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THE BOARD OF TRUSTEES OF THE
7 LELAND STANFORD JUNIOR UNIVERSITY

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 _____)
12 THE BOARD OF TRUSTEES OF THE)
LELAND STANFORD JUNIOR)
13 UNIVERSITY,)

14 Plaintiff,)

15 vs.)

16 Chiang Fang Chi-yi, an Individual; Chiang)
Yo-mei, an Individual; Chiang Hsiao-chang,)
an Individual; Chiang Tsai Hui-mei, an)
17 Individual; Chiang Yo-sung, an Individual;)
Chiang Yo-lan, an Individual; Chiang Yo-bo,)
18 an Individual; Chiang Yo-chang, an)
Individual; Chiang Yo-ching, an Individual;)
19 and Chungyan Chan, an Individual,)

20 Defendants.)
21 _____)

Case No. CV 13-04383-EJD-HRL

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
PLAINTIFF'S EX PARTE
APPLICATION REGARDING
SERVICE OF PROCESS

Judge: Edward J. Davila

Time: TBD

Date: TBD

22 I. INTRODUCTION

23 This Interpleader Action involves a deposit of over 50 boxes of historically unique
24 documents including the original diaries of two Presidents of the Republic of China –
25 Chiang Kai-shek and Chiang Ching-kuo (“the Deposit”) by defendant/claimant Chiang
26 Fang Chi-yi. The named defendants (collectively, “Defendants”) are some of the claimed
27 descendants of these two former Presidents of the Republic of China. Though Plaintiff has
28

1 had numerous conversations with many of the Defendants, has had communications with
 2 counsel for most of the Defendants, and reasonably believes that all of the Defendants have
 3 knowledge of this action, Plaintiff does not have physical addresses for many of the
 4 Defendants, and thus requests, pursuant to Federal Rule of Civil Procedure 4(f)(3), to be
 5 permitted to use substituted service via electronic mail.

6 II. BACKGROUND

7 A. The Deposit

8 The Deposit includes the diaries and personal papers of two Presidents of the
 9 Republic of China (“Taiwan”) – Chiang Kai-shek and Chiang Ching-kuo. Declaration of
 10 Eric Wakin (“Wakin”) ¶ 7. Also included in the Deposit are other papers related to the
 11 Presidency of these two men. Wakin ¶ 8. The Deposit was originally deposited at Hoover¹
 12 in 2004 by defendant Chiang Fang Chi-yi. Wakin ¶ 9. 1. Consistent with the agreement
 13 between Hoover and Ms. Chiang, Hoover has facilitated the scholarly study of redacted
 14 copies of the diaries of Chiang Kai-shek (part of the Deposit) for thousands of times for
 15 different scholars, students or persons. Wakin ¶ 10. During any given month, many people
 16 come to Hoover for the specific purpose of studying these diaries. Wakin ¶ 11. Hoover has
 17 been very proud, and humbled, in its role of disseminating this knowledge to the world.
 18 Wakin ¶ 12. Consistent with this Court’s Order, the Deposit is currently being stored in
 19 over 50 archivally safe boxes in a vault at Stanford. Wakin ¶ 13; *see also*, Dkt. 13. Only
 20 limited staff has access to the vault. Wakin ¶ 14.

21 B. The Defendants

22 The Defendants are persons who have claimed to Plaintiff that they are descendants
 23 of either Chiang Kai-shek or Chiang Ching-kuo. Wakin ¶ 16. For purposes of this motion
 24 the Defendants are broken into 5 categories – one for each of the four legitimate children of
 25 Chiang Ching-kuo: (1) Chiang Hsiao-wen; (2) Chiang Hsiao-chang; (3) Chiang Hsiao-wu
 26 and (4) Chiang Hsiao-yung, and the fifth being a claimed grandchild of Chiang Kai-shek

27 ¹ “Hoover” or the “Hoover Institution” is part of Stanford University. Wakin ¶ 2.
 28

1 named Chungyan Chan.² Plaintiff provides further explanation, below. *See also*, Wakin
2 Decl. ¶ 34, Ex. A.

3 1. The Branch of Chiang Hsiao-wen

4 Chiang Hsiao-wen, the oldest son of Chiang Ching-kuo, passed away in 1989, and is
5 survived by his only child, his daughter, defendant Chiang Yo-mei. Chiang Yo-mei resides
6 in England and her counsel, Manatt, Phelps & Phillips, has filed a notice of appearance in
7 this action.³ *See* Dkt. 16, Stipulation to Extend Time to Respond to Initial Complaint; *see*
8 *also*, Dkt. 11, Waiver of Service of Chiang Yo-mei. Chiang Yo-mei has accepted service
9 of the Summons and Complaint.

