

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NIBI, INC.,
Plaintiff,
v.
JOHN DOE,
Defendant.

Case No. [24-cv-06184-EKL](#)

**ORDER AUTHORIZING EXPEDITED
DISCOVERY AND ALTERNATIVE
SERVICE OF PROCESS**

Re: Dkt. Nos. 12, 18, 20, 21

Plaintiff Nibi, Inc. (“Nibi”) seeks an order (1) authorizing expedited discovery to identify Doe Defendants, and (2) permitting Nibi to serve the Doe Defendants by delivering a non-fungible token (“NFT”) to certain cryptocurrency wallets that Nibi has traced to them. *Ex Parte* Mot. to Expedite Disc. and for an Order Authorizing Alternative Service, ECF No. 12 (“Motion”). The Court carefully reviewed the briefs and supplemental submissions and heard oral argument on December 18, 2024. For the following reasons, the Court GRANTS the Motion.

I. FACTUAL BACKGROUND¹

This action involves an alleged email spoofing attack through which the Doe Defendants posed as a bank, defrauded Nibi into sending them digital assets, and then covered their tracks through a series of digital transactions. Nibi “develops software related to the Nibiru Chain,” a “layer-1 blockchain and smart contract ecosystem.” Compl. ¶ 2. “Over the course of several months, Nibi exchanged emails with Deltec [International Group bank] regarding opening a new bank account.” *Id.* ¶ 3. When Nibi and Deltec corresponded via email, “Deltec sent its communications to Nibi using the email domain URL [www.deltecbank.com](#).” *Id.* ¶ 4.

¹ These facts are taken from the Complaint, ECF No. 1 (“Compl.”), and assumed to be true for purposes of this motion.

Unknown to Nibi, “malicious attackers compromised the email thread where Nibi was communicating with Deltec and introduced a set of imposter email addresses impersonating Deltec using the email domain URL www.deltecsbank.com.” *Id.* ¶ 4. By using the sham email domain, “the Doe Defendants lied to make Nibi . . . believe they were legitimate personnel from Deltec,” *id.* ¶ 6, and fraudulently induced Nibi to send them approximately \$4 million of digital assets intended for Deltec. *Id.* ¶¶ 1, 32-40, 50-56. The Doe Defendants “dissipated the converted digital assets through a series of blockchain wallet addresses and cryptocurrency exchanges.” *Id.* ¶ 7.

On November 29, 2024, Nibi filed the present Motion. On December 13, 2024, in response to the Court’s Order to Supplement, ECF No. 14, Nibi supplemented its request for expedited discovery by filing its proposed subpoenas and identifying the proposed recipients. On December 18, 2024, the Court held a hearing on the Motion and ordered Nibi to submit additional information regarding service of process. Min. Entry, ECF No. 19. On December 23, 2024, Nibi filed the requested information. *See* Decl. of Julia Hardy, ECF No. 20 (“Hardy Decl.”); Proposed Order, ECF No. 21. As of the date of this Order, no opposition to the Motion has been filed.

II. MOTION TO EXPEDITE DISCOVERY

“Expedited discovery under Rule 45 is appropriate when good cause for the discovery, in consideration of the administration of justice, outweighs the prejudice to the responding party.” *UMG Recordings, Inc. v. Does 1-4*, No. 06-0652 SBA (EMC), 2006 WL 1343597, at *1 (N.D. Cal. Mar. 6, 2006). When the defendants’ identities are not known before the complaint is filed, “the plaintiff should be given an opportunity through discovery to identify the unknown defendants, unless it is clear that discovery would not uncover the identities, or that the complaint would be dismissed on other grounds.” *Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980).

In evaluating whether a plaintiff establishes good cause, . . . courts examine whether the plaintiff (1) identifies the Doe defendant with sufficient specificity that the court can determine that the defendant is a real person who can be sued in federal court, (2) recounts the steps taken to locate and identify the defendant, (3) demonstrates that the action can withstand a motion to dismiss, and (4) proves that the discovery is likely to lead to identifying information that will permit service of process.

Digital Sin, Inc. v. Does 1-5698, No. C 11-04397 LB, 2011 WL 5362068, at *2 (N.D. Cal. Nov. 4, 2011).

1 Nibi has shown good cause to permit expedited discovery to uncover the identity of the
2 Doe Defendants. Nibi has sufficiently alleged the prima facie elements of a claim for fraud.
3 Compl. ¶¶ 30-40, 70-75. Additionally, Nibi has conducted an investigation to locate and identify
4 the Doe Defendants. Through its investigation, Nibi has identified certain internet protocol (“IP”)
5 addresses that the Doe Defendants allegedly used to host the sham email domain used in the
6 spoofing attack. Decl. of Jonathan Chang ¶ 13, ECF No. 12-1 (“Chang Decl.”). Nibi has also
7 identified “on-chain wallet addresses that the attackers were utilizing as part of their scheme.” *Id.*
8 ¶ 13; *see also* Hardy Decl. This information indicates that the Doe Defendants are real persons
9 who can be sued in federal court.

10 The requested discovery will likely fill the gaps in Nibi’s investigation and lead to
11 information that will identify the Doe Defendants. *See* Mot. at 4 (requesting discovery into the
12 identity of the attackers). Nibi needs this discovery to advance its case. *UMG Recordings*, 2006
13 WL 1343597, at *1 (“Plaintiffs have no other way to obtain this most basic information, which is
14 necessary to advance the lawsuit by enabling Plaintiffs to effect service of process.”). Therefore,
15 on the current record, Nibi has shown that good cause for discovery outweighs the potential
16 prejudice to the responding parties.

17 Accordingly, the Court GRANTS Nibi’s request to serve expedited discovery on the third
18 parties identified in the Motion and supplemental filings. *See* ECF Nos. 18-7, 18-8, 18-9, 18-10,
19 18-11, 18-12, 18-13, 18-14. Each proposed subpoena recipient shall have 30 days from service of
20 the subpoena to object to, or move to quash or modify, the subpoena. Nibi may use the
21 information identifying potential Doe Defendants disclosed in response to the subpoenas solely to
22 pursue Nibi’s claims and rights related to the spoofing attack against Nibi as alleged in the
23 operative complaint.

24 The Court expresses no opinion as to whether Nibi’s specific discovery requests comply
25 with Federal Rule of Civil Procedure 45, which requires Nibi to “take reasonable steps to avoid
26 imposing undue burden or expense” on the subpoena recipients. This Order is made without
27 prejudice to any third-party’s right to move to quash or modify the subpoenas.
28

III. MOTION TO AUTHORIZE ALTERNATIVE SERVICE OF PROCESS

The Court turns to Nibi's motion to serve the Doe Defendants by delivery of an NFT to certain cryptocurrency wallets. "[T]he method of service crafted by the district court must be 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1016 (9th Cir. 2002) (quoting *Mullane v. Centr. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)).

It is unknown whether the Doe Defendants are located in a judicial district of the United States, but the answer is immaterial for purposes of this motion. If the Doe Defendants are located in a judicial district of the United States, Federal Rule of Civil Procedure 4(e) permits service by "following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made." In turn, California law provides that a summons may be served "in a manner which is reasonably calculated to give actual notice to the party to be served." Cal. Civ. P. Code § 413.30. If the Doe Defendants are located outside of the United States, Federal Rule of Civil Procedure 4(f)(3) permits service by "means not prohibited by international agreement" and consistent with Constitutional due process, which requires service to be "reasonably calculated" to provide notice. *Rio Props.*, 284 F.3d at 1017. Service via an NFT and posting on a specially created website is not prohibited by any international agreement. Thus, under either standard, the Court must determine whether Nibi's proposed method of service is reasonably calculated to give actual notice of this action to the Doe Defendants.

