

Society Pass Inc. v Xperx AI Pte Ltd
2025 NY Slip Op 32230(U)
June 18, 2025
Supreme Court, New York County
Docket Number: Index No. 652442/2023
Judge: Joel M. Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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SOCIETY PASS INCORPORATED,

INDEX NO. 652442/2023

Plaintiff,

MOTION DATE 01/15/2025

- v -

MOTION SEQ. NO. 005XPERX AI PTE LTD D/B/A GROWTH HERO, XPERX AI
CO LTD D/B/A GROWTH HERO, THOMAS O'CONNOR,
RAHUL NARAIN, CVO ADVISORS PTE LIMITED, JOHN
DOES, CORPORATIONS X, Y, Z**DECISION + ORDER ON
MOTION**

Defendants.

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 005) 58, 59, 60, 65
were read on this motion for EXTENSION OF TIME TO COMPLETE SERVICE/
ALTERNATE SERVICE.

Plaintiff Society Pass Incorporated ("Society Pass") moves for an Order (i) granting an extension of time to complete service of process under the Hague Convention upon Defendants Xperx AI Pte Ltd. d/b/a GrowthHero ("Xperx Pte."), Xperx AI Co. Ltd. d/b/a GrowthHero ("Xperx Co."), Thomas O'Connor ("O'Connor"), and CVO Advisors Pte Limited ("CVO") (collectively the "Defendants") pursuant to CPLR 306-b; and (ii) granting leave to serve Defendants by email via O'Connor pursuant to CPLR 308(5). For the reasons set forth below, Society Pass' motion is **granted**.

Society Pass commenced this action on May 18, 2023 (NYSCEF 1-2). By order dated December 8, 2023, the Court granted Society Pass' initial motion for a six-month extension of time to complete service under the Hague Convention on Defendants in Vietnam with leave to renew, if necessary (NYSCEF 43). On June 7, 2024, Society Pass moved for a second six-month extension of time to serve Defendants under the Hague Convention and for leave to move by

Order to Show Cause permitting service by email pursuant to CPLR 308(5) should Hague Convention service prove impossible (NYSCEF 47-49). The Court granted that motion by order dated July 16, 2024 (NYSCEF 50). Society Pass now moves for a third six-month extension to complete service of process and leave to serve O'Connor¹ by email.

I. SOCIETY PASS' REQUEST FOR A THIRD SIX-MONTH EXTENSION TO COMPLETE SERVICE OF PROCESS PURSUANT TO THE HAGUE CONVENTION IS GRANTED.

"An extension of time for service is a matter within the court's discretion" (*Leader v Maroney, Ponzini & Spencer*, 97 NY2d 95, 101 [2001]). "CPLR 306–b authorizes an extension of time for service in two discrete situations: upon good cause shown or in the interest of justice" (*Henneberry v Borstein*, 91 AD3d 493, 495 [1st Dept 2012] [internal quotation marks omitted]). Here, Society Pass has demonstrated significant efforts to serve Defendants in Vietnam, including engaging an international service agent to effectuate Hague Convention service. The service agent attempted to serve O'Connor at a residential address (an apartment) in Vietnam that O'Connor had provided during a deposition in a related case and which was later confirmed by his counsel (NYSCEF 13-14). According to the service agent, the building's front desk receptionist stated that O'Connor had moved out (*id.*). The service agent, which had initially estimated that Hague Convention service would take up to a year, recently advised Society Pass that there was no further action that Society Pass could take toward the completion of service on Defendants. The delay in effectuating service has been due to circumstances beyond Society Pass' control, despite its diligent efforts. Accordingly, the Court finds that a six-month extension is warranted.

¹ According to Society Pass, O'Connor is an executive officer of Xperx Pte., Xperx Co., and CVO is O'Connor's alter ego (NYSCEF 60 at 2).

II. SOCIETY PASS MAY SERVE DEFENDANTS BY EMAIL.

"Under New York law, service by email on foreign defendants is also a permissible means of service, consistent with due process and not prohibited by the Hague Convention, where the methods prescribed by or compatible with the law of defendants' country have proved ineffective" (*Korea Deposit Ins. Corp. v Jung*, 59 Misc 3d 442, 446 [Sup Ct 2017], citing *Alfred E. Mann Living Tr. v ETIRC Aviation S.a.r.l.*, 78 AD3d 137, 141 [1st Dept 2010]). However, a litigant must show that email service can be "reasonably calculated under the circumstances to apprise defendant of the action" (*NMR E-Tailing LLC v Oak Inv. Partners*, 216 AD3d 572, 572 [1st Dept 2023]; *Baidoo v Blood-Dzraku*, 48 Misc 3d 309, 312 [Sup Ct 2015]).

Here, the same factors that "previously mandated an extension of time to serve" Defendants "in the interests of justice also mandate an alternative method of service in the interests of elemental fairness" (*Korea Deposit Ins. Corp.*, 59 Misc 3d 447). Society Pass has attempted to serve Defendants under the Hague Convention through an international service agent for over a year. Those efforts have not been successful for reasons beyond Society Pass' control. In addition to showing that Hague Convention service is impracticable, Society Pass has demonstrated that email service can be reasonably calculated to apprise O'Connor (and through him the other Defendants) of this action. O'Connor, who is a plaintiff in an action against Society Pass pending in this Court) has testified during a deposition that he uses the three email addresses through which Society Pass seeks to effectuate service. In one instance, O'Connor's counsel copied O'Connor on an email he sent to Society Pass, using one of those three email addresses. Having established that Hague Convention service was impracticable and that alternative service by email would be reasonably calculated to apprise Defendants of this action, Society Pass is authorized to serve O'Connor by email.

Accordingly, it is

ORDERED that Society Pass' motion for (i) a six-month extension of the time to effectuate Hague Convention service of process upon Defendants pursuant to CPLR 306-b and (ii) leave to serve Defendants by email pursuant to CPLR 308(5) is **granted**; and it is further

ORDERED that the Defendants shall respond to the complaint within 30 days of service.

This constitutes the decision and order of the Court.

6/18/2025

DATE

CHECK ONE:

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CASE DISPOSED

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GRANTED

☐

DENIED

APPLICATION:

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SETTLE ORDER

CHECK IF APPROPRIATE:

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INCLUDES TRANSFER/REASSIGN

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NON-FINAL DISPOSITION

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GRANTED IN PART

☐

OTHER

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SUBMIT ORDER

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FIDUCIARY APPOINTMENT

☐

REFERENCE

20250618145031JMC0HEHF3B0903D0DE446FA89F6526C1163DF36

JOEL M. COHEN, J.S.C.