10 2. The Branch of Chiang Hsiao-chang

11 Chiang Hsiao-chang is the only daughter of Chiang Ching-kuo. Ms. Chiang resides
12 within this judicial district, and has accepted service of the Summons and Complaint. *See*
13 Dkt. 14, Waiver of Service of Chiang Hsiao-chang.

14 3. The Branch of Chiang Hsiao-wu

15 Chiang Hsiao-wu, the second son of Chiang Ching-kuo, passed away in 1991, and is
16 survived by his widow defendant Chiang Tsai Hui-mei and his two children, defendant
17 Chiang Yo-sung and defendant Chiang Yo-lan, all of whom presently live in Taiwan.
18 Wakin ¶ 17. During its attempts to resolve this matter prior to the filing of this
19 Interpleader, Plaintiff has met and has had email correspondence with defendant Chiang
20 Yo-sung, who has claimed in writing to Plaintiff that he is authorized to speak on behalf of

22 ² Plaintiff had been informed, by Leo Soong and others, that the Academia Historica in
23 Taiwan may claim ownership to part of the Deposit. Academia Historica is Taiwan's
24 national organization tasked with affairs related to the nation's history, and has as its core
25 task the compilation of that history. Wakin ¶ 32. Plaintiff met in person with the
26 Director of the Academia Historica and then sent two letters to the Director of the
27 Academia Historica to determine whether it would make a claim to ownership of any part
28 of the Deposit. Despite these efforts, Academia Historica has never confirmed to Plaintiff
that it claimed ownership to any part of the Deposit. Wakin ¶ 33.

³ Counsel for Plaintiff informed Counsel for Chiang Yo-mei that it would be filing this *ex parte*
action. Counsel for Chiang Yo-mei informed Counsel for Plaintiff that Ms. Chiang
would not take any position on this motion and would not be filing any papers opposing
(or in support of) said motion.

1 his mother and sister. Wakin ¶ 18. Plaintiff has an email address for defendant Chiang Yo-
 2 sung, but no physical address. Wakin ¶ 19. Plaintiff has no contact information for
 3 defendants Chiang Tsai Hui-mei or Chiang Yo-lan. Wakin ¶ 20. Plaintiff has been
 4 informed by a representative of this branch of the family, Mr. Leo Soong of Walnut Creek
 5 California,⁴ that they are represented by counsel -- a Mr. Nathan Kaiser of the Eiger Law
 6 law firm in Taipei. Wakin ¶ 23.⁵

7 Counsel for Plaintiff first communicated with Mr. Kaiser in June 2013 on this
 8 matter. Declaration of Mark D. Litvack (“Litvack”) ¶ 2. Most recently on October 17,
 9 2013, Counsel for Plaintiff sent Mr. Kaiser a letter asking him if he would accept service of
 10 the Summons and Complaint for his clients. Litvack ¶ 3. In an October 23, 2013, response,
 11 while acknowledging his familiarity with the Interpleader action, Mr. Kaiser stated, “I
 12 reject any idea of accepting service on behalf of any of the parties.” Litvack ¶ 4.

13 4. The Branch of Chiang Hsiao-yung

14 Chiang Hsiao-yung, the third son of Chiang Ching-kuo, passed away in 1996, and is
 15 survived by his widow defendant Chiang Fang Chi-yi and his three sons, defendants Chiang
 16 Yo-bo, Chiang Yo-chang, and Chiang Yo-ching, all of whom presently live in Taiwan.
 17 Wakin ¶ 25. Over the years, Plaintiff has had many communications with Chiang Fang
 18 Chi-yi. Wakin ¶ 26. Additionally, during its attempt to resolve this dispute prior to the
 19 filing, Plaintiff met with Chiang Fang Chi-yi, Chiang Yo-bo, and Chiang Yo-chang. Wakin
 20 ¶ 27. Plaintiff has telephone numbers and email addresses for Chiang Fang Chi-yi and
 21 Chang Yo-bo, but no physical addresses for them. *Id.*

22 Because of her status regarding the Deposit, Plaintiff directly emailed the
 23 Interpleader to Chiang Fang Chi-yi and her representative Mr. Leo Soong. Wakin ¶ 28.⁶

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 25 ⁴ See discussion in section II.B.4, below.

26 ⁵ The Eiger Law law firm has two senior partners – Mr. Kaiser and a Mr. John Eastwood.
 Mr. Eastwood is an American trained lawyer and a member of the Bar in Ohio.

