainly be left without the ability to pursue a remedy in this case.

II. STATEMENT OF FACTS

1. This case was filed on December 16, 2024. Dkt. 1.
2. A service of process forwarding request for all Defendants was submitted to the Texas Secretary of State on December 20, 2024.

3. The corporate Defendants (Flashdot Limited, Peken Global Limited, and PhoenixFin PTE Ltd) in this case are all currently represented by the law firm of Allen Overy Shearman Sterling US LLP (“KuCoin.com’s U.S. counsel”), in a lawsuit filed against them by the Commodity Futures Trading Commission in the Southern District of New York, Case No. 24-cv-02255 (“the New York case”). In the New York case, corporate Defendants’ counsel at Allen Overy have confirmed to Judge Caproni that they represent the Defendants in that case. *See* Exhibit A (John A. Nathanson of Allen Overy Shearman Sterling US LLP states “We represent Defendants Mek Global Limited, PhoenixFin PTE Ltd., Flashdot Limited, and Peken Global Limited...”.) According to Mr. Nathanson of Allen Overy, his firm will continue to represent the corporate Defendants in that case and have requested an extension to “to respond to the Complaint” in that case, to February 4, 2025. Exhibit A at 2.

4. In the instant case, Plaintiff’s counsel emailed the aforementioned Allen Overy lawyers at the following email addresses, on December 18, 2024:

Christopher.Lavigne@aoshearman.com;
Liz.Robinson@aoshearman.com;
John.Nathanson@aoshearman.com;
Katherine.Stoller@aoshearman.com; and
Sean.Boren@aoshearman.com.

In that email message, Plaintiff attached the Complaint and Summonses and requested waiver of service, but Allen Overy did not respond to the request. *See* Exhibit E. On January 2, 2025, Plaintiff sent an email following up on the request to accept service, but Allen Overy has not responded to that message either. *Id.*

5. On December 20, 2024, Plaintiff’s counsel directly and successfully emailed Defendants at the following email addresses: johnny@kucoin.com; eric@kucoin.com; legal@kucoin.com; and support@kucoin.com. *See* Exhibit B. That email attached a letter

identifying this case and tendering Plaintiff's claim for attorneys' fees. *Id.* A response was received from support@kucoin.com, confirming receipt of the email message. *Id.*

6. Also on December 20, 2024, Plaintiff's counsel sent the same letter by FedEx International Priority to the following addresses:

Flashdot Limited
94 Solaris Avenue, Camana Bay
George Town, Cayman Islands KY1-1108

Phoenixfin Private Limited c/o Ke Tang and Chun Gan
2 Science Park Drive
#01-03 Ascent
Singapore 118222

Peken Global Limited
Room 306, Victoria House
Victoria Mahe Seychelles 00000

The letter was successfully delivered to the aforementioned address in the Cayman Islands (FedEx Tracking # 770948855312), but delivery was unsuccessful at the addresses in Singapore and Seychelles (FedEx Tracking # 770948771095 and # 770948922438).

7. An indictment filed against Defendants in the Southern District of New York includes a section entitled "Background on KuCoin, GAN, and TANG." *See* Exhibit C at ¶¶16-23, available at <https://www.justice.gov/usao-sdny/media/1345231/dl> (last accessed January 7, 2025). The indictment states that KuCoin has "been owned and operated by and through one or more associated companies, including FLASHDOT LIMITED, formerly known as Phoenixfin Limited, PEKEN GLOBAL LIMITED, and PHOENIXFIN PRIVATE LIMITED." *Id.* at ¶16. The indictment also states that Defendants Chun Gan and Ke Tang "have been co-owners of KuCoin since its founding" and "together held approximately 75% ownership share in KuCoin's holding company FLASHDOT LIMITED." *Id.* at ¶17. The indictment states that the

support@kucoin.com email list includes both of the individual Defendants: “CHUN GAN, a/k/a ‘Michael,’ and KE TANG, a/k/a ‘Eric.’” Exhibit C, ¶36.

