No. S249923

IN THE SUPREME COURT

FOR THE STATE OF CALIFORNIA

Changzhou Sinotype Technology Co., Ltd.,

Appellant/Defendant,

vs.

Rockefeller Technology Investments (Asia),

Respondent/Plaintiff.

Second Appellate District Court of Appeal
Civil No.: B272170

Los Angeles Superior Court
Case No.: BS149995

Judicial Officer Information:
The Honorable Randolph Hammock,
Presiding in Dept. 47 [(213) 633-0647]

ANSWER BRIEF ON THE MERITS

On Review of a Published Opinion

of the Second District Court of Appeal, Division Three

Case No. B272170

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LIMITED ISSUE ON REVIEW

Can private parties contractually agree to legal service of process by methods not expressly authorized by the Hague Convention?

I. INTRODUCTION

A. The Sole Issue Presented On this Appeal is Whether a Private Party's Agreement can Circumvent a Treaty of the United States with a Foreign Nation

The Second Appellate District Court of Appeal decided that a $414 million dollar default Judgment against Defendant and Appellant Changzhou Sinotype Technology Co., Ltd., in this case, was obtained in violation of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents, Nov. 15, 1965, 20 U.S.T. 361, 658 U.N.T.S. 163 (hereinafter referred to as "the Hague Convention" or "the Convention")[1] governing international service of process. The Court of Appeal decided that the Judgment violated the Hague Convention because that treaty, under the terms that China acceded to the Convention, does not permit service by mail in

[1] Article 1 of the Hague Convention declares that the Convention "shall apply in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad." Article 10(a) provides that, as long as the "State of destination" does not object, the Convention "shall not interfere with the freedom to send judicial documents, by postal channels, directly to persons abroad." The People's Republic of China has objected to Article 10. See Hague Convention, China Declaration Notification, 3, available at http://www.hcch.net/index_en.php?act=status.comment&csid=393&disp=resdn (declaring "to oppose the service of documents in the territory of the People's Republic of China by the methods provided by Article 10 of the Convention") - also re-published via a list of hyperlinks at http://www.courts.ca.gov/partners/documents/ea_HagueService.pdf

China, and, instead, requires that all service of process within China occur through China's central authority. China has made it clear and the United States has agreed to abide by China's wishes in that regard, that the Chinese government will control the manner in which its citizens are served with process, through the central authority. The United States Supreme Court in Water Splash, Inc. v. Menon, (2017) 137 S. Ct. 1504 recently decided that, although service by mail under the Convention is not prohibited, any service under the Convention must comply with the law of the forum where service is accomplished. China expressly prohibited service by mail when it acceded to the Convention and required service through its central authority in all cases. In addition, when questioned on the meaning of these requirements in a questionnaire published by the Hague Convention governing body, China stated that **private parties could not consent to service by other means**. Plaintiff and Appellant has argued that private parties **should** be allowed to disregard this treaty and also disregard China's expressed wishes through a private contract, and violate the terms of the treaty by serving Chinese citizens in China presumably through email or through postal channels whenever these parties contractually consent to receive such process, in direct disregard of China's own expression of what it meant by its prohibition on any service other than service through the central authority. Clearly, Plaintiff and Appellant is wrong because, if China prohibits parties from voluntarily accepting service in a general sense, without serving through the

central authority, then, of course, China prohibits parties from voluntarily accepting service in the context of a contract.

B. Statement of the Case

Defendant and Appellant, CHANGZHOU SINOTYPE TECHNOLOGY CO., LTD. ("SinoType"), a Chinese foreign corporation, seeks relief from a Default Judgment that was fraudulently obtained by Plaintiff and Respondent, ROCKEFELLER TECHNOLOGY INVESTMENTS (ASIA) VII ("Rockefeller") (also referred to as "RTI Asia" or "RockAsia7") (collectively the "Parties"). In the Court below, SinoType argued that the Judgment is void as a matter of law due to improper service of process as required by the Hague Convention. SinoType made other arguments which are not the subject of this review, i.e. that the Judgment is also void because there was no valid and enforceable contract between the Parties: (1) the Memorandum of Understanding ("MOU"), also referred to as the "bèi wàng lù," was a *non-binding* agreement that anticipates the signing of the final "long form agreements"; (2) SinoType did not voluntarily and knowingly agree to the arbitration provision and the waiver of the Hague Convention's service requirements; (3) the MOU was obtained by fraud due to Rockefeller's misrepresentations that the MOU was non-binding; and (4) Rockefeller did not pay any consideration to SinoType to support the

existence of a valid and enforceable MOU. (See MOU at CT 242-245;[2] see also SinoType's Motion to Quash and to Set Aside Default Judgment for Insufficiency of Service ("Motion to Vacate") at CT 199-217; "long form agreements" attached as Exhibit H to Kejian "Curt" Huang's Declaration at CT 287-428.)

In 2012, Rockefeller instituted arbitration proceedings – turning what SinoType has characterized as a non-binding MOU and an imaginary $9.65 million stock transfer (200,000 AIG shares) into a $414 million dollar arbitration award ("Award"). On August 5, 2014, Rockefeller commenced this action by filing a Summons and Petition to Confirm Arbitration Award. (CT 9-30.) SinoType was not served with the Summons and Petition pursuant to the Hague Convention's requirements. Rather, SinoType was served by Fedex and email. (See Proof of Service at CT 34-36.) The trial court, misled into believing that the MOU and the arbitration award were valid and enforceable, and that Sinotype was properly served, confirmed the Award by default and entered Judgment on October 23, 2014. (See Judgment at CT 42-44.) As SinoType was not served with formal process and a copy of the Judgment, SinoType did not learn of the Judgment's existence until March 2015, when Sinotype was informed by a client that there were

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[2] References to the Clerk's Transcript shall be as follows: CT ___ (page #).

enforcement proceedings against it. (See Motion to Vacate at CT 210; Declaration of Kejian "Curt" Huang ("Huang Decl."), ¶90 at CT 236.)

On January 29, 2016, SinoType filed a Motion to Quash and to Set Aside Default Judgment ("Motion to Vacate") for insufficient service of process under California Code of Civil Procedure section 473(d) because the Judgment was void for not complying with the Hague Convention. (See Motion to Vacate at CT 199-217.) The hearing on the Motion to Vacate was heard on February 24, 2016 and counsel for both Parties made oral arguments. (See transcript of the February 24, 2016 hearing at RT 1-27.) Having heard the Parties' arguments, the trial court continued the hearing and ordered both Parties to submit supplemental briefs on the issue of whether China has objected to Article 10(A) of the Hague Convention (service by postal channels) and if so, whether individuals and corporations can contractually waive the requirements of the Hague Convention to agree to a different method of service. (See Feb. 24, 2016 transcript, in particular, at RT 23:17-24:13.) The continued hearing was on heard on April 6, 2016. (See transcript of April 6, 2016 at RT 301-336.) On April 15, 2016, the trial court denied Sinotype's Motion to Vacate. (See Order Denying Motion to Quash and to Set Aside at CT 817-823.)

On May 11, 2016, SinoType timely filed a notice of appeal from the Order Denying SinoType's Motion to Vacate. (CT 840-848.)