27 ⁶ Mr. Soong has also stated to Plaintiff, on numerous occasions, that he has discussed this
 28 litigation with Chiang Fang Chi-yi. Wakin ¶ 24.

1 Mr. Soong is a member of the Soong family of the Republic of China – a family with multi-
 2 generational connections to the Chiang family. Wakin ¶ 21-2. Soong May-ling (a member
 3 of the Soong family) married Chiang Kai-shek, and was oft referred to as Madame Chiang.
 4 Wakin ¶ 21. Leo Soong, nephew to Soong May-ling, is a resident of Walnut Creek,
 5 California, a Stanford graduate, and his wife Shirley has been a person designated by
 6 Chiang Fang Chi-yi to redact the Chiang diaries, at Hoover, prior to their release to the
 7 public. Wakin ¶ 22. Mr. Leo Soong responded to the Interpleader papers with several
 8 questions. Wakin ¶ 28. However, when Plaintiff addressed the issue of service with Mr.
 9 Soong, he responded “I said I would offer you no help to serve your papers.” Wakin ¶ 29.

10 Additionally, like the branch of Chiang Hsiao-wu, this branch of the family is
 11 represented by Mr. Kaiser – and Plaintiff faces identical issues here as noted above.

12 Litvack ¶ 5.

13 5. Chungyan Chan

14 During litigation in 2011 in Taipei between defendants Chiang Fang Chi-yi and
 15 Chiang Yo-mei, Plaintiff was copied on correspondence from Jones Day, as attorneys on
 16 behalf of Chen Yaoguang. Wakin ¶ 30. Chen Yaoguang claimed to be the adopted
 17 daughter of Chiang Kai-shek and Chen Jieru, the second wife of Chiang Kai-shek. Wakin ¶
 18 31. Plaintiff could not verify the validity of this claim, but does believe that there was a
 19 basis in fact for the claim.⁷ *Id.* In 2013, Counsel for Plaintiff was informed by Jones Day
 20 that Chen Yaoguang had passed away, that Chungyan Chan was her son, and that Jones
 21 Day would not be representing Chungyan Chan. Litvack ¶ 6. Chungyan Chan has accepted
 22 service of the Complaint. *See* Dkt. 15, Waiver of Service of Chungyan Chan.

23 III. PLAINTIFF’S REQUEST

24 Plaintiff requests to serve by email defendants Chiang Fang Chi-yi, Chiang Yo-bo,
 25 and Chiang Yo-sung. Plaintiff has repeatedly corresponded with each of these defendants

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 27 ⁷ *See, e.g.* Ch’en, Chieh-ju, Chiang Kai-shek’s Secret Past: The Memoir of His Second
 28 Wife: The Memoir of Ch’en Chieh-ju, His Second Wife (1994); *see also*, Chen Jieru,
 (Dec. 27, 2013), http://en.wikipedia.org/wiki/Chen_Jieru

1 via email. If permitted, Plaintiff would then serve discovery upon these persons who
2 almost certainly know how to communicate with their immediate family members: sons and
3 brothers – in the case of Chiang Fang Chi-yi and Chiang Yo-bo – and mother and sister – in
4 the case of Chiang Yo-sung. Additionally, to ensure knowledge of the litigation, Plaintiff
5 would simultaneously serve counsel for all of these persons, Mr. Nathan Kaiser. Plaintiff
6 requests that this simultaneous email service constitute service upon the above named un-
7 served Taiwanese defendants.

8 IV. APPLICABLE LAW AND ARGUMENT

9 A. Applicable Law

10 Federal Rule of Civil Procedure 4(f)(3) permits service in a place not within any
11 judicial district of the United States “by other means not prohibited by international
12 agreement, as the Court orders.” Fed. R. Civ. P. (4)(f)(3). The Ninth Circuit has
13 specifically accepted the legality of service by email and has rejected the argument that
14 “Rule 4(f) should be read to create a hierarchy of preferred methods of service of process.”
15 *See Rio Properties, Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1014-5 (9th Cir. 2002). In
16 fact, the Ninth Circuit specifically stated that “By all indications, court-directed service
17 under Rule 4(f)(3) is as favored as service available under Rule 4(f)(1) or Rule 4(f)(2).” *Id.*
18 at 1015.

19 Consistent with *Rio*, earlier this year, this Court noted:

20 In *Rio Properties*, the Ninth Circuit concluded that email was reasonably
21 calculated to provide notice to the foreign defendant of the suit, and that it
22 was the method of service most likely to reach defendant because the
23 defendant had no recorded physical address in Costa Rica, but was
24 communicative by email.