8. On January 2, 2025, Plaintiff’s counsel successfully emailed to Defendants a service copy of Plaintiff’s Certificate of Interested Parties pursuant to the Court’s Order at Dkt. 10 to the following email addresses: johnny@kucoin.com; eric@kucoin.com; legal@kucoin.com; and support@kucoin.com, Christopher.Lavigne@aoshearman.com; Liz.Robinson@aoshearman.com; John.Nathanson@aoshearman.com; Katherine.Stoller@aoshearman.com; and Sean.Boren@aoshearman.com. See Exhibit F. Plaintiff’s counsel received a response from Defendants’ support@kucoin.com email address on the same date, confirming receipt. *Id.*

III. LEGAL AUTHORITY

Federal Rule 4(h) governs service of process on foreign businesses and allows for service on a foreign corporation “at a place not within any judicial district of the United States, in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C)(i).” FED. R. CIV. P. 4(h)(2). And Rule 4(f) provides the means by which a plaintiff may serve any individual located outside of the U.S. Under Rule 4(f)(3), the Court has considerable discretion to authorize an alternative means of service as long as the method of service is not prohibited by international agreement. See *Document Operations, LLC v. AOS Legal Techs., Inc.*, No. 4:20-CV-1532, 2021 U.S. Dist. LEXIS 136564, at *7 (S.D. Tex. July 22, 2021); FED. R. CIV. P. 4(f)(3).

Rule 4(f)(3) permits the Court to order an alternate method for service on foreign defendants, provided that the ordered method is not prohibited by international agreement and is reasonably calculated to give notice to the defendants. FED. R. CIV. P. 4(f)(3). “A party seeking

authorization for alternate service under Rule 4(f)(3) need not attempt service by those methods enumerated under subsections (f)(1) and (f)(2), including by diplomatic channels and letters rogatory, before petitioning the Court for 4(f)(3) relief.” *Seventh Coast Ventures LLC v. Xiamen Daysun Indus. Co., LTD*, No. 4:22-cv-04474, 2023 U.S. Dist. LEXIS 121408, at *3 (S.D. Tex. Jan. 12, 2023).

Alternate service by email and Internet publication is not prohibited by any applicable international agreement. *See CIPHERBLADE, LLC v. CIPHERBLADE, LLC*, No. 3:23-cv-00238-JMK, 2024 U.S. Dist. LEXIS 3159, at *4 (D. Alaska Jan. 5, 2024) (“the Court is not aware of any international agreements that prohibit alternative forms of service in [Singapore]”) (emphasis added). In fact, the Hague Convention does not specifically preclude service by email or Internet publication, and the Court has previously authorized email and Internet publication as alternate international service methods under Rule 4(f)(3). *See Seventh Coast Ventures LLC v. Xiamen Daysun Indus. Co., LTD*, No. 4:22-cv-04474, 2023 U.S. Dist. LEXIS 121408, at *4-6 (S.D. Tex. Jan. 12, 2023) (addressing Hague Convention and authorizing alternate service by email and Internet publication); *see also AOS Legal Techs.*, 2021 U.S. Dist. LEXIS 136564, at *12-16 (noting delays in service under the Hague Convention and explaining that service on U.S. counsel via email is warranted under the Federal Rules of Civil Procedure and comports with due process). “Courts have also found that avoiding the additional expense of serving a defendant in a foreign country is a valid justification for authorizing an alternative method of service.” *AOS Legal Techs.*, 2021 U.S. Dist. LEXIS 136564, at *13.

A plaintiff need not pursue other methods of service before requesting that the Court authorize an alternative method under Rule 4(f)(3). “Rule 4(f)(3) is neither a ‘last resort’ nor ‘extraordinary relief’—it is merely one means among several that enables service of process on an

international defendant.” *AOS Legal Techs.*, 2021 U.S. Dist. LEXIS 136564, at *7; FED. R. CIV. P. 4(f)(3).

IV. ARGUMENT AND AUTHORITIES

Under Rule 4(f)(3), Plaintiff respectfully requests authorization of alternate service on Defendants by direct email, by email to KuCoin.com’s U.S. counsel, and/or by website posting.

1. Alternate Service via Email to Current U.S. counsel for Flashdot Limited, Peken Global Limited, and PhoenixFin Private Limited

When, as here, there is evidence of an attorney-client relationship between a foreign defendant and its domestic counsel, a common method of alternate service under Rule 4(f) is service of process on that defendant's U.S. counsel. *See Document Operations, LLC v. AOS Legal Techs., Inc.*, No. 4:20-CV-1532, 2021 U.S. Dist. LEXIS 136564, at *12-13 (S.D. Tex. July 22, 2021). Alternative service is also warranted here to prevent further delay and needless cost to the parties in resolving this dispute. *See id.* The corporate Defendants in the instant case are represented by the law firm of Allen Overy Shearman Sterling US LLP in the New York case, an ongoing litigation filed by the Commodity Futures Trading Commission. *See Exhibit A.* Defendants, who operate one of the largest global cryptocurrency exchange platforms (with more than 30 million customers and billions of dollars’ worth of cryptocurrency in daily trading volume), should not be allowed to avoid the laws of the United States by hiding behind physical addresses in foreign jurisdictions (i.e., Singapore, Cayman Islands, Seychelles) where service is impractical or impossible. For instance, Plaintiff’s letter sent by FedEx International Priority to Defendants’ addresses in Singapore and Seychelles (FedEx Tracking # 770948771095 and # 770948922438) were rejected as undeliverable. This is especially troublesome when Kucoin.com has “actively encouraged U.S. customers to utilize its spot trading and derivative trading