The Court finds that Nibi's proposal to serve the summons via an NFT to three cryptocurrency wallet addresses is reasonably calculated to provide notice of this action. Nibi has identified these cryptocurrency wallet addresses through its investigation into the alleged spoofing attack and offers a reasonable basis to conclude that these addresses are connected to the Doe Defendants. *See Hardy Decl.* ¶ 3. The Doe Defendants are alleged to be sophisticated scammers that used a "series of blockchain wallet addresses and cryptocurrency exchanges" to "dissipate" the digital assets that they allegedly converted from Nibi. *Compl.* ¶¶ 7, 49. Under these

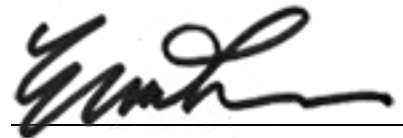
circumstances, it is reasonable to expect that the Doe Defendants are familiar with blockchain technology and will receive actual notice of the action when Nibi delivers the summons via an NFT to the cryptocurrency wallet addresses that Nibi has traced to the Doe Defendants. Additionally, Nibi has created a special website that includes a notice of this action, a hyperlink to the summons and Complaint, and all filings and orders in this action. Given that no other identifying information is known about the Doe Defendants, service via an NFT delivered to cryptocurrency wallet addresses and posting on a special website is the best, and perhaps only, way to provide Doe Defendants with notice of this action.

Several courts have permitted alternative service via an NFT delivered to a cryptocurrency wallet, including in cases that involve fraudulent schemes like the one Nibi alleges. For example, in *Stil Well v. Defendant "I"*, the plaintiff alleged “that the Defendants stole \$1,333,004.00 of cryptocurrency from him pursuant to a sophisticated global internet cryptocurrency fraud and conversion scheme.” No. 23-21920-CIV-Scola, 2023 WL 5670722, at *1 (S.D. Fla. Sept. 1, 2023). The plaintiff’s investigator traced “the stolen cryptocurrency to certain electronic cryptocurrency wallets and cryptocurrency exchange accounts.” *Id.* The court authorized service via an NFT and website posting because “the Defendants conducted their scheme using electronic means over the Internet and using cryptocurrency blockchain ledger technology.” *Id.* at *2. Similarly, in *Chow v. Defendant 1*, the court concluded that “service by NFT electronic transfer and website posting” was “reasonably calculated to give notice” because the alleged “cryptocurrency scheme was facilitated online using cryptocurrency blockchain technology.” No. 24-CV-480, 2024 WL 3225917, at *1 (E.D. La. Apr. 19, 2024); *see also In re Celsius Network LLC*, No. 22-10964 (MG), 2024 WL 4564196, at *1-2 (Bankr. S.D.N.Y. Oct. 24, 2024) (authorizing service by airdropping an NFT to cryptocurrency wallet addresses); *CipherBlade, LLC v. CipherBlade, LLC*, No. 3:23-cv-00238-JMK, 2024 WL 69164, at *3 (D. Alaska Jan. 5, 2024) (authorizing service by airdropping an NFT “containing a link to a digital copy of the summons and complaint via a blockchain wallet”); *Polansky v. Defendant 1*, No. 23-21852, 2023 WL 5951838, at *2 (S.D. Fla. Aug. 31, 2023) (authorizing service of defendant “via NFT to their Crypto Wallets and by posting on a specifically created website”).

Accordingly, the Court grants Nibi's request for leave to serve the Doe Defendants via NFT on the three cryptocurrency wallet addresses identified during Plaintiff's investigation into the incident. *See* Hardy Decl. ¶ 3. Nibi shall serve on these addresses an NFT which contains a notice of this action with summons language and a hyperlink to <https://nibiru.fi/docs/community/legal/2024-nibi-v-doe.html>, a specially created website that includes (a) a notice of this action, (b) a hyperlink to the summons and Complaint, and (c) all filings and orders in this action. The NFT shall display on its face an image that includes the summons in this action when delivered to the addresses identified above. Nibi shall mitigate the risk that the Doe Defendants will misperceive the NFT as a scam or attempt to hack by including with the NFT messaging indicating that the NFT is effectuating service of official court documents.

IT IS SO ORDERED.

Dated: January 2, 2025



Eumi K. Lee
United States District Judge