UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

LEONID GOLDSTEIN,	§	
	§	
Plaintiff,	§	
	§	
	§	
v.	§	**NO. 5:16-cv-211-C**
	§	
CLIMATE ACTION NETWORK, CERES INC, ROCKEFELLER BROTHERS FUND INC, GENERATION INVESTMENT MANAGEMENT US LLP, FORD FOUNDATION, THE PEW CHARITABLE TRUSTS, GREENPEACE INTERNATIONAL CORP, ENVIRONMENTAL GRANTMAKERS ASSOCIATION CORP, THE CONSULTATIVE GROUP ON BIOLOGICAL DIVERSITY CORP, SIERRA CLUB FOUNDATION CORP, WORLD WIDE FUND FOR NATURE TRUST, US CLIMATE ACTION NETWORK CORP, GLOBAL CALL FOR CLIMATE ACTION CORP, GENERATION INVESTMENT MANAGEMENT LLP, ALLIANCE FOR CLIMATE PROTECTION CORP, FENTON COMMUNICATIONS CORP, WORLD WILDLIFE FUND INC, GREENPEACE INC, GREENPEACE FUND INC, FRIENDS OF EARTH INTERNATIONAL CORP, FRIENDS OF THE EARTH US CORP, FRIENDS OF THE EARTH (ACTION) INC, ENVIRONMENTAL DEFENSE FUND, INC, ENVIRONMENTAL DEFENSE ACTION FUND CORP, NATURAL RESOURCES DEFENSE COUNCIL INC, NRDC ACTION FUND CORP, SIERRA CLUB CORP, EARTHJUSTICE CORP, THE UNION OF CONCERNED SCIENTISTS INC, THE PEW MEMORIAL TRUST, HOWARD PEW FREEDOM TRUST, MABEL PEW MYRIN TRUST, J.N. PEW JR CHARITABLE TRUST, THE JOHN D	§	

AND CATHERINE T MACARTHUR FOUNDATION, THE WILLIAM & FLORA HEWLETT FOUNDATION, THE DAVID AND LUCILE PACKARD FOUNDATION, TIDES FOUNDATION CORPORATION, TIDES :CENTER CORPORATION, CLIMATEWORKS FOUNDATION, THE ENERGY FOUNDATION, JOHN and JANE DOES 1-99,	§ § § § § § § § § § § § §
Defendants.	

DEFENDANT WWF – WORLD WIDE FUND FOR NATURE (FORMERLY WORLD WILDLIFE FUND)'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT, AND BRIEF IN SUPPORT

TO THE HONORABLE SAM R. CUMMINGS, SENIOR UNITED STATES DISTRICT JUDGE:

COMES NOW Defendant WWF – World Wide Fund for Nature (formerly World Wildlife Fund) ("WWF- International") and files this Motion and Brief in Support thereof, to dismiss all claims against WWF-International in the Complaint.

I. FAILURE TO PROPERLY SERVE WWF - INTERNATIONAL

Plaintiff failed to properly serve WWF-International with process and the Court therefore lacks personal jurisdiction over it. The Plaintiff mailed his complaint to "World Wide Fund for Nature Trust" c/o World Wildlife Fund, Inc. ("WWF - US") at that organization's headquarters in Washington, D.C., USA. WWF-International is located in Gland, Switzerland. It does not have a physical or legal presence in the United States, and it is a separate legal entity from WWF-US.

Normally, service on international corporations requires compliance with the Hague Convention, which the Plaintiff did not attempt here. *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 705, 108 S.Ct. 2104, 100 L.Ed.2d 722 (1988). However, this does not override state law, which allows for domestic service of a foreign corporation's agent. *See*

Glencore Ltd. v. Occidental Argentina Expl. & Prod., Inc., No. CIV.A. H-11-3070, 2012 WL 591226, at *3 (S.D. Tex. Feb. 22, 2012). Thus, in order for the service in question to be held effective, WWF-International and WWF-US would need to be in an agency relationship or a contractual relationship in which WWF is specifically authorized to accept service of process on WWF-International's behalf. That is not the case here.

Rule 4(h) governs service of process on a foreign corporation, and states that, unless otherwise provided by federal law, a foreign business entity must be served as follows:

> (1) in a judicial district of the United States:
> (A) in the manner prescribed by Rule 4(e)(1) for serving an individual; or
> (B) by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receiver service of process—if the agent is one authorized by statute and the statute so requires—by also mailing a copy of each to the defendant; or
>
> (2) at a place not within any judicial district of the United States, in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C)(i).

Fed.R.Civ.P. 4(h).

