

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND

WAI FENG TRADING CO. LTD, and	:	
EFF MANUFACTORY CO., LTD.,	:	
Plaintiffs,	:	
	:	
v.	:	C.A. No. 13-33S
	:	
QUICK FITTING, INC.,	:	
Defendant.	:	
	:	
	:	<u>consolidated with</u>
	:	
QUICK FITTING, INC.,	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 13-56S
	:	
WAI FENG TRADING CO. LTD., et al.,	:	
Defendants.	:	

**MEMORANDUM AND ORDER**

Before the Court for determination is Plaintiff Quick Fitting, Inc.’s Motion for Entry of Default Pursuant to Rule 55(a) (ECF No. 148)<sup>1</sup> and Defendant Andrew Yung’s Motion to Reconsider the Order Denying his Motion to Dismiss for Lack of Personal Jurisdiction (ECF No. 156).<sup>2</sup>

Pursuant to Fed. R. Civ. P. 55(a), Quick Fitting asks the Court to enter default against an alleged entity named in its two amended complaints as W&F Manufacturing; in accordance with Fed. R. Civ. P. 4(l)(1), it supports its motion with an attorney affidavit ostensibly establishing the

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<sup>1</sup> This litigation involves two consolidated cases, numbered C.A. No. 13-33S and C.A. No. 13-56S. Because these motions pertain only to C.A. No. 13-56S, all ECF references are to that case unless otherwise indicated.

<sup>2</sup> Both motions were referred for determination; because neither is dispositive, 28 U.S.C. § 636(b)(1)(A) applies. See Powell v. CREDO Petroleum Corp., No. 09-CV-01540-WYD-KLM, 2011 WL 2565490, at \*2 (D. Colo. June 29, 2011) (motion for reconsideration is a nondispositive motion); Willen v. Norfolk S. Ry. Co., No. 3:04-CV-116-S, 2006 WL 2632078, at \*2 (W.D. Ky. Sept. 13, 2006) (entry of default not a dispositive ruling).

default, an affidavit of service from a Canadian process server and its three complaints, two of which are verified. ECF Nos. 1, 59, 135, 147, 148-1. The Wai Feng defendants<sup>3</sup> vigorously object, arguing that W&F Manufacturing is a trade name and that it is not an entity subject to suit under a common name; they also contend that Quick Fitting's purported service on W&F Manufacturing was neither effective nor timely. Their opposition is supported by two declarations, one from Jacky Yung (ECF No. 152-1) and the other from a Canadian attorney (ECF No. 159-1), which provides the Court with applicable Canadian law.

Andrew Yung's motion for reconsideration is related but contingent. Contending that a finding that W&F Manufacturing is an entity subject to being sued in this Court removes the prerequisite to the conclusion that the Court has personal jurisdiction over him, he asks for reconsideration of the Court's denial of his motion to dismiss based on lack of personal jurisdiction.

For the reasons stated below, both motions are denied.

## **I. BACKGROUND<sup>4</sup> AND TRAVEL**

Quick Fitting's original Verified Complaint, signed under oath by its President, David Crompton, was filed on January 25, 2013. ECF No. 1. This pleading named Eastern Foundry & Fittings, Inc. and Wai Feng Trading Co., Ltd., as defendants; it claimed, in part, damages for breach of a 2010 License and Supply Agreement ("2010 License Agreement"), a copy of which was attached. ECF No. 1 ¶¶ 2-3, 11-14, 59-63; ECF No. 1-1. The 2010 License Agreement

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<sup>3</sup> "The Wai Feng defendants," as the term is used in this memorandum and order, refers to defendants Wai Maio Company, Ltd., Wai Feng Trading Co., Ltd., and Andrew Yung.

