

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

GREGORY BUNCE, Individually and)
as Personal Representative of)
the Estate of Peter Bunce, and)
))
EVELYN BUNCE, Individually,)
))
Plaintiffs,)
))
v.)
))
GLOCK, INC., a Georgia corporation,)
and)
))
GLOCK Ges.m.b.H., an Austrian)
corporation conducting business in the)
United States,)
))
Defendants)

Case No. 2:23-cv-133-cr

PLAINTIFFS’ MOTION FOR ALTERNATE SERVICE

Plaintiffs Gregory and Evelyn Bunce, by and through undersigned counsel, hereby move this Court for an order allowing alternate service against Defendant Glock Ges.m.b.H. in the above-captioned matter for all of the reasons that follow:

1. On October 6, 2023, this Court granted Plaintiffs’ Renewed Motion to Extend Deadline to Complete Service, making return of service due by November 20, 2023.
2. Upon receiving summonses from the Clerk, Plaintiffs served the summonses, civil cover sheet, notice and waiver forms, and Plaintiffs’ original and

First Amended Complaint separately by mail to each Defendant on October 16, 2023. Each service packet was mailed to the registered agent for Glock, Inc., because that entity is a wholly owned subsidiary of Defendant Glock Ges.m.b.H.

3. Counsel for Glock, Inc. accepted service and Plaintiffs filed the waiver form with the Court on November 16, 2023.

4. However, on or about October 22, 2023, Plaintiffs received a letter from general counsel for Glock, Inc. returning the documents that had been served on Glock Ges.m.b.H. by and through Glock, Inc.'s registered agent. The letter indicated that Glock, Inc. was not authorized to accept service on behalf of Glock Ges.m.b.H.

5. Since early November, Plaintiffs' counsel has been engaged in a lengthy medical malpractice trial that ended yesterday, which is why this motion was not filed prior to November 20, 2023.

6. However, Plaintiffs' counsel has communicated with outside counsel for Glock, Inc., who upon information and belief will also represent Glock Ges.m.b.H. in this action.

7. Pursuant to Fed. R. Civ. P. 4(h), the rules for service of process on a foreign corporation depend on whether the foreign corporation is served within a judicial district of the United States, or "at a place not within any judicial district of the United States," in which case service must be accomplished "in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C)(i)." Rule 4(h)(2).

8. Both Defendants Glock, Inc. and Glock Ges.m.b.H. are frequently represented by the same counsel in litigation – Renzulli Law Firm LLP. *See, e.g., Traviesco v. Glock Incorporated and Glock GesmbH*, D. Ariz., 2:20-cv-00523-SMB; *Mickle, et al. v. Glock Inc. and Glock GES M.B.H.*, S.D. Cal., 3:02-cv-02227-JAH-BLM; *Van Horn v. Glock, Inc. and Glock Ges.m.b.H.*, E.D. Ky., 7:02-cv-00319-DCR; *Billings et al. v. Glock Inc. and Glock Ges.m.b.H.*, W.D. Missouri, 4:06-cv-00115-DBK; and *Thames, et al. v. Glock, Inc. and Glock Ges.m.b.H.*, W.D. Texas, 5:04-cv-00838-WRF.

9. The fact that the parent company Glock Ges.m.b.H. and its wholly owned subsidiary, Glock, Inc., are jointly represented by the same law firm suggests there is no separation between these entities for purposes of serving process, and counsel for one has control over both. *See Cooper Indus., Inc. v. British Aerospace, Inc.*, 102 F.R.D. 918, 919-20 (S.D.N.Y. 1984) (finding that defense counsel representing both the U.S. defendant and its U.K. affiliate had access to documents in the possession of both, and control over both).

10. In *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 696 (1988), the United States Supreme Court considered whether service of process on a foreign corporation was effective by serving its domestic subsidiary. The Court also reviewed whether the service of process at issue was “compatible with the Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters, Nov. 15, 1965 (Hague Service Convention), [1969] 20 U.S. T. 361, T. I. A. S. No. 6638.” *Id.* The Court explained as follows:

VWAG, a corporation established under the laws of the Federal Republic of Germany, has its place of business in that country. VWoA is a wholly owned subsidiary of VWAG. Schlunk attempted to serve his amended complaint on VWAG by serving VWoA as VWAG's agent.

Id. a 697.

11. VWAG attempted to quash service and argued that it could only be served in accordance with the Hague Service Convention. *Id.* The Circuit Court denied the motion to quash service, finding that VWoA was registered to do business in Illinois, with a registered agent in Illinois for service of process. *Id.* “The court then reasoned that VWoA and VWAG are so closely related that VWoA is VWAG’s agent for service of process as a matter of law, notwithstanding VWAG’s failure or refusal to appoint VWoA formally as an agent.” *Id.*

12. The same result should follow here. The court “relied on the facts that VWoA is a wholly owned subsidiary of VWAG, that a majority of the members of the board of directors of VWoA are members of the board of VWAG, and that VWoA is by contract the exclusive importer and distributor of VWAG products sold in the United States.” *Id.* Therefore, because “service was accomplished within the United States, the Hague Service Convention did not apply.” *Id.*

13. The Supreme Court ultimately held that whenever “service on a domestic agent is valid and complete under both state law and the Due Process Clause, our inquiry ends and the Convention has no further implications. Whatever internal, private communications take place between the agent and a foreign principal are beyond the concerns of this case. The only transmittal to which the

Convention applies is a transmittal abroad that is required as a necessary part of service.” *Id.* at 707.

14. Moreover, the Court held that “the Due Process Clause does not require an official transmittal of documents abroad every time there is service on a foreign national. Applying this analysis, we conclude that this case does not present an occasion to transmit a judicial document for service abroad within the meaning of Article I [of the Hague Convention]. Therefore[,] the Hague Service Convention does not apply, and service was proper.” *Id.* at 707-08.

15. The same result is required in this case, even without closely analyzing the corporate connections and integrated enterprises that are Glock, Inc. and Glock Ges.m.b.H. Under Vermont law, as well as Rule 4m, counsel for Glock Ges.m.b.H. – indeed the very agent that will represent each Defendant *in this action* – has already been notified of the pendency of this action, obviating the need for foreign service abroad.

16. The process of serving Glock Ges.m.b.H. abroad when the company has a law firm in the United States representing them would amount to unnecessarily expensive and time-consuming delay. The process often takes months. If this Court required service on Glock Ges.m.b.H. abroad in accordance with the Hague Service Convention, it would cause months of delay in the progression of this case. Plaintiffs would incur needless time and expense to service Glock Ges.m.b.H. in Austria, and at the end of the day the very law firm that has already accepted service as to Glock, Inc. will represent Glock Ges.m.b.H.

17. The decision “whether to allow alternative methods of serving process under Rule 4(f)(3) is committed to the sound discretion of the district court.” *Asia Mar. Pac. Chartering Ltd. V. Comercializadora Columbia S.A. de C.V.*, 2023 U.S. Dist. LEXIS 11529, *1-2 (S.D.N.Y. Jan. 23, 2023).

18. Courts generally require a showing that the plaintiff “has reasonably attempted to effectuate service on the defendant,” and “the circumstances are such that the court’s intervention is necessary.” *Baliga on behalf of Link Motion Inc. v. Link Motion Inc.*, 385 F. Supp. 2d 212, 220 (S.D.N.Y. 2019).

19. Service of process by other means under Rule 4(f)(3) is “neither a last resort nor extraordinary relief. It is merely one means among several which enables service of process on an international defendant.” *Kumer v. Hezbollah*, 2023 U.S. Dist. LEXIS 99279, *8-9 (E.D.N.Y. June 7, 2023).

20. This Court recently noted that service under Rule 4(f)(3) “must comply with constitutional notions of due process and constitute ‘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 *9.

21. Glock Ges.m.b.H., by and through its counsel in this very action, has already been apprised of the pendency of the action and will have an opportunity to present its objections to being served by the method requested herein.

22. Under the circumstances of the instant case, Plaintiffs have attempted to serve Defendant Glock Ges.m.b.H. within a judicial district of the United States,

meaning that service need not be accomplished in accordance with the Hague Convention.

23. Procedurally, this Court recently denied without prejudice Plaintiffs' Motion to Extend Deadline to File Stipulated Discovery Schedule (ECF No. 22), noting that: "The court generally does not rule on the sufficiency of service unless it is raised as a defense." ECF No. 23.

24. Accordingly, Plaintiffs withdraw and ask the Court to deny as moot their Motion to Deem Service Complete on Defendant Glock Ges.m.b.H. Instead, Plaintiffs request that the Court grant this Motion for Alternate Service and allow Plaintiffs to complete service on Glock Ges.m.b.H. via its counsel within the United States, the Renzulli Law Firm, within 14 days of the granting the relief requested herein.

25. On today's date, Plaintiffs have also filed a Renewed Motion to Extend the Deadline to File a Stipulated Discovery Schedule until after service is completed on Glock Ges.m.b.H. via the Renzulli Law Firm.

26. Plaintiffs anticipate that Defendants object to the relief requested in this Motion.

Respectfully submitted,

Dated: February 2, 2024

/s/ Laura H. White

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CERTIFICATE OF SERVICE

I, Laura H. White, hereby certify that on this 2nd day of February, 2024, I filed the foregoing Plaintiffs' Motion for Alternate Service with the Court's CM/ECF system, which automatically sends notification to all counsel of record. I have also emailed a copy of this Motion to counsel for Defendants, Christopher Renzulli, at crenzulli@renzullilaw.com.

Dated: February 2, 2024

/s/ Laura H. White

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