

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 1:22-cv-23753-KMM

EDWIN GARRISON, *et al.*, on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

SAM BANKMAN-FRIED, *et al.*,

Defendants.

**PLAINTIFFS' MOTION TO SERVE DEFENDANT SHAQUILLE O'NEAL
THROUGH APPROVED ALTERNATE MEANS**

Defendant Shaquille O'Neal has had actual knowledge of the allegations against him in this matter *since this suit was first filed November 15, 2022*. While Plaintiffs understand that “actual knowledge” is not alone sufficient for effecting service, this fact is important to give context to Plaintiff’s request to serve him now via alternative methods. Mr. O’Neal’s conduct over the last 5 months in evading service in this action is unprecedented, and frankly shocking, based upon on the extent of his public appearances, persona, and presence. Mr. O’Neal is the sole remaining defendant in this matter who has still not been served. Despite Plaintiffs’ dozens of attempts in multiple states and countries, to either effect service on him or have him (or a designated agent) accept service of process.

Just last week, after the eighth most recent attempt at O’Neal’s Texas residence, Plaintiffs’ process server in Texas received a threatening text message stating “shaq lives in the Bahamas u stupid fuck give beth shaw my regards.” *See* Declaration of Joseph Kaye, filed concurrently

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herewith (“Kaye Decl.”), ¶ 12, Comp. Ex. E, at 3. Beth Shaw is the wife of our retained process server. Enough is enough.

Plaintiffs respectfully suggest that it is finally time to move this massive class action case along and therefore request the Court approve the suggested alternate service of process on O’Neal through, among other methods, direct messages to his verified social media accounts, as set forth below.

News of this lawsuit, filed closely on the heels of the collapse of FTX—the largest financial debacle in history—has been disseminated through nearly every conceivable source of news, across almost every country, be it on television, the internet, or otherwise. Dozens of articles published globally and nationwide specifically call out Defendant O’Neal.¹ Defendant O’Neal, as set forth below, publicly acknowledged his actual notice of this suit shortly after it was filed.

Plaintiffs respectfully request that under these specific, verified circumstances, the Court grant this motion to effect service on Shaquille O’Neal through various electronic means that are reasonably calculated to provide O’Neal with additional actual notice of the lawsuit and the allegations against him, namely through his social media accounts, his attorneys’ emails, and through publication on a dedicated webpage, located at <https://moskowitz-law.com/service-by-publication-of-garrison-v-bankman-fried-122-cv-23753-sd-fla-on-shaquille-oneal> (the “Service Webpage”).

¹ See, e.g., “Shaq, Naomi Osaka, Steph Curry named as defendants in class-action suit against embattled crypto company FTX,” published November 17, 2022, at <https://www.yahoo.com/video/shaq-naomi-osaka-steph-curry-164000087.html> (accessed April 7, 2023); “FTX Investors Sue Shaquille O’Neal, Naomi Osaka, Steph Curry,” published November 28, 2022, at <https://peopleofcolorintech.com/articles/ftx-investors-sue-shaquille-oneal-naomi-osaka-steph-curry/> (accessed April 7, 2023); “Brady, Curry, Shaq Among Athletes Facing Lawsuit in FTX Debacle,” published November 16, 2022, at <https://www.si.com/nfl/2022/11/16/brady-curry-shaq-among-athletes-facing-lawsuit-in-ftx-debacle> (accessed April 7, 2023).

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As explained below, shortly before filing this Motion, Plaintiffs served O’Neal with the above link (1) via direct message from The Moskowitz Law Firm’s Twitter account to one of O’Neal’s verified Twitter accounts (@DJDiesel);²³ (2) via direct message from The Moskowitz Law Firm’s Instagram account to O’Neal’s verified Instagram accounts (@Shaq and @DJDiesel); and (3) via email to Shaq’s prior and current counsel in other matters. Kaye Decl. ¶ 15.