<sup>4</sup> The somewhat complex history of the disputes between these parties is amply developed in prior decisions; it will not be repeated here. See, e.g., Quick Fitting, Inc. v. Wai Feng Trading Co., No. CA 13-56S, 2015 WL 5775108, at \*1 (D.R.I. June 17, 2015), report and recommendation adopted, No. CA 13-056 S, 2015 WL 5775149 (D.R.I. Sept. 30, 2015); Quick Fitting, Inc. v. Wai Feng Trading Co., No. CA 13-56S, 2015 WL 5719503, at \*1 (D.R.I. Feb. 27, 2015), report and recommendation adopted, No. CA 13-056 S, 2015 WL 5719571 (D.R.I. Sept. 29, 2015); Wai Feng Trading Co. v. Quick Fitting, Inc., No. CA 13-033 S, 2014 WL 4199174 (D.R.I. Aug. 22, 2014).

recites that it is between Quick Fitting and “W&F Manufacturing . . . comprised of three divisions, Wai Mao Company Ltd. Wai Feng Trading Company, Ltd. and Cixi City Wai Feng Ball Valve Company Ltd., Toronto, Canada.” ECF No. 1-1 at 2. Notwithstanding the language of the Agreement, the first Verified Complaint did not name W&F Manufacturing as a defendant. Nor did Quick Fitting make any attempt to serve W&F Manufacturing.

The next iteration of the complaint was placed on the record after the parties had begun discovery. Captioned as the First Amended Verified Complaint, it was filed on April 17, 2014. ECF No. 59. Like the first complaint, its allegations are verified under oath by David Crompton. This iteration does name “W&F Manufacturing” as a defendant; however, in the body of the pleading, it alleges that “W&F Manufacturing is a trade name under which the Yungs and/or the Yung Entities, or some combination of them, have conducted business.” ECF No. 59 ¶ 55; see also ECF No. 59 ¶ 149 (“W&F Manufacturing is the shared trade name used by defendants Wai Mao, Wai Feng Trading, and [Cixi City] Wai Feng Ball Valve.”). Consistent with the language of the pleading, Quick Fitting made no attempt to serve the First Amended Verified Complaint on “W&F Manufacturing.” However, it did name and serve an array of new defendants, including all three of the corporations named in the 2010 License Agreement, which are alleged to have used W&F Manufacturing as a “shared trade name,” as well as the three individuals associated with the Wai Feng defendants, Wai Yan Yung a/k/a Jimmy Yung, Andrew Yung and Jacky Yung.

After he was served with the First Amended Verified Complaint, Andrew Yung filed a motion to dismiss for lack of personal jurisdiction; following a continuance to allow Quick

Fitting time for jurisdictional discovery, the motion was denied.<sup>5</sup> ECF No. 132. One element of the Court’s reasoning was based on the complaint that David Crompton, Quick Fitting’s President, had verified, which “makes clear that [Quick Fitting] understood that W&F Manufacturing is not a company; rather, it is a trade name used by the Yung companies.” Quick Fitting, Inc., 2015 WL 5719503, at \*16-17. However, the linchpin of the holding is Andrew Yung’s signature on the 2010 License Agreement purportedly on behalf of Cixi City Wai Feng Ball Valve Company, a corporation entity for which he was not authorized to sign; accordingly, the Court found that he was bound personally by the forum selection clause in the 2010 License Agreement. Quick Fitting, Inc., 2015 WL 5719503, at \*15-16.

On October 1, 2015, after extensive discovery, Quick Fitting filed a Second Amended Verified Complaint; despite the moniker, unlike its predecessors, from the date of filing through the hearing on these motions, it was not verified.<sup>6</sup> See ECF No. 135 at 52. In this latest pleading, Quick Fitting’s case caption now names, “W&F Manufacturing (an Unincorporated Association by and through Members Chi Yam ‘Andrew’ Yung, Chi Pang ‘Jacky’ Yung, Wai Feng Trading Co., Ltd., and Wai Mao Company, Ltd.)” ECF No. 135 at 1. The body of the Second Amended Verified Complaint makes an array of inconsistent allegations about the entity status of W&F Manufacturing. In paragraph 52, it alleges that W&F Manufacturing “is, or was

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<sup>5</sup> Jimmy Yung’s motion to dismiss for lack of personal jurisdiction was mooted after he was dropped as a defendant by agreement of the parties, while Jacky Yung’s motion was granted based on the lack of evidence of sufficient contact with the District of Rhode Island. Quick Fitting, Inc., 2015 WL 5719503, at \*2, 17, 22, 24 & n.3.

<sup>6</sup> After the hearing on these motions, during which the Court pointed out that the filed version of the Second Amended Verified Complaint was not verified, Quick Fitting filed a motion to amend its pleading to add the sworn verification of its President, David Crompton. ECF No. 178. As of this writing, that motion has been referred to me and the period for objection is now ticking. Whether the Second Amended Verified Complaint is verified or not has no impact on the outcome of these motions. The verification simply shifts Mr. Crompton from his sworn statement that W&F Manufacturing is nothing more than a trade name to what amounts to the sworn statement that W&F Manufacturing could be anything and that he does not know what it is. See ECF No. 135 ¶¶ 52, 55, 56, 147, 243 (W&F Manufacturing described variously as trade name, unincorporated association, or “either an incorporated business entity, a partnership, or an unincorporated association.”).

at the time of the 2010 License and Supply Agreement, either an incorporated business entity, a partnership, or an unincorporated association.” ECF No. 135 ¶ 52. In paragraphs 55 and 56, it alleges that “W&F Manufacturing was an unincorporated association,” and that “Wai Feng Trading, Wai Mao, and Wai Feng Ball Valve, Andrew Yung and Jacky Yung are or were members and representatives of, and participants in, W&F Manufacturing.” ECF No. 135 ¶¶ 55-56. In paragraph 243, it calls W&F Manufacturing, “[u]pon information and belief, . . . an unincorporated association, of which Andrew Yung and Jacky Yung were representatives.” ECF No. 135 ¶ 243. And in paragraph 147, it tacks back to the language used in the First Amended Verified Complaint and alleges that W&F Manufacturing is “a shared trade name used by defendants Wai Mao, Wai Feng Trading, and Wai Feng Ball Valve.” ECF No. 135 ¶ 147.

On October 15, 2015, a week after counsel for the Wai Fang defendants declined to accept service on W&F Manufacturing, ECF No. 158-1 at 2, Quick Fitting made its first ever attempt to serve W&F Manufacturing. ECF No. 147. A Canadian process server was sent to 10 Brodie Drive, Richmond Hills, Ontario, Canada, the address where defendants Wai Maio Company, Ltd., and Wai Feng Trading Co., Ltd., are located. ECF No. 152-1 ¶ 2. The record has no probative evidence that an entity named W&F Manufacturing has ever done business there;<sup>7</sup> the declaration of Jacky Yung avers that “there is no company or ‘unincorporated association’ called W&F Manufacturing which has an office at the Brodie Drive address.” ECF No. 152-1 ¶ 3. Nevertheless, the affidavit of Quick Fitting’s process server states:

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<sup>7</sup> Quick Fitting’s reply brief includes an unauthenticated picture of two business cards that have a “W&F Manufacturing” logo, with the names and addresses of the two Brodie Drive entities, Wai Maio Company, Ltd., and Wai Feng Trading Co., Ltd., as well as an unauthenticated picture of what is represented to be a screenshot from an “old waifeng.com website,” which depicts the same logo. ECF No. 158 at 3-4, 8; ECF No. 158-2. With no evidentiary foundation for interpreting this proffer, the Court should disregard it. Nevertheless, to the extent that one might speculate regarding its meaning, it appears to display “W&F Manufacturing” as a trade name, which is consistent with the sworn statements of David Crompton of Quick Fitting and Jacky Yung. ECF No. 59 ¶¶ 55, 149; ECF No. 152-1 ¶ 8. This proffer does not support the proposition that W&F Manufacturing is an entity eligible to be served under Ontario law.

I served W&F Manufacturing [on October 15, 2015] . . . by leaving a copy with an unidentified male, representative, an adult who appeared to be in control or management of W&F Manufacturing at time of service, at the place of business at 10 Brodie Drive, Richmond, Ontario . . . I was able to identify the person by means of a verbal admission.

ECF No. 147. The Jacky Yung declaration confirms that it was he who encountered the process server; he refused to take the papers because he “did not represent any business by that name.”

ECF No. 152-1 at 2, ¶ 12. The process server left the papers on a reception desk based on instructions to leave them “no matter what.” ECF No. 152-1 at 2, ¶ 13.

Because W&F Manufacturing did not file an answer to the Second Amended Verified Complaint by the date required in the summons, ECF No. 148-1, Quick Fitting now seeks entry of default against it pursuant to Fed. R. Civ. P. 55(a). ECF No. 148.

In response, the Wai Feng defendants contend that W&F Manufacturing is not an entity, that if it is or was an entity, it nevertheless is not subject to suit under a common name, and that, even if it is somehow found to be an unincorporated association subject to being served under its common name pursuant to whatever may be the correct applicable law, it was neither timely nor properly served. In support of their arguments, they have attached two declarations. The first is Jacky Yung’s, which avers that W&F Manufacturing was a trade name for a business relationship among three companies, Wai Maio Company, Ltd., and Wai Feng Trading Co., Ltd., together with Cixi City Ball Valve Company, Ltd., that ceased to exist since before 2010. ECF No. 152-1 ¶¶ 8-9. The Yung affidavit concludes: “[a]ny statement that W&F Manufacturing is located at Wai Feng’s address or that Jacky Yung appeared to be in control of or part of management for W&F Manufacturing is false and has no factual basis.” ECF No. 152-1 ¶ 14.

The other declaration proffered by the Wai Feng defendants is from Richard Worsfold, an attorney who has been practicing law in Ontario, Canada, continuously since 1985. ECF No.

159-1 ¶¶ 1, 2. Filed with leave of Court, Text Order of Dec. 18, 2015,<sup>8</sup> Attorney Worsfold’s declaration explains that, under the law of Ontario, there is no legal entity such as an unincorporated association, and, for a group of legal entities or persons working together to constitute a legal entity able to be sued, their arrangement must satisfy the legal requirements for a partnership.<sup>9</sup> ECF No. 159-1 ¶ 9. Under Canadian law, if the partnership is registered with the provincial government, it is unambiguously a partnership and eligible to be sued as such. An unregistered partnership is an entity comprised as “partners” doing business in the name of the “partnership.” To sue an unregistered partnership under Ontario law, Attorney Worsfold averred that the plaintiff must name each partner as a defendant, serve each partner, and do so within two years of the partnership’s dissolution. ECF No. 159-1 ¶¶ 10, 11, 12.

At argument on the motion to default, Quick Fitting confirmed that, as far as it is aware, there is no entity known as “W&F Manufacturing” that is either incorporated or registered as a partnership. In connection with the default motion, Quick Fitting has not advised the Court what is the law applicable to the determination whether W&F Manufacturing is or was an entity subject to being served pursuant to Fed R. Civ. P. 4. Nor has it proffered the applicable law or evidence required by that law to establish that W&F Manufacturing is a partnership able to be served using the method employed by its process server on October 15, 2015.<sup>10</sup>

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<sup>8</sup> This text order allowed the Worsfold declaration to become part of the record in connection with this motion, and afforded Quick Fitting time to file a response to it. It did not do so. Instead, Quick Fitting argued that this Court should disregard the Worsfold declaration based on Fed. R. Evid. 44.1, which requires notice that an issue of foreign law is to be presented, including by testimony to assist the court in determining what is the relevant point of foreign law. Because it received ample notice of the Worsfold declaration, Quick Fitting’s argument based on Fed. R. Evid. 44.1 is rejected. Attorney affidavits are a proper way to prove foreign law. Whallon v. Lynn, 230 F.3d 450, 458 (1st Cir. 2000).

<sup>9</sup> The Worsfold declaration does not say what these legal requirements are under the law of Ontario or Canada. Quick Fitting is also silent on this point.

<sup>10</sup> If Rhode Island law governs the question whether W&F Manufacturing is a partnership, specific proof is required, none of which has been presented here. See R.I. Gen. Laws § 7-12-17 and 18 (definition of partnership and rules for

The related motion for reconsideration is made by Andrew Yung; it is offered in the alternative. He argues that, if the Court finds that W&F Manufacturing is an entity that was properly served, the Court should reconsider its ruling that there is personal jurisdiction over him. In his view, if W&F Manufacturing is an entity, that means he was acting on its behalf and his signature on the 2010 License Agreement should not expose him to personal jurisdiction. His motion focuses on the disingenuousness of Quick Fitting's shift of position regarding W&F Manufacturing, pointing out that Quick Fitting took the position that W&F Manufacturing was a mere trade name in the quest to persuade the Court that he is subject to personal jurisdiction and is now taking the opposite position in its effort to procure a default judgment against W&F Manufacturing.