C. Statement of Appealability

The order appealed from is appealable. Apparently there is no dispute in this case that an order denying a statutory motion to vacate or to set aside a default judgment, such as one made under Code of Civil Procedure section 473, is appealable as a special order after final judgment under Code of Civil Procedure section 904.1(a)(2). (Shapiro v. Clark (2008) 164 Cal.App.4th 1128, 1137; Generale Bank Nederland, N.V. v. Eyes of the Beholder Ltd. (1998) 61 Cal.App.4th 1384, 1394.) Similarly, there is no dispute in this case that an order denying a motion to vacate a void judgment is also appealable based on the rationale that the order giving effect to a void judgment, is itself void. (311 South Spring Street Co. v. Dept. of Gen. Services (2009) 178 Cal.App.4th 1009, 1014; Carr v. Kamins (2007) 151 Cal.App.4th 929, 933-934; Carlson v. Eassa (1997) 54 Cal.App.4th 684, 691.) "While a denial of a motion to set aside a previous judgment is generally not an appealable order, in cases where the law makes express provision for a motion to vacate such as under Code of Civil Procedure section 473, an order denying such a motion is regarded as a special order made after final judgment and is appealable under Code of Civil Procedure section 904.1, subdivision (b) [see now § 904.1, subd.

(a)(2)]." (Generale Bank Nederland, N.V., *supra*, 61 Cal.App.4th at 1394 (quoting Cochran v. Linn (1984) 159 Cal.App.3d 245, 249).)

II. STATEMENT OF FACTS

While not all the facts developed in the trial court motion to vacate are directly pertinent to the sole question presented, as to whether parties can contract around an express prohibition in the Hague Convention governing service of process, Defendant and Appellant believes that it is important for this Court to understand something about the contract at issue in this case.

A. SinoType is a Chinese Company Versed in Chinese Customs

SinoType is a Chinese company headquartered in Changzhou, China, which specializes in developing and licensing Chinese fonts to technology companies in China and the United States. (See Huang Decl., ¶2 at CT 218.) SinoType is a subsidiary of SinoType Technology International, Inc. ("STI"), which owns 70% of SinoType. (CT 218.) SinoType is a frontrunner in the market for Chinese font technology, but the market is a small one. SinoType's revenues from 2007-2014 average to roughly less than $1 million

per year. (Huang Decl., ¶3 at CT 219; Declaration of Howie Lan ("Lan Decl.") ¶¶2, 30 at CT 472, 478.) SinoType's contracts typically involve one-time payments and are not based on a per-unit sold or a per-use basis. (Huang Decl., ¶8 at CT 220; Lan Decl., ¶3 at CT 473.)

Kejian Huang (hereinafter "Curt") is the Chairman and General Manager of SinoType, and the President of STI. (Huang Decl., ¶2 at CT 218.) He is a citizen and resident of China. (Huang Decl., ¶1 at CT 218.) His colleague, Howie Lan, is originally from China, but lives and works in San Francisco. (Lan Decl., ¶1 at CT 472.) Lan is a shareholder of STI and serves as a board member for SinoType. (Lan Decl., ¶2 at CT 472.)

B. The "Bèi Wàng Lù" – a Chinese Business Custom

In China, businesses often sign different types of documents – not all of which are legally binding. (Huang Decl., ¶¶17-19 at CT 221-222.) A person knowledgeable in this custom, such as Faye Huang – the agent and president of Rockefeller and its parent company Rockefeller Fund Management Co. (hereinafter "RFM") – can use it to her advantage, inducing someone to sign a non-binding document on the one hand and then misrepresenting the document to a court or arbitrator as a binding agreement on the other.

In Chinese, there are four different words used to reflect a relationship between parties, in varying degrees of strength. (Huang Decl., ¶18 at CT 221-222; Lan Decl., ¶¶9-10 at CT 474.) The word creating the weakest

relationship between two parties, 备忘录, or "bèi wàng lù," refers to a memorandum of understanding between the parties to record the current state of negotiations. (Huang Decl., ¶18 at CT 221-222; Lan Decl., ¶10 at CT 474.) This type of document does not necessarily reflect terms to which the parties have agreed. (Id.) It is often used where there has been no real progress in a business meeting to memorialize the discussion so that the parties can pick up on the negotiations at a later meeting. (Id.) The signing of a memorandum of understanding, or "bèi wàng lù," does not create a binding contract. (Id.) The second word in the progression, 意向书, or "yì xiàng shū," refers to a letter of intent and reflects the intentions of the parties to enter into an agreement before a formal contract exists. (Id.) This is essentially an agreement to agree. (Id.) The third word, 协议, or "xié yì," refers to an agreement between the parties, which is usually, but not always legally binding. (Id.) Finally, the strongest word, 合同, or "hé tong," refers to a formal contract, which is legally enforceable. (Id.)

SinoType's management is familiar with these four different terms. (Id.) When presented with a "bèi wàng lù," they do not necessarily institute their usual contract review procedures, because the "bèi wàng lù" does not create any legally binding obligations. (Huang Decl., ¶29 at CT 224; Lan Decl., ¶15 at 475.) The negotiations in this case never advanced past the beginning stages and the signing of a "bèi wàng lù."

C. Curt Huang Meets Faye Huang and Nicholas Rockefeller

In 2007, Curt was considering the formation of a new company, called World Wide Type (hereinafter referred to as "WWT"), to market and sell international font technology products in the United States and worldwide. (Huang Decl., ¶6 at CT 219; Lan Decl., ¶4 at CT 473.) This is when Curt met Faye Huang ("Faye"). Faye introduced herself as the CEO of Rockefeller Pacific Ventures Company, and told Curt that she worked for Nicholas Rockefeller, a descendant of the famous Rockefeller family. (Huang Decl., ¶¶4-8 at CT 219-220.) She told Curt that Nicholas Rockefeller might be interested in partnering in a new project. (Huang Decl., ¶5 at CT 219.) Faye's business card had Chinese translation and the parties spoke in Mandarin Chinese. (Id.)

In July and September 2007, Curt met with both Faye and Nicholas Rockefeller to explain his plans for WWT, explaining it would be a new company. (Huang Decl., ¶¶7-11 at CT 219-220.) Curt was impressed by Nicholas Rockefeller's claimed connection to the Rockefeller family, and believed this would help the WWT company expand market share for SinoType's fonts. (Huang Decl., ¶63 at 231.)

The discussions stalled in September and did not resume until February 2008. (Huang Decl., ¶12-13 at CT 220-221.)

D. The Parties Sign the "Bèi Wàng Lù" MOU

In February 2008, Faye and Curt met several times to discuss Curt's

dissatisfaction with the current state of the parties' negotiations and decided to prepare a "bèi wàng lù" to demonstrate that Rockefeller was taking the negotiations seriously. (See Motion to Vacate at CT 205.) During all of these meetings, Curt and Faye spoke in Mandarin. (Huang Decl., ¶19 at CT 222.) Specifically, on February 8, 2008, while Curt was visiting Los Angeles for business, Faye suggested a meeting at a McDonald's restaurant. (Huang Decl., ¶13 at CT 221.) Curt expressed dissatisfaction at the lack of progress in the Parties' discussions regarding the formation of WWT and Rockefeller's failure to generate interest in WWT from prospective investors. (Huang Decl., ¶14 at CT 221.) Faye assured him that Nicholas Rockefeller remained interested in a deal and that she would prepare a draft contract. (Id.)

During a subsequent telephone call on February 13, 2008, Faye suggested signing a "bèi wàng lù" to demonstrate that the parties were engaged in discussions. (Huang Decl., ¶15 at CT 221.) The Parties did not discuss the "bèi wàng lù" in English and Faye never referred to the English word "contract." (Huang Decl., ¶19 at CT 222.) Faye did not have the document prepared when they met on February 17, 2008 and Curt was returning to China the next day. (Huang Decl., ¶20 at 222.)

On February 18, 2008 the Parties signed the "bèi wàng lù". (See MOU at CT 242-245.) Faye contacted Curt just hours before his return flight to China on February 18, 2008 and asked to meet. (Huang Decl., ¶21 at CT

222.) During that meeting, she presented a "bèi wàng lù," which was entitled "Memorandum of Understanding." (Huang Decl., ¶22 at CT 222.) It was hastily put together, had been faxed over, and was blurry. (Id.) The counterpart is a copy of the fax. (Id.) It had many typos and one sentence stopped half way through with no end. (Id.) SinoType's address was incorrect and was still incorrect after Faye handwrote over the typed address, instead of correcting and reprinting the document. (Id.) The mistaken address was not corrected on Faye's counterpart. (Id.) Because he had a flight to catch, Curt only had about 10 minutes to review the "bèi wàng lù." (Huang Decl., ¶23 at CT 223.) Even then, Curt was frustrated by its sloppiness and inconsistencies. (Huang Decl., ¶¶21-24 at 222-223.) He challenged the listing of "Rockefeller Technology Investments (Asia) VII," as the counterparty identified in the MOU, because he always believed he would do business with Rockefeller Pacific Ventures Company. (Huang Decl., ¶¶23, 26 at CT 223.) He had never heard of the company identified in the MOU and had no knowledge of who was running the company, or what the company did. (Id.) He later learned that the counterparty identified in the MOU was only established about a month prior to that meeting. (Id.) Curt also had no idea what Rockefeller would be contributing to the WWT project. (Huang Decl., ¶23 at CT 223.) The MOU states in vague terms that both Parties are to contribute all of their interests in their respective companies into WWT without specifying what those "interests" are. (See

MOU, in particular, at CT 242-243.) Curt also told Faye that he would not agree to give Rockefeller 12.5% interest in the new company, WWT, with non-dilution rights, as the MOU suggested. (Huang Decl., ¶24 at CT 223.) Faye assuaged these fundamental objections by assuring Curt that his concerns would be fixed in the formal agreement, as 协议 or "xié yì," reaffirming this was only a non-binding "bèi wàng lù." (Huang Decl., ¶¶25-26 at CT 223.)

Curt signed the MOU because he understood it to be a non-binding "bèi wàng lù" – an understanding Faye reinforced and encouraged, and an understanding that was supported by the incomplete nature of the MOU. (Huang Decl., ¶¶25-29 at CT 223-229.) Curt desired a "bèi wàng lù" to ensure negotiations progressed, spur Rockefeller to draft a formal agreement within 90 days, and show potential WWT investors that SinoType and Rockefeller were working together towards a deal. (Huang Decl., ¶27 at CT 224.) At the time, Curt had no intention of waiving SinoType's right to service of process or agreeing to arbitration. (Huang Decl., ¶28 at CT 224.) Because he only had ten minutes to review the MOU, he did not even know that it contained a statement saying SinoType would agree to alternate service. (Id.) In fact, the MOU itself does not expressly state that the Parties are waiving the Hague Convention requirements. (See MOU at CT 242-245.) It is also unclear from the MOU whether RFM, the parent company of Rockefeller, was a party to the MOU, as RFM did not join Rockefeller as

co-plaintiffs in the underlying action. (Id.; see also Petition to Confirm Arbitration Award at CT 9-30.) Curt believed that the "bèi wàng lù" had no legal implications and all of the terms would be negotiated and modified later in the actual contract or the "long form agreements." (Huang Decl., ¶¶28, 29 at CT 224; see also draft "long form agreements" at CT 287-428; Declaration of Faye Huang In Support of Rockefeller's Opposition to Sinotype's Motion to Set Aside Default Judgment ("Faye Decl."), ¶¶8, 9 at CT 507.)

Curt returned to China hours after signing the "bèi wàng lù." (Huang Decl., ¶31 at CT 225.) He did not receive a draft agreement or the "long form agreements" within 90 days. (Id.) Negotiations for a formal contract stalled after Curt's return to China and did not move forward until late 2009. (Huang Decl., ¶¶31, 33-34 at CT 225.)

E. The Parties' Relationship Sours

Over time, Curt grew increasingly disenchanted by Rockefeller. His meetings with Faye were always held at off-site locations despite Curt's repeated requests to visit Rockefeller's offices. (Huang Decl., ¶9 at CT 220.) During these meetings, Curt became frustrated by the lack of progress and lack of clarity as to which of the Rockefeller entities Faye and Nicholas Rockefeller proposed doing business with WWT. (Id.)

Curt also became disenchanted with Nicholas Rockefeller's lack of preparedness and misrepresentations during subsequent meetings. In late 2009, Faye and Nicholas Rockefeller proposed a Los Angeles roadshow to

raise funds for WWT. (Huang Decl., ¶36 at CT 225.) The roadshow consisted of three meetings with potential investors arranged by Faye and Nicholas Rockefeller. (Huang Decl., ¶¶37-56 at CT 226-229; Lan Decl., ¶¶18-26 at CT 475-478.) Curt prepared a presentation for the roadshow with Howie Lan and John Chang (another colleague), predicting revenues for the global sales for WWT. (Huang Decl., ¶37 at CT 226; Lan Decl., ¶17 at CT 475-476.) The presentation did not contain any revenue projections for SinoType. (Id.)

The roadshow abolished Curt's confidence in a deal with Rockefeller. During the roadshow, Nicholas Rockefeller continually misrepresented to potential investors that he owned 12.5% of SinoType, that SinoType had $7 million in revenues in 2009, and that SinoType had received a $200 million acquisition offer. (Huang Decl., ¶¶37-56 at CT 226-229; Lan Decl., ¶¶18-26 at CT 476-478.) None of this was true. (Huang Decl., ¶¶57-59 at CT 229-230; Lan Decl., ¶¶27-30.) Curt never agreed to sell Sinotype's equity to Rockefeller or to any third party. (Huang Decl., ¶57 at CT 229-230.) **In fact, the MOU does not provide for the sale of Sinotype's equity to Rockefeller.** (See MOU at CT 242-245.) Rather, the MOU, which was never agreed to by Curt, provides that Rockefeller will have 12.5% of WWT, a new company that was never formed. (Id.) When Curt confronted Nicholas Rockefeller about these misstatements, Nicholas Rockefeller became angry and claimed no one would be interested in investing if they did not believe

those statements to be true. (Huang Decl., ¶48 at CT 228; Lan Decl., ¶21 at CT 477.) During this confrontation, Nicholas Rockefeller never denied the fact that he did not own equity interest in Sinotype. (Id.) Curt stopped the roadshow due to Nicholas Rockefeller's persistent misrepresentations. (Huang Decl., ¶56 at CT 229.)

In February 2010, Faye contacted Curt to apologize for Nicholas Rockefeller's misrepresentations and to try to revive negotiations about investing in WWT. (Huang Decl., ¶60 at CT 230.) Curt demanded that Rockefeller retain professionals if any deal was to move forward. (Huang Decl., ¶61 at CT 230.) Faye did not object or claim there was already a binding agreement. (Huang Decl., ¶62 at CT 231.)

Negotiations for an agreement regarding WWT continued in 2010, but the terms Faye and Nicholas Rockefeller proposed were unacceptable. During a meeting on February 27, 2010, Faye and Nicholas Rockefeller requested that Rockefeller receive a 12.5% equity in the WWT project, with 10% being delivered up front. (Huang Decl., ¶¶64-65 at CT 231.) Because they had provided no value to the project – no investors resulted from the failed roadshow. Curt refused and offered instead to provide equity in WWT on a commission basis. (Huang Decl., ¶66 at CT 231.) Nicholas Rockefeller was upset with this counter-offer, but did not assert that Rockefeller already owned equity in SinoType or that Rockefeller had transferred any assets to the WWT project. (Huang Decl., ¶67 at CT 231.) Curt later learned that

Rockefeller told the arbitrator it transferred approximately $10 million to SinoType in 2008, which is false. (Id.)

F. Rockefeller unilaterally delivers draft "long form agreements" to SinoType – the terms of which were never agreed to, and which were vastly different from the MOU.