Plaintiffs’ respectfully request, pursuant to Federal Rule of Civil Procedure 4(e)(1) and the specific law of the State of Texas, where O’Neal resides, that the Court enter an Order authorizing service of process on O’Neal and deeming him served as of April 6, 2023, the date when Plaintiffs’ Counsel sent these materials directly to O’Neal (or alternatively, the date the Court enters an order authorizing service through these means). To the extent necessary, Plaintiffs’ alternatively request an additional extension of time to effect service on O’Neal through these same types of methods.

FACTUAL BACKGROUND

Shaquille O’Neal has demonstrably had actual notice of this action since at least December 15, 2022, when CNBC published an article containing O’Neal’s comments during his interview with *CNBC Make It* that week regarding the allegations in this suit, which also confirmed that his

² O’Neal made history back in 2008 as the first ever verified Twitter user with his @Shaq account, and it is common knowledge that he manages his own Twitter and social media accounts as a means of interacting directly with his fanbase. See <https://www.essentiallysports.com/nba-basketball-news-way-before-elon-musks-twitter-blue-tick-fiasco-shaquille-oneal-made-history-on-1-billion-worth-social-media-platform/> (accessed April 7, 2023); see also <https://theathletic.com/1234609/2019/09/24/shaquille-oneal-early-adoption-twitter-changed-athlete-relations-forever/> (accessed April 7, 2023). While it appears O’Neal disabled direct messages to his @Shaq Twitter account, the Service Website link was direct messaged to his @DJDiesel Twitter account and both his @Shaq and @DJDiesel Instagram accounts.

³ O’Neal moonlights as “DJ Diesel,” producing electronic music and DJing at festivals around the country. <https://www.essentiallysports.com/nba-basketball-news-dj-diesel-shaquille-oneal-chose-to-pursue-a-career-in-electronic-music-because-of-its-similarity-to-basketball/> (accessed April 7, 2023).

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public FTX statement (namely that He was “All in, are You?” on FTX), for which he was paid likely millions of dollars by FTX to make, was *simply false*.⁴

“A lot of people think I’m involved, but I was just a paid spokesperson for a commercial,” O’Neal says.

...

Today, O’Neal cites his friendship with Curry as a reason he consented to appear in the ad. A spokesperson for Curry declined to comment.

In the ad, O’Neal told viewers that he checked his FTX account daily. But when asked now if he’s bullish on crypto, he offers a simple response: “No.”

“People know I’m very, very honest,” O’Neal says. “I have nothing to hide. If I was heavily involved, I would be at the forefront saying, ‘Hey.’ But I was just a paid spokesperson.”

It’s unclear how much money O’Neal made from his FTX endorsement deal.

Despite O’Neal’s actual knowledge of this action for at least the last four months, and his claim that he has “nothing to hide,” to date he has not allowed himself to be served with process, has not had any counsel confirm that they will represent him in this action, or otherwise appeared in this action.

Shaquille O’Neal owns and has owned a large number of homes all across the country, from Florida and Georgia, to Texas, to Nevada and California, and sometimes resides in Bahamas.⁵ Plaintiffs’ Counsel’s investigation showed, however, that while Defendant O’Neal is regularly on the move between these locations (making personal service of process more difficult than with an average American), he was likely spending much of his time in Texas, based on reports that he “is

⁴ See “Shaq distances himself from crypto and FTX collapse: ‘I was just a paid spokesperson,’” dated December 15, 2022, published at <https://www.cnbc.com/2022/12/15/shaq-on-crypto-ftx-post-collapse-i-was-just-a-paid-spokesperson.html> (accessed April 7, 2023).

⁵ <https://www.realtor.com/news/celebrity-real-estate/every-home-shaquille-oneal-has-owned-past-and-present/> (accessed April 7, 2023).

