No. _____

In The Supreme Court of the United States

Gussi S.A. de C.V., a Mexican corporation, *Petitioner,*

v.

Voltage Pictures, LLC, *Respondent.*

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Charles M. Coate, CA SBN 140404
Counsel of Record, Attorneys for Petitioner
ccoate@hamricklaw.com
Hamrick & Evans, LLP
2600 W. Olive Avenue, Suite 1020
Burbank, California 91505
(818) 763-5292/Fax (818) 763-2308

QUESTIONS PRESENTED

1. Have the Marshal service requirements of 9 U.S.C. § 9 on an application to confirm an arbitration award on a nonresident foreign adverse party been implicitly repealed?

2. If the answer to Question Presented No. 1 is no, does 9 U.S.C. § 9 provide a viable method of service on a nonresident foreign adverse party outside of the U.S.?

3. If the answer to Question Presented No. 2 is no, is the appropriate fallback provision for service of an application to confirm an arbitration award on a nonresident foreign adverse party outside of the U.S., F.R.C.P. Rule 4 as followed in the Second Circuit, or F.R.C.P. Rule 5 (b) as followed in the Ninth Circuit?

PARTIES TO PROCEEDING

Pursuant to the Supreme Court Rule 14.1(b), the caption of the case contains the names of all the parties to the proceeding in the court where the judgment sought to be reviewed was entered.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rules 14.1(b) and 29.6, Respondent-Appellant and Petitioner herein, Gussi S.A. de C.V. hereby certifies that it is a nongovernmental corporate party. Its parent company owning 10% or more of its stock is Media Max Group S.A. de C.V. and that no publicly held corporation owns 10% or more of its stock.

LIST OF PROCEEDINGS

1. *Voltage Pictures, LLC v. Gussi, S.A. de C.V.,* United States District Court, Central District of California, Case No. 2:21-cv-04751-FLA (RAOx), Docket #14, March 28, 2022 (Order Granting In Part Respondent's Motion To Quash Service Of And To Dismiss Notice Of Motion And Motion For Order Confirming Arbitration Award); 2022 U.S. Dist. LEXIS 236366.

2. *Voltage Pictures, LLC v. Gussi, S.A. de C.V.,* United States District Court, Central District of California, Case No. 2:21-cv-04751-FLA (RAOx), Docket #34, December 6, 2022 (Order Denying Respondent's Further Motion to Quash Service of and to Dismiss Notice of Motion For Order Confirming Arbitration Award [Dkt 34]; and Setting Briefing Schedule on Petitioner's Motion for Order Confirming Arbitration Award [Dkt 1]); 2022 U.S. Dist. LEXIS 236375.

3. *Voltage Pictures, LLC v. Gussi, S.A. de C.V.,* United States District Court, Central District of California, Case No. 2:21-cv-04751-FLA (RAOx), Docket #45, January 17, 2023 (Order Granting Petitioner's Motion to Confirm Arbitration Award [Dkt 1]); 2023 U.S. Dist. LEXIS 13931.

4. *Voltage Pictures, LLC v. Gussi, S.A. de C.V.,* United States District Court, Central District of California, Case No. 2:21-cv-04751-FLA (RAOx), Docket #47,

January 26, 2023 (Judgment); 2023 U.S. Dist. LEXIS 13931 (Pages 3 and 4 of 4).

5. *Voltage Pictures, LLC (Petitioner-Appellee) v. Gussi, S.A. de C.V.*, (*Respondent-Appellant),* United States Court of Appeals for the Ninth Circuit, Case No. 23-55123, Docket #79 February 5, 2024 (Opinion); 92 F. 4th 815 (9th Cir. 2024).

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES TO PROCEEDING ii

CORPORATE DISCLOSURE STATEMENT ii

LIST OF PROCEEDINGS iii

TABLE OF CONTENTS v

TABLE OF AUTHORITIES viii

OPINIONS BELOW 1

JURISDICTION 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 3

STATEMENT OF THE CASE 15

REASONS FOR GRANTING THE PETITION 19

A. CLARIFICATION WHETHER THE U.S. MARSHAL SERVICE REQUIREMENTS OF 9 U.S.C. § 9 ON AN APPLICATION TO CONFIRM AN ARBITRATION AWARD ON A NONRESIDENT FOREIGN ADVERSE PARTY HAVE BEEN IMPLICITLY REPEALED WILL PROVIDE FUTURE CLARITY IN FEDERAL PROCEEDINGS TO CONFIRM INTERNATIONAL ARBITRATION AWARDS. 19

B. IN THE EVENT THAT THE U.S. MARSHAL SERVICE REQUIREMENTS OF 9 U.S.C. § 9 ON AN APPLICATION TO CONFIRM AN ARBITRATION AWARD ON A NONRESIDENT FOREIGN ADVERSE PARTY HAVE NOT BEEN IMPLICITLY REPEALED, CLARIFICATION OF WHETHER 9 U.S.C. § 9 PROVIDES A VIABLE METHOD OF SERVICE ON A NONRESIDENT FOREIGN ADVERSE PARTY WILL ALSO PROVIDE FUTURE CLARITY IN FEDERAL PROCEEDINGS TO CONFIRM INTERNATIONAL ARBITRATION AWARDS .....;24

C. ALTERNATIVELY, IF 9 U.S.C. § 9 DOES NOT PROVIDE A VIABLE METHOD OF SERVICE ON A NONRESIDENT FOREIGN ADVERSE PARTY, IS THE APPROPRIATE FALLBACK PROVISION FOR SERVICE OF AN APPLICATION TO CONFIRM AN INTERNATIONAL ARBITRATION AWARD F.R.C.P. RULE 4 AS FOLLOWED IN THE SECOND CIRCUIT, OR F.R.C.P. RULE 5 (b) AS FOLLOWED IN THE NINTH CIRCUIT, SO THAT A SPLIT AMONG THE CIRCUITS CAN BE RESOLVED? 26

CONCLUSION..... 31

TABLE OF APPENDICES ..... ia

Appendix A 1a

Appendix B 13a

Appendix C 32a
Appendix D 39a
Appendix E 43a

TABLE OF AUTHORITIES

Page(s)

Cases

Voltage Pictures, LLC (Petitioner-Appellee) v. Gussi, S.A. de C.V.
92 F. 4th 815 (9th Cir. 2024) 1, 23
Agrasanchez v. Agrasanchez,
2022 U.S. Dist. LEXIS 237672, 2022 WL 18587019 30
Aktiengesellschaft v. Schlunk,
(1988) 486 U.S. 694 18
Amazon.com, Inc. v. Arobo Trade, Inc.,
2017 U.S. Dist. LEXIS 126431, 2017 WL 3424976 30
American Fed'n of Musicians v. Stein,
213 F.2d 679 (6th Cir. 1954) 21, 22
Americatel El Salvador, S.A. v. Compania De Telecomunicaciones De El Salvador,
No. 07-21940-CIV, 2007 WL 2781057..... 29
Anderson v. Yungkau,
329 U.S. 482 (1947) 21
Canada Life Assur. Co. v. Converium Ruckversicherung (Deutschland) AG,
Civ. No. 06-3800, 2007 U.S. Dist. LEXIS 42890, 2007 WL 1726565 (D.N.J. June 13, 2007)..... 29
Crawford Fitting Co. v. J.T. Gibbons, Inc.,
482 U.S. 437 (1987) 21
Enter. Ltd. v. CVG Ferrominera Orinoco, C.A.,
49 F. 4th 802 (2d Cir. 2022) 16, 27

Hancor, Inc. v. R & R Eng'g Prods., Inc.,
381 F. Supp. 2d 12 (D.P.R. 2005) 29
Harris v. Browning-Ferris Industries Chemical Services, Inc.,
100 F.R.D. 775, (M.D. La. 1984) 22
Henderson v. United States,
517 U.S. 654 (1996) 21
In re Arbitration Between Trans Chemical Ltd. & China Nat'l Machinery Import & Export Corp.,
978 F. Supp. 266 (S.D. Tex. 1997) 29
Intercarbon Bermuda, Ltd. v. Caltex Trading and Transp. Corp., (U.S.D.C., S.D.N.Y. 1993) 146 F.R.D. 64 ..... 27, 28
Logan & Kanawha Coal Co. v. Detherage Coal Sales, LLC,
739 F. Supp. 2d 716 (S.D. W.Va 2011.) 23
Meilleur v. Strong,
682 F.3d 56, (2d Cir. 2012) 24, 25
Posadas v. Nat'l. City Bank,
296 U.S. 497 (1936) 21
Reed & Martin, Inc. v. Westinghouse Elec. Corp.,
439 F. 2d 1268 (2d Cir. 1971) 26, 28
Technologists, Inc. v. MIR's Ltd.,
725 F. Supp. 2d 120 (D.D.C. 2010) 17, 27
Traynor v. Turnage,
485 U.S. 535 (1988) 21
U.S. v. Microsoft Corp.,
165 F.3d 952 (D.C. Cir. 1999) 21
United States v. Jack Cozza, Inc.,
106 F.R.D. 264, 1985 U.S. Dist. LEXIS 18814 24
United States v. Thoman,
156 U.S. 353 (1895) 21

Voltage Pictures, LLC v. Gulf Film, LLC, Case, No. 2:18-cv-00696-VAP (SKx), 2018 U.S. Dist. LEXIS 121108 (C.D. Cal. Apr. 17, 2018) 9, 20

Statutes

9 U.S.C. § 6 – App 16
9 U.S.C. § 9.....16, 17, 18, 19, 20, 22, 23, 24, 25, 26, 30
9 U.S.C. § 10..... 29
9 U.S.C. § 201..... 4
9 U.S.C. § 202..... 4
9 U.S.C. § 203..... 5, 15
9 U.S.C. § 207..... 5
28 U.S.C. § 1254 (1) 2
28 U.S.C. § 2072(b) 21, 22
28 U.S.C. § 2101(c)..... 2

Miscellaneous

F.R.C.P. Rule 4 .....17, 23, 24, 25, 26, 27, 30
F.R.C.P. Rule 4 (c)..... 25
F.R.C.P. Rule 4 (c) (3), (e) 23
F.R.C.P. Rule 4(e) 18
F.R.C.P. Rule 4(e)(1)..... 8
F.R.C.P. Rule 4(f)..... 8
F.R.C.P. Rule 4(f)(1)..... 9
F.R.C.P. Rule 4(f)(2) or (f)(3) 9
F.R.C.P. Rule 4(h)..... 25, 32
F.R.C.P. Rule 4(m)..... 6, 25
F.R.C.P. Rule 5 ..... 9, 26, 27, 30
F.R.C.P. Rule 5 (b) 26, 30
F.R.C.P. Rule 5(c)..... 9
F.R.C.P. Rule 78 (b) 2, 14, 34

F.R.C.P. Rule 81(a)(6), (B) 14
United States Supreme Court Rules 13.1 and 13.3 .. 2

Other Authorities

4 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1067.3 (4th ed. Apr. 2021) 7

OPINIONS BELOW

This petition is from:

Voltage Pictures, LLC (Petitioner-Appellee) v. Gussi, S.A. de C.V., (*Respondent-Appellant),* United States Court of Appeals for the Ninth Circuit, Case No. 23-55123, Docket #79 February 5, 2024 (Opinion); 92 F. 4th 815 (9th Cir. 2024).

Voltage Pictures, LLC v. Gussi, S.A. de C.V., United States District Court, Central District of California, Case No. 2:21-cv-04751-FLA (RAOx), Docket #47, January 26, 2023 (Judgment); 2023 U.S. Dist. LEXIS 13931 (Pages 3 and 4 of 4).

[1]Numbers preceded by "App." refer to pages in the attached Appendix.

JURISDICTION

This petition is brought pursuant to 28 U.S.C. § 2101(c) and United States Supreme Court Rules 13.1 and 13.3 as it was originally submitted for filing on May 2, 2024, within ninety days of the Ninth Circuit's opinion dated February 5, 2024 (App. E, 43a-78a) which affirmed the Judgment following confirmation of an international arbitration award entered by the United States District Court for Central District of California on January 26, 2023. (App. D, 39a – 42a). On May 7, 2024, a letter from the Office of the Clerk returned a rejected previously submitted version of the Petition with instructions for its correction and resubmission within 60 days. The jurisdiction of this Court is pursuant to 28 U.S.C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

9 U.S. Code § 6 – Application heard as Motion

Any Application to the Court hereunder shall be made and heard in the manner provided by law for the making and hearing of Motions except as otherwise herein expressly provided.

9 U.S. Code § 9 - Award of arbitrators; confirmation; jurisdiction; procedure

If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall be

made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court.

9 U.S. Code § 201 - Enforcement of Convention

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, shall be enforced in United States courts in accordance with this chapter.

9 U.S. Code § 202 - Agreement or award falling under the Convention

An arbitration agreement or arbitral award arising out of a legal relationship, whether contractual or not, which is considered as commercial, including a transaction, contract, or agreement described in section 2 of this title, falls under the Convention. An agreement or award arising out of such a relationship which is entirely between citizens of the United States shall be deemed not to fall under the Convention unless that relationship involves property located abroad, envisages performance or enforcement abroad, or has some other reasonable relation with one or more foreign states. For the purpose of this section a corporation is a citizen of the United States if it is incorporated or has its principal place of business in the United States.

9 U.S. Code § 203 - Jurisdiction; amount in controversy

An action or proceeding falling under the Convention shall be deemed to arise under the laws and treaties of the United States. The district courts of the United States (including the courts enumerated in section 460 of title 28) shall have original jurisdiction over such an action or proceeding, regardless of the amount in controversy.

9 U.S. Code § 207 - Award of arbitrators; confirmation; jurisdiction; proceeding

Within three years after an arbitral award falling under the Convention is made, any party to the arbitration may apply to any court having jurisdiction under this chapter for an order confirming the award as against any other party to the arbitration. The court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention.

Federal Rule of Civil Procedure Rule 4

Summons

…

(c) Service.

(1) *In General.* A summons must be served with a copy of the complaint. The plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m) and must furnish the necessary copies to the person who makes service.

…

(3) By a Marshal or Someone Specially Appointed. At the plaintiff's request, the court may order that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court...

…

(e) SERVING AN INDIVIDUAL WITHIN A JUDICIAL DISTRICT OF THE UNITED STATES. Unless federal law provides otherwise, an individual … may be served in a judicial district of the United States by:

(1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or

(2) doing any of the following:

(A) delivering a copy of the summons and of the complaint to the individual personally;

(B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or

(C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

(f) SERVING AN INDIVIDUAL IN A FOREIGN COUNTRY. Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served at a place not within any judicial district of the United States:

(1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:

(A) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

(B) as the foreign authority directs in response to a letter rogatory or letter of request; or

(C) unless prohibited by the foreign country's law, by:

(i) delivering a copy of the summons and of the complaint to the individual personally; or

(ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or

(3) by other means not prohibited by international agreement, as the court orders.

…

(h) SERVING A CORPORATION, PARTNERSHIP, OR ASSOCIATION. Unless federal law provides otherwise or the defendant's waiver has been filed, a domestic or foreign corporation, …, must be served:
(1) in a judicial district of the United States:
(A) in the manner prescribed by Rule 4(e)(1) for serving an individual; or
(B) by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and—if the agent is one authorized by statute and the statute so requires—by also mailing a copy of each to the defendant; or
2) at a place not within any judicial district of the United States, in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C)(i).

…

(l) Proving Service. Affidavit Required. Unless service is waived, proof of service must be made to the court. Except for service by a United States

marshal or deputy marshal, proof must be by the server's affidavit. Service Outside the United States. Service not within any judicial district of the United States must be proved as follows:
if made under Rule 4(f)(1), as provided in the applicable treaty or convention; or
if made under Rule 4(f)(2) or (f)(3), by a receipt signed by the addressee, or by other evidence satisfying the court that the summons and complaint were delivered to the addressee.

Federal Rule of Civil Procedure Rule 5

Serving and Filing Pleadings and Other Papers

(a) SERVICE: WHEN REQUIRED.

(1) *In General.* Unless these rules provide otherwise, each of the following papers must be served on every party:

(A) an order stating that service is required;

(B) a pleading filed after the original complaint, unless the court orders otherwise under Rule 5(c) because there are numerous defendants;

(C) a discovery paper required to be served on a party, unless the court orders otherwise;

(D) a written motion, except one that may be heard ex parte; and

(E) a written notice, appearance, demand, or offer of judgment, or any similar paper.

(2) *If a Party Fails to Appear.* No service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party must be served on that party under Rule 4.

(3) *Seizing Property.* If an action is begun by seizing property and no person is or need be named as a defendant, any service required before the filing of an appearance, answer, or claim must be made on the person who had custody or possession of the property when it was seized.

(b) SERVICE: HOW MADE.

(1) *Serving an Attorney.* If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

(2) *Service in General.* A paper is served under this rule by:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of

abode with someone of suitable age and discretion who resides there;

(C) mailing it to the person's last known address—in which event service is complete upon mailing;

(D) leaving it with the court clerk if the person has no known address;

(E) sending it to a registered user by filing it with the court's electronic-filing system or sending it by other electronic means that the person consented to in writing—in either of which events service is complete upon filing or sending, but is not effective if the filer or sender learns that it did not reach the person to be served; or

(F) delivering it by any other means that the person consented to in writing—in which event service is complete when the person making service delivers it to the agency designated to make delivery.

(3) *Using Court Facilities.* [Abrogated (Apr._, 2018, eff. Dec. 1, 2018)]

(c) SERVING NUMEROUS DEFENDANTS.

(1) *In General.* If an action involves an unusually large number of defendants, the court may, on motion or on its own, order that:

(A) defendants' pleadings and replies to them need not be served on other defendants;

(B) any crossclaim, counterclaim, avoidance, or affirmative defense in those pleadings and replies to them will be treated as denied or avoided by all other parties; and

(C) filing any such pleading and serving it on the plaintiff constitutes notice of the pleading to all parties.

(2) *Notifying Parties.* A copy of every such order must be served on the parties as the court directs.

(d) FILING.

(1) *Required Filings; Certificate of Service.*

(A) *Papers after the Complaint.* Any paper after the complaint that is required to be served—must be filed no later than a reasonable time after service. But disclosures under Rule 26(a)(1) or (2) and the following discovery requests and responses must not be filed until they are used in the proceeding or the court orders filing: depositions, interrogatories, requests for documents or tangible things or to permit entry onto land, and requests for admission.

(B) *Certificate of Service.* No certificate of service is required when a paper is served by filing it with the court's electronic-filing system. When a paper that is required to be served is served by other means:

(i) if the paper is filed, a certificate of service must be filed with it or within a reasonable time after service; and

(ii) if the paper is not filed, a certificate of service need not be filed unless filing is required by court order or by local rule.

(2) *Nonelectronic Filing*. A paper not filed electronically is filed by delivering it:

(A) to the clerk; or

(B) to a judge who agrees to accept it for filing, and who must then note the filing date on the paper and promptly send it to the clerk.

(3) *Electronic Filing and Signing*.

(A) *By a Represented Person*—Generally Required; Exceptions. A person represented by an attorney must file electronically, unless nonelectronic filing is allowed by the court for good cause or is allowed or required by local rule.

(B) *By an Unrepresented Person*—When Allowed or Required. A person not represented by an attorney:

(i) may file electronically only if allowed by court order or by local rule; and

(ii) may be required to file electronically only by court order, or by a local rule that includes reasonable exceptions.

(C) *Signing*. A filing made through a person's electronic-filing account and authorized by that person, together with that person's name on a signature block, constitutes the person's signature.

(D) *Same as a Written Paper.* A paper filed electronically is a written paper for purposes of these rules.

(4) *Acceptance by the Clerk.* The clerk must not refuse to file a paper solely because it is not in the form prescribed by these rules or by a local rule or practice.

Federal Rule of Civil Procedure Rule 81(a)(6)(B)

Applicability of the Rules in General; Removed Actions

(a) APPLICABILITY TO PARTICULAR PROCEEDINGS.

…

6) Other Proceedings. These rules, to the extent applicable, govern proceedings under the following laws, except as these laws provide other procedures:

…

(B) 9 U.S.C., relating to arbitration;

…

STATEMENT OF THE CASE

This petition raises important questions for which there is an overriding need for national uniformity and consistency in the interpretation of the Federal Arbitration Act (FAA) as it applies to service upon a foreign non-resident party to an arbitration award and to resolve a current Circuit split.

Here, the Ninth Circuit affirmed the Central District of California's judgment confirming an arbitration award against a nonresident foreign adverse party. The Central District originally premised confirmation upon asserted diversity jurisdiction and service under California state law. Specifically, the Central District of California in Los Angeles held that service of confirmation papers was properly accomplished in Sacramento via a non-arbitrating third party's registered agent by someone other than a U.S. Marshal. The third party, a Delaware corporation, was deemed by the trial court to be the nonresident foreign adverse party's managing agent under California law.

The U.S. Court of Appeals for the Ninth Circuit, however, affirmed on wholly separate grounds. Instead, it noted at the outset that it was not satisfied that the trial court had diversity jurisdiction. However, the Ninth Circuit Court of Appeals alternatively found independent jurisdiction existed below under 9 U.S.C. § 203. It then went on to affirm judgment on the basis that although the U.S. Marshal

service requirement on nonresident adverse parties under 9 U.S.C. § 9, was not implicitly repealed, it did not apply as to a nonresident adverse foreign party not found in the U.S. In turn, it further held that service had properly been effected under 9 U.S.C. § 6 in conjunction with F.R.C.P. 5 (b), finding they permitted service of an application to confirm an arbitration award on the nonresident foreign adverse party's arbitration counsel by mail. Such deemed service was found valid notwithstanding the fact that arbitration counsel was not authorized to accept service and did not confirm such authorization.

The Ninth Circuit's new recognition and adoption of service of an application for confirmation on a nonresident foreign adverse party under F.R.C.P. 5(b) by mail to underlying arbitration counsel in the United States creates a conflict among the Circuits. It is directly at odds with the rule followed by the United States Court of Appeal for the Second Circuit. "It is well established in the Second Circuit that Rule 4 sets forth the basic procedures for serving process in connection with arbitral awards." Commodities & Mins. Enter. Ltd. v. CVG Ferrominera Orinoco, C.A. 49 F. 4th 802, 812 (2d Cir. 2022) cert. denied, 143 S. Ct. 786, 215 L. Ed. 2d 52 (2023). This new mandated service regimen effectively deems arbitration counsel to be registered agents in the subject local district under the Ninth Circuit's interpretation of the interplay of these statutes.

Given the ever increasing prevalence of international arbitration proceedings globally (See

FTI Consulting: International Arbitration After the Pandemic, March 2022: "According to data from international arbitration institutions, international arbitration filings have grown steadily at more than 3% per year from 2010 to 2019, with a 9.9% spike in 2020), a uniform rule regarding what "service" of notice of applications for confirmation, (and for vacatur,) in international arbitrations, including "in like manner" "as other court process" means under 9 U.S.C. § 9 (and § 12), is necessary to avoid confusion throughout the nation.

From a public policy standpoint, national and uniform recognition of procedures for service of nonresident foreign adverse parties that are well established in the Second Circuit, (and in the District of Columbia (See *Technologists, Inc. v. MIR's Ltd.*, 725 (D.D.C. 2010) F. Supp. 2d 120, 127)) is merited to address and resolve a split among the Second and Ninth Circuits. Namely, that basic procedures (as between New York and Los Angeles) for serving process in federal actions initiated to confirm international arbitral awards on nonresident foreign adverse parties are set forth by F.R.C.P. Rule 4 in conjunction with § 9, and as a fallback to such statute, is warranted.

F.R.C.P. Rule 4 can easily be read in harmony with 9 U.S.C. § 9 (and § 12 for vacatur) and further explicitly provides alternatives for service in accordance with international law as well as in any manner directed by the court. For example, a Court

order that directs service efforts of confirmation 9 U.S.C. § 9
papers on a nonresident foreign adverse party be made via the U.S. Marshal's office by letters rogatory. Moreover, because enforcement abroad of a judgment entered by an American federal court may be dependent on comity and international treaties, parties that comply therewith ultimately may find it easier to enforce their judgments abroad. *Volkswagen Aktiengesellschaft v. Schlunk*, (1988) 486 U.S. 694, 706.

Conversely, as a practical matter, recognition that service is affected by simply mailing an application to confirm an international arbitration award on a nonresident foreign adverse party's arbitration counsel in another country once a subsequent, new and separate federal action has been initiated, may well deter and discourage enforcement abroad of any judgment entered by an American federal court if confirmed. Arguably, it will encourage the courts of other nations to treat U.S. litigants in their countries in similar cursory fashion, as if they are residents of foreign countries.

Ultimately, such recognition, as is now the law in the Ninth Circuit will likely make it more difficult for future U.S. litigants to enforce their judgments abroad following confirmation given their requisite dependency on comity and international treaties. Correspondingly, the strong federal policy established by this Court in *Southland Corp. v. Keating* (1964) 465 U.S. 112 favoring arbitration embodied by the FAA,

including the uniformity of results as to disputes subject to FAA, is undermined in the future by the Ninth Circuit's recent ruling that conflicts with sound Second Circuit precedent.

Petitioner respectfully submits that it should be in the Supreme Court's interest to grant *certiorari* to this sufficiently meritorious issue and resolve the conflict between the Second and Ninth circuits raised by the Ninth Circuit's decision, and employ one uniform national standard of service of confirmation papers of an international arbitration award on a nonresident foreign adverse party.

REASONS FOR GRANTING THE PETITION

A. CLARIFICATION WHETHER THE U.S. MARSHAL SERVICE REQUIREMENTS OF 9 U.S.C. § 9 ON AN APPLICATION TO CONFIRM AN ARBITRATION AWARD ON A NONRESIDENT FOREIGN ADVERSE PARTY HAVE BEEN IMPLICITLY REPEALED WILL PROVIDE FUTURE CLARITY IN FEDERAL PROCEEDINGS TO CONFIRM INTERNATIONAL ARBITRATION AWARDS.

The *Federal Rules of Civil Procedure* ("F.R.C.P.") govern proceedings under the Federal Arbitration Act ("FAA"), unless the statute provides other procedures. (*F.R.C.P.* 81(a)(6)(B); *Teamsters Local 177 v. United Parcel Serv.*, 966 F.3d 245, 255 (3d Cir. 2020)).

Here, an action was initiated to confirm an international arbitration award in federal court, and notwithstanding the erroneous application of state law by the District Court below, federal procedural law applies.

9 U.S.C. **§** 9 of the FAA governs confirmation of arbitration awards. It reads as follows:

9 U.S. Code § 9 - Award of arbitrators; confirmation; jurisdiction; procedure

"If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as

prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court."

When in drafting a statute, Congress uses both "may" and "shall," the normal inference is that each is being used in its ordinary sense – the one being permissive, the other mandatory. *Anderson v. Yungkau*, 329 U.S. 482, 485 (1947); *see also United States v. Thoman,* 156 U.S. 353, 359-60 (1895).

Statutes enacted prior to promulgation of rules that are inconsistent with them are superseded, unless such supersession would abridge, enlarge or modify a substantive right. 28 U.S.C. § 2072(b); *American Fed'n of Musicians*, at 686; See also *U.S. v. Microsoft Corp.*, 165 F.3d 952, 958 (D.C. Cir. 1999); *Henderson v. United States*, 517 U.S. 654, 663 (1996).

However, "[R]epeals by implication are not favored." *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 442 (1987); *Posadas v. Nat'l. City Bank*, 296 U.S. 497, 503 (1936). "The courts are not at liberty to pick and choose among congressional enactments, and when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." *Traynor v. Turnage*, 485 U.S. 535, 547-48 (1988) (internal citations omitted).

Generally, the *F.R.C.P.* have the effect of laws.

28 U.S.C. § 2072(b); *American Fed'n of Musicians v. Stein*, 213 F.2d 679, 685-86 (6th Cir. 1954), *certiorari* denied 348 U.S. 873 (1954). In federal actions, Rule 4 governs service of process. Neither state law nor Rule 4, however, can authorize service of process in a manner inconsistent with federal treaty. *Harris v. Browning-Ferris Industries Chemical Services, Inc.*, 100 F.R.D. 775, (M.D. La. 1984).

Accordingly, in order to supersede 9 U.S.C. § 9, the *F.R.C.P.* would either have to expressly contradict or conflict irreconcilably with § 9, or a conflicting construction would have to be absolutely necessary to give meaning to the service provisions of the *F.R.C.P.* Neither scenario is present here.

First, under § 9, if Petitioner herein had resided in Los Angeles where the award was made, "such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court." This clause as to a domestic adverse party, while not at issue here, neither expressly contradicts nor conflicts irreconcilably with the *F.R.C.P.*

As to a non-resident adverse party such as Petitioner herein, to the extent that a marshal was required to be utilized per § 9, it is respectfully submitted that the § 9 marshal service requirement does not expressly contradict or irreconcilably conflict with the current *F.R.C.P.* On this point, the Ninth Circuit largely agreed, stating: "Accordingly, we hold that later amendments to the Federal Rules of Civil

Procedure did not implicitly repeal the marshal requirement in § 9 and that it is still valid where it applies." *Voltage Pictures, LLC v. Gussi S.A. de C.V.*, 92 F. 4th 815, 829 (9th Cir. 2024).

In support of its holding that the marshal service requirements of 9 U.S.C. § 9 requirements were not implicitly repealed, the Ninth Circuit noted that its decision was in accord on this point with the decision in *Logan & Kanawha Coal Co. v. Detherage Coal Sales, LLC,* 739 F. Supp. 2d 716, 720-22 (S.D. W.Va 2011.)

As explained in *Logan & Kanawha Coal Co.*, *supra.,* there are several instances where courts retain the discretion, and in some cases, the duty to order marshal service, See e.g. *F.R.C.P.* Rule 4 (c) (3), (e). Moreover, the District Court in *Logan & Kanawha Coal Co.* noted the failure of the Rule [4] drafters to include the FAA cannot by implication repeal the statutory language of the FAA, which expressly requires service "by marshal" on nonresident defendants. 9 U.S.C. § 9.

In sum, where Congress has specifically and expressly provided for service by marshal, has not expressly repealed the provision, and where the Federal Rules of Civil Procedure are not irreconcilably in conflict with such requirements, clarification and reaffirmation that the plain language of the 9 U.S.C. § 9 must be given effect is warranted.

9 U.S.C. § 9 can and clearly does co-exist with *F.R.C.P.* Rule 4 as marshals can perform the service requirements of Rule 4. Correspondingly, this Court can dispel otherwise and confirm there has been no implicit repeal thereof as to this aspect of 9 U.S.C. § 9.

B. IN THE EVENT THAT THE U.S. MARSHAL SERVICE REQUIREMENTS OF 9 U.S.C. § 9 ON AN APPLICATION TO CONFIRM AN ARBITRATION AWARD ON A NONRESIDENT FOREIGN ADVERSE PARTY HAVE NOT BEEN IMPLICITLY REPEALED, CLARIFICATION OF WHETHER 9 U.S.C. § 9 PROVIDES A VIABLE METHOD OF SERVICE ON A NONRESIDENT FOREIGN ADVERSE PARTY WILL ALSO PROVIDE FUTURE CLARITY IN FEDERAL PROCEEDINGS TO CONFIRM INTERNATIONAL ARBITRATION AWARDS.

Marshals are and have long been utilized, for service of process and can be approved by the court to accomplish such task. (See *United States v. Jack Cozza, Inc.,* 106 F.R.D. 264, 1985 U.S. Dist. LEXIS 18814: service by marshal by mail on taxpayer in taxpayer proceeding upheld.)

In *Meilleur v. Strong*, 682 F.3d 56, (2d Cir. 2012), the Plaintiff made arrangements with the U.S. Marshals Service for service of summons and complaint, but did not request court appointment. The marshals did not effect service prior to the deadline

and the district court was not aware of Plaintiff's efforts. The Second Circuit upheld dismissal under F.R.C.P. Rule 4(m).

Meilleur makes clear that service via a U.S. Marshal can still be requested and approved by the court, but that the failure to make proper arrangements to meet statutory and/or court ordered service deadlines can and many times does result in dismissal.

Here, Gussi S.A. de C.V. was not served by a U.S. Marshal within a 60-day service deadline ordered by the District Court after it initially quashed service of Plaintiff's motion for confirmation for insufficient service. Nor was any request made of the court to order service of confirmation papers by marshal consistent with *F.R.C.P.* Rule 4 (c). Such a request by Respondent herein, upon issuance of a corresponding court order, could have met the companion 9 U.S.C. § 9 confirmation marshal service requirements as well. A letter rogatory from a U.S. Marshal to a foreign authority also could have followed consistent with F.R.C.P. Rule 4(h). Accordingly, it is respectfully submitted that 9 U.S.C. § 9 can be and remains a viable means of service of an application for confirmation of an international arbitration award on a nonresident adversary party; on this record it was not properly utilized below.

C. ALTERNATIVELY, IF 9 U.S.C. § 9 DOES NOT PROVIDE A VIABLE METHOD OF SERVICE ON A NONRESIDENT FOREIGN ADVERSE PARTY, IS THE APPROPRIATE FALLBACK PROVISION FOR SERVICE OF AN APPLICATION TO CONFIRM AN INTERNATIONAL ARBITRATION AWARD F.R.C.P. RULE 4 AS FOLLOWED IN THE SECOND CIRCUIT, OR F.R.C.P. RULE 5 (b) AS FOLLOWED IN THE NINTH CIRCUIT, SO THAT A SPLIT AMONG THE CIRCUITS CAN BE RESOLVED?

In the event that this Court finds that 9 U.S.C. § 9 does not or no longer provide(s) a viable method of service of an application for confirmation of an international arbitration award on a nonresident foreign adverse party, for reasons set forth below, a determination that the fallback applicability of F.R.C.P. Rule 4 governs is warranted. This is the rule in the Second Circuit, and has been followed by courts in circuits other than the Ninth Circuit.

The Second Circuit in *Reed & Martin, Inc. v. Westinghouse Elec. Corp.* 439 F. 2d 1268, 1277 (2d Cir. 1971) long ago held the phrase "in like manner as other process of the court" found in 9 U.S.C. § 9 refers to *Fed.R.Civ.P.* 4 ("Rule 4") on the accomplishment of appropriate service. Indeed, both § 9 (confirmation) and §12 (vacatur) employ the same language. Both avail resident adverse parties to the procedures for

service of a notice of motion, while restricting nonresidents to the procedures for service of process.

The applicability of F.R.C.P. Rule 4 under these circumstances in the arbitration context in the Second Circuit was recently reaffirmed in Commodities & Mins. Enter. Ltd. v. CVG Ferrominera Orinoco, C.A. 49 F. 4th 802, 812 (2d Cir. 2022) cert. denied, 143 S. Ct. 786, 215 L. Ed. 2d 52 (2023): "It is well established in the Second Circuit that Rule 4 sets forth the basic procedures for serving process in connection with arbitral awards." (See also *Intercarbon Bermuda, Ltd. v. Caltex Trading and Transp. Corp.*, (U.S.D.C., S.D.N.Y. 1993) 146 F.R.D. 64, 67 (ruling that Rule 4 and not Rule 5 is "the proper fallback provision" where the FAA provides "no method of service for foreign parties not resident in any district of the United States").

In *Technologists, Inc. v. MIR's Ltd.* 725 F. Supp. 2d 120, 126-27 (D.D.C. 2010) the District Court for the District of Columbia also recognized the difficulty of serving nonresident adverse parties, particularly foreign corporations, under the FAA. Judge Kollar-Kotelly explained that it would be literally impossible to comply with the service by marshal requirement and noted the requirement was "an artifact of the era in which United States marshals were the default servers of process in federal courts, an era that ended in the early 1980s." The court construed the phrase "in like manner as other process of the court" to refer to Rule 4.

In arriving at her decision, Judge Kollar-Kotelly noted that in addition to the Second Circuit, courts in New Jersey, Florida and Texas had similarly recognized that service on foreign adversary parties under § 9 and/or §12 of the FAA was to be made on a foreign party in accordance with Rule 4. In this regard, she stated:

> "This problem with § 12 and foreign parties appears to have been first recognized by the court in *In re Arbitration Between InterCarbon Bermuda, Ltd. & Caltex Trading & Transportation Corp.*, 146 F.R.D. 64 (S.D.N.Y. 1993). In that case, the court concluded that § 12 provides no method of service for foreign parties not resident in any district of the United States and held that the proper fallback provision for service of process is Rule 4. *See* 146 F.R.D. at 67. The *InterCarbon* court relied in part on precedent from the Second Circuit interpreting the phrase "in like manner as other process of the court" found in § 9 of the FAA (which is identical to the language in § 12) as referring to the service requirements of Rule 4. *See id.* (citing *Reed & Martin, Inc. v. Westinghouse Elec. Corp.*, 439 F.2d 1268, 1277 (2d Cir. 1971)). Although no courts within this circuit appear to have addressed the issue, several authorities have followed *InterCarbon* in concluding that sections 9 and 12 of the FAA require service to be made on a foreign party in

accordance with Rule 4. *See Americatel El Salvador, S.A. v. Compania De Telecomunicaciones De El Salvador*, No. 07-21940-CIV, 2007 WL 2781057, at * (S.D. Fla. Sept. 19, 2007) (holding that the proper fallback provision for service of process on foreign parties is Rule 4); *Canada Life Assur. Co. v. Converium Ruckversicherung (Deutschland) AG*, Civ. No. 06-3800, 2007 U.S. Dist. LEXIS 42890, 2007 WL 1726565, at *4 (D.N.J. June 13, 2007) (same); *In re Arbitration Between Trans Chemical Ltd. & China Nat'l Machinery Import & Export Corp.*, 978 F. Supp. 266, 299-300 (S.D. Tex. 1997) (same); *see also Hancor, Inc. v. R & R Eng'g Prods., Inc.*, 381 F. Supp. 2d 12, 14-16 (D.P.R. 2005) (holding that service on nonresidents within a judicial district of the United States may be made under Rule 4 and need not be made by a marshal). These authorities recognize that because the FAA calls for service on nonresidents "in like manner as other process of the court," the provisions in the Federal Rules of Civil Procedure governing service of process should be applied. *See also* FED. R. CIV. P. 81(a)(6)(B) (stating that the Federal Rules of Civil Procedure apply to proceedings under the FAA except where the FAA provides other procedures). Thus, the weight of authority supports application of Rule 4 to the service of a motion to vacate an arbitration award filed pursuant to 9 U.S.C. § 10."

While the Ninth Circuit largely premises its decision in applying F.R.C.P. Rule 5 (b) as the fallback for service upon § 6 of the FAA, and disagrees with other courts' discounting of it, (*Voltage Pictures, LLC v. Gussi S.A. de C.V.*, supra. at 70a-72a,) the decision in its interpretation of the FAA is an outlier and further rejects a number of prior decisions in its own Circuit to reach its desired result. (See *Agrasanchez v. Agrasanchez,* 2022 U.S. Dist. LEXIS 237672, 2022 WL 18587019, the Central District of California adopted service under Rule 4 service to satisfy § 12 of FAA; See also *Amazon.com, Inc. v. Arobo Trade, Inc.*, 2017 U.S. Dist. LEXIS 126431, 2017 WL 3424976: Western District of Washington concluded that serving a nonresident respondent in accordance with F.R.C.P. Rule 4 satisfied 9 U.S.C. § 9 of the FAA.

A review of F.R.C.P. Rule 4's relevant provisions as they relate to foreign defendants confirm that it easily co-exists with § 9 as to service of confirmation papers on a foreign nonresident adversary in an international arbitration confirmation proceeding. Hence, why the Ninth Circuit's recent decision is properly reversed and why the rule adopted by the Second Circuit and many other courts in other Circuits throughout the country should be made uniform.

In light of this well documented conflict among federal circuits, what constitutes valid service of an application for confirmation in Los Angeles will not be recognized as such in New York. Specifically, a

foreign nonresident adversary in an international arbitration confirmation proceeding in New York may be served in like manner as if a foreign non-resident, but one in Los Angeles, under the 9th Circuit's decision, may effectively be served as if it were a resident. The opinion further has the secondary effect of deputizing all arbitration counsel for such purposes notwithstanding the actual scope of their engagement with their international clients.

Unless and until resolved, interpretation of the FAA as it applies to the service of foreign arbitral parties in confirmation proceedings stands to be a recurring issue. Moreover, policy considerations regarding the treatment of foreign parties to arbitration agreements is of such import as to warrant a certain and uniform application of the FAA.

Thus, considering the contradictory interpretations of the FAA, it should be in the Supreme Court's interest to grant certiorari to resolve the disagreement between the circuits, and employ one uniform national standard in this important area of international contractual arbitration.

CONCLUSION

Review by this honorable court on these crucial issues requiring national uniformity and consistency in the interpretation, application and enforcement of the Federal Arbitration Act as applicable to non-resident foreign parties to arbitration is warranted.

For all the foregoing reasons, Petitioner prays that a writ of certiorari issue to review the Ninth Circuit's opinion in *Voltage Pictures, LLC v. Gussi S.A. de C.V.,* supra.

Dated: May 29, 2024 Respectfully submitted:

/s/ Charles M. Coate
Counsel of Record, Attorney for Petitioner
Hamrick & Evans, LLP
2600 West Olive Avenue,
Suite 1020
Burbank, CA 91505
Phone: (818) 763-5292
Facsimile: (818) 763-2308
Email: ccoate@hamricklaw.com

TABLE OF APPENDICES

APPENDIX A:

Order of the United States District Court, Central District of California, Filed March 28, 2022 ..... 1a

APPENDIX B:

Order of the United States District Court, Central District of California, Filed December 6, 2022..... 13a

APPENDIX C:

Order of the United States District Court, Central District of California, Filed January 17, 2023..... 32a

APPENDIX D:

Judgment of the United States District Court, Central District of California, Filed January 26, 2023 ..... 39a

APPENDIX E:

Opinion of the United States Court of Appeals for the Ninth Circuit, Filed February 5, 2024..... 43a

Appendix A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VOLTAGE PICTURES, LLC,

Petitioner,
v. No. 2:21-cv-04751-FLA (RAOx)

GUSSI, S.A. de C.V.,

Respondent.

Counsel: For GUSSI S.A. de C.V., Respondent: Charles Michael Coate, Hamrick and Evans LLP, Burbank, CA.

For Voltage Pictures LLC, Petitioner: Amy Rose Cole, Elaine Li, Jeremiah Tracy Reynolds, Eisner LLP, Beverly Hills, CA.

Judges: FERNANDO L. AENLLE-ROCHA, United States District Judge.

ORDER GRANTING IN PART RESPONDENT'S MOTION TO QUASH SERVICE OF AND TO DISMISS NOTICE OF MOTION AND MOTION FOR ORDER CONFIRMING ARBITRATION AWARD [DKT. 14]

RULING

Before the court are two motions: (1) Petitioner Voltage Pictures, LLC's ("Voltage" or "Petitioner") Motion for Order Confirming Arbitration Award ("Motion to Confirm," Dkt. 1), and (2) Respondent Gussi S.A. de C.V.'s ("Gussi" or "Respondent") Motion to Quash Service of and to Dismiss Notice of Motion and Motion for Order Confirming Arbitration Award ("Motion to Quash, Dkt. 14) (collectively, the "Motions"). On July 20, 2021, the court found the Motions suitable for resolution without oral argument and took the Motions under submission. Dkt. 20; *see Fed. R. Civ. P. 78(b)*; Local Rule 78-1.

For the reasons stated herein, the court GRANTS IN PART Respondent's Motion to Quash, Dkt. 14, and ORDERS Petitioner to complete service on Respondent and submit proof of service within 60 days of this order. Respondent's request to dismiss Petitioner's Motion to Confirm is DENIED. The court will issue a ruling on Petitioner's Motion to Confirm, Dkt. 1, after considering Petitioner's additional proof of service.

BACKGROUND

Voltage is a film production and distribution company with its principal place of business in Los Angeles, California. Dkt. 1 ("Pet.") at 4;[1] Dkt. 5 (Deckter Decl.) ¶ 2. Gussi is a Mexican corporation

[1] The court will cite documents by the page numbers added by the CM/ECF system rather than the page numbers listed in the documents themselves.

with its principal place of business in Mexico City. Dkt. 1 at 4; Dkt. 4-1 (Final Award) at 7, ¶ 7.

On November 7, 2018, Voltage, on behalf of EVE Nevada, LLC, entered into a Distribution License Agreement (the "Distribution License Agreement" or "DLA") with Gussi to license the distribution rights of the film "Ava"[2] exclusively in Latin America. Dkt. 5-1 (Deckter Decl. Ex. 1, Distribution License Agreement); Dkt. 4-1 (Final Award) at 6, ¶ 1. Exhibit A to the DLA contains an arbitration provision ("Arbitration Provision") which states, in relevant part, "[a]ny dispute arising out of or relating to this Agreement will be resolved by final binding arbitration under the IFTA® Rules of International Arbitration ('IFTA® Rules') in effect at the time the notice of arbitration is filed[.]" Dkt. 5-1 (DLA Ex. A) at 12, ¶ 12. The Arbitration Provision further states that "[t]his Agreement shall be covered by and interpreted in accordance with the laws of the State of California (without regard to the conflict of laws provisions thereof)." *Id.* The DLA incorporates by reference the 2010 version of the IFTA International Standard Terms (the "Standard Terms") and the IFTA International Schedule of Definitions v2012 ("Schedule of Definitions"), as well as their definitions of terms. *Id.* (DLA) at 2; Dkt. 4-1 (Final Award) at 6, ¶ 3.

A dispute arose between Voltage and Gussi regarding their respective rights and obligations

---

[2] Ava was formerly titled "Eve" and is at times referred to as such in the parties' exhibits. *See, e.g.*, Dkt. 5-1 (DLA) at 2; Dkt. 4-1 (Arbitration Award) at 6, ¶ 1.

under the DLA, and Voltage submitted an arbitration demand on July 12, 2020, which commenced IFTA Case No. 20-37 (the "Arbitration"). Dkt. 4-1 (Final Award) at 7, ¶ 4. On October 12, 2020, Voltage filed and served an amended arbitration demand, alleging claims for breach of contract, declaratory relief, and injunctive relief. *Id.* On August 31, 2020, Gussi filed its statement of defense and counterclaims for rescission, money had and received, intentional and/or negligent misrepresentation, and declaratory relief. *Id.* ¶ 5.

The Arbitration took place via Zoom on December 3 and 4, 2020, with the proceedings based in Los Angeles. Dkt. 4-1 (Final Award) at 5 & n. 1. On June 7, 2021, the Arbitrator issued a Corrected Final Arbitration Award ("Final Award") in Voltage's favor. *Id.* at 2. The Final Award dismissed all of Gussi's counterclaims against Voltage with prejudice and granted Voltage "the principal amount of $345,000.00, attorney's fees in the sum of $109,303.00, paralegal fees in the sum of $7,775.00, arbitration fees and costs in the sum of $30,409.95, and a lump sum daily finance charge of $44,375.70 (based upon the outstanding mitigated sum of $1.175 million), for a total award of $536,863.65, plus a daily finance charge of $30.71 from July 15, 2020 until the principal amount of $345,000.00 is paid in full." *Id.* at 40.

Voltage filed this action on June 10, 2021, requesting the court confirm the Final Award. Dkt. 1. Gussi filed its Motion to Quash on June 21, 2021. Dkt. 14.

JURISDICTION

I. Subject Matter Jurisdiction

"The provisions of *9 U.S.C. § 9* do not in themselves confer subject matter jurisdiction on a federal district court." *Gen. Atomic Co. v. United Nuclear Corp., 655 F.2d 968, 969 (9th Cir. 1981)*. Thus, a party seeking confirmation of an arbitration award under *Section 9* must demonstrate independent grounds of federal subject matter jurisdiction. *Id.*

Federal courts are courts of limited jurisdiction, having subject matter jurisdiction only over matters authorized by the Constitution and Congress. *Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377, 114 S. Ct. 1673, 128 L. Ed. 2d 391 (1994)*. *Article III, § 2 of the Constitution* and the federal diversity statute, *28 U.S.C. § 1332(a)*, give federal district courts jurisdiction over cases between "citizens of a State" and "citizens or subjects of a foreign state" where the amount in controversy exceeds $75,000.

Here, Voltage has its principal place of business in California, Gussi is a Mexican corporation, and the underlying amount in controversy exceeds $75,000. Dkt. 1 (Mot. Compel) at 4; Dkt. 5 (Deckter Decl.) ¶ 2; Dkt. 4-1 (Final Award) at 7, ¶ 7. Accordingly, the court is satisfied it has subject matter jurisdiction to decide the present Motions.

II. Personal Jurisdiction

Section 9 of the Federal Arbitration Act ("FAA")

provides that the court specified in the agreement of the parties, or if no such court is specified, the United States court in and for the district within which such award was made, shall have personal jurisdiction over a respondent regarding a petition to confirm an arbitration award upon the respondent's receipt of notice of that petition. *See* 9 U.S.C. § 9 ("Notice of the application [to confirm an arbitration award] shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding."); *see also LG Elecs. MobileComm U.S.A., Inc. v. Reliance Commc'ns, LLC*, Case No. 3:18-cv-00250-BAS-RBB, 2018 U.S. Dist. LEXIS 75284, at *3-4 (S.D. Cal. May 3, 2018) ("Personal jurisdiction over a defendant in a confirmation proceeding may arise upon service of a petition for confirmation of an arbitration award under Section 9 of the FAA.") (citations omitted).

Section 9 describes several methods for such service, depending on where the respondent resides. As relevant here, if the respondent is a "nonresident" of the district where the arbitration award was made, "then the notice of the [petition] shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court." 9 U.S.C. § 9.

Gussi argues that, because the award was made in this district and Gussi is not a resident here, the court lacks personal jurisdiction over Gussi unless and until it is served with notice of Voltage's Motion to Confirm "by the marshal of any district within which the adverse party may be found in like manner as other process of the court." Dkt. 14 (Mot. Quash) at 4-7.

Voltage responds that Gussi cannot raise lack of personal jurisdiction as a defense in this action since it consented to this court's exercise of personal jurisdiction in the Distribution License Agreement. Dkt. 16 (Opp. to Mot. Quash) at 13-15. The court agrees with Voltage.

It is long-established that a party can consent to a court's exercise of personal jurisdiction. *The Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 11, 92 S. Ct. 1907, 32 L. Ed. 2d 513 (1972) ("[P]arties to a contract may agree in advance to submit to the jurisdiction of a given court, to permit notice to be served by the opposing party, or even to waive notice altogether."); 4 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1067.3 (4th ed. Apr. 2021) ("[P]ersonal jurisdiction can be based on the defendant's consent to have the case adjudicated in the forum, or the defendant's waiver of the personal jurisdiction defense."). Here, Gussi agreed under the DLA that it "consents and submits to the jurisdiction of the ... federal courts located in Los Angeles County, California with respect to any action arising out of or relating to this Agreement or the Picture." Dkt. 5-1 (DLA) at 12, ¶ 12. Furthermore, Gussi agreed to "submit to the jurisdiction of courts in the Forum ... to confirm an arbitration award." *Id.*

Based on this language, the court finds that Gussi has waived its ability to raise personal jurisdiction as a defense in this action and that this court has the requisite personal jurisdiction over Gussi to decide Voltage's Motion to Confirm.

SERVICE OF PROCESS

I. Legal Standard

Fed. R. Civ. P. 12(b)(5) ("*Rule 12(b)(5)*") authorizes a district court to dismiss a case for "insufficient service of process."[3] *Fed. R. Civ. P. 4* ("*Rule 4*") governs service of the summons and complaint. Although "*Rule 4* is a flexible rule that should be liberally construed so long as a party received sufficient notice of the complaint ... neither actual notice nor simply naming the defendant in the complaint will provide personal jurisdiction without 'substantial compliance with *Rule 4*.'" *Benny v. Pipes, 799 F.2d 489, 492 (9th Cir. 1986)* (citations omitted).

II. Analysis

Gussi contends the court should dismiss this action because Voltage did not serve its Motion to Confirm upon Gussi in accordance with *Rule 4*. Dkt. 14 (Mot. Quash) at 4-7; Dkt. 18 (Reply ISO Mot. Quash) at 3-7. Voltage responds that the parties agreed to waive service requirements under *Fed. R. Civ. P. 4* and that it properly effectuated service under the DLA. Dkt. 16 (Opp. to Mot. Quash) at 9-12.

Just as parties may contractually assent to personal jurisdiction, they may also assent to alternative means of service. *See, e.g., Masimo Corp. v. Mindray DS USA, Inc.*, Case No. 8:12-cv-02206-CJC

---

[3] Although Gussi does not discuss Rule 12(b)(5) in its supporting memorandum, Respondent brought this motion pursuant to Rules 4 and 12(b)(4) and (5). Dkt. 14 (Mot. Quash) at 1. The court, therefore, will consider Gussi's arguments as a challenge to service of process under Rule 12(b)(5).

(JPRx), 2013 U.S. Dist. LEXIS 197706, 2013 WL 12131723, at *2 (C.D. Cal. Mar. 18, 2013) (citing *Comprehensive Merch. Catalogs, Inc. v. Madison Sales Corp., 521 F.2d 1210, 1212 (7th Cir. 1975)*); *Voltage Pictures, LLC v. Gulf Film, LLC*, Case No. 2:18-cv-00696-VAP (SKx), 2018 U.S. Dist. LEXIS 121108, 2018 WL 2110937, at *3 (C.D. Cal. Apr. 17, 2018); *see also Nat'l Equip. Rental, Ltd. v. Szukhent*, 375 U.S. 311, 316, 84 S. Ct. 411, 11 L. Ed. 2d 354 (1964) ("[P]arties to a contract may agree in advance to submit to the jurisdiction of a given court, to permit notice to be served by the opposing party, or even to waive notice altogether.").