On June 9, 2010, Faye emailed to Curt a draft of the long-overdue "long form agreements" which includes a "Series A Preferred Stock Purchase Agreement" ("Stock Purchase Agreement" or "SPA") and other ancillary agreements (sometimes collectively referred to as "Draft Agreements" or "long form agreements"). (Huang Decl., ¶69 at CT 232; see "long form agreements" at CT 287-425.) The "long form agreements" were supposed to "carry forth the agreements made in the [MOU], together with any and all other documents in furtherance of the [MOU]." (See Section IV(1) of MOU at CT 244; Faye Decl., ¶8 at CT 507; "Recitals" of draft Stock Purchase Agreement at CT 289.)

Rather than creating the new company WWT as stated in the MOU, the proposed "long form agreements" drafted by Rockefeller's counsel, K&L Gates LLP, purportedly in conformity with the MOU and sent to Curt, presented an entirely **new agreement** – one involving different parties, different terms, different transactions, and different consideration. (Compare MOU at CT 242-245 with "long form agreements" at CT 287-425 and Arbitration Award at CT 19-24.) The original parties to the MOU, Sinotype and Rockefeller, were no longer parties to the Stock Purchase Agreement.

(CT 288-304.) Instead, the parties became Rockefeller Fund Management Co. ("RFM") (parent company of Rockefeller), Pacific Rim Cultural Foundation (collectively referred to as the "Purchasers" in the Stock Purchase Agreement), STI (U.S. parent company of Sinotype), Curt Huang, Howie Lan, and Diana Hong (collectively referred to as the "Founders" in the Stock Purchase Agreement). (Id.; see also Exhibit A to the Stock Purchase Agreement at CT 304.) **The proposed Stock Purchase Agreement does not contain any of the terms in the MOU**, including the material term requiring both Sinotype and Rockefeller to contribute all of their "interests" (whatever those were, as it is unspecified in the MOU) into the new company WWT. (See Stock Purchase Agreement at CT 289-304.) Instead, the Stock Purchase Agreement provides for the sale of **STI's** stock to RFM and Pacific Rim Cultural Foundation without any apparent consideration paid to STI for its shares. (CT 289-304.) **The Stock Purchase Agreement also requires STI to amend its articles of incorporation to change its name to "World Wide Type" ("WWT").** (See Stock Purchase Agreement at CT 289; see also "Amended and Restated Articles of Incorporation of Sinotype Technology International, Inc." (attached as Exhibit B to Stock Purchase Agreement) at CT 305-324, in particular at CT 307.)

No explanation was provided as to why Rockefeller proposed the Stock Purchase Agreement and the "long form agreements" with terms that

were never negotiated or agreed to by Curt. (See Huang Decl., ¶69-71 at CT 232.) Curt repeatedly made it clear to Faye and Nicholas Rockefeller that the only deal he would consider would be an award of equity on a commission basis if Rockefeller successfully raised funds for the WWT project, and that he would not transfer equity interests in either SinoType or STI to Rockefeller. (Id.) The MOU does not mention the transfer of either Sinotype or STI's equity interests to Rockefeller. (Huang Decl., ¶70 at CT 232; MOU at CT 242-245.) No agreement was reached by the Parties; the "long form agreements" were not signed.

In addition to the Stock Purchase Agreement, the June 9, 2010 email also included a draft "Promotion Agreement" requiring the proposed WWT company to reimburse RFM for all the costs and expenses associated with promoting the business and financial opportunities of WWT. (See Promotion Agreement at CT 430; Huang Decl., ¶73, 74 at CT 233.) However, Curt never agreed to any reimbursements in either the non-binding MOU or this draft Promotion Agreement. Curt was not aware of any substantial expenses incurred by RFM or Rockefeller during the road show. (Huang Decl., ¶73, 74 at CT 233.)

Faye's email also includes an "Amendment" that attempts to amend both the MOU and the "long form agreements" including the Stock Purchase Agreement. (See "Amendment" at CT 427-428, attached as Exhibit I to Huang's Decl.); see also "Huang Decl., ¶72 at CT 232.) More importantly,

the Amendment attempts to convert the non-binding MOU to a binding one by providing in Paragraph 7 of the Amendment: "*The Parties agree that the 18 February 2008 MOU was duly executed by Kejian (Curt) Huang and by Faye Huang and was valid and binding on the Parties.*" (See Amendment at CT 428.) The Amendment further provides that Rockefeller "hereby assigns all of its assets" to STI (a non-party to the MOU). (See Amendment at CT 427.)

G. Sinotype rejects "long form agreements." Faye Huang and Nicholas Rockefeller try to coerce a binding agreement.

The draft "long form agreements" (e.g., Stock Purchase Agreement, Promotion Agreement, the Amended and Restated Articles of Incorporation of STI, and the Amendment included in Faye's June 2010 email, reflect the Parties' understanding that the MOU was not binding and was simply a "bèi wàng lù." (Huang Decl., ¶69-75 at CT 232-233.) As these agreements represented a completely different project than the one Sinotype envisioned for WWT, Curt informed Faye and Nicholas Rockefeller in July 2010 that he would not sign the "long form agreements." (Huang Decl., ¶75-76 at CT 233-234.)

After Curt's rejection of the "long form agreements," on July 15, 2010, Faye arranged a meeting with Curt in Los Angeles at a yogurt shop. (Huang Decl., ¶76-77 at CT 233-234.) Faye's son, Travis Huang, was also at the meeting. (Huang Decl., ¶77 at CT 234.) Faye was very angry that Curt

refused to sign the "long form agreements." (Huang Decl., ¶76-78 at CT 233-234.) Faye told Curt that Nicholas Rockefeller had "many lawyers" and would "make things difficult" for him if he did not sign. (Id.) Faye further stated that she would be in big trouble with Nicholas Rockefeller if Curt did not sign. (Huang Decl., ¶77 at CT 234.) Curt did not submit to these threats.

Faye continued to aggressively harass Curt into signing the "long form agreements." (Huang Decl., ¶79-87 at CT 234-235.) Faye enlisted her friend, known to Curt only as "Mr. Liu" to persuade Curt to sign the "long form agreements." (Huang Decl., ¶85-86 at CT 235.) Mr. Liu told Curt that if Curt did not sign the agreements, Curt would have trouble. (Id.)

Communications between Curt, Faye, and Nicholas Rockefeller ended around March 2011.

H. Rockefeller initiates Arbitration in 2012. Rockefeller misrepresents the MOU and the facts to the arbitrator – resulting in a colossal award of $414 million to Rockefeller. The Judgment confirming the Award was entered on October 23, 2014.

In or about January 2012, Curt received a letter via Fedex, the cover of which mentioned "arbitration" and referenced Faye and Nicholas Rockefeller. (See Motion to Vacate, p. 9 at CT 209; Huang Decl., ¶88 at CT 236.) As there was never a binding agreement between the Parties, Curt ignored the letter. (Huang Decl., ¶88 at CT 236.) Curt also ignored all subsequent FedEx packages and emails, as he did not want to be harassed by Faye and her friends, and he did not believe the Parties' negotiations came

to an agreement. (See Huang Decl., ¶88, 89 at CT 236.)

Unbeknownst to Curt and SinoType, Faye and Nicholas Rockefeller proceeded with an arbitration in which they grossly misstated or left out important facts, and misrepresented the nature of the MOU to the arbitrator. (Motion to Vacate, p. 9 at CT 209.) Also unbeknownst to Curt and SinoType, Rockefeller filed a petition to confirm the arbitration award. (Huang Decl., ¶90 at CT 236.) Curt did not learn of the Judgment until March 2015 when he heard from one of SinoType's clients that Rockefeller was alleging that SinoType owed them money. (Id.) SinoType immediately sought legal counsel who opened the FedEx packages. (Id.) That was when Curt and SinoType learned of the $414 million dollar Judgment, an amount that is more than 70 times SinoType's revenues for the period from 2009 and 2013 (Id.) The $414 million award represents Rockefeller's loss of its 12.5% equity interests in SinoType (even though the MOU states that it is 12.5% in the new company WWT), making SinoType a company purportedly worth **$1.44 billion dollars** as of February 2012. (See Arbitration Award, p. 4 at CT 23.)

SinoType was never served with formal process of the Summons and Petition to confirm arbitration award. (See Proof of Service of Summons at CT 34-41; Huang Decl., ¶91 at CT 236; Motion to Vacate p. 9 at CT 209.) Rather, SinoType was served by FedEx and email. (CT 34-41.) The FedEx envelope containing the Summons does not reference a court proceeding.

(Huang Decl., ¶91 at CT 236; see also FedEx envelope attached as Exhibit M to Huang's Decl. at CT 435-437.) SinoType never agreed to arbitration or to a waiver of the requirements of the Hague Convention. The MOU was not binding. (Huang Decl., ¶27-29 at CT 224.)

I. SinoType learned of Faye Huang's and Rockefeller's misrepresentations during arbitration. There are glaring and unexplained inconsistencies between the MOU, the Long Form Agreements, the Arbitration Award, and the documents and declarations submitted as part of Rockefeller's Opposition to SinoType's Motion to Vacate.

When Curt reviewed the documents submitted to the arbitrator, he was dismayed by the numerous misstatements and misrepresentations which deceived the arbitrator. Faye declared that Rockefeller transferred almost $10 million (more specifically $9.65 million) in AIG stock to SinoType. (See Arbitration Award, last paragraph of p. 3 at CT 21 [referencing an assignment of $9.65 million of AIG shares to SinoType]; see also RT, vol. 2, p. 324, lines 27-28 [Rockefeller's counsel stating that Rockefeller "put up $10 million"; RT, vol 2., p. 325, lines 1-9 [Rockefeller's counsel explaining how $10 million turned into $400 million]; RT, vol. 2, p. 333, lines 20-23 [Rockefeller's counsel asking the Court to refer to paragraph 7 of Faye's Declaration (CT 506) as evidence of the $10 million stock transfer]; but see Faye Decl., ¶7 at CT 506 [stating that it was "partnership interests" in Rockefeller that was transferred to SinoType worth $9.65 million (not AIG stock).) **However, the $10 million AIG stock transfer never occurred; it**

was never agreed to by the Parties either in the MOU or in any subsequent negotiations – SinoType did not receive a single penny even to this day. (See Huang Decl., ¶94-95 at CT 237; RT, vol. 2, p. 329, lines 9-17.) Faye and Nicholas Rockefeller never mentioned any AIG stock transfer to SinoType, neither did SinoType signed any documents relating to the imaginary AIG stock transfer. (Id.) In fact, MOU which has an integration clause, does not reference any transfer of any stocks whatsoever to SinoType. (See MOU at CT 242-245.) Instead, Section I(2) of the MOU states that "Party A [SinoType] shall receive 87.5% interest in WWT and shall contribute 100% of its interests in the companies comprising Party A, i.e., Changzhou Sinotype Technology [SinoType]." (MOU at CT 242.) Section I(3) of the MOU states that "Party B shall receive 12.5% interest in WWT and shall contribute 100% of its interest in the companies comprising Party B, i.e., Rockefeller Technology Investments (Asia) VII [Rockefeller]." (See MOU at CT 243; see also Arbitration Award, p. 3 at CT 21.) **Nowhere in the MOU does it mention that Rockefeller was to transfer $9.65 million of AIG stock (or any other consideration) to SinoType in exchange for 12.5% of WWT**. (See MOU at CT 242-245; see "long form agreements at CT 287-428.) More baffling is Faye's declaration stating that "[u]pon the execution of the [MOU], an *Assignment of Partnership Interests* was executed by the Rockefeller Parties [purported to be Rockefeller and RFM, even though RFM is not known to be a party to the MOU or this

litigation], which had a value of $9.65 million, to SinoType *per the terms of the [MOU]*." (Faye Decl., ¶7 at CT 506.) (Emphasis added.) The MOU does not mention any transfer of "partnership interests" of RFM and Rockefeller to SinoType. (See MOU at CT 242-245.) If partnership interests in Rockefeller and RFM were transferred to SinoType, then SinoType would be a current partner of Rockefeller.

It is also unclear how Rockefeller's alleged 12.5% interest in WWT (a company not yet formed), as provided in the MOU, became 12.5% interest in SinoType. (See MOU at CT 242-245; Arbitration Award at CT 19-23.) **WWT is <u>not</u> SinoType.** The Arbitration Award is silent on this issue. (<u>Id.</u>) The Parties also did not sign any subsequent document to modify or to add new or different terms to the MOU. (See Faye Decl., ¶8, 9 at CT 507, admitting that the MOU can only be modified in writing and that the Parties did not sign the "long form agreements.")

Additionally, the "long form agreements," in particular, the Stock Purchase Agreement, constitutes an entirely new agreement – one that is not in conformity with the MOU or the Declaration of Faye Huang. (See Faye Decl., ¶8, 9 at CT 507 [indirectly admitting that the "long form agreements" were supposed to conform to the MOU]; see "Recitals" of Stock Purchase Agreement at CT 289 [stating that the Stock Purchase Agreement is made "in furtherance of the agreement between the parties set forth in the MOU"]; see Stock Purchase Agreement at CT 289, 301-302, 304 [showing that the

parties to the Stock Purchase Agreement to be RFM, Pacific Rim Cultural Foundation, Curt Huang, Howie Lan, and Diana Hong – none of whom were parties to the MOU].)

Faye's declaration that SinoType would be rebranded as WWT also contradicts the MOU and the "long form agreements." (See Faye Decl., ¶3, lines 18-19 at CT 505; see MOU at CT 242-245 for lack of any reference that SinoType is to become WWT; see Amended and Restated Articles of Incorporation of STI, in particular at CT 307, changing the name of STI (not SinoType) to World Wide Type ("WWT").) These glaring inconsistencies between the MOU, the draft "long form agreements," the Amendment, Faye's declaration, and the Arbitration Award all confirm that the MOU, although signed by the Parties, was never intended to be binding and that the Parties did not act and perform according to the MOU, as evidenced by the documents and negotiations subsequent to the MOU.

The hearing on SinoType's Motion to Vacate Default Judgment was heard on February 24, 2016 and April 6, 2016. (See RT, vol. 2.) Despite the evidence submitted by SinoType and SinoType's arguments that the entire MOU (including the arbitration provision and the wavier of the Hague Convention) was void due to Faye's misrepresentations, that the MOU was not binding, and that the MOU is void for lack of consideration, the trial court refused to look at the evidence, even in the face of such an inconceivable award of $414 million, and the glaring fact that Rockefeller never provided

any consideration, whether it is AIG stock or partnership interests of Rockefeller or RFM to support a binding, valid, and enforceable MOU.

III. STANDARD OF REVIEW

When considering what standard of review to apply on appeal of the denial of a motion in the trial court, generally, if the trial court's denial of said motion rests solely on a decision of law, then a de novo standard of review is employed on review in the Courts of Appeal. (Carlson v. Home Team Pest Defense, Inc., (2015) 239 Cal.App.4th 619, 630 (Carlson) (in that case review of the trial court's denial of a motion to compel arbitration)). Alternatively, if the court's order is based on a decision of fact, then this Court would adopt a substantial evidence standard. (Carlson, 239 Cal.App.4th at 630.)

In the present case, the sole issue, as in Carlson is one of statutory interpretation, i.e. the meaning and application of the Hague Convention to service of legal papers by mail in China in violation of that country's limitations on service of process and, therefore, this Court should apply the de novo standard of review.