## **II. LAW AND ANALYSIS**

Entry of default is proper when a defendant fails to “plead or otherwise defend” and “that failure is shown by affidavit or otherwise.” Fed. R. Civ. P. 55(a). Before the entry of default is permissible, the defendant must receive the complaint and summons through legally-effective service of process. Nagy v. George, 286 F. App'x 135, 137 (5th Cir. 2008); Oriental M.S. Corp. v. One Sources Inc., No. CIV. 01-2743 (JP), 2005 WL 2138743, at \*6 (D.P.R. Sept. 1, 2005). When a defendant objects to a default by seasonably challenging the adequacy of service, the plaintiff has the burden of showing that service was proper. Vazquez-Robles v. CommoLoCo, Inc., 757 F.3d 1, 4-6 (1st Cir. 2014) (when corporate defendant offers specific evidence that person is no longer registered agent, plaintiff must present “significantly probative evidence” to show otherwise); see Eaton v. Coastal Asset Mgmt., No. 3:09-CV-00089 BSM, 2009 WL 2462510, at \*2 (E.D. Ark. Aug. 11, 2009) (motion for default denied because plaintiff failed to

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determining existence of partnership requires proof at least of sharing of profits); Filippi v. Filippi, 818 A.2d 608, 618 (R.I. 2003) (whether a particular agreement constitutes a partnership is a question of law).

demonstrate that she had properly served defendant under federal law, Arkansas law, or California law).

The prerequisite to finding that W&F Manufacturing has been served in a legally-effective fashion requires examination of whether it is a “partnership or other unincorporated association that is subject to suit under a common name.” Fed. R. Civ. P. 4(h). To do so, the Court must examine the capacity of a partnership or an unincorporated association<sup>11</sup> to be sued in federal court. This issue is controlled by Fed. R. Civ. P. 17(b), which provides that, in a diversity case with no claims seeking to enforce a law or the Constitution of the United States, capacity is determined by the law of the state where the court is located. Fed. R. Civ. P. 17(b)(3); L’Esperance v. HSBC Consumer Lending, Inc., Civil No. 11-cv-555-LM, 2012 WL 2122164, at \*2 (D.N.H. June 12, 2012) (HSBC Group dismissed from all state law claims because New Hampshire does not permit suit against unincorporated associations). Under Rhode Island law, “an unincorporated party is not a proper party in a law suit.” Corrente v. State of Rhode Island, Dept. of Corrs., 759 F. Supp. 73, 80 (D.R.I. 1991) (quoting Walsh v. Israel Couture Post, 542 A.2d 1094, 1095 n.1 (R.I. 1988)). Rather, the suit must be maintained against its officers or members. R.I. Gen. Laws § 9-2-12; ROBERT B. KENT, B. MITCHELL SIMPSON, ROBERT G. FLANDERS, and DAVID A. WOLLIN, RHODE ISLAND CIVIL PROCEDURE § 17:5 (2015 ed.). Because a general partnership is no more than an unincorporated association, under Rhode Island law, it also has no capacity to sue or be sued; rather, an action must be maintained by or against the partners. Nisenzon v. Sadowski, 689 A.2d 1037 (R.I. 1997); RHODE ISLAND CIVIL PROCEDURE § 17:5.

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<sup>11</sup> Quick Fitting concedes that it is unaware of any evidence that W&F Manufacturing is incorporated anywhere, while Jacky Yung avers that it is a trade name, not an entity and certainly not a corporation. Accordingly the rules applicable to service on a corporation are not in issue.

