No. 23-

IN THE

Supreme Court of the United States

FANG ZENG,

Petitioner,

v.

ANQIN WANG AND MINGAN CHEN, *et al.*,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In these federal cases Plaintiffs could not locate Defendant in California for personal service of process, because at all times Defendant was a resident and citizen of China. Plaintiffs had reasons to know or suspect that Defendant was in China, but made no effort to locate her there. The District Court permitted either substituted service in California, or service by publication in California, pursuant to California law under Federal Rule of Civil Procedure 4(e)(1). This resulted in default judgments against Defendant.

When Plaintiffs have reason to believe that Defendant may be located and served in a foreign country, do the Due Process Clauses of the Fifth and Fourteenth Amendments require Plaintiffs to conduct a reasonably diligent search for Defendant in that foreign country before substitute service or service by publication are permissible?

LIST OF PARTIES

The parties named in the two proceedings below:

A. *Chen v. California Investment Immigration Fund*, 22-56101

1. Plaintiffs/Appellees (herein Respondents):

MINGAN CHEN
YANMEI DAI
LI GE
PENGMING GUAN
HONG JI
HUI JIANG
YINSHAN LAN
ZHIQUAN PU
JUE WANG
ZI WANG
YI ZHANG
CHANGDING ZHAO
JUN HUANG
YANHONG CHEN
WEI YANG

2. Defendant/Appellant (herein Petitioner):

FANG ZENG

3. Defendants not participating in this petition for certiorari:

CALIFORNIA INVESTMENT
IMMIGRATION FUND

VICTORIA CHAN
HARRIS LAW GROUP, USA LLC
TAT CHAN
ZHENG CHANG
THE HARRIS GROUP III, LP

B. *Wang v. California Investment Immigration Fund*, 22-56141

1. Plaintiff and appellee (herein Respondent):

   ANQIN WANG

2. Defendant and appellant (herein Petitioner):

   FANG ZENG

3. Defendants not participating in this petition for certiorari:

   CALIFORNIA INVESTMENT
   IMMIGRATION FUND, LLC
   HARRIS LAW GROUP, USA LLC
   TAT CHAN
   ZHENG CHANG
   HARRIS GROUP, LP

RELATED CASES

Proceedings in other courts directly related to these cases:

Chen v. California Investment Immigration Fund, 22-56101 U.S. District Court for the Central District of California. Order denying Zeng's motion to set aside default and default judgment, filed November 10, 2022.

Chen v. California Investment Immigration Fund, 22-56101 U.S. Court of Appeals for the Ninth Circuit. Opinion affirming the District Court's order, filed December 11, 2023.

Chen v. California Investment Immigration Fund, 22-56101 U.S. Court of Appeals for the Ninth Circuit. Order denying Zeng's petition for rehearing, filed January 2, 2024.

Wang v. California Investment Immigration Fund, 22-56141 U.S. District Court for the Central District of California. Order denying Zeng's motion to set aside default and default judgment, filed November 10, 2022.

Wang v. California Investment Immigration Fund, 22-56141 U.S. Court of Appeals for the Ninth Circuit. Opinion affirming the District Court's order, filed December 11, 2023.

Wang v. California Investment Immigration Fund, 22-56141 U.S. Court of Appeals for the Ninth Circuit. Order denying Zeng's petition for rehearing, filed January 24, 2024.

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Opinion of the Court of Appeals for the Ninth Circuit affirming the District Court's order, filed December 11, 2023: Not Reported in Fed. Rptr.; 2023 WL 8542619.

Order of the Court of Appeals for the Ninth Circuit denying Zeng's petition for rehearing, filed January 2, 2024: Not Reported in Fed. Rptr.

2. *Wang v. California Investment Immigration Fund*, 22-56141

Order of the District Court for the Central District of California denying Zeng's motion to set aside default and default judgment, filed November 10, 2022: Not Reported in Fed.Supp.; 2022 WL 17491820.

Opinion of the Court of Appeals for the Ninth Circuit affirming the District Court's order, filed December 11, 2023: Not Reported in Fed. Rptr.; 2023 WL 8542627.

Order of the Court of Appeals for the Ninth Circuit denying Zeng's petition for rehearing, filed January 24, 2024: Not Reported in Fed. Rptr.

BASIS FOR JURISDICTION

For both cases, the Ninth Circuit entered its opinions affirming the denial of Zeng's motions to set aside the defaults and default judgments on December 11, 2023.

For both cases, the Ninth Circuit entered its orders denying Zeng's petitions for rehearing on January 24, 2024.

On April 18, 2024 Zeng's application to extend time to file her petition for writ of certiorari was granted by Justice Kagan, extending the time to file until June 22, 2024.

This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment V states in part:

> No person shall be . . . deprived of life, liberty, or property, without due process of law. . . .

United States Constitution, Amendment IV states in part:

> No State shall . . . deprive any person of life, liberty, or property, without due process of law. . . .

Federal Rules of Civil Procedure, rule 4(e)(1) states in part:

> (e) Unless otherwise provided by federal law, service upon an individual from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected in any judicial district of the United States:
>
> > (1) pursuant to the law of the state in which the district court is located, or in which service is effected, for the service of a summons upon the defendant in an action brought in the courts of general jurisdiction of the State. . . .

California Code of Civil Procedure section 415.20(b) states in part:

> If a copy of the summons and complaint cannot with reasonable diligence be personally delivered to the person to be served . . . a summons may be served by leaving a copy of the summons and complaint at the person's dwelling house, usual place of abode, usual place of business, or usual mailing address other than a United States Postal Service post office box, in the presence of a competent member of the household or a person apparently in charge . . . and by thereafter mailing a copy of the summons and of the complaint by first-class mail, postage prepaid to the person to be served

> at the place where a copy of the summons and complaint were left. . . .

California Code of Civil Procedure section 415.50(a) states in part:

> A summons may be served by publication if upon affidavit it appears to the satisfaction of the court in which the action is pending that the party to be served cannot with reasonable diligence be served in another manner specified in this article. . . .

STATEMENT OF THE CASE

Chen v. California Investment Immigration Fund, 22-56101

On September 27, 2017, Chen and others filed their complaint in the U.S. District Court for the Central District of California against Zeng and others. Plaintiffs accused defendants of a scheme to defraud them: Allegedly defendants had a business to help Chinese nationals obtain permanent U.S. residency through the U.S. EB-5 visa program, but instead pocketed plaintiffs' money. Zeng was at all times a resident and citizen of China.

On December 8, 2017, Chen filed a proof of service on Zeng. Chen asserted that after a reasonably diligent search he was unable to personally serve Zeng. He supposedly effected substituted service by putting the summons in the mailbox of Victor Chan, who is related to some co-defendants. As noted, Zeng was at all relevant times in China.

On December 11, 2017, Chen applied for and was granted entry of default. On February 27, 2018 the District Court filed its default judgment against Zeng and other defendants. The court found defendants jointly and severally liable to plaintiffs for $26,730,400, including $20,000,000 in punitive damages.

Zeng learned of the default judgment years later, when Chen sought to enforce it in China. (All of a sudden it wasn't so hard to locate defendant in China.) On June 20, 2022 Zeng moved to set aside the default and default judgment against her. Zeng argued that there was no effective service of process on her. Therefore, the District Court lacked personal jurisdiction over her, and consequently the default judgment is void.

On November 10, 2022 the District Court denied Zeng's motion to set aside.

Zeng appealed that ruling to the Ninth Circuit Court of Appeals. On December 11, 2023, the appellate court affirmed the order denying Zeng's motion to set aside. On January 24, 2024, the Court of Appeals denied Zeng's petition for rehearing.

***Wang v. California Investment Immigration Fund*, 22-56141**

Wang is similar to *Chen* in all relevant respects.

On December 12, 2017, Wang filed his complaint in the U.S. District Court for the Central District of California against Zeng and others. Plaintiff accused defendants of a scheme to defraud them: Allegedly defendants had a business to help Chinese nationals obtain permanent

U.S. residency through the U.S. EB-5 visa program, but instead pocketed plaintiff's money. Zeng was at all times a resident and citizen of China.

On April 24, 2018 the District Court granted Wang's motion for service on Zeng by publication after Wang claimed that after a reasonably diligent search he couldn't find Zeng. As noted, Zeng was at all relevant times in China.