IV. ARGUMENT

A. THE MOTION TO VACATE THE DEFAULT JUDGMENT AFFIRMING THE ARBITRATION AWARD SHOULD HAVE BEEN GRANTED BECAUSE THE JUDGMENT IS VOID FOR FAILING TO COMPLY WITH THE HAGUE CONVENTION.

Failure to comply with the Hague Convention renders any attempt at service of process void, even if the defendant has actual notice of the lawsuit. (See Floveyor Internat., LTD. vs. Superior Court (1997) 59 Cal.App.4th 789, 795, citing Honda Motor Co. vs. Superior Court (1992) 10 Cal.App.4th 1043, 1049, and Dr. Ing. H.C.F. Porsche A.G. vs. Superior Court (1981) 123 Cal.App.3d 755, 762 ("Dr. Ing.")). The cases in this area specifically hold that such service is VOID AB INITIO, not merely voidable. The distinction between *void ab initio* and merely "voidable" is, of course, that a judgment which is void ab initio is a nullity, may be ignored and may be set aside at any time by any court, either a trial court or a reviewing court. (Stowe vs. Matson, (1954) 94 Cal.App.2d 678.) "A judgment or order that is invalid on the face of the record is subject to collateral attack. [Citation.] It follows that it may be set aside on motion, with no limit on the time within which the motion must be made." (8 Witkin, Cal. Procedure (5th ed. 2016) Attack on Judgment in Trial Court, § 207, p. 812; see, also, Peralta vs. Heights Medical

Center, (1988) 485 U.S. 80,85-87 (proceeding to vacate default held timely though filed 6 years after judgment was entered where default was void)).

Such a motion to vacate a void judgment may be made under Code of Civil Procedure Section 473(d), which provides, in pertinent part:

> "(d) The court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed, and may, on motion of either party after notice to the other party, set aside any void judgment or order."

In Kott vs. Superior Court (1996) 45 Cal.App.4th 1126 (Kott), the Court of Appeal held that "[f]ailure to comply with the Hague Service Convention procedures voids the service even though it was made in compliance with California law. [Citation.] This is true even in cases where the defendant had actual notice of the lawsuit. [Citations.]" (Kott, 45 Cal.App.4th at 1136.)

The Hague Convention is a multilateral treaty formulated in 1964 by the Tenth Session of the Hague Conference of Private International Law. (Kott, 45 Cal.App.4th at 1133.) The 1964 version was intended to provide a simpler way to serve process abroad, to assure defendants sued in foreign jurisdictions would receive actual and timely notice of suit, and to facilitate proof of service abroad. (Id., citing Volkswagenwerk Aktiengesellschaft v. Schlunk (1988) 486 U.S. 694, 698).

Article 1 of the Hague Convention declares that the Convention "shall apply in all cases, in civil or commercial matters, where there is occasion to transmit a judicial or extrajudicial document for service abroad." Article 10(a) provides that, as long as the "State of destination" does not object, the Convention "shall not interfere with the freedom to send judicial documents, by postal channels, directly to persons abroad." The People's Republic of China has objected to Article 10. See Hague Convention, China Declaration Notification, 3, available at http://www.hcch.net/index_en.php?act=status.comment&csid=393&disp=resdn (declaring "to oppose the service of documents in the territory of the People's Republic of China by the methods provided by Article 10 of the Convention").

The Convention entered into force in the United States on February 10, 1969. China became signatory to the Hague Service Convention on March 2, 1991 and entered into force on January 1, 1992 with objections to service pursuant to Articles 8, 10, 15 and 16 of the Convention. With reservation to service in accordance with Article 8, China only permits direct service through the requesting state's diplomatic or consular agents when there is an attempt to serve process on their nationals. Service of process via postal channels, through judicial officers or other competent persons and interested persons specified in Article 10(a)(b)(c) is prohibited in China

under the Hague Service Convention. See U.S. Dep't of State, Country Specific U.S. State Department Circulars, Judicial Assistance - China, in International Business Litigation & Arbitration 2005, Litigation and Administrative Practice Course Handbook Series, PLI Order No. 5929, 721 PLI/Lit 1311, 1311, 1313 (Practising Law Institute ed., March 2005). Under current Chinese civil procedure law, service of process is regarded as a "judicial" or "sovereign" act that may not be performed by a private person. The People's Republic of China in Articles 260 and 261 of its Civil Procedure Law, which was in effect in the year 2012 when the Petition to Confirm the Arbitration Award was allegedly served by mail, and which remains in force today, although re-codified as Articles 276 and 277, has detailed the sole means for foreign litigants to obtain international judicial assistance in China. See People's Republic of China Civil Procedure Law, arts. 260 & 261, subject of a Motion for Judicial Notice in the Second Appellate District Court of Appeal, filed contemporaneously with Appellant's Opening Brief in the Court of Appeal which was granted by the Court of Appeal (hereinafter the "MJN").

CA Rules of Court, Rule 8.500(c)(2), provides, in pertinent part, as follows:

"A party may petition for review without petitioning for rehearing in the Court of Appeal, but as a policy matter the Supreme Court

normally will accept the Court of Appeal opinion's statement of the issues and facts unless the party has called the Court of Appeal's attention to any alleged omission or misstatement of an issue or fact in a petition for rehearing."

See, e.g., People v. Peevy (1998) 17 Cal.4th 1184, 1205-1206 and People v. Bransford (1994) 8 Cal.4th 885, 893, fn. 10.

No Petition for Rehearing was filed in the Court of Appeal in this case. Therefore, apparently, this Court should accept the matters of fact which were accepted by the Court of Appeal in its granting of the Motion for Judicial Notice.

Then effective Article 260 of the Civil Procedure Law of the People's Republic of China (translated into English) (see MJN) provides, in pertinent part:

> "Article 260 A people's court and a foreign court may mutually request each other for service of documents, investigation, evidence collection and other litigation acts on their respective behalf in accordance with the international treaties concluded or acceded to by the People's Republic of China or according to the principle of reciprocity.
>
> If any matter for which a foreign court requests assistance harms the sovereignty, security or social public interest of the People's Republic of China, a people's court shall refuse to enforce the matter."

Then effective Article 261 of the Civil Procedure Law of the People's Republic of China (translated into English) (see MJN) (hereinafter "Article 261") provides, in pertinent part:

> "Article 261. A request for and the provision of judicial assistance shall be conducted through channels stipulated in the international treaties concluded or acceded to by the People's Republic of China, and in the absence of treaty relations, shall be conducted through diplomatic channels.
>
> An embassy or consulate of a foreign country in the People's Republic of China may serve documents on, investigate, or collect evidence from the citizens of that country, provided, however, that the laws of the People's Republic of China are not violated and that no compulsory measures are adopted.
>
> Except for the circumstances specified in the preceding paragraph, **no foreign agency or individual may serve documents**, conduct investigations or collect evidence **within the territory of the People's Republic of China** without the consent of the in-charge authorities of the People's Republic of China." [Emphasis added]

Article 261 states that any request for judicial assistance "shall be conducted through channels stipulated in the international treaties concluded or acceded to by the People's Republic of China" or through diplomatic channels. People's Republic of China Civil Procedure Law, arts. 260 & 261 (see MJN). The Hague Service Convention is precisely the international treaty contemplated by Article 261 to which China has acceded with the intention of channeling all requests for judicial assistance through the mechanism provided by the treaty and China's implementing legislation in compliance with the Hague Service Convention. In acceding

to the Hague Service Convention, China took a limited reservation with regard to service of process by mail, further indicating its determination to control the intrusion of foreign legal process on Chinese judicial sovereignty. Indeed, according to the U.S. State Department's website, service of process by mail should NOT be used in China. Bureau of Consular Affairs, U.S. Dep't of State, *China Judicial Assistance,* https://travel.state.gov/content/travel/en/legal-considerations/judicial/country/china.html.

> "China . . .
> Party to Hague Service Convention? Yes
> Party to Hague Evidence Convention? Yes
> Party to Hague Apostille Convention? Yes
> Party to Inter-American Convention? No
> Service of Process by Mail? No"

Although the Hague Convention "liberalized service of process in international civil suits," (see Brockmeyer v. May, (9th Cir. 2004) 383 F.3d 798, 801), it does not, by itself, provide an affirmative answer to what specific types of service are allowed in a particular case.

The English text of Article 10 of the Convention reads as follows:

"Provided the State of destination does not object, the present Convention shall not interfere with—

"(a) the freedom to send judicial documents, by postal channels, directly to persons abroad,

"(b) the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly

through the judicial officers, officials or other competent persons of the State of destination,

"(c) the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination."

In Water Splash, Inc. v. Menon, (2017) 137 S. Ct. 1504, 1508 ("Water Splash"), a unanimous United States Supreme Court, recently resolved a split between the Second Circuit and Eighth Circuit Court of Appeals and held that the Convention does not prohibit service by mail but also held, "this does not mean that the Convention affirmatively authorizes service by mail." (Id.) The Court then went on to state that, "in cases governed by the Hague Service Convention, service by mail is permissible if two conditions are met: **first, the receiving state has not objected to service by mail**; and second, service by mail is authorized under otherwise-applicable law." [emphasis added] (Id.)

Service on a Chinese company by mail is not effective in California or anywhere else in the United States, as California and other U.S. courts have held that formal objections to service by mail under Article 10(a) of the Convention are valid. (Dr. Ing H.C. F. Porsche A.G. v. Superior Court, (1981) 123 Cal. App. 3d 755, 761 (rejecting attempt to serve a German defendant by mail where Germany had objected to Article 10(a) of the Convention)). "By virtue of the supremacy clause, the [Hague Service Convention] overrides state methods of serving process abroad that are

objectionable to the nation in which the process is served." (See DeJames v. Magnificence Carriers, Inc., (3d Cir. 1981) 654 F.2d 280).

It is beyond reasonable dispute that China has objected to service by mail since China has objected to Article 10 which is the Article providing for service by mail. It is also beyond dispute that China views attempts to serve its citizens by mail as an insult to its sovereignty and a violation of the treaty it entered into with the United States. It is beyond dispute, also, that China does not recognize or permit informal service on its citizens even by their own consent under Article 5 of the Convention.

The English text of Article 5 of the Convention reads as follows:

> "Article 5 - The Central Authority of the State addressed shall itself serve the document or shall arrange to have it served by an appropriate agency, either –
>
> a) by a method prescribed by its internal law for the service of documents in domestic actions upon persons who are within its territory, or
>
> b) by a particular method requested by the applicant, **unless such a method is incompatible with the law of the State addressed**.
>
> Subject to sub-paragraph (b) of the first paragraph of this Article, the document may always be served by delivery to an addressee who accepts it voluntarily.
>
> If the document is to be served under the first paragraph above, the Central Authority may require the document to be written in, or translated into, the official language or one of the official languages of the State addressed.
>
> That part of the request, in the form attached to the present Convention, which contains a summary of the document to

be served, shall be served with the document." [emphasis added]

Proper service under the Hague Convention is effected through the designated Chinese Central Authority in Beijing, which is the "Bureau of International Judicial Assistance, Ministry of Justice of the People's Republic of China". A Plaintiff, which includes a Plaintiff that is suing in a California Court, seeking to sue a company which resides within the territorial boundaries of the People's Republic of China must submit the following to the Ministry of Justice:

a. A completed United States Marshals Service Form USM-94

b. The original English version of the documents to be served (the summons must have the issuing court's seal)

c. The Chinese translation of all documents to be served.

d. A photocopy of each of these documents. (See below.)

The U.S. State Department's website provides, as follows:

"China is a party to the Hague Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil and Commercial Matters. Complete information on the operation of the Convention, including an interactive online request form are available on the Hague Conference website. Requests should be completed in duplicate and submitted with two sets of the documents to be served, and translations, directly to China's Central Authority for the Hague Service Convention. The person in the United States executing the request form should be either an attorney or

clerk of court. The applicant should include the titles attorney at law or clerk of court on the identity and address of applicant and signature/stamp fields. In its Declarations and Reservations on the Hague Service Convention, China formally objected to service under Article 10, and does not permit service via postal channels. For additional information see the Hague Conference Service Convention website and the Hague Conference Practical Handbook on the Operation of the Hague Service Convention. See also China's response to the 2008 Hague Conference questionnaire on the practical operation of the Service Convention."
Bureau of Consular Affairs, U.S. Dep't of State, *China Judicial Assistance,*
https://travel.state.gov/content/travel/en/legal-considerations/judicial/country/china.html

In the written response of the People's Republic of China to the Hague Service Convention Questionnaire, Questions for Contracting States, China specifically indicates that it does not permit its citizens to agree to informally accept service without involvement of the Central Authority and without the documents being translated into the Chinese language. See Hague Service Convention Questionnaire, Questions for Contracting States (2008), at: http://www.hcch.net/upload/wop/2008china14.pdf, at page "19" thereof:

"c. Informal delivery (Art. 5(2))
[question] (i) Does the law of your State provide for informal delivery of documents (understood to be a method of service where the documents to be served are delivered to an addressee who accepts them voluntarily)?
. . . .
[answer] [X] NO";

and see, also, Hague Service Convention Questionnaire, Questions for Contracting States (2008), at:

http://www.hcch.net/upload/wop/2008china14.pdf, at page "21" thereof:

> "C. Translation requirements (Art. 5(3))
> 30) Please indicate if your State, as a requested State, imposes any language or translation requirements for documents to be served in your State under Article 5(1) (see Conclusions and Recommendations Nos 67 and 68 of the 2003 Special Commission):
> . . . .
>
> [X] YES - please indicate what these requirements are, in each of the following set of circumstances:
>
> a. Formal service (Art. 5(1) a)):
> In circumstances where the/ a Central Authority of your State, as a requested State, is in a position to assess the content and nature of the request for service based on the "Summary" section of the Model Form and where there is evidence that the addressee is fluent in the language in which the document to be served is written. Would your State then still insist, under Article 5(1) a), that the document be translated into another language (i.e., one of the official languages of your State)?
>
> [X] YES - please indicate why:
>
> According to the domestic law, the documents to be served must be in Chinese language."

Completely ignoring the rules of service of process required by the Hague Convention, Respondent Rockefeller in this case obtained the Default Judgment described above by transmitting the Petition to confirm the arbitration award to SinoType in China via postal channels without complying with the Hague Convention in any way. This Court should find

that Parties may not waive due process procedures created by the Hague Convention in the manner in which Rockefeller has claimed was done in this instance. China does not permit parties to informally waive their rights to service of legal documents under Article 5 of the Convention. China does not permit legal documents to be served unless they are translated into Chinese and served formally by the Central Authority in China. China does not permit legal documents to be served by mail. Therefore, the Petition to confirm the award, the award, and, indeed, the arbitration notices themselves, were not properly served in compliance with the Convention, and the Default Judgment is void ab initio since the attempted service violated a treaty of the United States with the People's Republic of China under Dr. Ing. and Kott, and, indeed, under the U.S. Supreme Court's recent decision in Water Splash wherein it was held that, for service by mail under the Convention to be effective, it must be something that "the receiving state has not objected to". (Dr. Ing., 123 Cal. App. 3d at 761; Kott, 45 Cal.App.4th at 1136; and Water Splash, 137 S. Ct. at 1508.)

B. CONTRARY TO ROCKEFELLER'S POSITION, THERE IS NO EXCEPTION TO THE HAGUE CONVENTION FOR PRIVATE CONTRACTS WHICH WOULD BAR CHINA FROM DECIDING HOW ITS CITIZENS ARE TO BE SERVED WITH JUDICIAL AND EXTRAJUDICIAL DOCUMENTS.

In its Opening Brief on the Merits, Plaintiff and Respondent argues that general provisions of the Hague Conference on Private International Law (the "HCCH") which purport to allow private parties to make their own rules for litigation somehow trump or supersede express prohibitions of the Hague Convention on service of process. This is the so called "personal autonomy" argument. There is no merit to the argument in this context. China wants its citizens to be served in a certain way, i.e. documents translated into Chinese and delivered by the central authority so that the government can control the process in that way. The United States government agreed to abide by that treaty. International Treaties are the law of the land. Due process requires that the law be followed. Failure to abide by the Hague Convention renders any default judgment obtained *void ab initio*. (Dr. Ing., 123 Cal. App. 3d at 761; Kott, 45 Cal.App.4th at 1136; and Water Splash, 137 S. Ct. at 1508.) This is not controversial, despite Rockefeller's refusal to acknowledge this and citation to other areas of law where there is more ambiguity. Rockefeller still does not offer any "plausible textual footing" (Water Splash, 137 S. Ct. at 1509-1510) for the proposition that parties may contract around the Hague Service Convention.

Rockefeller cites D. H. Overmyer Co. v. Frick Co. (1972) 405 U.S. 174 which stands for the proposition that corporations can waive their rights to notices and hearings in the United States. That case and the concept

behind it are totally irrelevant. The U.S. government, in this instance, has agreed with China that its citizens, in China, will only be served in a certain way. That is nonwaivable right. One might ask, "How does one know it's a non-waivable right?" Because China, itself, takes that position in the treaty and in the questionnaire wherein it is asked whether its citizens can simply consent to service. In effect, fundamentally, it is not even a just a right of the litigants that we are discussing here, it is a right of sovereignty of the Chinese government guaranteed to it by a treaty. Nothing in any case cited by Rockefeller suggests that treaties can be ignored.

Rockefeller also asserts that there is something unfair or oppressive about litigants having to re-write their contracts in such a way that they are legally enforceable, and with the ability of litigants in "India" and "China" to take advantage of liberal service of process policies in the United States, but nevertheless, forcing U.S. litigants suing people residing in India and China to serve their process through the central authorities there. It is not China's or India's fault that the drafters of contracts in the United States don't bother to read and understand international treaties. Respectfully, Rockefeller should take these disputes up with India and China.

Perhaps most appallingly, in a desperate attempt to circumvent this Court's own statement as to what the one single issue is in this Review, Rockefeller argues in footnote 3, on page 6 of it Brief on the Merits, that

"Rockfeller Asia's ability to enforce its arbitral award or judgment is not at issue in this case [sic] and should not have been an issue for the Court of Appeal . . .[because of] . . . the "New York Convention"). The so called "New York Convention", which actually has no bearing whatsoever on this case, is a method of enforcing foreign arbitral awards whereby a litigant can take a foreign arbitration award and enforce it in the defendant's home country. (See http://www.newyorkconvention.org/) For the New York Convention to have been applicable in the instant case, Rockefeller would have had to have taken its arbitration award to China and presented it to the Chinese judicial system for enforcement. Given the governing statutes in China, presumably a panel of Chinese judges would then get to decide if the arbitration clause in the dubious MOU was enforceable, and presumably after all the documents for enforcement under the New York Convention were translated into Chinese and properly filed and served there by the Central Authority. For whatever reason, ROCKEFELLER chose not to entrust its case to the legal system of the People's Republic of China. Instead this was a domestic arbitration, not a foreign one, and, therefore, domestic law applies, which includes the Hague Convention, which requires service on the Central Authority in China before any service of process there could be effective.

A great deal of Rockefeller's Brief on the Merits appears to be opining that the proverbial sky will fall, and that an unspecified number of default judgments will be set aside and international contracts have to be re-written, because attorneys in the past foolishly believed that the Hague Convention could be waived in China, because they were unfamiliar with the plain meaning of the treaty. An alternative way to look at this would be to recognize that China and Chinese business people, in general, and perhaps business people all over the world, will continue to see the United States for what it is, a country where the courts can be expected to follow legal principles, rather than considering whether this side or that side of a dispute is making money or losing money on a particular business transaction, a land ruled by due process and not by expediency or mercenary concerns, a nation of laws, not merely a nation of men.

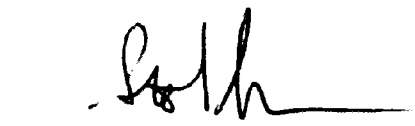
"A judge can't have any preferred outcome in any particular case. And a judge certainly doesn't have a client. The judge's only obligation — and it's a solemn obligation — is to the rule of law, and what that means is that in every single case, the judge has to do what the law requires." Samuel Alito, in Confirmation Hearing on the Nomination of Samuel A. Alito, Jr. to be an Associate Justice of the Supreme Court of the United States (January 2006), p. 56.

V. CONCLUSION

The Court of Appeal correctly saw that China's accession to the Hague Convention does not permit informal arrangements for service, waiver of Hague Convention service, or service by mail. Therefore, the default judgment is *void ab initio* and should be set aside. For the reasons stated, Appellant respectfully requests that this Court also find, on the sole issue before it, that parties cannot contract around express provisions in the Hague Convention that require service of process on the central authority in China. In so doing, Defendant and Appellant requests that this Court reverse the Trial Court's Order, order that the motion to vacate and set aside the judgment be granted and remand the case to the trial court for a trial on the question as to whether the arbitration award should be deemed unenforceable because there was no binding, enforceable agreement to arbitrate.

Date: May 21, 2019 Respectfully submitted,

LAW OFFICES OF STEVEN L. SUGARS

BY: 

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Attorney for Defendant/Appellant:
CHANGZHOU SINOTYPE
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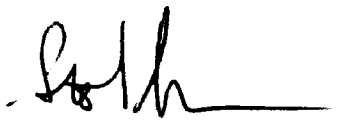
CERTIFICATE AS TO WORD COUNT

I, Steven L. Sugars, certify that the foregoing Answer Brief on the Merits is within the limit provided by the rules of this Court and that my computer reports that the number of words in the foregoing materials, exclusive of exhibits, if any, is 10,746.

Dated: May 21, 2019



Steven L. Sugars
Attorney for Defendant and
Appellant

PROOF OF SERVICE

I am an attorney at law, licensed to practice before all the courts of the state of California and I am attorney of record for Defendant and Appellant in this case. My business address is 388 E. Valley Blvd., # 200, Alhambra, CA 91801.

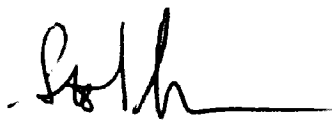
On May 22, 2019, I personally served interested parties in this case by depositing true and correct copies of the foregoing document, Defendant and Appellant's Answer Brief on the Merits, in the United States Mail at Pasadena, California, first class postage fully prepaid, in sealed envelopes addressed as follows:

Steven A. Blum, Esq. Gary Ho, Esq. 707 Wilshire Boulevard, Suite 4880 Los Angeles, California 90017	1 copy
Civil Filing Clerk, for delivery to Judge Randolph Hammock Los Angeles County Superior Court, 111 N. Hill Street Los Angeles, CA 90012	1 copy
Second District Court of Appeal Clerk Division 3 Ronald Reagan State Building 300 S. Spring Street 2nd Floor, North Tower Los Angeles, CA 90013	1 copy

In addition, I provided an electronic copy of the brief to the CA Supreme Court at the time of filing in compliance with CRC, rule 8.44(a)(1)(B).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: May 22, 2019



Steven L. Sugars, declarant