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expanding [his] Big Chicken franchise to Texas, and as a result, he has bought a house there to help facilitate the move.”⁶

The process servers made several service attempts at the most recent, last-known address listed for Defendant O’Neal in Texas. After learning that Defendant O’Neal sold his former Sugarland residence (apparently to his ex-wife, Arnetta Yardbough), our process server has also been trying to track Mr. O’Neal based upon various posts on his social media. Plaintiffs’ Counsel’s investigation showed that Defendant O’Neal recently purchased another home in Texas, but the address was not listed and did not show up in the process server’s skip trace. *See* Kaye Decl. ¶ 5, Comp. Ex. A. After combing through public records and reports of the purchase of the new home (all of which did not list the address of the property because (1) O’Neal did not purchase the home in his individual capacity and (2) the reports only stated his home was in “Carrollton, Texas” and gave the statistics for the home, such as the square footage and number of bedrooms or bathrooms), Plaintiffs’ Counsel finally located an article that gave away the full address of 4012 Sahara Court, Carrollton, Texas 75010.⁷ *Id.* Since obtaining the address, the process server has made numerous attempts at effecting service on O’Neal at his Carrollton address, including through personal service and through FedEx (serving the summons, complaint, and the pending MDL petition), and Plaintiffs’ Counsel have directed them to continue attempting service. *Id.*

At the same time, Plaintiffs’ Counsel worked to determine whether there are any attorneys who represent or have previously represented Defendant O’Neal who either (1) intend to represent

⁶ <https://thesportsrush.com/nba-news-shaquille-oneal-has-a-new-1-22-million-home-in-north-texas-amid-big-chicken-restaurant-expansion-plans/> (accessed April 7, 2023).

⁷ <https://www.housedigest.com/913481/take-a-tour-of-shaquille-oneals-stunning-new-texas-home/> (accessed April 7, 2023).

him, (2) will accept service on his behalf, or (3) would provide information to facilitate his service. Kaye Decl. ¶ 6.

Plaintiffs' counsel first reached out to Benjamine Reid, Clifton R. Gruhn, and Jeffrey A. Cohen, shareholders at the Miami office of Carlton Fields who recently represented Mr. O'Neal in many different litigation,⁸ with Notice of Commencement and Request for Waiver of Service forms and a copy of the operative Amended Complaint. Kaye Decl. ¶ 7, Comp. Ex. B. They disclaimed knowledge of O'Neal's representation and declined to forward the materials to Mr. O'Neal. *Id.*

Then, Plaintiffs' Counsel contacted Peter W. Ross and Eric C. Lauritsen of Ross LLP, who represented O'Neal as recently as two months ago,⁹ with Notice of Commencement and Request for Waiver of Service forms and a copy of the operative Amended Complaint. Kaye Decl. ¶ 8, Ex. C. On a phone call, attorney Lauritsen similarly disclaimed any personal knowledge of O'Neal's representation or whereabouts. Mr. Ross's response to Plaintiffs' Counsel's email is outstanding. *Id.*

Finally, Plaintiffs' Counsel contacted attorney Dennis Roach, who has apparently represented and worked with O'Neal in various matters for years.¹⁰ Kaye Decl. ¶ 9. On a phone call, Mr. Roach confirmed that O'Neal was his client. When asked whether he represented him in

⁸ <https://www.law.com/dailybusinessreview/2021/05/13/slam-dunk-carlton-fields-lawyers-score-413k-in-attorney-fees-for-shaquille-oneal/> (accessed April 7, 2023); *see also* https://www.abajournal.com/news/article/biglaw_lawyers_sanctioned_for_advising_shaquille_oneal_he_didnt_need_to_att (accessed April 7, 2023).

⁹ <https://www.law360.com/articles/1570921/shaq-settles-suit-against-pot-co-alleging-mismanaged-funds> (accessed April 7, 2023).

¹⁰ <https://abcnews.go.com/Sports/shaq-lawyer-calls-incident-horseplay/story?id=23045999> (accessed April 7, 2023); <https://www.prnewswire.com/news-releases/shaquille-oneal-unveils-all-star-board-of-directors-for-the-shaquille-oneal-foundation-301273421.html> (accessed April 7, 2023).