When a plaintiff names as defendant in a case based on diversity jurisdiction either a group operating under a trade name or what is, at most, an unincorporated association that may not sue or be sued under the law of the forum state, courts routinely dismiss the claim. For example, in K & S Servs., Inc. v. The Schulz Elec. Grp. of Companies, 670 F. Supp. 2d 91, 92-93 (D. Me. 2009), the plaintiff sued the “Schulz Group of Companies,” something that the plaintiff conceded was not registered anywhere as a corporation; in support of its argument that the Schulz Group was an entity with capacity to be sued, the plaintiff pointed to the Schulz Group’s website, to business cards bearing the logo for the Schulz Group and to correspondence that references the “Schulz family of electric companies.” Id. at \*92-93. In the face of a declaration stating that the Schulz Group is not a business entity, but rather is “an assumed name identifying collectively, for convenience, several separate companies,” the court dismissed the claim. Id. at \*93; see also S. Shore Hellenic Church, Inc. v. Artech Church Interiors, Inc., No. CIV.A. 12-11663-GAO, 2015 WL 846533, at \*11 (D. Mass. Feb. 26, 2015) (whether unincorporated association or mere trade name, Church lacks power to sue under state law).

Here as in K & S Servs., Quick Fitting asserts only state law claims and concedes that there is no evidence that W&F Manufacturing is a corporate entity. Like the K & S Servs. plaintiff, Quick Fitting claims that W&F Manufacturing is “subject to suit,” Fed. R. Civ. P. 4(h), based on the use of the W&F Manufacturing trade name in a website at some unknown time in the past and on unauthenticated business cards. Also as in K & S Servs., the Wai Feng defendants have responded with a sworn declaration making plain that W&F Manufacturing is just a trade name. ECF No. 152-1 ¶¶ 8-9. David Crompton, Quick Fitting’s President, has confirmed the same information under oath. ECF No. 59 ¶ 55; ECF No. 135 ¶ 147. Even if this Court assumes that the party asserting lack of capacity bears the burden of proof, Estate of

Eiteljorg ex rel. Eiteljorg v. Eiteljorg, No. 1:09-CV-0726-SEB-DML, 2012 WL 1574927, at \*3 (S.D. Ind. May 3, 2012), the evidence that W&F Manufacturing is not an entity subject to being sued under that name pursuant to Rhode Island law is unanimous. The Court’s analysis could stop here. Quick Fitting has purported to serve what is at most an unincorporated association. Because Rhode Island law is clear that such an unincorporated association, whether a general partnership or not, is not “subject to suit under a common name,” Quick Fitting’s motion for default must be denied. Fed. R. Civ. P. 4(h)(2) (unincorporated association may be served only if it is “subject to suit under a common name”).

Even if the Court ignores whether W&F Manufacturing is an unincorporated association subject to suit under a common name, Quick Fitting’s method of service is an independent reason why its default motion is doomed. Under Fed. R. Civ. P. 4(h)(2), there are three ways to effect service on an entity in a foreign country: (1) by treaty or pursuant to the Hague Convention; (2) by using a method ordered by the court; or (3) by delivering a copy of the summons and complaint by a method reasonably calculated to give notice, as prescribed by the foreign country’s law for service in an action in its courts of general jurisdiction. Fed. R. Civ. P. 4(h)(2) (referring to service methods listed in Fed. R. Civ. P. 4(f)). In this instance, Quick Fitting chose the third method, hiring an Ontario process server to try to serve W&F Manufacturing at 10 Brodie Drive. However, the Worsfold declaration lays out the proper method for serving an unregistered partnership under the law of Ontario. It states that Ontario law does not permit service on any unincorporated entity other than a partnership and, for a partnership, it requires that the claim must be served on each member of the partnership, at the latest within two years of its dissolution. ECF No. 159-1 ¶¶ 10-11. In this record, there is simply no evidence that W&F Manufacturing is or was a partnership either under Ontario or

Rhode Island law (whichever may be applicable), and there is no probative proof regarding what entities or persons might be its members or partners. The Wai Feng defendants plug this evidentiary hole with the Jacky Yung declaration, which avers that W&F Manufacturing was a trade name used for a business relationship that ended before 2010, as well as that Jacky Yung himself has never been a partner, representative or member of an unincorporated association called W&F Manufacturing. ECF No. 152-1 ¶¶ 8-10. This evidence, read in light of the law laid out in the Worsfold declaration, establishes that service on Jacky Yung on October 15, 2015, simply does not come close to clearing the bar for effective service on W&F Manufacturing.