On June 19, 2018, Wang applied for entry of default, which was granted on June 20, 2018. On July 30, 2018 the District Court filed its default judgment against Zeng and other defendants. The court found defendants jointly and severally liable to plaintiffs for $1,800,000, including $1,240,000 in punitive damages.

Zeng learned of the default judgment years later when Wang sought to enforce it in China. (All of a sudden it wasn't so hard to locate Zeng in China.) On June 22, 2022 Zeng moved to set aside the default and default judgment against her. Zeng argued that there was no effective service of process on her. Therefore, the District Court lacked personal jurisdiction over her, and the default judgment is void.

On November 10, 2022 the District Court denied Zeng's motion to set aside.

Zeng appealed that ruling to the Ninth Circuit Court of Appeals. On December 11, 2023, the appellate court affirmed the order denying Zeng's motion to set aside.

On January 24, 2024, the Court of Appeals denied Zeng's petition for rehearing.

REASONS TO GRANT THE WRIT

1. The Court should decide whether the Due Process Clauses' requirement that plaintiff use "reasonable diligence" to locate defendant for personal service has any geographic limitation.

A. Introduction.

This case presents an opportunity to clarify an important point in civil litigation that potentially affects every lawsuit filed in the United States: The extent of a plaintiff's responsibility to try to personally serve defendant with service of process, when plaintiff knows or suspects defendant can be found abroad.

Virtually all jurisdictions require plaintiffs to exercise "reasonable diligence" to locate defendants for service of process. However, they do not explicitly state that the reasonable diligence standard applies when plaintiff knows or believes that defendant can be located outside of the United states.

In addition, state and federal cases apply the reasonable diligence standard inconsistently, and in some cases, inconsistently with due process. This Court should bring uniformity to this area of the law.

B. The majority view is that due process requires reasonable diligence to locate defendant for service of process.

The essential purpose of service of process is to inform the defendant that plaintiff is suing her:

> [T]he core function of service is to supply notice of the pendency of a legal action, in a manner and at a time that affords the defendant a fair opportunity to answer the complaint and present defenses and objections."

Henderson v. U.S., 517 U.S. 654, 671 (1996).

Due process is the fundamental value that undergirds the notification element of service of process:

> Many controversies have raged about the cryptic and abstract words of the Due Process Clause but there can be no doubt that at a minimum they require that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313 (1950.)

Thus, due process requires plaintiff to do more than go through the motions. "[W[hen notice is a person's due, process which is a mere gesture is not due process." *Mullane v. Central Hanover Bank & Trust Co.,* 339 U.S. 306, 315 (1950).

This is usually expressed, in statutes, rules and case law, as a requirement of "reasonable diligence." What counts as reasonable diligence in any particular case is a fact-bound inquiry. *Birdsell v. Holiday Inns*, 852 F.2d 1078, 1081 (8th Cir. 1988). Nevertheless, per *Mullane*, the Due Process Clauses control the parameters of what sort of diligence is constitutionally reasonable.

(This is a distinct and separate issue from the due process/personal jurisdiction question of whether defendant has sufficient *minimum contacts* with the forum state. This petition does not concern that question.)

What is reasonable diligence? One good answer is:

> The test of reasonable diligence is whether the complainant *reasonably employed knowledge at his or her command*, made diligent inquiry, and exerted an honest and conscientious effort appropriate to the circumstances, to acquire the information necessary to enable him or her to effect personal service on the defendant.

Benavente v. Ocean Village Property Owners Ass'n, Inc., 260 So. 3d 313, 316 (Fla. App. 2018), emphasis added); *accord*, *Matter of J.N. In Interest of C.G.*, 518 P.3d 788, 793 (Colo. App. 2022).

Plaintiff cannot be considered diligent if he closes his eyes to the facts available to him.

Petitioner's cases present the question of whether the duty of reasonable diligence has any geographic

boundaries. If plaintiff knows or suspects that defendant is in, for example, China, must plaintiff perform a reasonably diligent search for defendant in China before resorting to substitute service/service by publication?

The United States Supreme Court has not addressed this issue. However, the Court *has* observed that service by publication is usually futile: the Court has said that chance alone brings a defendant's attention to "an advertisement in small type inserted in the back pages of a newspaper." Therefore, notice by publication is unacceptable unless "it is not reasonably possible or practicable to give more adequate warning." *Jones v. Flowers*, 547 U.S. 220, 237 (2006). This, too, is an aspect of due process.

The majority view in the states is, at least impliedly, that reasonable diligence does not stop at the nation's frontiers. Sometimes by statute, mostly by rule, the states require reasonable diligence before service by publication may be had. They do not state, "not only in the United States," or "without geographic limit," or "including defendants living abroad." But that is a fair interpretation of the language. It is arguably the only reasonable interpretation.

However, a minority of courts, including the Ninth Circuit in Petitioner's cases, have taken the contrary view, despite the fact that the reasonable diligence requirement is never framed in terms of "in this state," "only within the United States," or similar limiting expressions. The Supreme Court should step in, approve the majority view and make the international scope of the duty of reasonable diligence explicit, which is now merely implicit.

C. The reasonable diligence requirement for service of process is not explicitly applied to foreign defendants. But due process demands it.

There are state laws governing service of process that require a diligent search for the defendant before permitting substitute service or service by publication. They do not explicitly restrict that search geographically.

For example, California Code of Civil Procedure section 415.20(b) states in part:

> If a copy of the summons and complaint cannot with *reasonable diligence* be personally delivered to the person to be served . . . a summons may be served by leaving a copy of the summons and complaint at the person's dwelling house. . . .

(Emphasis added.)

Similarly, California Code of Civil Procedure section 415.50(a) states in part:

> A summons may be served by publication if upon affidavit it appears to the satisfaction of the court in which the action is pending that the party to be served cannot with *reasonable diligence* be served in another manner specified in this article

(Emphasis added.)

Many states prefer to embed the reasonable diligence requirement in their court rules, rather than in a statute.

For example, under Mississippi Rules of Civil Procedure, rule 4(d), substitute service is permitted "if service . . . cannot be made with reasonable diligence. . . ."

North Carolina Rules of Civil Procedure, rule 4(j) states: "A party that cannot with due diligence be served by personal delivery, registered or certified mail, or by a designated delivery service . . . may be served by publication."

Ohio Civil Rules, rule 4.4 provides that "when service of process is required upon a party whose residence is unknown, service shall be made by publication in actions where such service is authorized by law. . . . The affidavit shall aver that . . . that the residence of the party to be served, cannot be ascertained with reasonable diligence."

These rules, like many others like them, place no geographic limitation on where plaintiff should look. Due process permits no such limits. Plaintiff must perform a reasonably diligent search wherever he knows or believes defendant can be served.

California state courts clearly uphold the rule Petitioner advocates: plaintiff must search with reasonable diligence abroad, when he has reason to believe defendant is abroad. For example, in *Kott v. Superior Court*, 45 Cal. App.4th 1126 (1996), plaintiff made no effort to locate defendant's address in Canada after discovering that defendant was Canadian national. The Court of Appeal held that attempted service of process by publication was ineffective. *Id.* at 1138.

Similarly, in *In re R.L.*, 4 Cal.App.5th 125 (2016) the court noted that Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters does not apply where the address of the person to be served is not known. However, a plaintiff is first required to exercise reasonable diligence to ascertain a defendant's whereabouts. *Id*. at 147. Only after a reasonably diligent search in the country in question comes up dry may plaintiff resort to service by publication. This is important because, as explained below, the Hague Service Convention potentially applies to the majority of foreign defendants.

Florida case law is comparable. In *De Vico v. Chase Manhattan Bank*, 823 So.2d 175 (App. Fla. 2002), a default judgment following constructive service was reversed because plaintiff attempted service in New York; after plaintiff was informed that defendant had moved to Florida, he made no additional efforts to personally serve defendant. *Id*. at 176. Plaintiff 's knowledge that defendant was somewhere in Florida required it to perform a reasonably diligent search for defendant in Florida.

There is nothing in the *De Vico* court's reasoning suggesting any relevant difference between Florida (or any other state) and China (or any other country) that would require a different result.

Similarly, in the Utah case of *Jackson Const. Co. Inc. v. Marrs*, 100 P.3d 1211, 1217 (Utah 2004), the state Supreme Court held that reasonable diligence may include searching out-of-state:

> In a case such as this, involving out-of-state defendants, a plaintiff might attempt to

> locate the defendants by checking telephone directories and public records, contacting former neighbors, or engaging in other actions suggested by the particular circumstances of the case. Advances in technology, such as the Internet, have made even nationwide searches for known individuals relatively quick and inexpensive.

Id. at 1217.

The Due Process Clauses do not limit the need for a reasonably diligent search to the forum state. If they require a search of other *states*, there is no logic to exclude other *countries*.

In transnational cases, the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters is often invoked. 20 U.S.T. 361 (U.S.T.1969). Currently 84 nations are signatories to the convention, including the United States' important trade partners. *Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*, **H**ague **C**onference on Private International Law, https://www.hcch.net/en/instruments/conventions/status-table/?cid=17 (2024).

Judicial treatment of the Convention's terms sheds light on the constitutional reasonable diligence requirement. The Hague Service Convention does not apply if the foreign defendant's address is unknown. But in order for an address to be "not known" per the Hague Service Convention, the Second Circuit, among others, has ruled that the plaintiff must have exercised reasonable diligence in attempting to discover a physical

address for service of process, and was unsuccessful in doing so. *Smart Study Co. v. Acuteye-Us,* 620 F.Supp.3d 1382, 1391 (S.D.N.Y. 2022). This is because of due process considerations.

The Fifth Circuit agrees, finding no reasonable diligence when plaintiff testified that he hired an attorney to search for defendant in Torreon, Mexico, but presented no evidence regarding the scope or thoroughness of that search. *Opella v. Rullan*, 2011 WL 2600707, 5 (S.D. Fla. 2011); *accord, U.S. v. Real Property Known As 200 Acres of Land Near FM 2686 Rio Grande City, Tex.*, 773 F.3d 654, 659 (5th Cir. 2014)

The courts of the Seventh Circuit also require reasonable diligence in searching abroad for defendant, as shown in *NBA Properties, Inc. v. Partnerships and Unincorporated Associations Identified in Schedule "A"*, 549 F.Supp.3d 790 (N.D. Ill. 2021):

> Plaintiffs' bare assertions regarding the reliability of Defendant's publicly available address are not a substitute for actual diligence. Plaintiffs do not claim that they conducted any diligence to verify the address Defendant posted on Amazon. Plaintiffs do not even claim that they found that address before it asked the Court to allow for alternative means of service. Plaintiffs therefore did not conduct the type of diligence courts have found sufficient to hold that a defendant's address was "not known" for the purpose of the [Hague Service] Convention.

Id. at 796.

Once more, there is no logic that would limit the *Marrs* court's reasoning to include other states, but not other countries. However, because cases involving out-of-state defendants are more common than those with international defendants, many courts have not had an opportunity to apply the reasonable diligence requirement in their statutes and rules to foreign defendants. The Supreme Court, sitting at the apex of the national judiciary, is best suited to settle an issue with international implications such as this.

D. The cases are in conflict over the application of the reasonable diligence requirement to foreign defendants.

The federal circuits clash, insofar as a minority do not impose a reasonable diligence requirement on service of foreign defendants.

For example, in a creditor's action to enforce a guarantor's personal guarantee for defaulted business loans against the defendant-guarantor, who was believed to reside in Pakistan, the Fourth Circuit in *BP Products North America, Inc. v. Dagra*, 236 F.R.D. 270 (E.D. Va. 2006), held that service by publication in two Pakistani newspapers was reasonably calculated to provide the defendant with sufficient notice of the creditor's action so as to satisfy due process. The court held that the Hague Service Convention does not apply when a defendant's address is unknown and attempts at service have been futile. The court imposed no duty to perform a diligent search in Pakistan.

The Ninth Circuit is also out-of-step with the weight of authority. For example, in *Yates v. Yee Mei Cheung*, 2012 WL 3155700 (N.D. Cal. 2012), the court stated:

> Here, Plaintiff was told that the Cheungs might be overseas. However, he was unable to discover any known address in China, and, furthermore, was also confronted with a number of addresses in California, as well as an active P.O. Box in California, all of which suggested the landlords might not be in China at all.

Id. at *5.

In *Yates* little or no diligence is demanded; despite information that defendants might be in China, the court permitted service by publication on the strength of "a number of addresses in California," despite the fact that defendant could not in fact be found in California, and was therefore likely to be in China – very much like Petitioner's cases.

It is not just federal courts holding that reasonable diligence can be bound geographically without denying due process. In *Eto v. Muranaka*, 57 P.3d 413, 420 (Hawaii 2002) the Hawaiian Supreme Court made no finding of reasonable diligence before concluding that the Hague Service Convention was inapplicable. Petitioner contends that this violates the Due Process Clauses.

E. The Ninth Circuit violated Petitioner's due process rights.

In Petitioner's cases, neither the District Court nor the Ninth Circuit followed applicable California law, such

as the *Kott* decision, *supra*. This is remarkable, given plaintiffs' reliance on Federal Rule of Civil Procedure 4(e)(1), providing for service of process *pursuant to state law*. The District Court permitted substitute service and service by publication, despite plaintiffs' knowledge of facts that indicated Petitioner could be served in China. Some examples of these facts:

- Before plaintiff Chen invested with California Investment Immigration Fund – and therefore before he filed his action – Chen received a CIIF brochure. *That brochure told Chen where to find Zeng – 362 Huanshi East Road, Haoshijie Plaza, Suite 2708, Guangzhou City, Guangdong Province.*

- Zeng at one time owned a house in the City of Arcadia, County of Los Angeles. The deed of trust is a public document. That deed of trust states that Zeng's address is "FLAT F 22/F RICHLAND TOWER, TOWER 2 NO. 288 HENG FU RD, GUANGZHOU GUANGDONG, CN 51009-5."

The courts below erroneously excused Plaintiffs from any duty of reasonable diligence that their knowledge should have imposed, and due process should have demanded.

F. Why the Supreme Court should grant review of Petitioner's cases.

Petitioner's cases are well-suited for Supreme Court review, because (1) they are relatively easy to decide, while (2) the issue they present is of great importance.

(1) Easy to decide. There is general agreement that due process demands a reasonably diligent effort to locate defendant for service of process. It would be a small step, conceptually and legally, for the Court to rule that the Due Process Clauses' reasonable diligence requirement has no geographic limits, and extends to a foreign country when plaintiff has reason to believe that defendant might be there.

This would ratify and make explicit the majority view, and the better view. But this would not be a dramatic upheaval in the law. Whether from a "textualist" perspective, or a "living Constitution" perspective, it would be a fairly easy opinion to write. But it would be the sort of nationally-harmonizing, Constitution-supervisory decision that only the Supreme Court can issue.

(2) Important issue. Removing the ambiguity and resolving the conflict in the circuits would be of enormous benefit to bench and bar, because it potentially affects so many litigants.

In the year ending March 31, 2023, there were 284,220 civil filings in the U.S. District Courts. *Federal Judicial Caseload Statistics 2023*, United States Courts, https://www.uscourts.gov/statistics-reports/federal-judicial-caseload-statistics-2023 (2023). It's been estimated that federal filings represent 1.5% of all cases filed in the United States. *Federal and State Caseload Trends*, Court Statistics Project, https://www.courtstatistics.org/court-statistics/state-versus-federal-caseloads (2024). That indicates in the neighborhood of *20,000,000* cases are filed in state and federal courts each year. *All of them require service of process*.

While an unknown percentage of cases involve a foreign defendant, the potential is always there. Business partners, business competitors, parent companies, subsidiary companies, insurance companies, employers, employees, manufacturers, suppliers, distributors, tortfeasors, real property owners, former spouses, parents, children, trustees, heirs – in our globalized and mobile world, virtually *any* case could have a defendant situated outside the United States, needing to be served.

(Such defendants may be U.S. citizens, living or working abroad. The due process issue cannot be resolved via a U.S. citizen/foreign citizen dichotomy.)

