

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT:	<u>HON. MELISSA ANNE CRANE</u>	PART	IAS MOTION 15EFM
	<i>Justice</i>		
-----X		INDEX NO.	<u>650263/2019</u>
BITPUSHER LLC		MOTION DATE	<u>N/A, N/A, N/A, N/A, N/A</u>
Plaintiff,		MOTION SEQ. NO.	<u>002 003 004 005 006</u>
- v -			
CACHETTE CAPITAL MANAGEMENT,			
Defendant.			

**DECISION + ORDER ON
MOTION**

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 28, 29, 30, 31, 32, 33, 60, 61, 62, 63, 67, 68, 69, 70, 71, 72, 76, 77, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 109, 110, 111, 112

were read on this motion to/for VACATE - DECISION/ORDER/JUDGMENT/AWARD.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 35, 36, 37, 38, 39, 40, 41, 42, 44, 45, 46, 59, 78, 79

were read on this motion to/for QUASH SUBPOENA, FIX CONDITIONS.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 80, 81, 102, 103, 104, 105, 106, 107

were read on this motion to/for CONTEMPT.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 64, 65, 66, 73, 74, 75, 88, 89

were read on this motion to/for AMEND/MODIFY DECISION/ORDER/JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 83, 84, 85, 86, 87, 90

were read on this motion to/for QUASH SUBPOENA, FIX CONDITIONS.

Upon the foregoing documents, it is

The court consolidates motions 2-6 for disposition. Motion 2 determines the outcome of the other motions.

In motion 2, defendants seek to vacate the judgment this court issued, on default and pursuant to CPLR 3213, due to improper service. The motion is granted. It remains plaintiff's burden to demonstrate proper service (*Lazarre v Davis*, 109 AD3d 968, 969 [2nd Dept 2013]).

The parties had entered into a settlement agreement in September 2018. Plaintiff served defendants at a California address in January 2019, apparently because that was the address defendants had listed on the settlement agreement several months earlier. It was also the address listed on the website of the Secretary of State for the State of California, but plaintiff did not serve via the California Secretary of State. Nor could it have, as service via the Secretary of State in California appears not to be permissible unless other forms of service fail and even then only upon leave of court (*see, e.g., Freshko Produce Services, Inc v ILA Products, Inc*, 2020 WL 4194019 [ED Cal. July 21, 2020]).

There is nothing in the Settlement Agreement requiring defendants to notify plaintiff of a change in address. Meanwhile, plaintiff does nothing to refute that defendant Cachette Capital Management LLC had a New York address and could be served there via the New York Secretary of State. Nor does plaintiff explain why it served a New York corporation in California about an action pending in New York State courts. Nor does plaintiff explain why, upon securing a judgment on default in July 2019, it knew enough of defendants' whereabouts to serve that judgment upon defendants in Europe where Ms. Cachette had moved.

Given these circumstances, and that the individual defendant had moved to the Netherlands without having a contractual obligation to notify plaintiff of a change in address, plaintiff has failed to sustain its burden that it complied with the due diligence requirements of CPLR 308(4) as to Ms. Cachette personally. Nor has plaintiff complied with CPLR 311-a for

personal service upon a limited liability company. *ROC-Lafayette Assoc. LLC v Reuter*, 183 AD3d 465 [1st Dep't 2020]).

Plaintiff has failed to serve a notice of cross-motion and therefore the court denies any purported cross motion. Despite filing a flurry of motions, defendants have not made a motion to dismiss.

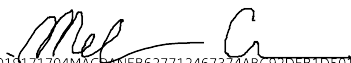
Accordingly, it is

ORDERED that the decision and order of this court [EDOC 10], dated July 26, 2019 and the judgment of this court, entered August 22, 2019, is hereby vacated; and it is further

ORDERED that motion 3, by defendants, to quash subpoenas is granted; and the cross motion denied due to failure to serve a notice of cross motion and it is further

ORDERED that motion 5, by plaintiff, to modify the money judgment is denied as moot without prejudice; and it is further

ORDERED that defendants motion to quash (seq. no 6) is granted.


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10/19/2020
DATE

MELISSA ANNE CRANE, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE