

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

WOOD MOUNTAIN FISH LLC,

Plaintiff,

v.

Mowi ASA (fka Marine Harvest ASA), Marine Harvest USA, LLC, Marine Harvest Canada, Inc., Ducktrap River of Maine LLC, Grieg Seafood ASA, Grieg Seafood BC Ltd., Bremnes Seashore AS, Ocean Quality AS, Ocean Quality North America Inc., Ocean Quality USA Inc., Ocean Quality Premium Brands, Inc., SalMar ASA, Leroy Seafood Group ASA, Leroy Seafood USA Inc., and Scottish Sea Farms Ltd.,

Defendants.

CASE NO. 1:19-CV-22128-RS

**[PROPOSED] ORDER FOR
APPROVAL OF PLAN FOR
ALTERNATIVE SERVICE OF
PROCESS ON NORWEGIAN
DEFENDANTS**

THIS CAUSE came before the Court on Plaintiff Wood Mountain Fish LLC’s Motion for Approval of Plan for Alternative Service of Process on Norwegian Defendants and Incorporated Memorandum of Law (“Motion”).

In its Motion, Plaintiff requests that the Court authorize alternative service of process on six Norwegian Defendants¹ involved in this suit (“Norwegian Defendants”). (*See* Mot. 1). Plaintiffs propose serving these Defendants by email, by digital publication on a specially created website, and by service on U.S. subsidiary offices. (*See id.* at 2).

The Norwegian Defendants are all residents of Norway. Each of the Defendants “is a major international business that conducts substantial business by email and maintains well-kept webpages in the English language.” (*Id.* at 9). These Defendants operate numerous websites that

¹ The Norwegian Defendants include Mowi ASA (“Mowi”), Grieg Seafood ASA (“Grieg”), Bremnes Seashore AS (“Bremnes”), Ocean Quality AS (“OQ”), SalMar ASA (“SalMar”), and Leroy Seafood Group ASA (“Leroy”). (*See* Mot. 1).

are accessible to current and prospective buyers of farm-raised Atlantic Salmon and use electronic means as a reliable form of communication. (*See* Silton Decl., ¶¶ 5, 8, 11, 13, 18, 23). The Norwegian Defendants' e-mail addresses are operational and a reliable means of communicating with them. (*See* Silton Decl., ¶¶ 6-7, 14-18). Additionally, Plaintiffs have created a publication website located at <https://www.whafh.com/case-information-documents/>, where copies of the Complaint and all other documents on file in this action will be displayed. (*See* Silton Decl., ¶ 3).

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. *See* Fed. R. Civ. P. 4(f)(3); *see also Karsten Mfg. Corp. v. Store*, No. 18-CIV-61624, 2018 WL 8060707, 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. (*See* Mot. 6). 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. *See Karsten*, 2018 WL 8060707, at *1. 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 id.* 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 8060707, 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)(3) because it does not violate The Hague Convention. *See In re Cathode Ray Tube Antitrust Litig.*, No. 07-5944, 2008 WL 4104341 (N.D. Cal. Sept. 3, 2008) (authorizing service of foreign defendant through domestic subsidiary and counsel); *In re LDK Solar Sec. Litig.*, No. C 07-05182, 2008 WL 2415186 (N.D. Cal. June 12, 2008) (authorizing service on local subsidiary).

Plaintiffs' service plan is reasonably calculated to give notice to the foreign Defendants. Plaintiffs cite numerous cases where courts have authorized plaintiffs to serve foreign defendants through e-mail, publication, and a subsidiary. (*See* Mot. 8–13) (listing cases authorizing service via e-mail and then listing cases authorizing service on a subsidiary). Similarly, here (1) Defendants conduct a majority of their business over the Internet; (2) Defendants routinely use e-mail to conduct their business; (3) Defendants have subsidiaries in the United States that have a sufficiently close relationship to the Defendant parent companies; and (4) Plaintiffs show that email is likely to reach Defendants. *See Karsten*, 2018 WL 8060707, at *2 (citing *Rio Props. Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1017–18 (9th Cir. 2002)).

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

For the foregoing reasons, it is

ORDERED AND ADJUDGED that Plaintiff Wood Mountain Fish LLC's Motion for Approval of Plan for Alternative Service of Process on Norwegian Defendants and Incorporated Memorandum of Law is **GRANTED** as follows:

1. Plaintiffs 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 its sales agents in the United States listed on the website for each domain name; and
2. Plaintiffs may serve summons, a copy of Plaintiff Wood Mountain Fish LLC'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://www.whafh.com/case-information-documents/>.

DONE AND ORDERED in Ft. Lauderdale, Florida, this ___ day of ___, 2019.

RODNEY SMITH
UNITED STATES DISTRICT JUDGE