

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

ELOY VELASCO BRISENO, and)
JANA HARRIS VELASCO,)
)
Plaintiffs,)
)
v.)
)
MARKETING AND MANAGEMENT)
SOLUTIONS, LLC, et al.,)
)
Defendants.)
)

Case No. 18-02482-CM-JPO

MEMORANDUM AND ORDER

This matter is before the court on plaintiff’s response to the magistrate judge’s Order to Show Cause why this case should not be dismissed, without prejudice, for lack of timely service of process to the thirteen remaining defendants. (Doc. 23.)

I. Background

Plaintiffs filed this case on September 7, 2018 against sixteen individual and corporate defendants in the United States and Mexico. At the time of filing, seven defendants were allegedly located in the United States, with the remaining nine defendants in Mexico. (Doc. 1, at 4–6.) Two of the defendants based in the United States were dismissed from this case without prejudice pursuant to the court’s order on January 31, 2019. (Doc. 20.) A third defendant allegedly based in the United States was dismissed from this case pursuant to the court’s order on June 27, 2019. (Doc. 21.) As a result, thirteen defendants remain: four who are allegedly located in the United States, as well as all nine who are allegedly located in Mexico.

Plaintiffs were ordered on July 1, 2019 to show cause why this case should not be dismissed for lack of service to these remaining thirteen defendants. (Doc. 22.) Plaintiffs responded on July 5, 2019

explaining their efforts to serve the defendants located in Mexico. (Doc. 23.) Plaintiffs attach multiple exhibits in support of their efforts to serve defendants in Mexico under Article 5 of the Hague Service Convention, which requires (1) translation of the relevant documents into Spanish; (2) completion of form USM-94, the Hague Service Request; and (3) transmission of these materials to the Central Authority of Mexico. Plaintiffs further attach a reply by the Central Authority stating that one defendant was not successfully served because it was not located at the address provided on the summons. (Doc. 23-4.) Due to the expected delay in completing foreign service, plaintiffs ask the court for a six month stay of the case. (Doc. 23, at 3.)

II. Discussion

In light of plaintiffs' exhibits, which include (1) certificates of accuracy for the translation of complaint and multiple summons to the nine defendants in Mexico (Doc. 23-1); the shipping receipt for plaintiffs' mailing of documents to the Central Authority in Mexico on February 27, 2019 (Doc. 23-2); proof of delivery of that submission dated March 11, 2019 (Doc. 23-3); and a response from Mexico's Central Authority as to service on one defendant, sent on or about June 20, 2019 (Doc. 23-4), the court is persuaded that plaintiffs are attempting to promptly serve defendants located in Mexico. However, four defendants remain who are allegedly located in the United States, and the court will not consider a stay of proceedings before resolving the service concerns presented by the magistrate judge's order.

Defendants James Allen Buckley ("Buckley"), Banorte USA Corporation ("Banorte USA"), Banorte, and BBVA Bancomer, S.A. ("BBVA") are allegedly located in the United States. As noted by the magistrate judge, a summons was returned executed upon Banco USA Corporation, but it is unclear which—if any—defendant has been served, as Banco USA Corporation is not a named party. The court notes that defendant Buckley is allegedly the President of Marketing and Management

Solutions, LLC, a defendant dismissed without prejudice pursuant to the court's January 31 order. (Doc. 20.) It is unclear whether plaintiffs wish to dismiss defendant Buckley or will timely serve him and the other three defendants allegedly located in the United States.

Accordingly, plaintiffs still must show cause why defendants Buckley, Banorte USA, Banorte, and BBVA should not be dismissed for lack of service. In light of plaintiffs' attempts to comply with the magistrate judge's order, the court directs plaintiffs to show cause on or by August 5, 2019.

IT IS THEREFORE ORDERED that on or by August 5, 2019, plaintiffs must show cause why defendants James Allen Buckley, Banorte USA Corporation, Banorte, and BBVA Bancomer, S.A. should not be dismissed without prejudice for lack of timely service of process.

Dated this 18th day of July, 2019, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge