IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CONTINENTAL AUTOMOTIVE SYSTEMS, INC., Plaintiff, v. AVANCI, LLC et al., Defendants.	§ § § § § § § § § §	Civil Action No. 3:19-cv-02933-M

ORDER

Before the Court is Defendant Sharp Corporation's Rule 12(b)(5) Motion to Dismiss for Improper Service. [ECF No. 269]. For the following reasons, the Motion is **DENIED**.

I. Factual Background

Defendant Sharp Corporation ("Sharp Japan") is a Japanese corporation with its principal place of business in Osaka, Japan. Its subsidiary, Sharp Electronics Corporation ("Sharp USA"), is a New York corporation with its principal place of business in New Jersey. Sharp USA's registered agent is CT Corporation, which was served by Plaintiff in California. The parties do not contest that service was properly executed on Sharp USA through CT Corporation; however, they dispute whether service of Sharp USA was effective as to Sharp Japan.

II. Legal Standard

When service of process is challenged, "the plaintiff bears the burden of establishing its validity." A corporation can be served under the law of the state in which service was executed. Fed. R. Civ. P. 4(e)(1), (h)(1)(A). Under California law, a corporation may be served through its "general manager." Cal. Civ. P. Code § 416.10(b). A foreign corporation, specifically, may be

served through "its general manager in [California]." Cal. Corp. Code § 2110.[1] "It is well settled" that California does not require "strict compliance with statutes governing service of process." *Gibble v. Car-Lene Research, Inc.*, 67 Cal. App. 4th 295, 313 (1998); *see also Garcia v. Doe White Trucking Co.*, No. 20-CV-00134-SI, 2020 WL 1156911, at *4 (N.D. Cal. Mar. 10, 2020) (describing similarly). Instead, these statutes "should be liberally construed to effectuate service and uphold the jurisdiction of the court if actual notice has been received by the defendant." *Gibble*, 67 Cal. App. 4th at 313; *see also Pasadena Medi-Ctr. Assocs. v. Superior Court*, 9 Cal. 3d 773, 778–79 (1973) (upholding service after concluding that § 416.10 should be "liberally construed"); *Summers v. McClanahan*, 140 Cal. App. 4th 403, 411 (2006) ("It is clear [that] the old rule of strict construction has been rejected and a new rule of liberal construction has been adopted.").

III. Sharp USA is Sharp Japan's General Manager

A general manager "includes any agent of the corporation 'of sufficient character and rank to make it reasonably certain that the defendant will be apprised of the service made.'" *Id.* "This depends upon the frequency and quality of contact between the parent and the subsidiary, the benefits in California that the parent derives from the subsidiary, and the overall likelihood that service upon the subsidiary will provide actual notice to the parent." *United States ex rel. Miller v. Pub. Warehousing Co. KSC*, 636 F. App'x 947, 949 (9th Cir. 2016). Such a relationship exists if the subsidiary provides the parent corporation "substantially the business advantages that it would have enjoyed 'if it conducted its business through its own offices or paid agents in the state.'" *Cosper v. Smith & Wesson Arms Co.*, 53 Cal. 2d 77, 84 (1959). This

[1] "General manager" is construed largely analogously under both provisions. *See Falco v. Nissan N. Am. Inc.*, 987 F. Supp. 2d 1071, 1076–78 (C.D. Cal. 2013) (analyzing the meaning of "general manager" in § 416.10(b) with reference to case law interpreting the predecessor to § 2110); *Gray v. Mazda Motor of Am., Inc.*, 560 F. Supp. 2d 928, 930–31 (C.D. Cal. 2008) (doing the same).

is "a very broad definition," which can "include the domestic sales representative(s) and local distributor(s) of a foreign corporation." *Hatami v. Kia Motors Am., Inc.*, No. SACV 08-226 DOC MLGX, 2008 WL 4748233, at *2 (C.D. Cal. Oct. 29, 2008).

It is undisputed that Sharp Japan established Sharp USA to expand into the United States, and that Sharp USA operates as Sharp Japan's "U.S. sales and marketing subsidiary." [Response Appx., ECF No. 280 at A31, A72–73].[2] As such, it serves as Sharp Japan's point of contact within the United States for product development, product and warranty support, and the provision to customers of English product manuals. [Response Appx. at A2, A7, A9, A11, A20, A115]. Sharp USA also uses Sharp Japan's trademarks, and jointly enforces Sharp Japan's patents. [Response Appx. at A87–A99, A101, A104, A114, A122–24]. Sharp USA's office in California serves as "the hub for sales, marketing and warehousing operations in the Western United States." [Response Appx. at A85].

The evidence suggests that Sharp USA is for Sharp Japan a "mere conduit or vehicle for entering and exploiting the American market." *See Falco*, 987 F. Supp. 2d at 1077. This gives Sharp Japan "substantially the business advantages that it would have enjoyed 'if it conducted its business through its own offices or paid agents in the state.'" *See Cosper*, 53 Cal. 2d at 84. Their close business connections establish that Sharp USA is Sharp Japan's general manager for purposes of service of process under California law. *See Khachatryan v. Toyota Motor Sales, U.S.A., Inc*., 578 F. Supp. 2d 1224, 1227 (C.D. Cal. 2008) (concluding that a subsidiary that distributed the parent corporation's vehicles in California and published and distributed

[2] Defendant Sharp Japan argues that the Court should ignore the Declaration submitted in support of Plaintiff's Response, because it consists largely of argument and assertions beyond the personal knowledge of the declarant. [Reply, ECF No. 286 at 1 n. 1]. To the extent that the Declaration includes impermissible arguments or factual assertions, the Court nevertheless credits its authentication of the attached exhibits, upon which the Court is basing its factual conclusions.

marketing materials with the parent corporation's logo, trademarks, and tradename was the parent corporation's general manager); *Gray*, 560 F. Supp. 2d at 931 (holding that a domestic distributor who jointly warranted vehicles with its foreign parent corporation was the parent's general manager); *Yamaha Motor Co. v. Superior Court*, 174 Cal. App. 4th 264, 274–75 (2009) (finding an entity that has "an exclusive arrangement to sell the manufacturer's products, provides warranty service [and] English owner manuals, does testing, marketing, and receives complaints about the manufacturer's products" was a general manager for the manufacturer) (emphasis omitted).

Defendant argues that the evidence described above should be discounted, because Sharp USA's operations do not specifically relate to the licensing of the patents at issue in this case. [Motion at 2; Reply at 2]. A subsidiary cannot serve as the general manager for a parent corporation engaged in a wholly unrelated business. *See Khachatryan*, 578 F. Supp. 2d at 1227 n. 1 ("By way of hypothetical, assume that Toyota had a subsidiary in California whose exclusive business was importing koi fish. That subsidiary could hardly be considered the general manager of Toyota's American automotive activities."); *see also Tang v. CS Clean Sys. AG*, No. D052943, 2008 WL 5352253, at *5 (Cal. Ct. App. Dec. 23, 2008) (holding that a general manager could not be served on behalf of its parent corporation for an action "involving alleged injury from operations that are divorced from the operations that [it] does manage for" the parent corporation) (emphasis omitted).

Sharp USA, however, is actively involved in the management of Sharp Japan's intellectual property, by working jointly with Sharp Japan to enforce Sharp Japan's patent rights. Its operations are, therefore, not wholly unrelated to the patent licensing at issue in this action. Here, due to their common activities, it is "reasonably certain [Sharp USA] will apprise [Sharp

Japan] of any service in California." *Yamaha Motor Co.*, 174 Cal. App. 4th at 274. Sharp Japan was "put on notice of this action as a result of the service of process on" Sharp USA. *Khachatryan*, 578 F. Supp. 2d at 1227. The Court finds that Sharp USA is a general manager of Sharp Japan for purposes of service of process.

IV. Sharp USA is Present in California

Defendant Sharp Japan argues that, because Sharp USA is not a citizen of California, either by being incorporated or having a principal place of business in California, it is not a "general manager in [California]," under § 2110. Although service of a foreign corporation is specifically addressed by § 2110, a foreign corporation can also be served under the more general § 416.10(b), which applies to both domestic and foreign corporations. *See Ault v. Dinner for Two, Inc.*, 27 Cal. App. 3d 145, 149 (1972) ("[Section 416.10] makes no distinction between corporations, foreign or domestic, resident or nonresident."); *see also Khachatryan*, 578 F. Supp. 2d at 1226–27 (applying § 416.10(b) to find proper service on a Japanese corporation through its general manager). Section 416.10(b) allows for service on a general manager, without geographic qualification. Therefore, service on a foreign corporation through its general manager, even if the general manager is not in California, can be proper under § 416.10(b), regardless of if it is proper under § 2110. *See Thomas v. Takeda Pharm. USA, Inc.*, No. 1:16-CV-01566-LJO-EPG, 2017 WL 2214956, at *5 n. 7 (E.D. Cal. May 19, 2017) (finding that the alleged general manager of a foreign corporation did not need to be located in California because service could be adequate under § 416.10(b) without satisfying § 2110).

In any event, Sharp USA's operations on behalf of Sharp Japan, as explained above, extend extensively into California, satisfying the requirements of § 2110. Understandably, "most of the cases in which courts have applied these statutes involved service on a California-based

affiliate of a foreign defendant." *LA Gem & Jewelry Design, Inc. v. Gold Star Jewellery PVT Ltd.*, No. CV 14-4807 DSF (RZX), 2014 WL 10401936, at *2 (C.D. Cal. Aug. 11, 2014). However, that fact is not dispositive on the issue. *See Locker v. So Cal Triumph*, 2018 Cal. Super. LEXIS 4030, at *2–3 (finding service on a general manager that was not a California citizen was proper under § 2110).[3] Instead, it is merely a consideration when determining if the served entity is a "general manager in [California]." *Cf. LA Gem & Jewelry Design, Inc.*, 2014 WL 10401936, at *2 (finding that the served entities were not general managers in California, both because they were New York citizens and because they did not conduct any other business in the state). Although not a citizen of California, Sharp USA's California operations on behalf of Sharp Japan are sufficient to make it the "general manager in [California]" of Sharp Japan for purposes of satisfying § 2110. Therefore, Plaintiff properly served Sharp Japan by serving Sharp USA.

V. Conclusion

For the foregoing reasons, the Court finds that Plaintiff properly served Sharp Japan through its general manager, Sharp USA, under § 2110 or, alternatively, under § 416.10(b) of California law. Because service was proper under state law, service is unnecessary under the Hague Convention. *See Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 707 (1988) ("Where 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.").[4]

[3] While the Court in *Locker* does not identify the citizenship of the served general manager, public records from the California Secretary of State's website indicate that it is registered in California as a foreign corporation with a principal place of business in Georgia.

[4] Defendant Sharp Japan also claims, in passing, that service was improper under the Due Process Clause. [Motion at 1]. However, its only argument in support of this claim is that service via Sharp USA was not authorized. [Reply at 1]. Since service was authorized under California law and thus under the Federal Rules of Civil Procedure, Defendant Sharp Japan's claims do not establish a Due Process Clause violation.

Therefore, Defendant Sharp Corporation's Rule 12(b)(5) Motion to Dismiss for Improper Service is **DENIED**.

SO ORDERED.

July 5, 2020.

BARBARA M. G. LYNN
CHIEF JUDGE