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this action or if he knew who did, he said to send him the information and he would “speak to the powers that be” to confirm and would “get back” to Plaintiffs’ Counsel. *Id.* Plaintiffs’ Counsel followed up with an email with Notice of Commencement and Request for Waiver of Service forms and a copy of the operative Amended Complaint. *Id.*

Plaintiffs’ Counsel followed up with Mr. Roach on March 29, 2023, but to date has received no further response. Kaye Decl. ¶ 10. O’Neal’s deadline to execute that waiver (if he decides to do so) is Monday, April 10, 2023.

On March 10, 2023, Plaintiffs filed a Response to the Court’s Show Cause Order, [ECF No. 99], explaining the specific issues with serving O’Neal with process and requesting an extension of time to continue their efforts, which the Court granted by an Order extending the deadline for Plaintiffs to serve Defendant O’Neal to April 17, 2023. ECF No. 101.

In addition to the previous attempts to serve O’Neal outlined above, Plaintiffs have also attempted personal service on Defendant O’Neal at his Texas residence on eight additional occasions over nearly a month. Kaye Decl. ¶ 12, Comp. Ex. E (affidavits of nonservice and affidavit of due diligence). After the eighth attempt, Plaintiffs’ process server in Texas received a text message later that night, stating “shaq lives in the Bahamas u stupid fuck **give beth shaw** my regards.” *Id.* at 3 (emphasis added). Plaintiffs’ investigation confirms O’Neal does not live in the Bahamas. *Id.*

Beth Shaw is the process server’s wife, which the sender of the text (from 518-816-0323) would only have known after conducting a background check into Mr. Shaw, who left his business card at O’Neal’s residence during his attempts at service, which included his name and phone number. Kaye Decl. ¶ 13, Comp. Ex. E. Believing the text to have originated from O’Neal or

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someone acting on his behalf, Mr. Shaw was no longer comfortable attempting to personally serve Mr. O'Neal with process, fearing for his and his wife's safety. *Id.*

Plaintiffs' counsel have also made efforts to serve Defendant O'Neal in Georgia, where he also maintains a residence. Process servers made 12 attempts at O'Neal's Georgia residence, and were unable to locate or contact O'Neal. Kaye Decl. ¶ 14, Comp. Ex. F (affidavits of nonservice). Plaintiffs' counsel also sent the summons and operative complaint via FedEx to O'Neal's Georgia residence and his office at Turner Sports in Atlanta (from where O'Neal regularly appears on TNT). Kaye Decl. ¶ 14, Comp. Ex. G (FedEx Delivery Confirmations with Pictures). Further, Plaintiffs' counsel sent via FedEx the summons, operative complaint, necessary check, and cover letter to the Civil Unit of Henry County Sheriff's Office (where O'Neal is a Director of Community Relations),¹¹ requesting assistance in effecting service of process on Mr. O'Neal. Kaye Decl. ¶ 14, Comp. Ex. H. The check cleared April 3, 2023, though to date Plaintiffs' Counsel have received no response from the Henry County Sheriff's Office. Kaye Decl. ¶ 14.

As we have done in prior cases before this Court, on April 6, 2023, Plaintiffs created the Service Webpage, and served O'Neal with the link to the Service Webpage (1) via direct message from The Moskowitz Law Firm's Twitter account to one of O'Neal's verified Twitter account (@DJDiesel); (2) via direct message from The Moskowitz Law Firm's Instagram account to O'Neal's verified Instagram accounts (@Shaq and @DJDiesel); and (3) via email to Shaq's prior and current counsel in other matters. *See* Kaye Decl. ¶ 15, Comp Ex. I. The direct message to O'Neal's accounts read as follows:

Mr. O'Neal, in accordance with Federal Rule of Civil Procedure 4(e)(1) and Texas Rule of Civil Procedure 106(b)(2), please find the summons, operative complaint, and other important materials regarding the claims filed against you in the action

¹¹ <https://www.safehenry.com/keep-in-touch-with-site-visitors-and-boost-loyalty> (accessed April 7, 2023).