Moreover, the United Nations reckons that global trade was $32 trillion in 2022. *Global trade set to hit record $32 trillion in 2022, but outlook increasingly gloomy for 2023*, United Nations Conference on Trade and Development, https://unctad.org/news/global-trade-set-hit-record-32-trillion-2022-outlook-increasingly-gloomy-2023#:~:text=Global%20trade%20should%20hit%20a,by%20UNCTAD%20on%2013%20December (2022). The United States is the largest goods importer in the world. It is the second-largest goods exporter in the world (behind China). *Countries and Regions*, Office of the United States Trade Representative, https://ustr.gov/countries-regions#:~:text=The%20United%20States%20is%20the%202nd%20largest%20goods%20exporter%20in,(%24307.3%20billion)%20from%202021 (2024). In short, American commerce with the world – and the resulting potential for legal actions against foreign defendants – is flourishing.

Attorneys and judges in every state and circuit would benefit from enjoying greater certainty about the boundaries of the due process requirement of reasonable diligence for service of process. Only the Supreme Court can provide this certainty.

CONCLUSION

There is a lack of unanimity among the circuits and state courts on this important issue of due process. The majority of jurisdictions expect a reasonably diligent search for defendant, but are silent on whether plaintiff must search in foreign lands when plaintiff has reason to believe defendant is abroad. It's appropriate for the Court to harmonize these voices, and make explicit that due process admits of no frontiers to the obligation to diligently search for defendant in order to serve her.

This is not an unreasonable demand. Petitioner agrees that due process does not require "heroic efforts." *Dusenbery v. United States,* 534 U.S. 161, 170 (2002). But we don't live in former times, which might have required painstaking leafing through multiple volumes of physical telephone books, or going to a dim basement clerical office to peer into dusty public records. Reasonable diligence today can often be accomplished sitting behind one's own desk (or indeed, in bed in one's pajamas). The constitutional measure remains "reasonable diligence," not "heroic diligence" – but reasonable diligence is so much easier today than it used to be. Petitioner's suggested standard does not add an undue legal or practical burden on plaintiffs, while protecting the due process rights of defendants.

The Ninth Circuit opinions in Petitioner's cases makes it too easy for a plaintiff to look for a defendant where plaintiff knows defendant isn't, get a default judgment in the United States (where damages awards are likely to be higher) without defendant's knowledge, then go abroad to collect the money without defendant ever being able to put up a fair fight. This offends due process.

For the reasons stated above, Petitioner requests that the Supreme Court grant this petition for writ of certiorari.

June 24, 2024

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — MEMORANDUM OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED DECEMBER 11, 2023

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 22-56101

MINGAN CHEN, *et al.*,

Plaintiffs-Appellees,

v.

FANG ZENG,

Defendant-Appellant.

D.C. No. 2:17-cv-07149-MWF-RAO

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Michael W. Fitzgerald, District Judge, Presiding

December 7, 2023**, Submitted
Pasadena, California
December 11, 2023, Filed

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Appendix A

Before: WARDLAW, LEE, and BUMATAY, Circuit Judges.

Fang Zeng appeals the district court's denial of her motion to vacate the court's entry of default and default judgment against her under Federal Rule of Civil Procedure 60(b)(4). We have jurisdiction under 28 U.S.C. § 1291. We affirm.

We review the denial of a motion to vacate a judgment under Rule 60(b)(4) de novo, but we review the district court's factual findings about jurisdiction for clear error. *SEC v. Internet Sols. for Bus. Inc.*, 509 F.3d 1161, 1165 (9th Cir. 2007); *Panavision Int'l, L.P. v. Toeppen*, 141 F.3d 1316, 1320 (9th Cir. 1998).

Rule 60(b)(4) provides that a court may relieve a party from a final judgment if that judgment is void. Fed. R. Civ. P. 60(b)(4). While the text of Rule 60(c) says that a Rule 60(b) motion must be made within a "reasonable time," we have held that a party can seek to vacate a void judgment at any time. *Meadows v. Dominican Republic*, 817 F.2d 517, 521 (9th Cir. 1987) ("There is no time limit on a Rule 60(b)(4) motion aside a judgment as void"). And a judgment is void if it was entered against a defendant over whom the court lacked personal jurisdiction. *See, e.g., Ruiz v. Snohomish Cnty. Pub. Util. Dist. No. 1*, 824 F.3d 1161, 1165 (9th Cir. 2016). We thus turn to whether the district court had personal jurisdiction over Zeng when it entered judgment against her.

1. Plaintiffs' service of process on Zeng was proper. The Federal Rules of Civil Procedure permit service of

process in accordance with state law. Fed. R. Civ. P. 4(e)(1). And if a plaintiff cannot personally serve a defendant using reasonable diligence, California allows service by "leaving a copy of the summons and complaint at the person's . . . usual mailing address . . . in the presence of a competent member of the household . . . and by thereafter mailing a copy of the summons and complaint [to that address]." Cal. Code Civ. Proc. § 415.20(b).

After using reasonable diligence to personally serve Zeng, Plaintiffs' process server left a copy of the summons and complaint with Victor Chan, an employee of Zeng and a tenant at Zeng's usual mailing address in Arcadia, California. The process server then mailed a copy of the summons and complaint to that address. Zeng argues that Plaintiffs failed to exercise reasonable diligence when attempting personal service and that the Arcadia house was not her usual mailing address. Both arguments fail.

First, Plaintiffs exercised reasonable diligence in attempting to personally serve Zeng before serving her at her usual mailing address. "Ordinarily, two or three attempts at personal service at a proper place and with correct pleadings should fully satisfy the requirement of reasonable diligence and allow substituted service to be made." *Kremerman v. White*, 71 Cal. App. 5th 358, 373, 286 Cal. Rptr. 3d 283 (2021) (citation omitted). Here, the efforts of Plaintiffs' private investigators fully satisfy this requirement. Zeng retorts that service was improper because she resided in China, not California. But Zeng's cited case, *In re D.R.*, 39 Cal. App. 5th 583, 591, 252 Cal. Rptr. 3d 283 (2019), holds that service is improper when

a plaintiff *knows* that the defendant resides in another country. Here, Plaintiffs reasonably believed that Zeng resided in and could be served in California.[1]

Second, the district court did not clearly err in finding that the Arcadia house was Zeng's usual mailing address. According to Zeng's 2016 mortgage contract, Zeng used the Arcadia house as her mailing address. Zeng argues that the service was invalid because she had agreed to a consent judgment order forfeiting the Arcadia house to the U.S. government in September 2017. But the consent judgment order only authorized the U.S. to remove Zeng 30 days after giving her notice. There are two reasons to conclude that, when service was made in November 2017, the government had not yet removed Zeng. First, Victor Chan, her tenant, was still residing at the property. Second, Zeng reconveyed the property in March 2019.

2. Zeng's argument that the Hague Convention on Service should have applied fails. "Where service on a domestic agent is valid and complete under both state law and the Due Process clause, our inquiry ends and the [Hague] Convention has no further implications."

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1. Zeng was the chairwoman of the California Immigrant Investment Fund, a California-incorporated entity with its principal place of business in Los Angeles. Zeng also obtained mortgages on her Arcadia property in 2011 and 2016 which indicate her agreement to occupy the property as her principal residence and which designate it as her mailing address. That a deed of trust from 2011 lists a Chinese address, and that certain plaintiffs met Zeng in China at some point, are insufficient to show that Plaintiffs knew Zeng resided in China.

Volkswagenwerk Aktiengesellschaft v. Schlunk, 486 U.S. 694, 707, 108 S. Ct. 2104, 100 L. Ed. 2d 722 (1988). Service of process was valid under California law. And service was valid under the Due Process Clause because it was "reasonably calculated . . . to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 261, 130 S. Ct. 1367, 176 L. Ed. 2d 158 (2010) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 94 L. Ed. 865 (1950)). The district court did not err by determining that the Hague Convention on Service did not apply.

Because we find that service of process was proper, we do not reach the issues of whether Zeng consented to personal jurisdiction in California or whether collateral estoppel applies. The district court had personal jurisdiction over Zeng when the judgment was entered. The judgment is not void.

AFFIRMED.

APPENDIX B — ORDER DENYING MOTION TO SET ASIDE DEFAULT AND DEFAULT JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, FILED NOVEMBER 10, 2022

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV-17-7149-MWF (RAOx)

Date: November 10, 2022

Title: Mingan Chen et al. v. California Investment Immigration Fund, LLC et al.

Proceedings (In Chambers): ORDER DENYING MOTION TO SET ASIDE DEFAULT AND DEFAULT JUDGMENT [36]

Before the Court is Defendant Fang Zeng's Motion to Set Aside Default and Default Judgment (the "Motion"), filed on June 20, 2022. (Docket No. 36). Plaintiffs Mingan Chen, Li Ge, Pengming Guan, Hong Jia, Hui Jian, Yinshan Lan, Zhiquan Pu, Jue Wang, Zi Wang, Yi Zhang, Changding Zhao, Jun Huang, Yanhong Chen, and Wei Yang filed on an Opposition on August 1, 2022. (Docket No. 48). Plaintiff Yanmei Dai filed a joinder in the Opposition on August 2, 2022. (Docket No. 50). Zeng filed a Reply on August 5, 2022. (Docket No. 52).

The Court has read and considered the papers filed in connection with the Motion and held a videoconference

hearing on **August 8, 2022** pursuant to General Order 21-08 and Order of the Chief Judge 21-124 arising from the COVID-19 pandemic.

For the reasons set forth below, the Motion is **DENIED**. The Motion was not filed in a reasonable time under Rule 60(c) because of Zeng's culpable conduct in that Zeng had actual notice of the action for several years via the proceedings in China. Further, substituted service in California was proper, and the Hague Convention does not apply.

I. BACKGROUND

The Court has previously summarized the background of this case in connection with the Court's February 27, 2018 Order Granting Motion for Default Judgment; Motion to Dismiss Does 1-10 (the "Default Order"). (*See* Docket No. 33). The Cour incorporates by reference the factual background set forth in the Default Order.

II. DISCUSSION

In the Motion, Zeng challenges the default and default judgment on the basis that she was never served properly. (*See* Motion at 15). First, Zeng disputes Plaintiffs' compliance with Rule 4, arguing that service was improper because Zeng's dwelling and usual place of abode is in Guangzhou City, along with her domicile, work address, and usual mailing address, and that Victor Chan was never authorized to receive service of process. (*See id.* at 16-18). Zeng also argues that as the address in Arcadia was not

her office, usual mailing address, place of abode, or place of business, or her dwelling house, service was improper under California law. (*See id.* at 18).

The Motion further contends that Zeng was required to be served in compliance with the Hague Convention under both Rule 4(f)(1) and California law, thereby invalidating the default and default judgment. (*See id.* at 19-21). Zeng argues that Plaintiffs bear the burden of invoking jurisdiction, have not met that burden, and that policy favors liberal relief from defaults in order to reach a decision on the merits. (*See id.* at 21-22).

The Opposition first argues that Zeng failed to bring the Motion in a timely manner under Rule 60(b)(4), as Zeng knew of the judgment as of at least January 10, 2019, when the collective Plaintiffs sought to enforce in China and where Zeng raised the same issues of service and jurisdiction. (*See* Opposition at 6-8). The Opposition also contends that the Motion is untimely under Rule 60(b)(1). (*See id.* at 8-9).

Next, the Opposition argues that the default judgment is not void because the Court has jurisdiction over Zeng, who has not shown an error in the exercise of jurisdiction or violation of due process, as jurisdiction over Zeng was proper, service was properly effectuated, and Zeng was aware of the judgment. (*See id.* at 9-11).

With regards to service, the Opposition contends substituted service was proper because Plaintiffs first attempted personal service, including by hiring an

investigator and searching public records and social media, and traveling to Zeng's previous addresses and addresses for Zeng's companies. (*See id.* at 15-16). Plaintiffs allege that after attempting personal service "numerous" times, substituted service was effectuated at 728 Carriage House Drive in Arcadia, which Zeng designated as the mailing address for her bank notices and wire transfers and for her company, California Investment Immigration Fund. (*See id.* at 16). Plaintiffs argue Zeng purchased the house in Arcadia with intent to used it as her principal residence, and also provided the address for notice when obtaining a second mortgage on another property. (*See id.*).

Plaintiffs contend that Victor Chan, who accepted service on Zeng's behalf, is the son of Zeng's partner, Tat Chan, and further is a licensed attorney and was an employee of her company. (*See id.* at 17). Plaintiffs note the absence of a declaration from Chan, and that even if Chan was not authorized, California law still provides for service at the Arcadia address. (*See id.* at 17).

The Opposition also argues that the Hague Convention does not apply to service because Zeng is subject to personal jurisdiction in California there was no need to serve in accordance with the Hague Convention. (*See id.* at 17-18). Plaintiffs also dispute that Zeng can contest jurisdictional issues because the argument was rejected in the Chinse proceedings. (*See id.* at 18-19).

Finally, the Opposition argues that Zeng has failed to show good cause to set aside the judgment given the prejudice to Plaintiffs, passage of time, and likelihood that Zeng was evading service. (*See id.* at 19-20).

In the Reply, Zeng first argues that the Motion is timely, as it is unclear there is even a timeliness limitation on motions contending a judgment is void. (*See* Reply at 8-9). Zeng further argues that lack of proper service voids the judgment. (*See id.* at 10-11). The Reply also contests the reliability of the declaration provided in connection with the Opposition, as underscored by Zeng's evidentiary objections (Docket No. 52-2) and argues that actual notice had to occur before the answer was due. (*See id.* at 11-12).

Zeng additionally argues that consent to jurisdiction in other matters did not waive the requirement of service here, minimum contacts are irrelevant, and service was improper at the Arcadia address. (*See id.* at 13-22). The Reply contends collateral estoppel does not apply as a result of the litigation in China, there is no need for Zeng to show good cause, and courts routinely and liberally grant relief from default. (*See id.* at 24, 26). Zeng lastly contests the timeliness of Plaintiff Yanmei Dai's joinder in the Opposition. (*See id.* at 26-27).

A. Rule 60(b)(4)

Motions to set aside a judgment are governed by Rule 60(b). Rule 60(c) states that any "motion under Rule 60(b) must be made within a reasonable time." *See also Kemp v. U.S.*, 142 S. Ct. 1856, 1861, 213 L. Ed. 2d 90 (2022) ("Rule 60(c) imposes deadlines on Rule 60(b) motions. All must be filed 'within a reasonable time'" (quoting Rule 60(c)(1)).

Rule 60(b)(4) provides for a party to seek relief from a judgment where the judgment is void. "Rule 60(b)(4)

applies only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard." *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271, 130 S. Ct. 1367, 176 L. Ed. 2d 158 (2010) (citations omitted). "Federal courts considering Rule 60(b)(4) motions that assert a judgment is void because of a jurisdictional defect generally have reserved relief only for the exceptional case in which the court that rendered judgment lacked even an 'arguable basis' for jurisdiction." *Id.* (quoting *Nemaizer v. Baker*, 793 F.2d 58, 65 (2d Cir. 1986).

Where a court lacks personal jurisdiction, the court lacks "the authority to rule on the merits," and a judgment is void. *Ruiz v. Snohomish Cnty. Pub. Util. Dist. No. 1*, 824 F.3d 1161, 1165 (9th Cir. 2016) (citing *Costello v. U.S.*, 365 U.S. 265, 285 (1961), 81 S. Ct. 534, 5 L. Ed. 2d 551 ("noting the 'fundamental jurisdictional defects which render a judgment void . . . such as lack of jurisdiction over the person or subject matter'"), *Thomas P. Gonzales Corp. v. Consejo Nacional de Produccion de Costa Rica*, 614 F.2d 1247, 1255 (9th Cir. 1980) ("'It is well-established that a judgment entered without personal jurisdiction over the parties is void'")).

Vacatur of a default judgment under Rule 60(b) is governed by "three factors derived from the 'good cause' standard that governs the lifting of entries of default under Fed. R. Civ. P. 55(c)." *TCI Grp. Life Ins. Plan v. Knoebber*, 244 F.3d 691, 696 (9th Cir. 2001), *overruled on other grounds by Egelhoff v. Egelhoff ex. rel. Breiner*, 532

U.S. 141, 121 S. Ct. 1322, 149 L. Ed. 2d 264 (2001)). "Those factors are: whether the defendant's culpable conduct led to the default; whether the defendant has a meritorious defense; and whether reopening the default judgment would prejudice the plaintiff." *Id.* (collecting cases). "This tripartite test is 'disjunctive,' meaning the court is free to deny the motion if any of these factors is shown to exist." *Creative Photographers, Inc. v. El Universal Online, Inc.*, CV 19-721-RGK (ASx), 2019 U.S. Dist. LEXIS 230579, 2019 WL 8628718, at *2 (C.D. Cal. Dec. 20, 2019) (quoting *Am. Ass'n of Naturopathic Physicians v. Hayhurst*, 227 F.3d 1104, 1108-09 (9th Cir. 2000)).

The Court will first consider whether defendant is culpable for the default. "'[A] defendant's conduct is culpable if he has received actual or constructive notice of the filing of the action and *intentionally* failed to answer.'" *TCI Grp.*, 244 F.3d at 697 (citations omitted) (emphasis in original). "'[A] defendant's conduct [is] culpable for purposes of the [good cause] factors where there is no explanation of the default inconsistent with a devious, deliberate, willful, or bad faith failure to respond." *Id.* at 698 (citations omitted); *see also Akkelian v. Gevorkyan*, 833 F. App'x 467, 468 (9th Cir. 2021) (citation omitted) (stating same).

In turn, the central question in this determination is if Zeng received actual notice and chose not to appear in or defend the action. If Zeng "received actual notice, the constitutional guarantee of due process was satisfied, even assuming plaintiff's service of process did not comply with statutory procedures." *Life Alert Emergency Response,*

Inc. v. Lifewatch, Inc., CV 08-2184-CAS (FFMx), 2014 U.S. Dist. LEXIS 69984, 2014 WL 2115189, at *3 (citing *Espinosa v. United Student Aid Funds, Inc.*, 553 F.3d 1193, 1208 (9th Cir. 2008) ("'Because 'due process does not require actual notice,' it follows a fortiori that actual notice satisfies due process'")). "Accordingly, [if] defendant had actual notice, the defects in service do not provide a basis for vacating the judgment under Rule 60(b)(4)." *Id.*

As set forth above, Plaintiffs argue that Zeng had notice of the action before this Court because of the filing of the correlated actions in China — for example, by responding to the action in July or August of 2018, and raising the same issues in September 2018. (*See* Opposition at 7).

Zeng never affirmative declares that she did not have actual notice from the Chinese action; Zeng only states that she did not receive notice before entry of default and that currently Plaintiffs seek to enforce the judgment in China. (*See* Chong Decl. Ex. A (Docket No. 38-1) ¶¶ 19-20). The dispute concerning service is discussed more thoroughly below.

The decision accordingly turns on whether Zeng's delay in moving to vacate the default judgment after receiving actual notice was unreasonable, despite the argument that service and actual notice were not received before entry of default. While Zeng raises issues of service, as argued at the hearing in the companion case, "[t]he defendant who chooses not to put the plaintiff to its proof [of service], but instead allows default judgment to

be entered and waits, for whatever reason, until a later time to challenge the plaintiff's action, should have to bear the consequences of such delay." *S.E.C. v. Internet Sols. for Bus., Inc.*, 509 F.3d 1161, 1166 (9th Cir. 2007).

In *Internet Sols.*, the defendant seeking to vacate the default knew of the action prior to the entry of default. *See id.* In *Life Alert*, "the motion for default judgment was undisputedly served by mail to defendant's correct address." 2014 U.S. Dist. LEXIS 69984, 2014 WL 2115189, at *3. This case is distinguishable because there is no indication—or at least evidence—that Zeng had actual knowledge of the action prior to entry of default, (*see* Chong Decl. Ex. A ¶ 17 (Victor Chan did not tell Zeng about case-related documents sent to the Arcadia property)), and Zeng disputes the propriety of the address where the default was mailed. (*See* Motion at 16-18, Cairl Decl. (Docket No. 31-6) ¶ 6 (motion for default mailed to Defendants' last known addresses)).

Plaintiffs submitted the declaration of Xiang Lu, attorney for a number of the Plaintiffs in the Chinese proceeding, who sets forth that Zeng returned two signed certificates of service in the Chinese proceeding, which included notice of the default judgment, on August 17, 2018. (*See* Lu Decl. (Docket No. 48-4) ¶ 7). Zeng objected to this declaration on an evidentiary basis, arguing that the original Mandarin document was not provided and the declaration therefore cannot be authenticated, but provides only speculation that the document might be inaccurate.

In sum, it appears that Zeng's overall calculation was to challenge the judgment in China rather than the United States. There is no explanation made for why Zeng did not move to vacate the default as soon as she received notice of the Chinese proceedings or otherwise seek to stay enforcement of the judgment, no evidence that Zeng was incapable of understanding the Chinese proceedings or the action before this Court that formed the basis for the Chinese action, and no evidence that Zeng did not receive actual notice, even if it was after entry of default.

Accordingly, there is no explanation for the delay in the filing of the Motion other than Zeng's own culpable conduct: Zeng sought to attempt to resolve the dispute in China, which was certainly her prerogative, but she cannot now equitably seek to vacate the default judgments only after having failed to prevail in the Chinese proceedings and without having otherwise made any attempt to address the default judgment entered over four years ago. *Cf. TCI Grp.*, 244 F.3d at 696 ("[T]he moving party is [not] absolved from the burden of demonstrating that, in this particular case, the interest in deciding the case on the merits should prevail over the very important interest in the finality of judgments").

"The ambiguity [in proof of service] is in no small part the result of the over-[four]-year delay since service was supposedly effectuated." *Life Alert*, 2014 U.S. Dist. LEXIS 69984, 2014 WL 2115189, at *3. "This delay, which is primarily the result of defendant's tardiness in bringing this motion, means that it is difficult, if not impossible, to definitively resolve whether or not plaintiff was in fact

properly served." *Id.* Zeng "received actual notice of the action" after entry of default, but chose not to challenge the entry of default, without explanation, for four years. *Id.*

Because the Court finds Zeng's conduct to be culpable, Zeng has not shown good cause to set aside the default. *See Creative Photographers*, 2019 U.S. Dist. LEXIS 230579, 2019 WL 8628718, at *2 (quoting *Am. Ass'n of Naturopathic Physicians*, 227 F.3d at 1108-09).

However, even if Zeng's conduct were not culpable, the underlying service of the Complaint and Summons appears to have been proper.

B. Service

The Court previously analyzed the issue of service in the Default Order and found service proper under Rule 4. (*See* Default Order at 5-7). Plaintiffs provided evidence that their private investigators found an address for Zeng, read Zeng's name to the tenant at the address, Victor Chan, who indicated he would accept service on Zeng's behalf, the left copies of the Summons and Complaint in the mailbox at the property, as instructed by Chan, and subsequently mailed a copy of both to the same address. (*See id.* at 5 (citations omitted)). The Default Order also construes service under Rule 4, not Rule 5. (*See id.*).

Under California Code of Civil Procedure section 415.20, substituted service may be effectuated by leaving a copy of the Complaint and Summons at the usual mailing address of the person to be served with a person

"apparently in charge thereof" and subsequently mailing a copy of both documents to the same address. Cal. Code. Civ. P. § 415.20.

As described in the Default Order, Plaintiffs' investigator found, after extensive research, the Arcadia address to be a current address for Zeng. (*See* Default Order at 5 (citing Larsen Decl. (Docket No. 21-3) ¶¶ 3-5)). Zeng contends this address was not *in fact* a usual mailing address for her, based primarily on Zeng's own declaration, and as Zeng argued at the hearing. (*See* Zeng Decl. (Docket No. 38-1) ¶¶ 8).

Zeng provides no basis to substantiate this claim and admits to owning the Arcadia property. (*See id.* ¶ 5). Additionally, as Plaintiffs note and argued at the hearing, California does not require Chan to have been authorized to accept service on Zeng's behalf. (*See* Opposition at 17). Further, as Plaintiffs argued at the hearing, although Zeng alleges Chan never informed her about the papers, Zeng provides no declaration from Chan corroborating that assertion and, as an attorney, it is implausible that Chan simply accepted service without informing Zeng and the other served parties.

Accordingly, even if the Arcadia address was not Zeng's "most" usual address, there is no basis for finding that service at that address was improper under the circumstances of this Motion. "So long as a party receives sufficient notice of the complaint, Rule 4 is to be 'liberally construed' to uphold service." *Travelers Cas. and Sur. Co. of Am. v. Brenneke*, 551 F.3d 1132, 1135 (9th Cir. 2009)

(quoting *Chan v. Soc'y Expeditions, Inc.*, 39 F.3d 1398, 1404 (9th Cir. 1994)).

Because service under California law was proper, Plaintiffs were not required to comply with the strictures of service set forth by the Hague Convention. *See Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 707, 108 S. Ct. 2104, 100 L. Ed. 2d 722 (1988) ("Where service on a domestic agent is valid and complete under both state law and the Due Process clause, our inquiry ends and the [Hague] Convention has no further implications").

Zeng has also not shown that any putative error deprived her of due process given that the service was "'reasonably calculated, under all the circumstances, to apprise [the] interested parties of the pendency of the action.'" *Espinosa*, 559 U.S. at 271-72 (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314, 70 S. Ct. 652, 94 L. Ed. 865). Zeng has therefore not demonstrated that the "judgment lacked even an 'arguable basis' for jurisdiction." *Id.* (quoting *Nemaizer*, 793 F.2d at 65).

There is no basis for the Court to set aside the default, as Zeng has not demonstrated good cause to vacate the default due to her notice of the action and unexplained failure to intervene for over four years, and the underlying service was proper. The Motion is therefore **DENIED**.

To the extent that the Court relies upon evidence to which Zeng objects, the objections are **OVERRULED**. To the extent the Court does not, the objections are **DENIED *as moot***.

Appendix B

In connection with the Opposition, Plaintiffs request the Court take judicial notice of various documents. (*See* RJN (Docket No. 49)). Because the Court did not rely on these documents in the disposition of the Motion, and consideration would not change the outcome, the RJN is **DENIED *as moot***.

IT IS SO ORDERED.

APPENDIX C — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED JANUARY 24, 2024

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 22-56101

MINGAN CHEN; *et al.*,

Plaintiffs-Appellees,

v.

FANG ZENG,

Defendant-Appellant,

and

CALIFORNIA INVESTMENT
MIGRATION FUND, LLC; *et al.*,

Defendants.

D.C. No. 2:17-cv-07149-MWF-RAO
Central District of California, Los Angeles

Appendix C

ORDER

Before: WARDLAW, LEE, and BUMATAY, Circuit Judges.

The petition for panel rehearing, Dkt. No. 43, is DENIED.

APPENDIX D — MEMORANDUM OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED DECEMBER 11, 2023

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 22-56141
D.C. No. 2:17-cv-08936-MWF-RAO

ANQIN WANG,

Plaintiff-Appellee,

v.

FANG ZENG,

Defendant-Appellant.

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Michael W. Fitzgerald, District Judge, Presiding

Submitted December 7, 2023**
Pasadena, California

Before: WARDLAW, LEE, and BUMATAY, Circuit Judges.

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Appendix D

Fang Zeng appeals the district court's denial of her motion to vacate the court's entry of default and default judgment against her under Federal Rule of Civil Procedure 60(b)(4). We have jurisdiction under 28 U.S.C. § 1291. We affirm.

We review the denial of a motion to vacate a judgment under Rule 60(b)(4) de novo, but we review the district court's factual findings about jurisdiction for clear error. *SEC v. Internet Sols. for Bus. Inc.*, 509 F.3d 1161, 1165 (9th Cir. 2007); *Panavision Int'l, L.P. v. Toeppen*, 141 F.3d 1316, 1320 (9th Cir. 1998).

Rule 60(b)(4) provides that a court may relieve a party from a final judgment if that judgment is void. Fed. R. Civ. P. 60(b)(4). And the Ninth Circuit has long held that a judgment is void if it was entered against a defendant over whom the court lacked personal jurisdiction. *See, e.g.*, *Ruiz v. Snohomish Cnty. Pub. Util. Dist. No. 1*, 824 F.3d 1161, 1165 (9th Cir. 2016). Assuming the Rule 60(b)(4) motion was timely, we turn to whether the district court had personal jurisdiction over Zeng when it entered judgment against her.

1. Wang's service of process on Zeng was proper. The Federal Rules of Civil Procedure permit service of process in accordance with state law. Fed. R. Civ. P. 4(e)(1). And California allows service by publication if the party to be served cannot "with reasonable diligence be served in another manner specified in this article." Cal. Code Civ. Proc. § 415.50(a). To effect proper service by publication, notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the

pendency of the action and afford them an opportunity to present their objections." *In re Emily R.*, 80 Cal. App. 4th 1344, 1351 (2000) (internal quotations omitted).

Wang exercised reasonable diligence in attempting to serve Zeng before requesting service by publication. The district court noted that, in an attempt to serve Zeng with process, Wang's private investigator searched California's official databases, county clerks' filings, court dockets, and social media, as well as traveled to Zeng's various properties in California. Wang also served Victoria Chan, one of the defendants and the daughter-in-law of Zeng, with process for both herself and Zeng, at which point Chan received the papers and said "okay." Zeng retorts that service was improper because she was residing in China, not California. But Zeng's cited cases, *In re D.R.*, 39 Cal. App. 5th 583, 591 (2019) and *Lebel v. Mai*, 210 Cal. App. 4th 1154, 1164 (2012), hold that service is improper when a plaintiff *knows* that the defendant resides in another country. The record makes clear that, upon Wang's reasonable belief, Zeng resided and could be served in California.[1]

And Wang's service by publication was reasonably calculated to give Zeng notice. The summons was

1. Zeng was the chairwoman of the California Immigrant Investment Fund, an entity which was incorporated in California and has its principal place of business in Los Angeles. Zeng also obtained mortgages on her Arcadia property in 2011 and 2016 which indicate her agreement to occupy the property as her principal residence and which designate it as her mailing address, respectively. That a deed of trust from 2011 lists a Chinese address, and that Wang once met Zeng in an office in China in 2016, are insufficient to show that Wang knew Zeng resided in China.

printed in the Los Angeles Times, one of the most widely circulated newspapers in California, four times over two months. And while the case number was misprinted, the publication did not reference a completely unrelated case. It contained Zeng's name, and the case number referred to another lawsuit before the Central District of California in which Zeng is a party. The district court correctly "[found] it implausible that a defendant, seeing their name in a published notice, would look up the case number, find that the case number is for a different action that also names the same defendant, and then deem themselves absolved of knowledge of either lawsuit – especially when the plaintiff has already attempted service in several other manners."

2. Zeng's argument that the Hague Convention on Service should have applied also fails. "Where service on a domestic agent is valid and complete under both state law and under the Due Process clause, our inquiry ends and the [Hague] Convention has no further implications." *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 707 (1988). As shown above, service of process was valid under California law. And service was valid under the Due Process clause because it was "reasonably calculated . . . to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 261 (2010) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)).[2] The

2. The district court noted the extensive surveillance and searches by Wang's retained investigator and counsel, as well as their visits to several addresses in an effort to effect service on Zeng.

district court did not err by determining that the Hague Convention on Service did not apply.

Because we find that service of process was proper, we do not reach whether Zeng consented to personal jurisdiction in California. The district court had personal jurisdiction over Zeng when the judgment was entered. The judgment is not void.

AFFIRMED.

APPENDIX E — ORDER DENYING MOTION TO SET ASIDE DEFAULT AND DEFAULT JUDGMENT OF THE UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA, FILED NOVEMBER 10, 2022

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV-17-8936-MWF (RAOx)

ANQIN WANG

v.

CALIFORNIA INVESTMENT IMMIGRATION FUND, LLC ET AL.

Date: November 10, 2022

PROCEEDINGS (IN CHAMBERS): ORDER DENYING MOTION TO SET ASIDE DEFAULT AND DEFAULT JUDGMENT [54]

Present: The Honorable Michael W. Fitzgerald, U.S. District Judge

Before the Court is Defendant Fang Zeng's Motion to Set Aside Default and Default Judgment (the "Motion"), filed on June 22, 2022. (Docket No. 54). Plaintiff Anqin Wang filed on an Opposition on July 28, 2022. (Docket No. 64). Zeng filed a Reply on August 2, 2022. (Docket No. 67).

Appendix E

The Court has read and considered the papers filed in connection with the Motion and held videoconference hearings on **July 25, 2022 and August 8, 2022** pursuant to General Order 21-08 and Order of the Chief Judge 21-124 arising from the COVID-19 pandemic.