The Fifth Circuit construes Rule 4(h) narrowly, and requires that the corporate entity sought to be served "have actually authorized the agent to accept service of process on its behalf." *Glencore*, 2012 WL 591226, at *2–4. Even if WWF-International and WWF-US were considered to be in a parent-subsidiary relationship (which they are not), the factors of analysis to determine if service on WWF-US would be sufficient for WWF-International do not support this type of service. For service on a subsidiary to be effective on a parent corporation, the parent corporation must "exercise such control over the domestic subsidiary that the two entities are essentially one." *Lisson v. ING Groep*, 262 F. App'x 567, 570 (5th Cir. 2007) (unpublished) (*per curiam*) (citing *Sheets v. Yamaha Motors Corp., U.S.A.*, 891 F.2d 533, 536 (5th Cir. 1990)). As established by the Declaration of Margaret Ackerley, Senior Vice President and General Counsel

for WWF-US: WWF-International has not designated WWF-US to serve as an agent for service of process in the United States and the two entities are not in a parent-subsidiary or sibling corporate relationship, but instead are separate entities. *See* Appendix In Support of WWF-International's Motion to Dismiss ("App.") at pg. 1. Thus, because of these facts, service of process upon WWF-US is ineffective to constitute proper service upon WWF-International. *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. at 705; *Glencore*, 2012 WL 591226, at *2–4; *Lisson*, 262 F. App'x at 570; *Sheets*, 891 F.2d at 536.

Plaintiff failed to properly serve WWF-International, a Swiss entity, because it attempted to do so by serving Defendant World Wildlife Fund, Inc. ("WWF – US"). This is insufficient. Because this action is based exclusively on federal question jurisdiction, and not based on diversity jurisdiction, service is governed by Federal Rule of Procedure 4. Under Rule 4(h), a foreign entity such as WWF - International can only be served in a manner provided for under Rule 4(f), and pursuant to Rule 4(f), service must be made on such a corporation pursuant to the Hague Convention. *See* Fed. R. Civ. P. 4(f), (h).[1]

Even if service on WWF - International could be effectuated through WWF - US, service of process would still be insufficient as to both WWF - US and WWF- International because it was not accomplished in accordance with applicable federal or Texas procedures. The proofs of

[1] Even if this were a diversity case and the Texas long-arm statute applied, and if the entities were parent-subsidiary, as this Court has held, "[s]ervice on a subsidiary does not usually constitute service on the parent corporation" absent allegations that the parent "exercised such a degree of control over its [] subsidiary that the two corporations cannot be considered separate entities for jurisdictional purposes." *Paradigm Entm't, Inc. v. Video Sys. Co.*, No. 99-cv-2004, 2000 WL 251731, at *3 (N.D. Tex. Mar. 3, 2000); *see also Hargrave v. Fibreboard Corp.*, 710 F.2d 1154, 1159 (5th Cir. 1983) ("[T]he mere existence of a parent-subsidiary relationship is not sufficient to warrant the assertion of jurisdiction over the foreign parent."). Such facts have not been alleged here.

service filed by Plaintiff show that WWF-US and WWF - International were served by a process server through certified mail, return receipt requested. (Dkt. 16, 17). The Federal Rules do not permit service of process by mail and the Texas rules limit service in this manner. Fed. R. Civ. P. 4(e)(1); Tex. R. Civ. P. 103, 106(a). As this Court has held, "for a private process server to make service by certified mail, authorization by law, a written court order, or certification by the Supreme Court is required." *Willis v. Lopez*, No. 10-cv-154, 2010 WL 4877273, at *2 (N.D. Tex. Dec. 1, 2010). No such order was obtained by Plaintiff, and thus service by this method fails as to WWF-US and WWF-International

II. ADOPTION OF CO-DEFENDANTS' MOTIONS BY REFERENCE

WWF – International understands that WWF – US and the other Co-Defendants intend to file motions to dismiss. If the Court finds that service on WWF – International was effective, WWF – International adopts by reference all Co-Defendants' motions to dismiss along with the grounds and argument stated therein, to the extent that they do not contradict the grounds and arguments raised in this Motion.

WHEREFORE, PREMISES CONSIDERED, **WWF-International** requests that the Court dismiss all claims against it in Plaintiff's Complaint.

Date: October 13, 2016

Respectfully submitted,

POLSINELLI PC

By: */s/ William B. Mateja*

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ATTORNEYS FOR DEFENDANT DEFENDANT WWF-WORLD WIDE FUND FOR NATURE (FORMERLY WORLD WILDLIFE FUND)

CERTIFICATE OF SERVICE

I hereby certify that on October 13, 2016, I caused the foregoing document to be electronically transmitted to the Clerk of the Court using the ECF system for filing. A Notice of Electronic Filing was transmitted to all ECF registrants and I served the same document by U.S. mail on all counsel of record who are not ECF registrants.

/s/ Jason C. Hoggan
Jason C. Hoggan