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pending in the Southern District of Florida before the Honorable Judge K. Michael Moore, styled *Garrison, et al. v. Bankman-Fried, et al.*, No. 1:22-cv-23753 (S.D. Fla.): <https://moskowitz-law.com/service-by-publication-of-garrison-v-bankman-fried-122-cv-23753-sd-fla-on-shaquille-oneal>

This is the same action you publicly commented on December 15, 2022: “Shaq distances himself from crypto and FTX collapse: ‘I was just a paid spokesperson,’” dated December 15, 2022, published at <https://www.cnbc.com/2022/12/15/shaq-on-crypto-ftx-post-collapse-i-was-just-a-paid-spokesperson.html>

Thank you.

Id.

The irony is that O’Neal is extremely active on his social media accounts. The number of posts made on each account since this action was filed and the date of the most recent posts are as follows:

- @Shaq (Instagram – 30 million followers and 3,752 posts): April 4, 2023; 127 posts since this action was filed. O’Neal includes what is apparently his cell phone number on this account, stating “Text me 818-583-8345” in the headline. O’Neal posted on April 9, 2020, confirming this was his number: <https://www.instagram.com/p/B-xlr1n11Qn/> (accessed April 7, 2023).
- @DJDiesel (Instagram – 397K followers and 399 posts): March 21, 2023; 21 posts since this action was filed.
- @Shaq (Twitter – 15.9M followers and 10.4K tweets since November 2008): April 5, 2023; 57 posts since this action was filed.
- @DJDiesel (Twitter – 77.3K followers and 550 tweets since September 2019): April 5, 2023; 30 posts since this action was filed.

Kaye Decl. ¶ 16.

LEGAL ARGUMENT

Federal Rule of Civil Procedure 4(e)(1) allows service pursuant to the law of the state either where the district court is located or where service is effected. *Izen v. Catalina*, 256 F.3d 324, 327 (5th Cir. 2001) (citing Fed. R. Civ. Proc. 4(e)(1) and approving service of complaint filed in federal district court in Texas on Defendant in Oklahoma pursuant to Oklahoma law); *see also, e.g., Doe*

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v. Islamic Salvation Front (FIS), 993 F. Supp. 3, 7 (D.D.C. 1998) (approving personal service in Virginia of complaint filed in D.C. and explaining Rule 4(e) service “is not limited to the district in which the complaint was filed”).

Under the law of Texas, where Defendant O’Neal resides at 4012 Sahara Court, Carrollton, Texas 75010, Defendant O’Neal may be served personally or by registered or certified mail (return receipt requested) as approved under Texas Rule of Civil Procedure 106(a), or, if service under *either* method prescribed under 106(a) is unsuccessful, the court may authorize another method of service under Texas Rule 106(b). *Joe Hand Promotions, Inc. v. Wash That Baby, LLC*, MO:21-CV-211-DC-RCG, 2022 WL 2761734, at *1 (W.D. Tex. May 9, 2022) (authorizing service through direct message to defendant’s Facebook account where plaintiffs submitted sworn statements from process servers that personal service on defendant was unsuccessful, that defendant had left the state and his return date was unknown, and that defendant actively used the Facebook account).

Texas Rule of Civil Procedure 106(b) allows for substitute service:

(b) Upon motion supported by a statement—sworn to before a notary or made under penalty of perjury—listing any location where the defendant can probably be found and stating specifically the facts showing that service has been attempted under (a)(1) or (a)(2) at the location named in the statement but has not been successful, the court may authorize service:

(1) ...; or

(2) in any other manner, including *electronically by social media*, email, or other technology, that the statement or other evidence shows will be reasonably effective to give the defendant notice of the suit.

Id. (emphasis added); *see also Chrisenberry v. Ketcher*, No. MO:21-CV-146-DC-RCG, 2022 WL 2762219, at *1 (W.D. Tex. May 18, 2022) (authorizing service through direct message to defendant’s Facebook account where plaintiffs submitted sworn statements from process servers

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that personal service on defendant was unsuccessful, “despite reasonable investigation and efforts,” and that defendant actively used the Facebook account).