Here, the DLA provides the parties "agree to accept service of process in accordance with the IFTA® Rules." Dkt. 5-1 (Ex. 1) at 12, ¶ 12. IFTA Rule 12.5 provides that "[s]ervice of any petition, summons or other process necessary to obtain confirmation of the Arbitrator's award may be accomplished by any procedure authorized by applicable law, ... except that the parties waive application of the Hague Convention for Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters with respect to service of process." Dkt. 4-2 (Ex. B) at 15. IFTA Rule 13.1 defines "applicable law" as "the laws of the State of California." *Id.* The court, therefore, looks to the law of California to determine the sufficiency of Petitioner's service of process.[4]

---

[4] On Reply, Respondent contends a court in this district rejected a similar argument in *Latinamerican Theatrical Group LLC v. Swen International Holding, Case No. 2:13-cv-01270-CAS (RNBx), 2013 U.S. Dist. Lexis 86383 (C.D. Cal. June 18, 2013).* Dkt. 18 (Reply) at 4-6. The court disagrees. The parties in

Voltage contends it properly served Gussi pursuant to Cal. Code Civ. Proc. § 415.40 ("Section 415.40") and, therefore, satisfied the service requirements under the DLA. Dkt. 16 (Opp.) at 12. *Section 415.40* provides:

> A summons may be served on a person outside this state in any manner provided by this article or by sending a copy of the summons and of the complaint to the person to be served by first-class mail, postage prepaid, requiring a return receipt. Service of a summons by this form of mail is deemed complete on the 10th day after such mailing.

Voltage states it served its Motion to Confirm on Gussi on June 17, 2021 at the address set forth in the DLA, by certified international priority mail, signature required. Dkt. 16 (Opp. to Mot. Quash) 8 (citing Dkt. 15). The DLA lists Gussi's address as "Montes Urales 715, 4th Floor, Col. Lomas de Chapultepec, 11000 Mexico D.F., Mexico." Dkt. 5-1 (DLA) at 2. Petitioner's proof of service, however, indicates that service was performed on "Montes Urales, 15, 4th Floor, Col. Lomas de Chapultepec, 11000 Mexico D.F., Mexico." Dkt. 15 at 3 (underline added); Dkt. 17-2 (Reynolds Decl. Ex. B) at 3. Furthermore, Petitioner does not appear to have attempted service by mail in a manner that required a return receipt, as *Section 415.40* requires. While Voltage contends it mailed service by "certified international priority mail, signature required," Dkt.

Latinamerican had not agreed to accept service of process by alternate means. *Latinamerican*, thus, is distinguishable and inapposite to the circumstances at hand.

16 (Opp. to Mot. Quash) 8, Petitioner does not demonstrate that such service required a return receipt. Petitioner's service, thus, was deficient.

Voltage further contends it also served Respondent (1) by email at the email address provided for in the DLA, (2) by certified overnight mail, signature required, at a different international address for Gussi, identified on Bloomberg.com, (3) certified overnight mail, signature required, at a Los Angeles address registered with the California Secretary of State for the agent for service of process of Gussi Inc., which is a subsidiary of Gussi, and (4) email and certified overnight mail on Gussi's counsel. Dkt. 16 (Opp. to Mot. Quash) at 8-9. Petitioner, however, does not cite any legal authority to establish that these alternate attempts at service constituted valid service under California law. *See id.* at 12-13.

On July 13, 2021, Petitioner submitted an additional proof of service, indicating Voltage served copies of the moving papers to Respondent by certified overnight mail, signature required, at "Gussi, S.A. de C.V., Montes Urales 715, 4th Floor, Col. Lomas de Chapultepec, 11000 Mexico D.F., Mexico." Dkt. 19 (underline added). Petitioner, however, does not establish that this manner of service required a return receipt or present other evidence to establish actual delivery to the person to be served. *See Cal. Code Civ. Proc. § 417.20(a).* Thus, the July 13, 2021 proof of service is also deficient. *See Inversiones Papaluchi S.A.S. v. Superior Court, 20 Cal. App. 5th 1055, 1066-67, 229 Cal. Rptr. 3d 701 (2018)* (holding service by Federal Express invalid under *Section 415.40* in the absence of "any evidence that either of the mailings

required a return receipt" or "any returned receipts confirming that petitioners actually received the service documents").

In sum, while the court finds the parties agreed to service as allowed under California law, Petitioner fails to demonstrate it completed service of process on Respondent.

CONCLUSION

For the foregoing reasons, the court GRANTS IN PART Gussi's Motion to Quash, Dkt. 14, and ORDERS Petitioner to complete service on Respondent and submit proof of service within 60 days of this order. Respondent's request to dismiss Petitioner's Motion to Confirm is DENIED. Failure to submit proof of service timely may result in the dismissal of Petitioner's Motion to Confirm without further notice. The court will issue a ruling on Petitioner's Motion to Confirm, Dkt. 1, after considering Petitioner's additional proof of service.

IT IS SO ORDERED.

Dated: March 28, 2022

/s/ Fernando L. Aenlle-Rocha

FERNANDO L. AENLLE-ROCHA

United States District Judge

Appendix B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VOLTAGE PICTURES, LLC Petitioner, v. GUSSI, S.A. de C.V., Respondent.	Case No. 2:21-cv-04751-FLA (RAOx) ORDER DENYING RESPONDENT'S FURTHER MOTION TO QUASH SERVICE OF AND TO DISMISS NOTICE OF MOTION FOR ORDER CONFIRMING ARBITRATION AWARD [DKT. 34]; AND SETTING BRIEFING SCHEDULE FOR PETITIONER'S MOTION FOR ORDER CONFIRMING ARBITRATION AWARD [DKT. 1]

Counsel: For GUSSI S.A. de C.V., Respondent: Charles Michael Coate, Hamrick and Evans LLP, Burbank, CA

For Voltage Pictures LLC, Petitioner: Amy Rose Cole, Elaine Li, Jeremiah Tracy Reynolds, Eisner LLP, Beverly Hills, CA.

Judges: FERNANDO L. AENLLE-ROCHA, United States District Judge.

RULING

On June 10, 2021, Petitioner Voltage Pictures, LLC ("Voltage" or "Petitioner") filed its Motion for Order Confirming Arbitration Award ("Motion to Confirm"). Dkt. 1. On June 3, 2022, Respondent Gussi S.A. de C.V.'s ("Gussi SA" or "Respondent") filed a Further Motion to Quash Service of and to Dismiss Notice of Motion and Motion for Order Confirming Arbitration Award ("Further Motion to Quash"). Dkt. 34 ("MTQ"). On June 24, 2022, the court found the Motion to Quash suitable for resolution without oral argument and took the Motion under submission. Dkt. 37; see Fed. R. Civ. P. 78(b); Local Rule 78-1.

For the reasons stated herein, the court DENIES Respondent's Further Motion to Quash (Dkt. 34), and SETS Petitioner's Motion to Confirm (Dkt. 1) for hearing on January 20, 2023 at 1:30 p.m. in Courtroom 6B. Respondent may file an opposition to the Motion to Confirm on or before December 23, 2022. Petitioner may file a reply in support of the Motion to Confirm on or before January 6, 2023.

BACKGROUND

Voltage is a film production and distribution company with its principal place of business in Los Angeles, California. Dkt. 1 ("MTC") at 4;[1] Dkt. 5

[1] The court cites documents by the page numbers added by the CM/ECF system rather than the page numbers listed in the

(Deckter Decl.) ¶ 2. Gussi SA is a Mexican corporation with its principal place of business in Mexico City. Dkt. 34 ("MTQ") at 3-4; Dkt. 4-1 (Final Award) at 7, ¶ 7. Gussi, Inc. is a Delaware Corporation that is related to Gussi SA and registered to conduct business in California. Dkt. 35-4 (Gussi, Inc. Statement of Information ("Gussi, Inc. SOI")); Dkt. 35-6 (12/4/20 Arbitration Tr.) at 20-21, 24-25.

On November 7, 2018, Voltage, on behalf of nonparty EVE Nevada, LLC, entered into a Distribution License Agreement (the "DLA") with Gussi SA to license the distribution rights of the film "Ava"[2] (the "Picture") in Latin America on an exclusive basis and for pan-regional Pay TV in the Spanish language only in additional foreign countries non-exclusively. Dkt. 5-1 (DLA); Dkt. 4-1 (Final Award) at 6, ¶ 1. Exhibit A to the DLA contains an arbitration provision ("Arbitration Provision") which states, in relevant part, "[a]ny dispute arising out of or relating to this Agreement will be resolved by final binding arbitration under the [Independent Film & Television Alliance ('IFTA')] Rules of International Arbitration ['IFTA Rules'] in effect at the time the notice of arbitration is filed[.]" Dkt. 5-1 (DLA Ex. A) at 12, ¶ 12. The Arbitration Provision further states, "[t]his Agreement shall be covered by and interpreted in accordance with the laws of the State of California (without regard to the conflict of laws provisions thereof)." *Id.*

---

documents themselves.

[2] Ava was formerly titled "Eve" and is at times referred to as such in the parties' exhibits. *See, e.g.*, Dkt. 5-1 (DLA) at 2; Dkt. 4-1 (Arbitration Award) at 6, ¶ 1.

A dispute arose between Voltage and Gussi SA regarding their respective rights and obligations under the DLA, and Voltage submitted an arbitration demand on July 22, 2020, and the IFTA opened Case No. 20-37 (the "Arbitration") on July 27, 2020. Dkt. 4-1 (Final Award) at 7, ¶ 4. On October 12, 2020, Voltage filed and served an amended arbitration demand, alleging claims for breach of contract, declaratory relief, and injunctive relief. *Id.* On August 31, 2020, Gussi SA filed its statement of defense and counterclaims for rescission, money had and received, intentional and/or negligent misrepresentation, and declaratory relief. *Id.* ¶ 5.

The Arbitration took place via Zoom on December 3 and 4, 2020, with the proceedings based in Los Angeles. Dkt. 4-1 (Final Award) at 5 & n. 1. On June 7, 2021, the Arbitrator issued a Corrected Final Arbitration Award ("Final Award") in Voltage's favor. *Id.* at 2. The Final Award dismissed all of Gussi SA's counterclaims against Voltage with prejudice and granted Voltage "the principal amount of $345,000.00, attorney's fees in the sum of $109,303.00, paralegal fees in the sum of $7,775.00, arbitration fees and costs in the sum of $30,409.95, and a lump sum daily finance charge of $44,375.70 (based upon the outstanding mitigated sum of $1.175 million), for a total award of $536,863.65, plus a daily finance charge of $30.71 from July 15, 2020 until the principal amount of $345,000.00 is paid in full." *Id.* at 40.

On June 10, 2021, Voltage initiated the subject action by filing the Motion to Confirm, and requests the court confirm the Final Award and enter judgment in its favor. Dkt. 1. On June 21, 2021, Gussi SA filed

a Motion to Quash Service of and to Dismiss the Motion to Confirm ("First Motion to Quash"). Dkt. 14. After considering the parties' arguments and briefing, the court, on March 28, 2022, granted in part Respondent's First Motion to Quash and ordered Petitioner to complete service of the Motion to Confirm on Respondent and submit proof of service by May 27, 2022. Dkt. 26. Petitioner filed Proofs of Service and Notice of Filing of Proofs of Service on May 18, 2022. Dkts. 31-33.

On June 3, 2022, Respondent filed the Further Motion to Quash, requesting the court dismiss the Motion to Confirm with prejudice, for insufficient service. MTQ at 2-3. Petitioner opposes the Further Motion to Quash. Dkt. 35 ("Opp'n").

DISCUSSION

I. Legal Standard

Fed. R. Civ. P. 12(b)(5) ("Rule 12(b)(5)") authorizes a district court to dismiss a case for "insufficient service of process."[3] Fed. R. Civ. P. 4 ("Rule 4") governs service of the summons and complaint. Unless federal law provides otherwise, an individual within a judicial district of the United States may be served by:

> (1) following state law for serving a summons in an action brought in courts of general jurisdiction in

---

[3] Although Gussi SA does not discuss Rule 12(b)(5) in its supporting memorandum, it brought this motion pursuant to Rules 4 and 12(b)(4) and (5). Dkt. 34 (MTQ) at 2. The court, therefore, will consider Gussi SA's arguments as a challenge to service of process under Rule 12(b)(5).

the state where the district court is located or where service is made; or

(2) doing any of the following:

(A) delivering a copy of the summons and of the complaint to the individual personally;

(B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or

(C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

Fed. R. Civ. P. 4(e).

Unless federal law provides otherwise, an individual in a foreign country may be served:

(1) by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents ["Hague Convention"];

(2) if there is no internationally agreed means, or if an international agreement allows but does not specify other means, by a method that is reasonably calculated to give notice:

(A) as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction;

(B) as the foreign authority directs in response to a letter rogatory or letter of request; or

(C) unless prohibited by the foreign country's law, by:

(i) delivering a copy of the summons and of the complaint to the individual personally; or

(ii) using any form of mail that the clerk addresses and sends to the individual and that requires a signed receipt; or

(3) by other means not prohibited by international agreement, as the court orders.

Fed. R. Civ. P. 4(f).

"Rule 4 is a flexible rule that should be liberally construed so long as a party received sufficient notice of the complaint." *Benny v. Pipes*, 799 F.2d 489, 492 (9th Cir. 1986) (citations omitted). "However, neither actual notice nor simply naming the defendant in the complaint will provide personal jurisdiction without 'substantial compliance with Rule 4.'" Id. (citations omitted).

II. Analysis

Gussi SA contends the court should dismiss this action because Voltage did not serve the Motion to Confirm upon Gussi SA in accordance with Rule 4. MTQ at 5-11; Dkt. 36 ("Reply") at 5-8. Voltage responds the parties agreed to waive service requirements under Rule 4 and that it properly effectuated service under the DLA. Opp'n at 7-9.

It is well established that parties may assent to alternative means of service. *Nat'l Equip. Rental, Ltd.*

v. Szukhent, 375 U.S. 311, 316, 84 S. Ct. 411, 11 L. Ed. 2d 354 (1964) ("[P]arties to a contract may agree in advance to submit to the jurisdiction of a given court, to permit notice to be served by the opposing party, or even to waive notice altogether."); *Rockefeller Tech. Invs. (Asia) VII v. Changzhou SinoType Tech. Co., Ltd.*, 9 Cal. 5th 125, 140, 260 Cal. Rptr. 3d 442, 460 P.3d 764 (2020) ("[I]t has long been settled that '[t]he due process rights to notice and hearing prior to a civil judgment are subject to waiver.'"); *see also Voltage Pictures, LLC v. Gulf Film, LLC*, Case No. 2:18-cv-00696-VAP (SKx), 2018 U.S. Dist. LEXIS 121108, 2018 WL 2110937, at *3 (C.D. Cal. Apr. 17, 2018) ("[T]he procedures found in Rule 4 need not be followed if the parties agree to another form of service.") (citation omitted). A waiver of notice must be voluntary, knowing, and intelligently made. *Rockefeller, 9 Cal. 5th at 140-41*.

By entering into the DLA, Gussi SA "consent[ed] and submit[ted] to the jurisdiction of the state and federal courts located in Los Angeles County, California with respect to any action arising out of or relating to [the DLA] or the Picture," and "to accept service of process in accordance with the IFTA® Rules." Dkt. 5-1 (DLA) at 12, ¶ 12; *see also* Dkt. 4-2 (IFTA Rules) at 15, ¶ 12.5. IFTA Rule 12.5 provides that "[s]ervice of any petition, summons or other process necessary to obtain confirmation of the Arbitrator's award may be accomplished by any procedure authorized by applicable law, ... except that the parties waive application of the Hague Convention for Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters with

respect to service of process." Dkt. 4-2 (IFTA Rules) at 15, ¶ 12.5. IFTA Rule 13.1 defines "applicable law" as "the laws of the State of California." *Id.* at 15, ¶ 13.1. The DLA provides similarly that the agreement "shall be covered by and interpreted in accordance with the laws of the State of California (without regard to the conflict of laws provisions thereof)." Dkt. 5-1 at 12, ¶ 12. The court, therefore, looks to the law of California to determine the sufficiency of Petitioner's service of process.

A. Service Under Cal. Code Civ. Proc. § 416.10 and Cal. Corp. Code § 2110

Voltage contends it completed service on Gussi SA on May 3, 2022, by serving Gussi, Inc. with a copy of the Motion to Confirm, the Notice of the Motion, and related papers ("Motion to Confirm Documents") through its registered agent for service of process, Paracorp Inc. ("Paracorp"). Opp'n at 14-17; Dkt. 32 (Proof of Service).[4] According to Voltage, this manner of service complied with California Code of Civil Procedure § 416.10 ("Section 416.10") and California Corporations Code § 2110 ("Section 2110"). Opp'n at 14.

Section 416.10 provides, in relevant part, that a

---

[4] Petitioner's filed Proof of Service indicates that service was performed by personal service on "Kaitlin Giblin, Authorized Employee, Paracorp Incorporated, Registered Agent." Dkt. 32 at 1. Paracorp's most recent 1505 Registration with the California Secretary of State, filed December 8, 2021, lists Kaitlin Giblin as an employee authorized to receive service on behalf of Paracorp. This evidence is sufficient to establish Petitioner served Gussi, Inc. personally through its registered agent for service of process.

summons may be served on a corporation by delivering a copy of the summons and the complaint: (1) "[t]o the person designated as agent for service of process"; (2) "[t]o the president, chief executive officer, or other head of the corporation, a vice president, a secretary or assistant secretary, a treasurer or assistant treasurer, a controller or chief financial officer, a general manager, or a person authorized by the corporation to receive service of process"; or (3) in the manner provided in Section 2110. Cal. Code Civ. Proc. § 416.10(a), (b), (d).

Pursuant to Section 2110, a foreign corporation may be served by "[d]elivery by hand of a copy of any process ... (a) to any officer of the corporation or its general manager in this state, ... (b) to any natural person designated by it as agent for the service of process, or (c), if the corporation has designated a corporate agent, to any person named in the latest certificate of the corporate agent filed pursuant to Section 1505...." Cal. Corp. Code § 2110.

Voltage contends Gussi, Inc. qualifies as a "general manager" of Gussi SA, for purposes of Sections 2110(a) and 416.10, such that service on Gussi, Inc. is sufficient to effect service on Gussi SA. Opp'n at 14-15. Voltage cites *Cosper v. Smith & Wesson Arms Co., 53 Cal. 2d 77, 83, 346 P.2d 409 (1959)*, to argue that the California Supreme Court has recognized the term "general manager" includes any agent or representative that would have "ample regular contact" with the foreign corporation or that is of "sufficient character and rank to make it reasonably certain" the foreign corporation will be apprised of the

service of process. Opp'n at 14.

In *Cosper,* 53 Cal. 2d at 82-84,[5] the California Supreme Court held a domestic company qualified as a "general manager" of a foreign manufacturer, for purposes of service, where the domestic company had a continuing arrangement for the distribution and sale of the foreign company's products in this state. The Court noted the domestic company performed substantial services for the foreign company "through a course of regularly-established and systematic business activity," which could "reasonably be said to have given [the foreign company] in a practical sense, and to a substantial degree, the benefits and advantages it would have enjoyed by operating through its own office or paid sales force." *Id. at 82-83* (citations omitted). As the domestic company's regular contact with and business activity for the foreign company was of "sufficient character and rank to make it reasonably certain" that the foreign company would be apprised of the service of process, the Court held the representative qualified as "the general manager in this State" for purposes of service of process on the company. *Id. at 83-84* (citations omitted).[6]

---

[5] The California Supreme Court's holding in *Cosper* involved consideration of former California Corporations Code § 6500. Section 2110 replaced former Section 6500 as part of a wholesale recodification of the Corporations Code, effective January 1, 1977. *Yamaha Motor Co. v. Super. Ct., 174 Cal. App. 4th 264, 272, 94 Cal. Rptr. 3d 494 (2009).* Courts have since recognized *Cosper* is binding authority with respect to *Section 2110.*

[6] Gussi SA contends the cases regarding service of a foreign

Courts have allowed a foreign corporation to be served through a domestic subsidiary where two requirements are met:

> First, where service was permitted, the parent corporation was foreign and otherwise not readily available for service within California. ... Second, service through a subsidiary as general manager requires a sufficiently close connection with the parent. This depends upon the frequency and quality of contact between the parent and the subsidiary, the benefits in California that the parent derives from the subsidiary, and the overall likelihood that service upon the subsidiary will

---

corporation through a "general manager," on which Petitioner relies, are inapposite as "these cases attempt to answer that question in the context of whether or not such service complies with the Hague Convention," while the parties have waived service through the Hague Convention. Reply at 12-13 (quoting *Yamaha, 174 Cal. App. 4th at 269*). The court disagrees. In the cited portion of *Yamaha*, the California Court of Appeal recognized that the United States Supreme Court held in *Volkswagenwerk Aktiengesellschaft v. Schlunk, 486 U.S. 694, 108 S. Ct. 2104, 100 L. Ed. 2d 722 (1988)*, that service of a foreign corporation through service on its domestic subsidiary was compatible with, and not prohibited by, the Hague Convention. *See Yamaha, 174 Cal. App. 4th at 270* (emphasis in original) (stating the Supreme Court has rejected the argument that service must comply with the Hague Convention, even if a foreign corporation has an agent domestically, "reasoning that if service, under state law, did not *necessarily require* transmittal of the relevant documents, the Hague Service Convention simply was not implicated."). *Yamaha* does not support Gussi SA's contention that a foreign corporation may be served through domestic subsidiary acting as a "general manager" under *Section 2110(a)* only when the parties are required to comply with the Hague Convention. Gussi SA's argument, thus, fails.

provide actual notice to the parent.

United States ex rel. Miller v. Pub. Warehousing Co. KSC, 636 Fed. App'x 947, 949 (9th Cir. 2016) (citations omitted).

Petitioner contends the first requirement is met because Gussi SA is a foreign corporation that has "not made it easy to be served directly by having an 'easily ascertainable' designated agent for service of process in California." Opp'n at 16-17 (citing *Yamaha, 174 Cal. App. 4th at 275*). Gussi SA responds that service through Gussi, Inc. is not proper because Petitioner knows the names of the agents for service of process and the persons with the authority to accept service on behalf of Gussi SA. Reply at 15.

In *Yamaha*, 174 Cal. App. 4th at 275, the California Court of Appeal held that service under Section 2110 was proper where it was difficult to serve a foreign, parent company directly in California, as that company "ha[d] not made it easy to be served directly by having an 'easily ascertainable' designated agent for service of process in California." Here, like in *Yamaha*, it is undisputed Gussi SA is a Mexican corporation, which does not have a designated agent for service of process in this state. See *MTQ* at 2 (identifying Gussi SA as a Mexican corporation), id. at 4 (arguing Gussi SA must be served in Mexico). Although Gussi SA argues Petitioner knows the names and addresses of Respondent's agents for service of process and persons with authority to accept service, the submitted evidence indicates that all such individuals are located in Mexico. Dkt. 35-7 (Reynolds Decl. Ex. F) at 2-3. Gussi SA has not identified any

agents who are able and willing to accept service in California and argues instead that service can only be performed in Mexico in compliance with Mexican law. *See* MTQ at 3-4; *see generally* Reply. The court, therefore, finds that Gussi SA is a foreign company that is otherwise "not readily available for service within California." *See Miller, 636 Fed. App'x at 949.*

Next, with respect to the second requirement, Petitioner contends "Gussi, Inc. is so closely related to Gussi [SA] that it undoubtedly qualifies as a 'general manager' for service of process under California law." Opp'n at 15. After reviewing the evidence in the record, the court agrees that Gussi, Inc. has a sufficiently close connection with Gussi SA to satisfy the second requirement because: (1) there is a high degree of close contact between the two entities, (2) Gussi SA has derived sufficient benefits in California from Gussi, Inc., and (3) Gussi SA is sufficiently likely to receive actual notice through service upon Gussi, Inc. The court will address each of these three elements in turn.

First, regarding the frequency and quality of contact between the two entities, the evidence shows Gussi SA and Gussi, Inc. are closely related companies that appear to be owned and operated as one entity. During the Arbitration, Horacio Altamirano ("Altamirano"), "the owner and director and president" of Gussi SA, Dkt. 35-6 (12/4/20 Arbitration Tr.) at 8, appeared to claim ownership and control of both Gussi SA and Gussi, Inc. *Id.* at 18-25 (referring to both companies as "Gussi" and "my company," and discussing the two interchangeably); *see also id.* at 19 (objecting to questions regarding the relationship

between Gussi SA and Gussi, Inc. by stating: "You are trying to find out internal things about my company. ... Ask me questions regarding to the contract, not to my company.") (emphasis added). While Altamirano was unclear as to whether Gussi SA was a parent or subsidiary of Gussi, Inc., he admitted the two companies were related. *Id.* at 20 (identifying Gussi, Inc. and Gussi SA as "parent companies"); *id.* at 21 (stating "Gussi, Inc. and Gussi, S.A. is part of holding company" [sic]); *id.* at 24 (agreeing the two companies are "related").

Altamirano further discussed Gussi, Inc. and Gussi SA as though they were the same company and repeatedly used the word "we" in reference to Gussi, Inc., despite testifying he was not a director of Gussi, Inc. and did not have any title with that company. *Id.* at 9-10 (stating "Gussi" began negotiating with Netflix, Inc. ("Netflix") after Voltage stated the Picture would not have a theatrical distribution), *id.* at 14-15 (stating he declined Voltage's offer to contact Netflix, only to start negotiations with Netflix separately through Gussi, Inc. at a later date); *id.* at 16-17 (including Netflix's payment to Gussi, Inc. in his calculations regarding the profits he and his companies would make from the Picture); *id.* at 22 (testifying he approved Gussi, Inc.'s licensing agreement with Netflix before it was signed).

Altamirano further testified Gussi, Inc. has only three employees, each of whom he identified as a director of the corporation and one of whom, Alejandro Lebrija Vazquez Gomez ("Lebrija"), was also a director of Gussi SA. Dkt. 35-6 (12/4/20 Arbitration Tr.) at 25; Dkt. 35-5 (Reynolds Decl. Ex. D) at 11 (listing Lebrija

as a "Director" of Gussi, Inc.); Dkt. 35-7 (Reynolds Decl. Ex. F) at 2 (listing Lebrija as a Director of Gussi SA). Lebrija and Altamirano negotiated the DLA on behalf of Gussi SA, and Lebrija signed the DLA on behalf of Gussi SA. Dkt. 35-2 (12/3/20 Arbitration Tr.) at 8-9; Dkt. 5-1 (DLA) at 9. Lebrija also signed Gussi, Inc.'s licensing agreement with Netflix, regarding the Picture. Dkt. 35-5 (Reynolds Decl. Ex. D) at 11. Altamirano's testimony regarding: (1) the close relationship between Gussi SA and Gussi, Inc., (2) his control over both entities, and (3) the manner in which Lebrija acted under his control and in the same capacity on behalf of both entities in connection with the Picture, is sufficient to demonstrate that Gussi, Inc. has a sufficiently frequent and high degree of contact with Gussi SA to serve as its "general manager." *See Miller, 636 Fed. App'x at 949.*

Second, regarding the benefits Gussi SA derived in California from Gussi, Inc., the evidence shows Gussi SA derived or expected to derive profit from the actions of Gussi, Inc. in this state. The licensing agreement between Gussi, Inc. and Netflix states the agreement "shall be governed by and construed and enforced in accordance with the laws of the State of California," and the parties consent "to the exclusive jurisdiction and venue of the Federal and State Courts located in Los Angeles County, California." Dkt. 35-5 (Reynolds Decl. Ex. D) at 9, 11. Altamirano testified at the Arbitration that he included the expected profit from the Netflix agreement in his calculations regarding the amount he and Gussi SA expected to earn from licensing the Picture. Dkt. 35-6 (12/4/20 Arbitration Tr.) at 16-17. This evidence is sufficient to

establish Gussi SA derived, through Gussi, Inc., "substantially the business advantages that it would have enjoyed 'if it conducted its business through its own offices or paid agents in the state.'" *See Miller, 636 Fed. App'x at 948*.

Third, regarding the likelihood of actual notice, the court finds service on Gussi, Inc. is reasonably certain to provide Gussi SA with actual notice. As stated, (1) Gussi, Inc. has only three employees, who are its directors, (2) Lebrija is a director of both entities, and (3) Altamirano, the "owner and director and president" of Gussi SA, testified he controlled and had the authority to approve the actions of Gussi, Inc. Dkt. 35-6 (12/4/20 Arbitration Tr.) at 8, 22, 25. Given that the two entities appear to be controlled by the same individuals, the court finds Gussi SA is reasonably certain to receive actual notice through service on Gussi, Inc. *See Miller, 636 Fed. App'x at 949*.

Gussi SA argues the facts here differ from cases in which courts have held a domestic subsidiary was a "general manager" of a foreign parent corporation, because Gussi, Inc. does not serve as the sole and/or exclusive distributor of Gussi SA's foreign products. Reply at 13-14. According to Gussi SA, Gussi, Inc cannot qualify as the "general manager" of Gussi SA because the DLA demonstrates that Gussi SA does not operate in California solely through Gussi, Inc. *Id.* The court disagrees.

Neither California courts nor the Ninth Circuit have limited the term "general manager" to include only domestic subsidiaries that serve as the sole and/or exclusive distributor of a foreign parent's

products. *See Cosper, 53 Cal. 2d at 80-81* (finding a domestic company was a "general manager" for a foreign manufacturer, despite having only a non-exclusive contract to promote sales of the foreign company's products for a commission); *Miller, 636 Fed. App'x at 948-49* (exclusivity not included as a relevant consideration). This court will not impose additional limits on service under Sections 2110(a) and 416.10 beyond the two requirements discussed in *Miller, 636 Fed. App'x at 949*.

Furthermore, if Gussi SA is conducting business in California regularly in its own name, despite not being registered in this state, as Gussi SA suggests, *see* Mot. at 4, Reply at 14, that would only further support a finding that it should be subject to service through its closely related company, Gussi, Inc., which is registered, as Gussi SA should not be permitted to conduct business in this state without being subject to service here. *See Cosper, 53 Cal. 2d at 84* (finding service through a general manager proper since the foreign company "should not be perpetually immune from the service of process [in California] in actions brought by residents of this state," despite "'doing business' within this state"). Respondent's argument, thus, fails.

In short, the evidence in the record establishes (1) Gussi SA is a foreign company that is otherwise not readily available for service within California, and (2) Gussi SA has a sufficiently close connection with Gussi, Inc., for Gussi, Inc. to serve as its "general manager," for purposes of service under Sections 2011(a) and 416.10(b) and (d).

Petitioner's filed Proof of Service indicates Gussi, Inc. was served on May 3, 2022 through personal service on its registered agent for service of process, Paracorp. Dkt. 32. This service was sufficient to effect service on Gussi, Inc. See Cal. Code Civ. Proc. § 416.10(a). The court, therefore, finds Respondent Gussi SA was properly served with the Motion to Confirm Documents on May 3, 2022, pursuant to the DLA, IFTA Rule 12.5, and Sections 2110(a) and 416.10(b) and (d). Respondent's Further Motion to Quash is DENIED. Having found service was proper on this basis, the court need not address the parties' remaining arguments regarding the sufficiency of Petitioner's alternate attempts to complete service.

CONCLUSION

For the foregoing reasons, the court DENIES Respondent's Further Motion to Quash (Dkt. 34), and SETS Petitioner's Motion to Confirm (Dkt. 1) for hearing on January 20, 2023 at 1:30 p.m. in Courtroom 6B. Respondent may file an opposition to the Motion to Confirm on or before December 23, 2022. Petitioner may file a reply in support of the Motion to Confirm on or before January 6, 2023.

IT IS SO ORDERED.

Dated: December 6, 2022

/s/ Fernando L. Aenlle-Rocha

FERNANDO L. AENLLE-ROCHA
United States District Judge

Appendix C

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VOLTAGE PICTURES, LLC,

Petitioner,

v. Case No. 2:21-cv-04751-FLA (RAOx)

GUSSI, S.A. de C.V.,

Respondent.

Counsel: For Voltage Pictures, LLC, Petitioner: Amy Rose Cole, Eisner LLP, Beverly Hills, CA; Elaine Li, Jeremiah Tracy Reynolds, Eisner, LLP, Beverly Hills, CA.

For Gussi, S.A. de C.V., Respondent: Charles Michael Coate, Hamrick and Evans LLP, Burbank, CA.

Judges: FERNANDO L. AENLLE-ROCHA, United States District Judge.

Opinion by: FERNANDO L. AENLLE-ROCHA

ORDER GRANTING PETITIONER'S MOTION TO CONFIRM ARBITRATION AWARD [DKT. 1]

RULING

Before the court is Petitioner Voltage Pictures,

LLC's ("Voltage" or "Petitioner") Motion for Order Confirming Arbitration Award ("Motion"). Dkt. 1. Respondent Gussi, S.A. de C.V. ("Gussi SA" or "Respondent") filed a Response to the Motion on December 23, 2022. Dkt. 42. The court finds the Motion suitable for resolution without oral argument and VACATES the January 20, 2023 hearing on the Motion. See Fed. R. Civ. P. 78(b); Local Rule 78-1.

For the reasons stated herein, the court GRANTS Petitioner's Motion (Dkt. 1) and CONFIRMS the final arbitration award. Respondent's Request for Judicial Notice (Dkt. 43) is DENIED.

BACKGROUND

Voltage is a film production and distribution company with its principal place of business in Los Angeles, California. Dkt. 1 at 4;[1] Dkt. 5 (Deckter Decl.) ¶ 2. Gussi SA is a Mexican corporation with its principal place of business in Mexico City. Dkt. 34 at 3-4; Dkt. 4-1 (Final Award) at 7, ¶ 7. Gussi, Inc. is a Delaware Corporation that is related to Gussi SA and registered to conduct business in California. Dkt. 35-4; Dkt. 35-6 (12/4/20 Arbitration Tr.) at 20-21, 24-25.

On November 7, 2018, Voltage, on behalf of nonparty EVE Nevada, LLC, entered into a Distribution License Agreement (the "DLA") with Gussi SA, pursuant to which Gussi SA licensed the distribution rights of the

[1] The court will cite documents by the page numbers added by the CM/ECF system rather than the page numbers listed in the documents themselves.

film "Ava"[2] (the "Picture") in Latin America on an exclusive basis, and for pan-regional Pay TV in the Spanish language in additional foreign countries on a non-exclusive basis. Dkt. 5-1 (DLA); Dkt. 4-1 (Final Award) at 6, ¶ 1. Exhibit A to the DLA contains an arbitration provision ("Arbitration Provision") which states, in relevant part, "[a]ny dispute arising out of or relating to this Agreement will be resolved by final binding arbitration under the [Independent Film & Television Alliance ('IFTA')] Rules of International Arbitration ['IFTA Rules'] in effect at the time the notice of arbitration is filed[.]" Dkt. 5-1 (DLA Ex. A) at 12, ¶ 12. The Arbitration Provision further states, "[t]his Agreement shall be covered by and interpreted in accordance with the laws of the State of California (without regard to the conflict of laws provisions thereof)." *Id.*

On July 22, 2020, Voltage filed and served its demand for arbitration against Gussi SA after a dispute arose between Voltage and Gussi SA regarding their respective rights and obligations under the DLA. Dkt. 4-1 (Final Award) at 7, ¶ 4. The IFTA opened Case No. 20-37 (the "Arbitration") on July 27, 2020. *Id.* On October 12, 2020, Voltage filed and served an amended arbitration demand, alleging claims for breach of contract, declaratory relief, and injunctive relief. *Id.* On August 31, 2020, Gussi SA filed its statement of defense and counterclaims for rescission, money had and received, intentional and/or negligent

---

[2] Ava was formerly titled "Eve" and is at times referred to as such in the parties' exhibits. *See, e.g.*, Dkt. 5-1 (DLA) at 2; Dkt. 4-1 (Arbitration Award) at 6, ¶ 1.

misrepresentation, and declaratory relief. *Id.* ¶ 5.

The Arbitration took place via Zoom on December 3 and 4, 2020, with the proceedings based in Los Angeles. Dkt. 4-1 (Final Award) at 5 & n. 1. On June 7, 2021, the Arbitrator issued a Corrected Final Arbitration Award ("Final Award") in Voltage's favor. *Id.* at 2. The Final Award dismissed all of Gussi SA's counterclaims against Voltage with prejudice and granted Voltage "the principal amount of $345,000.00, attorney's fees in the sum of $109,303.00, paralegal fees in the sum of $7,775.00, arbitration fees and costs in the sum of $30,409.95, and a lump sum daily finance charge of $44,375.70 (based upon the outstanding mitigated sum of $1.175 million), for a total award of $536,863.65, plus a daily finance charge of $30.71 from July 15, 2020 until the principal amount of $345,000.00 is paid in full." *Id.* at 40. The Arbitrator further determined "[a]ll licensed rights in and to the Picture 'Ava' (formerly titled 'Eve') are deemed terminated as of September 22, 2020, and reverted to the licensor, Voltage Pictures, LLC, in perpetuity, as of September 22, 2020." *Id.*

Voltage filed this action on June 10, 2021, requesting the court confirm the Final Award and enter judgment in its favor. Dkt. 1. On December 6, 2022, the court found Petitioner served Gussi SA properly with a copy of the Motion, the Notice of the Motion, and related papers on May 3, 2022, through personal service on the registered agent for service of process of Gussi SA's general manager, Gussi, Inc. Dkt. 40 at 14. The court set the Motion for hearing on January 20, 2023 and set a briefing schedule on the Motion. *Id.*

RESPONDENT'S REQUEST TO DISMISS OR STAY THE ACTION

Gussi SA requests the court dismiss or stay the action, pursuant to an order purportedly issued by the Tribunal Superior De Justicia De La Ciudad De Mexico, Septuagesimo Segundo De Lo Civil (the "Mexican Court") on February 2, 2022, and principles of international comity. Dkt. 42 at 1. Respondent contends that a dismissal or stay of the action is appropriate because the Mexican court exercised its jurisdiction over Petitioner prior to this court's determination that it had jurisdiction over Gussi SA. *Id.* at 5-6.

This action was filed in this court prior to Gussi SA's filing before the Mexican Court. *See* Dkt. 1. The fact that the Mexican Court may have allowed Respondent to initiate a proceeding against Voltage is insufficient to demonstrate good cause for this court to stay or dismiss the action. Furthermore, Respondent did not submit a final certification that certifies the genuineness of the document, as required by Fed. R. Civ. P. 44(a)(2)(A)(ii) and Fed. R. Evid. 902(3), or an oath or affirmation by a translator regarding the accuracy of the translation, as required by Fed. R. Evid. 604. See Dkts. 42-1, 43.

The court, therefore, DENIES Respondent's request to dismiss or stay the action. Gussi SA's Request for Judicial Notice of these documents (Dkt. 43) is likewise DENIED.

MOTION TO CONFIRM

The Federal Arbitration Act ("FAA"), 9 U.S.C. § 9 ("Section 9"), states, in relevant part, that the court

must confirm an application to confirm an arbitration award "unless the award is vacated, modified, or corrected" pursuant to Sections 10 or 11 of the FAA. *Hall Street Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 587, 128 S. Ct. 1396, 170 L. Ed. 2d 254 (2008) ("There is nothing malleable about 'must grant,' which unequivocally tells courts to grant confirmation in all cases, except when one of the 'prescribed' exceptions applies."). "[F]ederal court review of arbitration awards is extremely limited." *A.G. Edwards & Sons, Inc. v. McCollough*, 967 F.2d 1401, 1403 (9th Cir. 1992), cert. denied 506 U.S. 1050, 113 S. Ct. 970, 122 L. Ed. 2d 126 (1993). "It is generally held that an arbitration award will not be set aside unless it evidences a 'manifest disregard for the law.'" *Id.* "The courts should not reverse even in the face of erroneous interpretations of the law." *Id.* Thus, a district court will set aside an arbitrator's decision "only in very unusual circumstances." *First Options of Chi., Inc. v. Kaplan*, 514 U.S. 938, 942, 115 S. Ct. 1920, 131 L. Ed. 2d 985 (1995).

Gussi SA does not present any arguments regarding the merits of Petitioner's Motion or challenge the validity of the Final Award. *See* Dkt. 42. Respondent, thus, fails to demonstrate "very unusual circumstances" are present here, sufficient for the court to set aside the Arbitrator's decision. *See First Options*, 514 U.S. at 942. Accordingly, the court "must grant" the Motion and confirm the Final Award.

CONCLUSION

For the foregoing reasons, the court GRANTS Voltage's Motion (Dkt. 1) and CONFIRMS the Final

Award. Voltage shall file a proposed judgment within fourteen (14) days of this Order.

IT IS SO ORDERED.

Dated: January 17, 2023

/s/ Fernando L. Aenlle-Rocha

FERNANDO L. AENLLE-ROCHA

United States District Judge

Appendix D

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

VOLTAGE PICTURES, LLC,

Petitioner,

v. Case No. 2:21-cv-04751-FLA (RAOx)

GUSSI, S.A. de C.V.,

Respondent.

Counsel: For Voltage Pictures, LLC, Petitioner: Amy Rose Cole, Eisner LLP, Beverly Hills, CA; Elaine Li, Jeremiah Tracy Reynolds, Eisner, LLP, Beverly Hills, CA.

For Gussi, S.A. de C.V., Respondent: Charles Michael Coate, Hamrick and Evans LLP, Burbank, CA.

Judges: FERNANDO L. AENLLE-ROCHA, United States District Judge.

JUDGMENT

Petitioner Voltage Pictures, LLC's ("Voltage" or "Petitioner"), Motion for Order Confirming Arbitration Award ("Motion") was set for hearing before this court on January 20, 2023, at 1:30 p.m., in Courtroom 6B of the above-entitled court, located at

350 West First Street, Los Angeles, CA 90012. On January 17, 2023, the court vacated the January 20, 2023 hearing and granted the Motion, for the reasons stated in the court's Order Granting Petitioner's Motion to Confirm Arbitration Award. Dkt. 45.

The matter having been fully argued and considered, and proof being made to the satisfaction of the Court, and good cause appearing, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. The Corrected Final Arbitration Award of the IFTA International Arbitration Tribunal, dated June 7, 2021 ("Final Award," Dkt. 4-1 at 5), which resolved Case No. 20-37 ("Arbitration") in all respects, is CONFIRMED in its entirety;

2. Respondent Gussi, S.A. de C.V. ("Gussi" or "Respondent") shall pay to Voltage damages in the sum of three hundred forty-five thousand dollars and zero cents ($345,000.00) ("Voltage Principal Award Amount"), in accordance with the terms of the Final Award;

3. Gussi shall pay to Voltage its attorneys' fees incurred in connection with the Arbitration proceedings, in the sum of one hundred nine thousand, three hundred, and three dollars and zero cents ($109,303.00), in accordance with the terms of the Final Award;

4. Gussi shall pay to Voltage its paralegal fees incurred in connection with the Arbitration proceedings, in the sum of seven thousand, seven hundred, and seventy-five dollars and zero cents ($7,775.00), in accordance with the terms of the Final

Award;

5. Gussi shall pay to Voltage its fees and costs incurred in connection with the Arbitration proceedings, in the sum of thirty thousand, four hundred

and nine dollars, and ninety-five cents ($30,409.95), in accordance with the terms of the Final Award;

6. Gussi shall pay to Voltage a lump sum daily finance charge (based upon the outstanding mitigated sum of $1.175 million), in the sum of forty-four thousand, three hundred seventy-five dollars, and seventy cents ($44,375.70), in accordance with the terms of the Final Award;

7. Gussi shall pay to Voltage a daily finance charge of thirty dollars and seventy-one cents ($30.71), from July 15, 2020 until the Voltage Principal Award Amount is paid in full.

8. Gussi shall pay to Voltage the attorney's fees and costs Petitioner reasonably incurred in connection with enforcement of the Final Award, in an amount to be determined through a separately-filed Motion for Attorney's Fees.

9. Gussi shall pay to Voltage post-judgment interest on amounts identified in paragraphs 3-5 and 8, immediately above, at the applicable rate based on the weekly average one-year constant maturity Treasury yield, as set forth in 28 U.S.C. § 1961, from the date of entry of this Judgment to the date of full

and final payment hereunder.

IT IS SO ORDERED.

Dated: January 26, 2023

/s/ Fernando L. Aenlle-Rocha

FERNANDO L. AENLLE-ROCHA

United States District Judge

Appendix E

In The United States Court of Appeals
For the Ninth Circuit

No. 23-55123

VOLTAGE PICTURES, LLC, Petitioner-Appellee,

v.

GUSSI, S.A. DE C.V., Respondent-Appellant.

Appeal from the United States District Court
for the Central District of California
Fernando L. Aenlle-Rocha, District Judge, Presiding

Argued and Submitted December 6, 2023
Pasadena, California

Filed February 5, 2024

Before: MILAN D. SMITH, JR., KENNETH K. LEE, and LAWRENCE VANDYKE, Circuit Judges.

Opinion by Judge Milan D. Smith, Jr.

SUMMARY

Arbitration/Service

The panel affirmed the district court's judgment confirming an arbitral award in favor of Voltage

Pictures, LLC (Voltage), and against Gussi S.A. de C.V. (Gussi SA), in a case arising from a dispute concerning the parties' respective rights and obligations under their Distribution and License Agreement (DLA).

The panel held that the district court had jurisdiction to hear the motion to confirm the arbitral award but not for the reasons it articulated. The district court ruled that it had diversity jurisdiction, but the panel was not satisfied that it did where the record below did not indicate the citizenship of Voltage's members. The panel nevertheless held that Section 203 of Chapter 2 of the Federal Arbitration Act (FAA) and 28 U.S.C. § 1331 gave the district court an independent basis for exercising jurisdiction.

The panel held that the district court erred in ruling that California law governed service of Voltage's notice of motion to confirm the arbitral award. Federal procedural law generally governs service when a party files an action in federal district court unless the party-to-be-served waives this protection. The panel looked to the DLA, which was governed by California law, and held that the parties agreed to accept service of a confirmation motion pursuant to the law that applied to such motions in the prevailing party's chosen confirmation forum. Because Voltage filed its confirmation motion in a federal court, the panel analyzed whether service of the motion on Gussi SA complied with federal law.

Applying federal law, the panel held that Voltage sufficiently served notice to confirm the arbitral award by mailing its motion papers to Gussi SA's counsel. Gussi SA does not reside in the district where

the award was made, and Voltage did not serve Gussi SA by a U.S. marshal. Gussi SA contended that service of Voltage's notice of motion was insufficient pursuant to § 9 of the FAA, which requires service by a U.S. marshal. The panel held that later amendments to the Federal Rules of Civil Procedure did not implicitly repeal § 9's marshal requirement, and thus it is still valid where it applies. However, § 9's nonresident service provision does not apply to the service of notice of an application to confirm a foreign arbitral award governed by the New York convention if the adverse party is not available for service in any judicial district of the United States at the time of service. When § 9 does not apply, section 6 of the FAA and Fed. R. Civ. P. 5(b)—the federal procedural law governing how service of a motion is made— fill the gap. Therefore, Voltage properly effected service by mailing its motion papers to Gussi SA's attorney pursuant to Rule 5(b). Service of notice was sufficient under federal law, and the district court was empowered to enter judgment against Gussi SA in confirming the award.

Finally, the panel held that the district court did not abuse its discretion when it declined to extend comity to a purported Mexican court order enjoining Voltage from seeking to confirm the award in the United States because Gussi SA did not certify the genuineness of the purported Mexican court order or the accompanying translation.

COUNSEL

Charles M. Coate (argued), Hamrick & Evans LLP, Burbank, California, for Respondent-Appellant.

Elaine Li (argued) and Jeremiah Reynolds, Eisner LLP, Beverly Hills, California, for Petitioner-Appellee

---

OPINION

M. SMITH, Circuit Judge:

On June 10, 2021, Voltage Pictures, LLC (Voltage) filed a motion in the United States District Court for the Central District of California to confirm an arbitral award that was issued against Gussi S.A. de C.V. (Gussi SA) earlier that year. After hearing from both parties, the district court confirmed the award and entered judgment in favor of Voltage. On appeal, Gussi SA maintains that service of the motion to confirm the award was insufficient under federal law and that parallel proceedings in Mexico required the district court to abstain from confirming the arbitral award. We have jurisdiction pursuant to 28 U.S.C. § 1291 and 9 U.S.C. § 16(a), and we affirm.

FACTUAL BACKGROUND

Voltage is a film production and distribution limited liability company based in Los Angeles.[1] Gussi SA is a Mexican corporation with its principal place of business in Mexico City. On November 7, 2018, Voltage, on behalf of non-party EVE Nevada, LLC, entered into a Distribution and License Agreement (the DLA) with Gussi SA to license the distribution rights of the film *Ava* in Latin America on an exclusive

---

[1] The record does not indicate the citizenship of Voltage's members.

basis, and for pan-regional television services in Spanish in additional foreign countries on a non-exclusive basis.

Exhibit A to the DLA contains an arbitration provision, which states that "[a]ny dispute arising out of or relating to this Agreement will be resolved by final binding arbitration under the [Independent Film & Television Alliance (IFTA)] Rules [for International Arbitration] . . . in effect at the time of the notice of arbitration is filed . . . ." It further states that Gussi SA "consents and submits to the jurisdiction of the state and federal courts located in Los Angeles County, California with respect to any action arising out of or relating to this Agreement or the Picture," and that the DLA "shall be covered by and interpreted in accordance with the laws of the State of California (without regard to the conflict of laws provisions thereof)." It also provides that "[t]he Parties hereby submit to the jurisdiction of the courts in [Los Angeles County, California] to compel arbitration or to confirm an arbitration award." Most significantly to this appeal, the arbitration provision declares that "[t]he Parties agree to accept service of process in accordance with the IFTA Rules."

I FTA Rule 12 is titled "The Award." IFTA Rule 12.5 provides, in part, that:

> Service of any petition, summons or other process necessary to obtain confirmation of the Arbitrator's award may be accomplished by any procedure authorized by applicable law, Treaty or Convention, except that the parties waive application of the Hague Convention for Service

> Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters with respect to service of process.

Immediately below IFTA Rule 12.5 is IFTA Rule 13, titled "Applicable Law." IFTA Rule 13.1 provides, in full, that:

> The Arbitrator shall apply the laws of the State of California to all arbitrations conducted under these Rules unless the parties by mutual agreement or by the contract to be enforced provide that the Arbitrator shall apply the law of one other jurisdiction, or the Arbitrator for good cause designates another location to be the situs of the arbitration in which case the Arbitrator shall have the discretion to apply for good cause the law of the situs of the arbitration.

PROCEDURAL HISTORY

On July 22, 2020, Voltage filed and served its demand for arbitration against Gussi SA after a dispute arose between Voltage and Gussi SA regarding their respective rights and obligations under the DLA. Eventually, both parties participated in an arbitration over Zoom on December 3 and 4, 2020, with the proceedings based in Los Angeles. On June 7, 2021, the Arbitrator issued a final arbitral award in Voltage's favor. Shortly thereafter, Voltage mailed a notice of motion to confirm the arbitral award and the accompanying motion papers to the attorneys who had represented Gussi SA in the underlying arbitration. On June 10, 2021, Voltage filed its motion to confirm the award in the United

States District Court for the Central District of California. In the motion, Voltage alleged that the district court had diversity jurisdiction over the matter pursuant to 28 U.S.C. § 1332(a)(2).

On June 21, 2021, Gussi SA filed its first motion to quash service of and to dismiss Voltage's motion to confirm the arbitral award. On March 28, 2022, after the district court held that it had diversity jurisdiction pursuant to 28 U.S.C. § 1332(a)(2) to adjudicate the motion, the district court ruled that "the parties agreed to service as allowed under California law" by incorporating IFTA Rule 12.5 into the DLA. However, the court also held that Voltage "fail[ed] to demonstrate it completed service of process on" Gussi SA in accordance with California law. Accordingly, the court granted in part the motion to quash service and ordered Voltage to complete service of the motion to confirm the arbitral award "within 60 days of th[e] order."

The next day, Voltage mailed its notice of motion and accompanying motion papers to Gussi SA's address in Mexico via Federal Express and requested the return of a signed receipt upon delivery. A few days later, Voltage received a return receipt, signed by Silvia Torres, who had been designated by Gussi SA as its representative for service of process during the underlying arbitration proceedings. Then, on May 3, 2022, Voltage delivered the same papers through personal service on the registered service agent for Gussi, Inc., a Delaware corporation registered to do business in California and with its executive offices located in Los Angeles, California. Gussi SA and Gussi, Inc. are owned by the same Mexican holding

company. Gussi, Inc. has only three employees, two of whom negotiated the DLA on behalf of Gussi SA.

On June 3, 2022, Gussi SA filed a further motion to quash service of process. Despite the district court already having ruled that California law governed service of process, Gussi SA reargued that federal procedural law—specifically, Federal Rules of Civil Procedure 4(h)(2) & 4(f)—and not California law, applied to service of process. Gussi SA also contended that, even if California law applied, Voltage's service was invalid. On December 6, 2022, the court reaffirmed its holding that California law governed service of the motion and also ruled that Voltage sufficiently served Gussi SA on May 3, 2022, through personal service on the registered service agent for Gussi, Inc., which the district court deemed to be Gussi SA's "general manager" pursuant to § 416.10(d) of the California Code of Civil Procedure and § 2110 of the California Corporations Code.

Within two days of the district court's order denying Gussi SA's further motion to quash service, Gussi SA notified Voltage of an action that Gussi SA supposedly brought against Voltage in Mexico earlier that year. According to Gussi SA, a Mexican court issued an order enjoining Voltage from enforcing the arbitral award on February 2, 2022. Therefore, Gussi SA requested that the district court dismiss or stay Voltage's motion to confirm the arbitral award based on the Mexican court order. The district court ultimately denied this motion, finding that Gussi SA failed to certify the genuineness of the document purporting to be a Mexican court order and the accompanying translation. Accordingly, the district

court found that there was no judicially noticeable court order to which the district court could extend comity. On January 23, 2023, the district court entered judgment confirming the arbitral award in all respects. Gussi SA timely appealed.

JURISDICTION AND STANDARD OF REVIEW

We have jurisdiction pursuant to 28 U.S.C. § 1291 and 9 U.S.C. § 16(a). Johnson v. Wells Fargo Home Mortg., Inc., 635 F.3d 401, 409 (9th Cir. 2011). We review de novo a district court's determination that it had subject matter jurisdiction over an action and its determination that service of process was sufficient. United States v. Peninsula Commc'ns, Inc., 287 F.3d 832, 836 (9th Cir. 2002) (subject matter jurisdiction); In re Focus Media Inc., 387 F.3d 1077, 1081 (9th Cir. 2004) (sufficiency of service). We review for abuse of discretion a district court's evidentiary rulings and its decisions regarding international comity. Wagner v. Cnty. of Maricopa, 747 F.3d 1048, 1052 (9th Cir. 2013) (evidentiary rulings); Mujica v. AirScan Inc., 771 F.3d 580, 589 (9th Cir. 2014) (international comity). We may affirm a district court's decision "on any ground supported by the record even if not explicitly relied upon by the district court." Johnson v. Barr, 79 F.4th 996, 1003 (9th Cir. 2023).

ANALYSIS

I. The District Court Had Jurisdiction to Hear the Motion to Confirm the Arbitral Award but Not for the Reasons It Articulated.

The district court correctly recognized that "[t]he

provisions of 9 U.S.C. § 9," which govern motions to confirm an arbitral award, "do not in themselves confer subject matter jurisdiction on a federal district court." *See Gen. Atomic Co. v. United Nuclear Corp., 655 F.2d 968, 969 (9th Cir. 1981)*; *see also United States v. Park Place Assocs., Ltd., 563 F.3d 907, 918-19 (9th Cir. 2009)*. Therefore, the district court had to identify an independent source of subject matter jurisdiction to hear Voltage's motion. The district court ultimately ruled that it had diversity jurisdiction pursuant to *28 U.S.C. § 1332(a)(2)*, but we are not satisfied that it did. *See generally Bender v. Williamsport Area Sch. Dist., 475 U.S. 534, 541, 106 S. Ct. 1326, 89 L. Ed. 2d 501 (1986)* ("[E]very federal appellate court has a special obligation to satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review, even though the parties are prepared to concede it." (internal quotation marks omitted)).

Section 1332(a)(2) vests federal district courts with subject matter jurisdiction over suits involving "citizens of a State and citizens or subjects of a foreign state," 28 U.S.C. § 1332(a)(2), but not over suits in which "aliens [are] on both sides of the case," *Grupo Dataflux v. Atlas Glob. Grp., L.P., 541 U.S. 567, 569, 124 S. Ct. 1920, 158 L. Ed. 2d 866 (2004). Section 1332(a)(3)*, by contrast, does confer jurisdiction over suits in which aliens are on both sides of the case, but only if there are also diverse U.S. citizens on both sides. *See Transure, Inc. v. Marsh and McLennan, Inc., 766 F.2d 1297, 1298-99 (9th Cir. 1985)* (citing *28 U.S.C. § 1332(a)(3)*). "A limited liability company is a citizen of every state of which its owners/members are

citizens, not the state in which it was formed or does business." *NewGen, LLC v. Safe Cig, LLC, 840 F.3d 606, 612 (9th Cir. 2016)* (internal quotation marks omitted).

The record below does not indicate the citizenship of Voltage's members. The record merely indicates that Voltage has its principal place of business in California. If Voltage were a corporation, the fact that its principal place of business is in California would be sufficient to render it a citizen there. *See* 28 U.S.C. § 1332(c)(1). However, Voltage is not a corporation—it is a limited liability company. The citizenship of a limited liability company is determined by the citizenship of its members. *NewGen, 840 F.3d at 612*. If one of Voltage's members is a citizen or subject of a foreign state, then diversity of citizenship pursuant to *§ 1332(a)(2)* would be lacking. *Cf. Grupo Dataflux, 541 U.S. at 569* ("Because [the limited partnership] had two partners who were Mexican citizens at the time of filing, the partnership was a Mexican citizen . . . . And because the defendant . . . was a Mexican corporation, aliens were on both sides of the case, and the requisite diversity was therefore absent.").

In advance of oral argument, we ordered the parties "to be prepared to address . . . [w]hether the district court erred in concluding it had 28 U.S.C. § 1332(a)(2) diversity jurisdiction over the case despite not inquiring into the citizenship of the members of Voltage . . . ." At oral argument, we asked Voltage's counsel to clarify whether any of Voltage's members are citizens or subjects of a foreign state. Voltage's

counsel declined this opportunity. Accordingly, on appeal, we still do not have enough information to determine whether the district court had § 1332(a) diversity jurisdiction over the matter.

Nevertheless, we hold that 9 U.S.C. § 203 and 28 U.S.C. § 1331 provided the district court with an independent basis for exercising jurisdiction over the matter. *See generally Johnson, 79 F.4th at 1003* (stating that we may affirm a district court's decision "on any ground supported by the record even if not explicitly relied upon by the district court"). As we have stated previously, Section 203 of Chapter 2 of the Federal Arbitration Act (FAA) vests federal district courts with subject matter jurisdiction over motions seeking to confirm non-domestic arbitral awards. *See HayDay Farms, Inc. v. FeeDx Holdings, Inc.*, 55 F.4th 1232, 1239 (9th Cir. 2022) ("[The parties' confirmation] petition stated that it was an action to confirm an arbitration award, and stated that the award was between at least one foreign party. Those facts trigger § 203."). Here, it is undisputed that the arbitral award at issue is "between at least one foreign party" because Gussi SA is a citizen of Mexico. *Id.* Accordingly, we are satisfied that Section 203 provided the district court with an independent basis for exercising subject matter jurisdiction over the motion. [2]

---

[2] The fact that Voltage failed to expressly invoke Section 203 in its motion to confirm the arbitral award does not change our conclusion. *See HayDay, 55 F.4th at 1239* (holding that a confirmation petition's "state[ment] that the award was between at least one foreign party" is sufficient to "trigger *§ 203*[]" even if the petition itself does not "explicitly invoke[]" *§ 203*). While it is

II. The District Court Erred in Ruling that California Law Governed Service of Voltage's Notice of Motion to Confirm the Arbitral Award.

Whereas subject matter jurisdiction refers to a court's power to hear a certain type of case, *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 639, 129 S. Ct. 1862, 173 L. Ed. 2d 843 (2009), personal jurisdiction refers to a court's power over a particular defendant, *Int'l Shoe Co. v. State of Wash., Off. of Unemployment Comp. & Placement*, 326 U.S. 310, 316, 66 S. Ct. 154, 90 L. Ed. 95 (1945). On appeal, Gussi SA objects to the district court's exercise of the latter. However, it is undisputed that Gussi SA, by entering into the DLA, "consent[ed] and submit[ted] to the" district court exercising personal jurisdiction over it because the district court is a "federal court[] located in Los Angeles County, California . . . ." *See Nat'l Equip. Rental, Ltd. v. Szukhent, 3*75 U.S. 311, 316, 84 S. Ct. 411, 11 L. Ed. 2d 354 (1964) (observing that "parties to a contract may agree in advance to

---

true that the Supreme Court has ruled that courts may not "look through" an application to confirm an arbitral award to the underlying substantive controversy to search for an independent source of federal subject matter jurisdiction that does not appear on the face of the application, *Badgerow v. Walters*, 596 U.S. 1, 5, 142 S. Ct. 1310, 212 L. Ed. 2d 355 (2022), that is not what we are doing here. Here, we are looking to the face of Voltage's motion itself, which clearly states Gussi SA's Mexican citizenship. *Cf. id. at 9* (acknowledging that if "the face of the application itself[]" provides the requisite jurisdictional facts establishing § 1332(a) diversity jurisdiction, "then § 1332(a) gives the court diversity jurisdiction[]" over the application).

submit to the jurisdiction of a given court"). Accordingly, the only basis for Gussi SA to contest the district court's exercise of personal jurisdiction over it would be insufficient service of Voltage's notice of motion to confirm the arbitral award. *See generally S.E.C. v. Ross*, 504 F.3d 1130, 1138-39 (9th Cir. 2007) (explaining that "in the absence of proper service of process, the district court has no power to render any judgment against the defendant's person or property").

Gussi SA maintains that it was never properly served with notice of Voltage's motion to confirm the arbitral award, and therefore, the district court lacked personal jurisdiction over Gussi SA to confirm the award. For us to evaluate whether service of Voltage's motion on Gussi SA was sufficient, we must first determine what law governs service of a confirmation motion. The district court ruled that California law governs service, but Gussi SA argues that federal procedural law governs. We agree with Gussi SA.

When a party files an action in federal district court, federal procedural law generally governs service, *see, e.g., Brockmeyer v. May*, 383 F.3d 798, 799-800 (9th Cir. 2004) (ruling that Federal Rule of Civil Procedure 4 governs service of a summons and complaint in federal district court), unless the party-to-be-served waived its protections, *see Nat'l Equip. Rental,* 375 U.S. at 316 ("[P]arties to a contract may agree in advance . . . to permit notice to be served by the opposing party, or even to waive notice altogether."); *see also Rockefeller Tech. Invs. (Asia) VII v. Changzhou SinoType Tech. Co.*, 9 Cal. 5th 125, 140-

41, 260 Cal. Rptr. 3d 442, 460 P.3d 764 (Cal. 2020). We must therefore look to the DLA, which is governed by California law, to determine whether such waiver occurred.

By entering into the DLA, Voltage and Gussi SA clearly "agree[d] to accept service of process in accordance with the IFTA Rules." Therefore, whether Gussi SA consented to accept service of the motion pursuant to California law (even if the motion is filed in federal court) hinges on our interpretation of the IFTA Rules governing service. The IFTA Rule governing service of a subsequent motion to confirm an arbitral award is IFTA Rule 12.5, which provides, in relevant part, that:

> Service of any petition, summons or other process necessary to obtain confirmation of the Arbitrator's award may be accomplished by any procedure authorized by applicable law, Treaty or Convention, except that the parties waive application of the Hague Convention for Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters with respect to service of process.

To date, at least two district courts in the Ninth Circuit, including the court below, have concluded that the "applicable law" referenced in IFTA Rule 12.5, which governs the service of a motion to confirm an arbitral award, is necessarily California law. *See Voltage Pictures, LLC v. Gussi, S.A. De C.V.*, 2022 U.S. Dist. LEXIS 236366, 2022 WL 18397529, at *3 (C.D. Cal. Mar. 28, 2022); *Voltage Pictures, LLC v. Gulf Film, LLC*, 2018 U.S. Dist. LEXIS 121108, 2018 WL

2110937, at *3 (C.D. Cal. Apr. 17, 2018). Those courts' justification is simple: because "IFTA Rule 12.5 provides [for service of confirmation motion to] 'be accomplished by any procedure authorized by applicable law,'" and "IFTA Rule 13.1 defines 'applicable law' as 'the laws of the State of California,'" California law necessarily governs service of a confirmation motion, no matter the forum in which the prevailing party chooses to file its motion. *Gussi*, 2022 U.S. Dist. LEXIS 236366, 2022 WL 18397529, at *3; *see Gulf Film*, 2018 U.S. Dist. LEXIS 121108, 2018 WL 2110937, at *3.

If only it were that simple. IFTA Rule 13.1 does not actually "define 'applicable law'" in the way that Voltage or the district court suggests that it does. In fact, the words "applicable law" do not appear anywhere in IFTA Rule 13.1. The words "applicable law" only appear in the header of IFTA Rule 13. IFTA Rule 13.1 itself only provides that "[t]he Arbitrator shall apply the laws of the State of California to all arbitrations conducted under the[] [IFTA] Rules . . . ." The rule says nothing about the procedural law a court must apply when adjudicating a subsequent petition to confirm an arbitration award issued pursuant to the IFTA Rules. Nor does any other IFTA Rule.

Moreover, IFTA Rule 12.5 does not merely state that service must be accomplished by applicable law. Rather, it provides that service "may be accomplished by any procedure authorized by applicable law, Treaty or Convention, except that the parties waive application of the Hague Convention . . . with respect to service of process." This language indicates that any

law, treaty, or convention (except for the Hague Convention) that applies in the prevailing party's chosen confirmation forum may govern service. The drafters of the IFTA Rules could have easily provided that service of a confirmation motion must be accomplished by California law, regardless of the prevailing party's chosen confirmation forum, but they did not.

We therefore reject the district court's ruling that by agreeing to abide by IFTA Rule 12.5, Gussi SA voluntarily waived its right to be served with notice of Voltage's motion in compliance with federal law in federal court. Instead, we hold that, by incorporating IFTA Rule 12.5 into the DLA, Voltage and Gussi SA both agreed to accept service of a confirmation motion pursuant to any law, treaty, or convention (except for the Hague Convention) that applies to such motions in the prevailing party's chosen confirmation forum. Because Voltage filed its confirmation motion in a federal court, we must analyze whether service of the motion on Gussi SA complied with whatever federal law applies to such motions.

III. Voltage Sufficiently Served Notice of Its Motion to Confirm the Arbitral Award by Mailing Its Motion Papers to Gussi SA's Counsel.

Rule 4 of the Federal Rules of Civil Procedure governs service of summons and a complaint in federal district court. *Brockmeyer, 383 F.3d at 800*. However, this case does not concern the service of summons and a complaint. Rather, it concerns the service of a prevailing party's notice of motion to confirm an

arbitral award. Rule 81(a)(6)(B) provides that the Federal Rules of Civil Procedure "govern proceedings under the [FAA] . . . relating to arbitration," except as the FAA "provide[s] other procedures." Fed. R. Civ. P. 81(a)(6), *(B)*.

Section 6 of the FAA provides that "[a]ny application to the court hereunder shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise herein expressly provided." 9 U.S.C. § 6. In federal district court, Rule 5 generally governs the service of "written motion[s]" and "notice[s] . . . ." Fed. R. Civ. P. 5(a)(1)(D), (E). Section 9 of the FAA, however, provides that:

> Notice of the application [to confirm an arbitral award] shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court.

9 U.S.C. § 9.

It is undisputed that Gussi SA does not reside in

the district where the award was made—*i.e.*, the Central District of California—and that Voltage did not attempt to serve Gussi SA by a U.S. marshal. Because of these undisputed facts, Gussi SA contends that service of Voltage's notice of motion was insufficient pursuant to § 9. Voltage, on the other hand, argues that later amendments to the Federal Rules of Civil Procedure implicitly repealed *§ 9*'s marshal requirement, and even if the requirement is still valid, it cannot apply to service on Gussi SA because Gussi SA insisted it could not be served within the United States and service by a U.S. marshal outside of the United States is impossible.

These arguments present several questions of first impression for us, including (1) whether later amendments to the Federal Rules of Civil Procedure implicitly repealed the marshal requirement in *§ 9*'s nonresident service provision, and (2) whether that nonresident provision may apply to adverse parties who insist that they are not available for service within the United States. To resolve these questions, we must examine the statutory text of the FAA and the Federal Rules of Civil Procedure, as well as later amendments to both.

A. When Congress Enacted *§ 9 of the FAA*, Service by a U.S. Marshal Was the Prevailing "Manner of Other Process of the Court."

"The FAA was enacted in 1925 in response to widespread judicial hostility to arbitration agreements." *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339, 131 S. Ct. 1740, 179 L. Ed. 2d 742

(2011). The Supreme Court has stated that "it [is] beyond dispute that the FAA was designed to promote arbitration." *Id. at 345*. The Ninth Circuit has "gone [even] further, stating that 'the FAA's purpose is to give preference (instead of mere equality) to arbitration provisions.'" *Chamber of Com. of the United States of Am. v. Bonta*, 62 F.4th 473, 483 (9th Cir. 2023) (quoting *Mortensen v. Bresnan Commc'ns, LLC*, 722 F.3d 1151, 1160 (9th Cir. 2013)). However, the Supreme Court has tempered "the FAA's 'policy favoring arbitration'" by clarifying that it "does not authorize federal courts to invent special, arbitration-preferring procedural rules." *Morgan v. Sundance, Inc.*, 596 U.S. 411, 418, 142 S. Ct. 1708, 212 L. Ed. 2d 753 (2022).

The FAA's provisions governing applications to confirm arbitral awards manifest Congress' intent to promote arbitration. One provision is § 6, which provides that "[a]ny application to the court hereunder shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise herein expressly provided." 9 U.S.C. § 6. Section 9 similarly provides, in relevant part, that:

> If the adverse party is a resident of the district within which the [arbitral] award was made, such service [of the application to confirm the award] shall be made upon the adverse party or his attorney *as prescribed by law for service of notice of motion* in an action in the same court.

9 U.S.C. § 9 (emphasis added). Serving a notice of motion in an already commenced action is less

cumbersome than serving process to initiate a new action, which generally requires the service of summons and a pleading, most commonly a complaint. Accordingly, these two provisions conform with Congress' stated desire to promote arbitration, as they make the adjudication of a confirmation application more efficient.

However, Congress provided a different rule for serving confirmation applications on adverse parties that do not reside in the district where the award was made:

> If the adverse party shall be a nonresident [of the district within which the arbitral award was made], then the notice of the application [to confirm the arbitral award] shall be served *by the marshal* of any district within which the adverse party may be found *in like manner as other process of the court*.

9 U.S.C. § 9 (emphasis added). In 1925, when Congress enacted the FAA, service of process—including service of summons and a complaint—was routinely enacted by the U.S. marshal. *See Changes in Federal Summons Service Under Amended Rule 4 of the Federal Rules of Civil Procedure, 96 F.R.D. 81, 94 (1983)* ("[P]rior to 1980, the marshal was the stated summons server unless there was a person 'specially appointed' by the court to make service."). Accordingly, in 1925, this additional provision in § 9 required prevailing parties to serve a confirmation application according to the normal rules governing service of other process of the court if the adverse party did not reside in the district

within which the arbitral award was made.

B. Later Amendments to the Federal Rules of Civil Procedure Did Not Implicitly Repeal § 9's Marshal Requirement.

In 1983, Congress amended Rule 4 of the Federal Rules of Civil Procedure, newly providing for service of summons by any nonparty over the age of eighteen. *See Changes in Federal Summons Service*, 96 F.R.D. at 88, 94. The "ostensibly principal purpose" of this change was to "tak[e] the marshals out of summons service almost entirely." *Id.* at 94. However, "[p]rocess other than a summons (or subpoena . . .) continue[d] to be servable only by a marshal or person specially appointed by the court." *Id.*

Numerous courts, including lower courts in our circuit, have relied on the 1983 amendment regarding the service of summons to conclude that the marshal requirement in § 9's nonresident service provision is an anachronism under the current Federal Rules. *See, e.g., In re Arbitration Between InterCarbon Berm., Ltd. & Caltex Trading & Transp. Corp.*, 146 F.R.D. 64, 67 n.3 (S.D.N.Y. 1993) (stating that identical service language in 9 U.S.C. § 12 "is an anachronism"); *Hancor, Inc. v. R & R Eng'g Prod., Inc.*, 381 F. Supp. 2d 12, 15 (D.P.R. 2005) (noting that "[s]ome courts have questioned the continued validity of § 9's service requirement"); *Technologists, Inc. v. MIR's Ltd.*, 725 F. Supp. 2d 120, 126 (D.D.C. 2010) (observing that the FAA's marshal requirement "is an artifact of the era in which United States marshals were the default servers of process in federal courts"); *LG Elecs.*

MobileComm U.S.A., Inc. v. Reliance Communs., LLC, 2018 U.S. Dist. LEXIS 75284, 2018 WL 2059559, at *2 (S.D. Cal. May 3, 2018) (collecting cases).

Some of those courts have even gone as far to suggest that the 1983 amendment implicitly repealed the marshal requirement in § 9's nonresident service provision and is thus no longer valid. *See, e.g., Hancor*, 381 F. Supp. 2d at 15-16 (jettisoning the marshal requirement because of the "later amendments to the Federal Rules"); *Technologists*, 725 F. Supp. 2d at 127 (concluding that the FAA's marshal requirement has been displaced by contemporary *Rule 4*); *LG Elecs.*, 2018 U.S. Dist. LEXIS 75284, 2018 WL 2059559, at *3 (ruling that "service under *Rule 4* satisfies [§] 9's notice requirement"); *see also, e.g., Elevation Franchise Ventures, LLC v. Rosario*, 2013 U.S. Dist. LEXIS 160339, 2013 WL 5962984, at *3 n.1 (E.D. Va. Nov. 6, 2013) (declining to apply § "9's requirement of service by U.S. Marshal" because some courts have found that it "need not be followed"); *Dobco, Inc. v. Mery Gates, Inc.*, 2006 U.S. Dist. LEXIS 49849, 2006 WL 2056799, at *2 (D.N.J. July 21, 2006) (implicitly ruling service by marshal pursuant to § 9 is no longer a requirement and is instead an "alternative" to Rule 4).

Those courts erred. First, while it is true that the "principal purpose" of the 1983 amendment was to "tak[e] the marshals out of summons service almost entirely," "[p]rocess other than a summons (or subpoena . . .) continue[d] to be servable only by a marshal or person specially appointed by the court." *Changes in Federal Summons Service, 96 F.R.D. at 94.*

That remains true today. *See Fed. R. Civ. P. 4.1*; *see, e.g., Hilao v. Est. of Marcos*, 95 F.3d 848, 853 (9th Cir. 1996) (applying Rule 4.1's marshal requirement to a class of plaintiffs' service of a notice of levy against a defendant's deposit account). Therefore, at the very least, § 9's requirement that "the notice of [an] application [to confirm an arbitral award] shall be served by the marshal . . . in like manner as other process of the court" is not wholly anachronistic as some courts have suggested. Rather, the marshal requirement mirrors contemporary Rule 4.1, which provides that "[p]rocess—other than a summons under Rule 4 or a subpoena under Rule 45—must be served by a United States marshal or deputy marshal or by a person specially appointed for that purpose." Fed. R. Civ. P. 4.1(a).

Second, even assuming arguendo that the phrase "in like manner as other process of the court" in *§ 9*'s nonresident service provision necessarily refers to the method for serving summons pursuant to *Rule 4*, *see, e.g., Reed & Martin, Inc. v. Westinghouse Elec. Corp., 439 F.2d 1268, 1277 (2d Cir. 1971)* (holding that that the phrase "in like manner as other process of the court" refers to *Rule 4* governing service of summons), that assumption would still fail to do away with the marshal requirement. The plain text of the statute clearly states that "the notice of the application shall be served by the marshal . . . ." 9 U.S.C. § 9. Congress' use of the term "shall" indicates that service by a U.S. marshal is mandatory. *See Firebaugh Canal Co. v. United States*, 203 F.3d 568, 573 (9th Cir. 2000). To jettison the marshal requirement in its entirety because of the latter

phrase "in like manner as other process of the court," 9 U.S.C. § 9, would "violate an important rule of statutory construction—that every word and clause in a statute be given effect." *United States v. Zhou*, 678 F.3d 1110, 1113 (9th Cir. 2012) (internal quotation marks removed). We can give meaning to both the marshal requirement and the phrase "in like manner as other process of the court" by reading the marshal requirement as governing *who* can complete service and the latter phrase as governing the method the marshal may employ to complete it.

Section 9's marshal requirement does not expressly contradict or irreconcilably conflict with the current Federal Rules, which still allow for service by a U.S. marshal if the court so orders, and still mandates service by a U.S. marshal where *Rule 4.1* applies. *Accord Logan & Kanawha Coal Co., LLC v. Detherage Coal Sales, LLC*, 789 F. Supp. 2d 716, 720-22 (S.D.W. Va. 2011) (holding that Rule 4 did not implicitly repeal § 9's marshal requirement and listing several contemporary instances where courts can still order marshal service). Accordingly, we hold that later amendments to the Federal Rules of Civil Procedure did not implicitly repeal the marshal requirement in § 9's nonresident service provision and that it is still valid where it applies. [3]

---

[3] We avoided answering this question more than a decade ago. *See Kirby Morgan Dive Sys., Inc. v. Hydrospace, Ltd.*, 478 Fed. App'x 382, 383 (9th Cir. 2012) *(declining to "address whether . . . service of [a] petition for confirmation . . . complied with . . . § 9"). But district courts within our circuit have continued to struggle with it. See, e.g., LG Elecs.*, 2018 U.S. Dist. LEXIS 75284, 2018 WL 2059559, at *3.

C. Section 9's Nonresident Service Provision Does Not Provide a Viable Method of Service on Adverse Parties Who Are Not Available for Service in the United States.

Despite lower court disagreement over whether § 9's marshal requirement has survived into the present day, there is an emerging consensus among district courts that § 9's nonresident service provision does not apply to adverse parties located outside the United States because service by a U.S. marshal outside of the territorial United States is impossible. *See, e.g., InterCarbon*, 146 F.R.D. at 67 ("The problem [with the marshal requirement] is that foreign parties will not necessarily be found in *any* district. Requiring parties to satisfy [it] might amount to requiring them to do the impossible."); *Technologists, Inc. v. MIR's Ltd.*, 725 F. Supp. 2d at 126 (observing the same); *PTA-FLA, Inc. v. ZTE USA, Inc.*, 2015 U.S. Dist. LEXIS 187448, 2015 WL 12819186, at *7 (M.D. Fla. Aug. 5, 2015) (noting that § 9's nonresident service provision "arguably does not include any method for service on foreign parties at all since [such parties] will not necessarily be found in *any* district" (internal citations and quotation marks omitted)), *aff'd*, 844 F.3d 1299 (11th Cir. 2016).

This emerging consensus among lower courts is well-founded. By ratifying the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) and enacting Chapter 2 of the FAA, Congress clearly intended for international arbitral awards to be confirmable in the courts of the United States. *See Jones Day v. Orrick,*

Herrington & Sutcliffe, LLP, 42 F.4th 1131, 1133 (9th Cir. 2022). However, § 9's nonresident service provision requires service of a notice of application to confirm an arbitral award to be made by the marshal of the district within which the adverse party may be found. *See* U.S.C. § 9. This requirement, in effect, requires prevailing parties to do the impossible when a nonresident adverse party cannot be found for service of process in any judicial district of the United States. In that circumstance, requiring service by the marshal of the district within which the adverse party may be found would disallow a federal court from ever exercising personal jurisdiction over an adverse party and prevent it from confirming an arbitral award governed by the New York Convention. That result would necessarily conflict with 9 U.S.C. § 207, which requires a federal court to confirm an award governed by the Convention "unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention." 9 U.S.C. § 207. Applying § 9's nonresident service provision to adverse parties located outside of the United States would also be repugnant to the entire purpose of Chapter 2, which Congress "enacted . . . to provide for the effective and efficient resolution of international arbitral disputes after the United States entered into the [New York] Convention . . . ." *Jones Day, 42 F.4th at 1133.*

How do we resolve this irreconcilable conflict? Section 208 of Chapter 2 instructs that Chapter 2 only incorporates § 9 "to the extent that [§ 9] is not in conflict with [Chapter 2] or the Convention as ratified by the United States." 9 U.S.C. § 208. Therefore, we

conclude that Congress did not intend to incorporate § 9's nonresident service provision into Chapter 2 of the FAA in circumstances where nonresident adverse parties cannot be found for service within the United States. Accordingly, we hold that § 9's nonresident service provision does not apply to the service of notice of an application to confirm a foreign arbitral award governed by the New York Convention if the adverse party is not available for service in any judicial district of the United States at the time of service.

D. Section 6 of the FAA and Federal Rule of Civil Procedure 5(b) Fill the Gap Left by § 9, Not Rule 4.

When § 9 does not apply, what stands in its place? Many courts, including the Second Circuit, have concluded that Rule 4 necessarily fills the gap. *See, e.g., InterCarbon*, 146 F.R.D. at 67 (ruling that Rule 4, and not Rule 5, is "the proper fallback provision" where the FAA provides "no method of service for foreign parties not resident in any district of the United States"); *Technologists, Inc. v. MIR's Ltd.*, 725 F. Supp. 2d at 127 (same); C*ommodities & Mins. Enter. Ltd. v. CVG Ferrominera Orinoco, C.A.*, 49 F.4th 802, 812 (2d Cir. 2022), cert. denied, 143 S. Ct. 786, 215 L. Ed. 2d 52 (2023) (noting that "[i]t is well established" in the Second Circuit that "Rule 4 sets forth the basic procedures for serving process in connection with arbitral awards").

However, those courts discount § 6 of the FAA, which states that "[a]ny application to the court hereunder shall be made and heard in the manner provided by law for the making and hearing of

motions, except as otherwise herein expressly provided." 9 U.S.C. § 6. Those courts also ignore other applicable language from § 9, which requires only that "[n]otice of [an] application" to confirm an arbitral award "be served upon the adverse party" before "the court shall have jurisdiction of such party as though he had appeared generally in the proceeding." 9 U.S.C. § 9. A prevailing party need not serve an adverse party with summons for the forum court to exercise personal jurisdiction over the adverse party. All that needs to be served is "[n]otice of the application . . . ." *Id.*

Because § 9's nonresident service provision does not provide a viable method of service of notice on adverse parties who are not available for service within the United States, we must rely on § 6's statutory mandate that "[a]ny application to the court hereunder shall be made and heard in the manner provided by law for the making and hearing of motions . . . ." 9 U.S.C. § 6. That language plainly refers to the reigning rules governing service of written motions and notices in federal court, which today is found in Rule 5. See Fed. R. Civ. P. 5(a)(1)(D), (E). Accordingly, we hold that Rule 5(b)—the federal procedural law governing how service of a motion is made, Fed. R. Civ. P. 5(b)—is the default rule for serving notice of an application to confirm an award when § 9 conflicts with Chapter 2.

Gussi SA's reliance on *Technologists*, 725 F. Supp. 2d, and other district court cases finding that Rule 4 governs service of such applications is unavailing. In *Technologists*, the District Court for the District of Columbia rejected the view that Rule 5 governs the

service of notice of applications to vacate [4] arbitral awards on adverse parties unavailable for service within the United States because if Rule 5 governed, "foreign parties could be served by mail, whereas domestic parties who reside in another judicial district would" benefit from the heightened protections of §§ 9 and 12's nonresident service provisions [5] "which generally do[] not permit service by mail[]." *Id.* at 127. The court stated that such an outcome "is not a logical reading of the FAA's service provisions" and held that Rule 4 governs service of notice on a foreign adverse party. *Id.*

The court did so despite the plain language of § 6, which instructs that "[a]ny application to the court hereunder shall be made and heard in the manner provided by law for the making and hearing of motions . . . ." 9 U.S.C. § 6. To justify its approach, the court asserted that § 6 "merely ensures that motions to vacate or confirm arbitral awards are not subject to the pleading requirements of the Federal Rules of Civil Procedure and enables judges to decide arbitration issues on an expedited basis," and has nothing to do with how notice of such motions are served. *Technologists, 725 F. Supp. 2d at 127*. But the

---

[4] 9 U.S.C. § 12 governs service of notice of an application to vacate, correct, or modify an arbitral award and contains identical provisions regarding service on resident and nonresident adverse parties.

[5] The *Technologists* court also concluded that Rule 4 displaced the marshal requirement in § 12's nonresident service provision, such that § 12's nonresident service provision mandates the application of Rule 4. See 725 F. Supp. 2d at 127.

court's narrowing construction does not withstand scrutiny. By referring to the "law for the making . . . of motions" in § 6, Congress clearly invoked the procedural law governing the making of motions in federal court. It is axiomatic that making a motion in federal court requires giving notice to the nonmovant. To facilitate such notice, the moving party must generally serve it on the other parties to the litigation in accordance with Rule 5. See Fed. R. Civ. P. 5(a)(1). Pursuant to the plain language of the FAA, that default rule applies unless the FAA "provides otherwise." 9 U.S.C. § 6.

A court's discomfort, as a matter of policy, that the default rule under the FAA allows for service of notice of applications to confirm an arbitral award pursuant to the "law for the making . . . of motions" does not authorize that court to narrow the commands of the FAA to the effect of ignoring them. As the Supreme Court has instructed, "[e]ven the most formidable policy arguments cannot overcome a clear statutory directive[]" in the FAA. *Badgerow, 596 U.S. at 16*. As a court, we "have no warrant to redline the FAA," *id. at 11*, importing *Rule 4*'s procedural protections, which generally apply to the service of summons into § 9 of the FAA, which does not require the service of summons, cf. id. (criticizing lower courts for "importing . . . consequential language" from § 4 of the FAA "into [other] provisions containing nothing like it"). [6] Accordingly, we reject Gussi SA's argument that

---

[6] Even if we could privilege policy-based arguments in construing the FAA, we would still reject importing the protections of Rule 4 into the FAA. "The overarching purpose of the FAA . . . is to

Rule 4 is the proper fallback provision where § 9's nonresident service provision does not apply.

E. Gussi SA Insisted It Was Not Available for Service in the United States. Voltage Could Therefore Effect Service by Mailing its Motion Papers to Gussi SA's Attorney Pursuant to *Rule 5(b)*.

In its first motion to quash service of the confirmation application, Gussi SA insisted that it had to be served in compliance with Federal Rule of Civil Procedure 4(f) because it is "a non-resident and foreign adversary" not available "for service . . . at any location . . . within a judicial district of the United States." In its second motion to quash service, Gussi SA maintained that it could not be served in the United States and further represented to the district court that it is not registered to do business in California, thereby relieving it of the obligation under California law to have a registered agent for service of process in the state. *See* Cal. Corp. Code § 2105(a)(6). Gussi SA's past representations about its inability to be served in the United States alone are sufficient for us to conclude that Gussi SA could not be found for service of process in the United States, and thus § 9's nonresident service provision does not apply.

---

ensure the enforcement of arbitration agreements according to their terms so as to facilitate streamlined proceedings." *Concepcion*, 563 U.S. at 344. Importing Rule 4 into the FAA as the default rule for serving notice of applications to confirm arbitral awards does not streamline the confirmation of them. Doing so hinders their confirmation, as is evident through Gussi SA's litigation conduct after it lost an arbitration that it fully participated in.

Accordingly, Voltage only needed to serve the motion "in the manner provided by the law for the making . . . of motions," 9 U.S.C. § 6, which in federal district court is Rule 5. Rule 5 provides that "[i]f a party is represented by an attorney, service under this rule must be made on the attorney . . . ." Fed. R. Civ. P. 5(b)(1). It further provides that "[a] paper is served under this rule by . . . mailing it to the person's last known address—in which event service is complete upon mailing." Fed. R. Civ. P. 5(b)(2), (C). In this case, it is undisputed that Voltage mailed its motion papers to the attorneys who represented Gussi SA in the underlying arbitration shortly before filing the motion in federal court. Accordingly, the application to confirm the award was sufficiently served in accordance with § 6 and Rule 5. Service of notice was thus sufficient under federal law, and the district court "ha[d] jurisdiction [over Gussi SA] as though [it] had appeared generally in the proceeding." 9 U.S.C. § 9. The district court was thus empowered to enter judgment against Gussi SA in confirming the award.[7]

---

[7] Gussi SA's argument that Voltage's service of notice violates the Inter-American Convention on Letters Rogatory is without merit. That convention only regulates the transmittal of judicial documents abroad. *See* 28 U.S.C. § 1781. Voltage's motion papers were not issued by a court and were not transmitted abroad when they were mailed to Gussi SA's attorneys, who received the papers in the United States. Gussi SA's related argument that such service is inconsistent with the Hague Convention is immaterial, because on the same page in its opening brief, Gussi SA plainly acknowledges that in signing the DLA, it waived application of the Hague Convention.

IV. The District Court Did Not Abuse Its Discretion When It Declined to Extend Comity to a Purported Mexican Court Order.

On appeal, Gussi SA also challenges the district court's decision not to take judicial notice of a document that Gussi SA claimed was a court order from Mexico enjoining Voltage from seeking to confirm the award in the United States. However, as the district court correctly noted, Gussi SA did not certify the genuineness of the document purporting to be a Mexican court order or the accompanying translation.

In its opening brief on appeal, Gussi SA fails to challenge either of those reasons stated by the district court for refusing to notice the order. Gussi SA only argues in general that the district court erroneously interpreted Federal Rule of Evidence 201 and fails to make any mention of the procedural and evidentiary rules upon which the district court relied, such as Federal Rule of Civil Procedure 44(a)(2)(A)(ii) or Federal Rules of Evidence 604 and 902(3). Therefore, Gussi SA fails to carry its heavy burden to show that the district court abused its discretion when it decided not to take judicial notice of the purported court order from Mexico. There was no judicially noticeable court order to which the district court could have extended comity.

Accordingly, we affirm the district court's denial of Gussi SA's request to stay or dismiss the case.

Because Gussi SA's failure to certify the genuineness of the court order and its accompanying translation is sufficient to affirm the district court's denial, we need not reach the substantive question of international comity raised by Gussi SA on appeal.

CONCLUSION

For the foregoing reasons, we **AFFIRM** the district court's judgment confirming the arbitral award in favor of Voltage. Gussi SA shall bear Voltage's costs on appeal. *See* Fed. R. App. P. 39(a)(2).