platforms” and “approximately 17% of its customers were based in the United States.” Exhibit C, ¶¶41 and ¶43. For example, Peken Global Limited has conceded that “KuCoin held approximately \$16,766,642 in assets for New York customers” alone. *Id.* at ¶43. KuCoin also holds approximately \$1,862,876 in Bitcoin that is the property of Plaintiff, which necessitated the filing of this case. *See* Dkt. 1, ¶1. Plaintiff, therefore, respectfully requests that it be authorized to accomplish service on Defendants by serving the same U.S. counsel who currently represent the corporate Defendants in the New York case under Rule 4(f)(3), at the email addresses listed in their letter to the Honorable Valerie E. Caproni. *See* Exhibit A (Christopher.Lavigne@aoshearman.com; Liz.Robinson@aoshearman.com; John.Nathanson@aoshearman.com; Katherine.Stoller@aoshearman.com; and Sean.Boren@aoshearman.com)

As shown in the fact section above, Plaintiff sent correspondence via FedEx International Priority to the three foreign addresses listed for the corporate Defendants—in the Cayman Islands, Singapore, and Seychelles. Plaintiff was only able to achieve delivery at the Cayman Islands address. Thus, logic suggests that if Plaintiff followed a process pursuant to the Hague Convention to serve corporate Defendants at the same three addresses, Plaintiff would be unable to serve them at their addresses in Singapore and Seychelles. Allowing service via email to KuCoin.com’s U.S. counsel in the New York case will thus prevent a time-consuming and likely futile exercise that would only delay resolution of the instant case. Judge Hanks has addressed this very issue and authorized alternate service on U.S. counsel in *Document Operations, LLC v. AOS Legal Techs., Inc.*, explaining that

...the parties are locked in mortal combat over the issue of whether AOS has been served and must respond to this lawsuit. This fight has been time consuming for the parties and has severely hampered the Court's efforts to timely move this case

toward resolution. To reach the next level of this litigation and put this issue to rest once and for all, Document Operations seeks alternative service on AOS via e-mail to AOS's U.S. counsel. (Dkt. 86 at pp 5-6). In other words, Document Operations wants AOS to stop with the gamesmanship, respond to this action under the Federal Rules of Civil Procedure and "Get over here!"

The time has come. This fight ends now. It should have ended long ago.No. 4:20-CV-1532, 2021 U.S. Dist. LEXIS 136564, at *5-6 (S.D. Tex. July 22, 2021) (emphasis added).

The Court has previously found that email service on a foreign defendant satisfies due process requirements when, for example, the parties have shown prior successfully transmitted communications to the proposed email address. *See, e.g., STS Prods. v. Boss Sols. LLC*, Civil Action No. H-19-4003, 2020 U.S. Dist. LEXIS 264287, at *15-17 (S.D. Tex. Jan. 21, 2020) (finding "that service by email does not offend constitutional notions of due process" when there was "no evidence that the email addresses are incorrect or not operational") Here, Plaintiff successfully sent emails to the corporate Defendants' U.S. counsel on December 18 and 20, 2024, and January 2, 2025. *See* Exhibits B and E. Thus, email service on the corporate Defendants' U.S. counsel should be an authorized alternate service under Rule 4(f)(3) because Plaintiff has successfully transmitted emails to the corporate Defendants' U.S. counsel, and email service satisfies due process requirements.

Other courts in the Fifth Circuit have also authorized alternate service on foreign defendants through their U.S. counsel under Rule 4(f)(3). *See, e.g., Wsou Invs. LLC v. Oneplus Tech. (Shenzhen) Co.*, No. 6-20-CV-00952-ADA, 2021 U.S. Dist. LEXIS 127056, at *3-4 (W.D. Tex. July 8, 2021) (authorizing service by emailing defendant's previous U.S. counsel); *Terrestrial Comms LLC v. NEC Corp.*, No. 6:19-CV-00597-ADA (W.D. Tex. Jun. 17, 2020) (granting plaintiff's motion for alternative service and authorizing service on Japanese defendant's U.S. counsel via email); *Affinity Labs of Texas, LLC v. Nissan North America, Inc.*, No. WA:13-cv-369

(W.D. Tex. 2014) (authorizing service on Japanese headquartered corporation through its American counsel); *see also Xilinx, Inc. v. Godo Kaisha IP Bridge 1*, 246 F. Supp. 3d 1260, 1264 (N.D. Cal. 2017) (authorizing service on Japanese defendant via email and registered mail to its U.S. attorneys). Accordingly, Plaintiff requests authorization for alternate service in the instant case via email to the corporate Defendants' U.S. counsel at Allen Overy Shearman Sterling US LLP for Flashdot Limited, Peken Global Limited, and PhoenixFin Private Limited.