Here, Plaintiffs have attempted to effect service of process at 4012 Sahara Court, Carrollton, Texas 75010 at least a dozen times pursuant to Texas Rule of Civil Procedure 106(a)(1), which ended when the process server was sent an ominous and threatening text message by O’Neal or someone acting on his behalf. Kaye Decl. ¶¶ 12–13, Comp. Ex. E. The only way that O’Neal or someone acting on his behalf would have gotten the information necessary to send this text to Mr. Shaw is if they physically went to 4012 Sahara Court and retrieved the business card he left there with his contact information. *Id.* That the text included misinformation in addition to the veiled threat (that they knew who Mr. Shaw’s wife was and asked he give her their “regards”) is clear evidence that O’Neal is evading service, by any means necessary.

Accordingly, given the circumstances, substitute service of process through social media pursuant to Texas Rule of Civil Procedure 106(b)(2) is necessary to complete service of process on Defendant O’Neal. This case needs to proceed.

Not only is service through O’Neal’s social media accounts necessary and proper under Rule 106(b)(2), but the evidence also shows it will be reasonably effective to give O’Neal notice of this action. To be sure, while O’Neal has demonstrated he has notice of this action since December 15, 2022,¹² the evidence demonstrates that he has made 235 posts between his two verified Twitter accounts and two verified Instagram accounts since this lawsuit was filed against him, with the most recent ones being posted April 5, 2023. The accounts are filled with personal videos apparently filmed by O’Neal himself, who made history back in 2008 as the first ever

¹² See “Shaq distances himself from crypto and FTX collapse: ‘I was just a paid spokesperson,’” dated December 15, 2022, published at <https://www.cnbc.com/2022/12/15/shaq-on-crypto-ftx-post-collapse-i-was-just-a-paid-spokesperson.html> (accessed April 7, 2023).

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verified Twitter user, and is commonly known to personally manage these accounts as a means of interacting directly with his fanbase.¹³

On April 6, 2023, Plaintiffs sent the messages with the link to the Service Webpage to O’Neal’s Instagram and Twitter accounts, as well as to the emails of the counsel known to have recently represented him in other matters. Kaye Decl. ¶ 15, Comp. Ex. I. For the reasons explained in this motion, Plaintiffs respectfully submit the Court should authorize service by these means in accordance with applicable law and deem O’Neal served as of April 6, 2023, so that this action may finally proceed with all Defendants before the Court.

CONCLUSION

Plaintiffs respectfully request, pursuant to Federal Rule of Civil Procedure 4(e)(1) and the law of the State of Texas, where O’Neal resides, that the Court grant this motion to effect service on Shaquille O’Neal through various electronic means reasonably calculated to provide O’Neal with additional actual notice of the lawsuit and the allegations against him, namely through direct message of the Service Webpage to three of his social media accounts, his attorneys’ emails, and through publication on the dedicated Service Webpage as set forth in this motion, deeming O’Neal served as of April 6, 2023, the date when Plaintiffs’ Counsel sent these materials directly to O’Neal (or alternatively, the date the Court enters an order authorizing service through these means, and, to the extent necessary, granting an additional extension of time to effect service in this regard), together with such other and further relief the Court deems just, equitable and proper.

¹³ See <https://www.essentiallysports.com/nba-basketball-news-way-before-elon-musks-twitter-blue-tick-fiasco-shaquille-oneal-made-history-on-1-billion-worth-social-media-platform/> (accessed April 7, 2023); see also <https://theathletic.com/1234609/2019/09/24/shaquille-oneal-early-adoption-twitter-changed-athlete-relations-forever/> (accessed April 7, 2023).

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Dated: April 7, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the forgoing was filed on April 7, 2023, via the Court's CM/ECF system, which will send notification of such filing to all attorneys of record.

By: /s/ Adam M. Moskowitz_____

ADAM M. MOSKOWITZ