25 *JBR, Inc. v. Café Don Paco, Inc.*, 2013 WL 1891386, at *5 (N.D. Cal. May 6,
26 2013). Applying *Rio*, this Court has repeatedly authorized service via email when the
27 plaintiff has a valid email address for defendant. *See Facebook, Inc. v. Banana Ads, LLC*,
28 No. C-11-3619 YGR, 2012 WL 1038752, at *1–2 (N.D. Cal. Mar. 27, 2012) (finding that
email service was the best way to apprise defendants, with domain names registered in
Panama and Thailand, of the lawsuit because their physical address was unsuitable for

1 service and the plaintiffs had valid email addresses); *ADT Sec. Servs., Inc. v. Sec. One Int'l*
2 *Inc.*, No. 11–CV–05149, 2012 WL 3580670 (N.D. Cal. Aug. 17, 2012) (“under the
3 circumstances, service by email appears to be not only reasonably calculated to provide
4 actual notice to [defendants], but the method most likely to apprise them of this action”);
5 *Gucci America, Inc. v. Wang Huoqing*, No. C–09–05969 JCS, 2011 WL 31191, at *2–3
6 (N.D. Cal. Jan. 3, 2011) (finding email service appropriate when Chinese defendant
7 operated anonymously via the Internet); *Bank Julius Baer & Co. Ltd v. Wikileaks*, No. C
8 08-00824 JSW, 2008 WL 413737, at *2 (N.D. Cal. Feb. 13, 2008) (finding email service
9 appropriate where plaintiffs could not locate a valid physical address for defendants, and
10 believed them to be foreign, but had email addresses for defendants)⁸; *Williams–Sonoma*
11 *Inc. v. Friendfinder Inc.*, No. C 06-06572 JSW, 2007 WL 1140639, at *1–2 (N.D. Cal. Apr.
12 17, 2007) (finding that email service was proper when physical addresses for foreign
13 defendants could not be ascertained, but email had been effective means of communication
14 between the parties).

15 In summary, this Court has established that for service by email to be appropriate a
16 plaintiff must show: (1) that service by email is reasonably calculated to provide actual
17 notice to the defendant; and (2) international agreement does not prohibit such service. *ADT*
18 *Sec. Servs.*, 2012 WL 3580670, at *2 (*citing Rio* 284 F.3d at 1014, 1016). Both of these
19 prongs are met here.

20 1. Service by email is reasonably calculated to provide actual notice to the
21 defendants

22 As noted above, Plaintiff has had repeated email exchanges with defendants Chiang
23 Fang Chi-yi, Chiang Yo-bo, and Chiang Yo-sung. For defendant Chiang Fang Chi-yi, these
24 email exchanges have gone on for several years, and for defendants Chiang Yo-bo and
25 Chiang Yo-sung, such exchanges have gone on for almost a year. Given the exchanges
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27 ⁸ In *Bank Julius Baer & Co. Ltd*, Judge White noted that like the facts in this matter, it was
28 relevant that defendants refused to accept service through their purported agents.

1 with each of these persons, and with their counsel, this Court can reasonably have complete
2 confidence that email notice will provide actual notice to each of these defendants.

3 2. International agreement does not prohibit service by email

4 The Convention on the Service Abroad of Judicial and Extrajudicial Documents,
5 better known as the “Hague Convention,” governs service of process between international
6 countries who are parties. However, although the United States is a party, the Republic of
7 China is not. *Hague Conference on Private International Law, Convention of 15 November*
8 *1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or*
9 *Commercial Matters*, November 15, 1965, (Dec. 27, 2013),
10 http://www.hcch.net/index_en.php?act=conventions.status&cid=17. Thus, no international
11 agreement governs service of process between the United States and Taiwan.

12 Additionally, it should be noted that under Taiwanese law, “Any litigation paper
13 may be transmitted by . . . any other technological device, and such transmission shall have
14 the same effect as service in the case of any of the following: . . . A person interested in the
15 action moves for transmission of a specific litigation paper.” *Taiwan Code of Civil*
16 *Procedure* Article 153-1. As such, this request under United States law mirrors the request
17 permitted by the courts in Taiwan.

18 V. CONCLUSION

19 For the reasons stated above, Plaintiff respectfully submits that email service upon
20 defendants Chiang Fang Chi-yi, Chiang Yo-bo, and Chiang Yo-sung is proper and
21 appropriate.

22 Dated: January 8, 2014.

23
24 PILLSBURY WINTHROP SHAW PITTMAN LLP
25 MARK D. LITVACK
26 JAMES CHANG

27 By /s/ Mark D. Litvack
28 Mark D. Litvack
Attorneys for Plaintiff