2. Alternate Service via Direct Email to Defendants and via Website Posting

The Court has found that emailing a defendant directly and publicly posting the complaint and summons on a designated website is a valid form of alternate service under Rule 4(f)(3). *Seventh Coast Ventures LLC v. Xiamen Daysun Indus. Co., LTD*, No. 4:22-cv-04474, 2023 U.S. Dist. LEXIS 121408, at *6-7 (S.D. Tex. Jan. 12, 2023). The Defendants in this case operate via the Internet (at www.KuCoin.com) and rely on electronic communications for the operation of their business. In this case, Plaintiff has already succeeded in sending email correspondence to Defendants at the following email addresses: johnny@kucoin.com; eric@kucoin.com; legal@kucoin.com; and support@kucoin.com. *See* Exhibits B and F. In fact, a response was received from the support@kucoin.com address confirming receipt of the email message. *Id.* The support@kucoin.com email address is also a known active email address of KuCoin.com and is substantiated throughout the indictment of Defendants in the Southern District of New York. *See* Exhibit C, available at <https://www.justice.gov/usao-sdny/media/1345231/dl> (last accessed January 7, 2025). In fact, the aforementioned indictment against Defendants states that the support@kucoin.com distribution list includes both of the individual defendants sued in this case:

“CHUN GAN, a/k/a ‘Michael,’ and KE TANG, a/k/a ‘Eric.’” Exhibit C, ¶36. Further, Johnny Lyu is the CEO of KuCoin, and his email address is published on several websites as johnny@kucoin.com. *See, e.g.*, Exhibit D, confirming the johnny@kucoin.com email on the RocketReach and Clay websites. And eric@kucoin.com appears to be the email address associated with Defendant Ke Tang. Plaintiff will also publicly post a copy of the Complaint and Summonses at Plaintiff’s counsel’s designated webpage: www.wsltrial.com/KuCoin_notice. Accordingly, Plaintiff requests authorization of alternate service via email directly to Defendants at those email addresses and by publicly posting the Complaint and Summonses.

V. CONCLUSION

In view of the foregoing, Plaintiff respectfully requests that the Court grant this Motion and authorize alternate service under Rule 4(f)(3) of the Complaint and Summonses upon Defendants in this action as follows:

- (1) via e-mail to the corporate Defendants’ U.S. counsel at Allen Overy Shearman Sterling US LLP at the following email addresses:

Christopher.Lavigne@aoshearman.com;
Liz.Robinson@aoshearman.com;
John.Nathanson@aoshearman.com;
Katherine.Stoller@aoshearman.com;
Sean.Boren@aoshearman.com

- (2) via email directly to the Defendants at the following email addresses:

johnny@kucoin.com;
eric@kucoin.com;
legal@kucoin.com;
support@kucoin.com; and

- (3) by publicly posting a copy of the Summonses and Complaint in this matter on the designated website appearing at www.wsltrial.com/KuCoin_notice.

Dated: January 8, 2025

Respectfully submitted,

By: /s/ Fred I. Williams

Fred I. Williams

Texas State Bar No. 00794855

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Texas State Bar No. 24091261

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Attorneys for Plaintiff, WILLIAM DEVITT

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of January 2025 a true copy of the foregoing was delivered to all counsel of record and to the following e-mail addresses of Defendants and Defendants' U.S. counsel:

Christopher.Lavigne@aoshearman.com;

Liz.Robinson@aoshearman.com;

John.Nathanson@aoshearman.com;

Katherine.Stoller@aoshearman.com;

Sean.Boren@aoshearman.com

johnny@kucoin.com;

eric@kucoin.com;

legal@kucoin.com; and

support@kucoin.com

/s/ Fred I. Williams

Fred I. Williams

CERTIFICATE OF CONFERENCE

Pursuant to Southern District of Texas Local Rule 7.1(D), the undersigned counsel for the Plaintiff certifies that the Plaintiff has been unable to confer with the Defendants prior to making this motion, as the Defendants have not yet appeared in this action.

/s/ Fred I. Williams

Fred I. Williams