The final reason why Quick Fitting's motion to default must be rejected is because its purported service on W&F Manufacturing is untimely. W&F Manufacturing is referenced in the original Verified Complaint filed on January 25, 2013. ECF No. 1 ¶¶ 11-24; ECF No. 1-1. It was first named as a defendant in the April 17, 2014, First Amended Verified Complaint. ECF No. 59. Quick Fitting's process server arrived at 10 Brodie Drive to make the first attempt at service a year and five months, or 516 days, after W&F Manufacturing was first named and almost three years after it was mentioned in the original Verified Complaint. See ECF No. 147. While the time limits in Fed. R. Civ. P. 4(m), recently reduced from 120 to ninety days, do not apply to service in a foreign country, our Circuit has made clear that a party seeking to sue a foreign defendant cannot be dilatory and that the time expended to effect service must be reasonable. Feliz v. MacNeill, 493 F. App'x 128, 131 (1st Cir. 2012); see Nylok Corp. v. Fastener World Inc., 396 F.3d 805, 807 (7th Cir. 2005) (“[T]he amount of time allowed for foreign service is not unlimited.”); Trask v. Service Merchandise Co., Inc., 135 F.R.D. 17, 22 (D. Mass. 1991) (granting plaintiff 45 days for service in Japan under the Hague Convention). Quick Fitting's decision to wait 516 days, a delay for which it presents no justification, is far

more troubling than the lackadaisical approach to service condemned in Feliz. 493 F. App'x at 131 (delay of 426 days not reasonable even though attempts to serve were made earlier). If service on W&F Manufacturing were otherwise legally effective, it is nevertheless untimely. For that reason, Quick Fitting's motion for default should be dismissed.

Based on the foregoing, I find that Quick Fitting's motion to default does not present a close question. There is simply no probative evidence to suggest that W&F Manufacturing is an entity with the capacity to be served "under a common name" as required by Fed. R. Civ. P. 4(h), or that the method of service – by leaving the summons and complaint with Jacky Yung at 10 Brodie Drive – was viable pursuant to Fed. R. Civ. P. 4(f)(2)(A). Quick Fitting has failed to supply the Court with Canadian legal principles from which the Court might conclude that its method of service comports with applicable law and it has not attempted to justify the delay of almost a year and a half from the naming of W&F Manufacturing until it made the first attempt to serve. For their part, the Wai Feng defendants have proffered competent evidence that W&F Manufacturing is a trade name used in the past by Wai Mao Company Ltd., Wai Feng Trading Company, Ltd., and Cixi City Wai Feng Ball Valve Company Ltd., that it never was an entity and certainly not an entity subject to suit under a common name; they have also provided the Court with a testimonial statement of the applicable law of Ontario pertaining to the method of service, which confirms that Quick Fitting's method was not effective. For all of these reasons, the motion for entry of default against W&F Manufacturing is denied.

Turning at last to Andrew Yung's motion to reconsider personal jurisdiction, the Court need not linger. Motions for reconsideration are appropriate when a court misapprehends the facts or law. See Bowling v. Hasbro, Inc., No. CIV.A. 05-229S, 2008 WL 169693, at \*1 (D.R.I. Jan. 16, 2008). At oral argument on the motion, Wai Feng made clear that this is a motion in the

alternative, to be pressed only if the Court finds that W&F Manufacturing is an entity subject to suit based on the theory that, if it is, then Andrew Yung signed the 2010 License Agreement on its behalf and is not subject to personal jurisdiction in an individual capacity. Because the motion to default W&F Manufacturing is denied, there is no need to reconsider personal jurisdiction over Andrew Yung. In any event, the personal jurisdiction decision rested on Andrew Yung's signature on the 2010 License Agreement purportedly on behalf of Cixi City Wai Feng Ball Valve Company, an entity for which he was not authorized to sign. Nothing presented in connection with the motion for reconsideration casts a shadow on the viability of that conclusion. For both reasons, the motion for reconsideration is also denied.

### **III. CONCLUSION**

Based on the foregoing, Quick Fitting, Inc.'s Motion for Entry of Default Pursuant to Rule 55(a) and Defendant Andrew Yung's Motion to Reconsider the Order Denying his Motion to Dismiss for Lack of Personal Jurisdiction are both denied. ECF Nos. 148, 156.

So ordered.

ENTER:

/s/ Patricia A. Sullivan  
PATRICIA A. SULLIVAN  
United States Magistrate Judge  
February 18, 2016