For the reasons set forth below, the Motion is **DENIED.** The Motion was not filed in a reasonable time under Rule 60(c) because of Zeng's culpable conduct in that Zeng had actual notice of the action for several years via the proceedings in China. Further, service in California was proper, and the Hague Convention does not apply.

I. BACKGROUND

The Court has previously summarized the background of this case in connection with the Court's April 24, 2018 Order Granting Application for Default Judgment (the "Default Order"). (*See* Docket No. 36). The Court incorporates by reference the factual background set forth in the Default Order.

II. DISCUSSION

The Motion contests the validity of service underlying the default and default judgment, arguing that Victoria Chan was never authorized as an agent for service of process, Zeng never resided at the addresses where service was attempted, and service via publication was defective. (*See id.* at 3-4). In particular, Zeng argues that Plaintiff knew Zeng was a Chinese national but made no attempt to serve Zeng in China, Zeng does not speak or

read English or the LA times, and never received actual notice of the lawsuit, noting further that the publication bore the wrong case number (2:17-cv07149, which is for the *Chen* case, not 2:17-cv-08936, for *Wang*). (*See id.* at 3-5).

The Motion also argues that compliance with the Hague Convention was required because Zeng resided and was domiciled in China at the time the action was filed and service was allegedly attempted. (*See id.* at 5-7). Finally, Zeng argues the motion is timely under Rule 60(b)(4). (*See id.* at 7).

The Opposition first argues that Zeng failed to bring the Motion in a timely manner under Rule 60(b)(4), as Zeng knew of the judgment as of at least January 10, 2019, when Plaintiff sought to enforce in China and where Zeng raised the same issues of service and jurisdiction. (*See* Opposition at 6-8). The Opposition also contends that the Motion is untimely under Rule 60(b)(1). (*See id.* at 8-9).

Next, the Opposition argues that the default judgment is not void because the Court has jurisdiction over Zeng, who has not shown an error in the exercise of jurisdiction or violation of due process, as jurisdiction over Zeng was proper, service was properly effectuated, and Zeng was aware of the judgment. (*See id.* at 9-12).

With regards to service, the Opposition argues for the propriety of service by publication, as the Court previously found that Plaintiff demonstrated reasonable diligence in efforts to locate and serve Zeng, given Plaintiff's investigator's efforts searching public records and social

media, as well as traveling to Zeng's previous addresses and addresses for Zeng's companies. (*See id.* at 14-16).

The Opposition also argues that the Hague Convention does not apply to service because Zeng is subject to personal jurisdiction in California there was no need to serve in accordance with the Hague Convention. (*See id.* at 16-17). Plaintiffs also dispute that Zeng can contest jurisdictional issues because the argument was rejected in the Chinse proceedings. (*See id.* at 16-18).

Finally, the Opposition argues that Zeng has failed to show good cause to set aside the judgment given the prejudice to Plaintiffs, passage of time, and likelihood that Zeng was evading service. (*See id.* at 18-19).

In the Reply, Zeng contends the default is void for lack of service, as Plaintiff admits Zeng could not read the publication and knew Zeng did not have contacts with California and did not own property in California, the error in the service by publication was significant, and neither the passage of time nor notice after entry of default are relevant. (*See* Reply at 2-8).

A. Rule 60(b)(4)

Motions to set aside a judgment are governed by Rule 60(b). Rule 60(c) states that any "motion under Rule 60(b) must be made within a reasonable *time.*" *See also Kemp v. U.S.,* 142 S. Ct. 1856, 1861 (2022) ("Rule 60(c) imposes deadlines on Rule 60(b) motions. All must be filed 'within a reasonable time" (quoting Rule 60(c)(1)).

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Rule 60(b)(4) provides for a party to seek relief from a judgment where the judgment is void. "Rule 60(b)(4) applies only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard." *United Student Aid Funds, Inc. v. Espinosa,* 559 U.S. 260, 271 (2010) (citations omitted). "Federal courts considering Rule 60(b)(4) motions that assert a judgment is void because of a jurisdictional defect generally have reserved relief only for the exceptional case in which the court that rendered judgment lacked even an 'arguable basis' for jurisdiction." *Id.* (quoting *Nemaizer v. Baker,* 793 F.2d 58,65 (2d Cir. 1986).

Where a court lacks personal jurisdiction, the court lacks "the authority to rule on the merits," and a judgment is void. *Ruiz v. Snohomish Cnty. Pub. Util. Dist. No.* 1, 824 F.3d 1161, 1165 (9th Cir. 2016) (citing *Costello v. U.S.,* 365 U.S. 265, 285 (1961) ("noting the 'fundamental jurisdictional defects which render a judgment void . . . such as lack of jurisdiction over the person or subject matter'"), *Thomas P. Gonzales Corp. v. Consejo Nacional de Produccion de Costa Rica,* 614 F.2d 1247, 1255 (9th Cir. 1980) ("It is well-established that a judgment entered without personal jurisdiction over the parties is void")).

Vacatur of a default judgment under Rule 60(b) is governed by "three factors derived from the 'good cause' standard that governs the lifting of entries of default under Fed. R. Civ. P. 55(c)." *TCI Grp. Life Ins. Plan v. Knoebber,* 244 F.3d 691, 696 (9th Cir. 2001), *overruled on*

other grounds by Egelhoff v. Egelhoff ex. rel. Breiner, 532 U.S. 141 (2001)). "Those factors are: whether the defendant's culpable conduct led to the default; whether the defendant has a meritorious defense; and whether reopening the default judgment would prejudice the plaintiff" *Id.* (collecting cases). "This tripartite test is 'disjunctive,' meaning the court is free to deny the motion if any of these factors is shown to exist." *Creative Photographers, Inc. v. El Universal Online, Inc.*, CV 19-721-RGK (ASx), 2019 WL 8628718, at *2 (C.D. Cal. Dec. 20, 2019) (quoting *Am. Ass'n of Naturopathic Physicians v. Hayhurst*, 227 F.3d 1104, 1108-09 (9th Cir. 2000)).

The Court will first consider whether defendant is culpable for the default. "'[A] defendant's conduct is culpable if he has received actual or constructive notice of the filing of the action and *intentionally* failed to answer.'" *TCI Grp.*, 244 F.3d at 697 (citations omitted) (emphasis in original). "[A] defendant's conduct [is] culpable for purposes of the [good cause] factors where there is no explanation of the default inconsistent with a devious, deliberate, willful, or bad faith failure to respond." *Id.* at 698 (citations omitted); *see also Akkelian v. Gevorkyan*, 833 F. App'x 467, 468 (9th Cir. 2021) (citation omitted) (stating same).

In turn, the central question in this determination is if Zeng received actual notice and chose not to appear in or defend the action. If Zeng "received actual notice, the constitutional guarantee of due process was satisfied, even assuming plaintiff's service of process did not comply with statutory procedures." *Life Alert Emergency Response*,

Inc. v. Lifewatch, Inc., CV 08-2184-CAS (FFMx), 2014 WL 2115189, at *3 (citing *Espinosa v. United Student Aid Funds, Inc.*, 553 F.3d 1193, 1208 (9th Cir. 2008) ("Because 'due process does not require actual notice,' it follows a fortiori that actual notice satisfies due process'")). "Accordingly, [if] defendant had actual notice, the defects in service do not provide a basis for vacating the judgment under Rule 60(b)(4)." *Id.*

As set forth above, Plaintiff argues that Zeng had notice of the action before this Court because of the filing of the correlated action in China—at least by January 10, 2019, when Plaintiff sought to enforce the judgment, and Zeng subsequently responded raising the same issues. (*See* Opposition at 7). Zeng concedes she received actual notice once Plaintiff moved to enforce in China, though she does not specify a date. (*See* Zeng Decl. (Docket No. 54-1) ¶ 13). The dispute concerning service is discussed more thoroughly below.

The decision accordingly turns on whether Zeng's delay in moving to vacate the default judgment after receiving actual notice was unreasonable, despite the argument that service and actual notice were not received before entry of default. While Zeng raises issues of service, as argued at the hearing, "[t]he defendant who chooses not to put the plaintiff to its proof [of service], but instead allows default judgment to be entered and waits, for whatever reason, until a later time to challenge the plaintiff s action, should have to bear the consequences of such delay." *S.E.C. v. Internet Sols. for Bus., Inc.,* 509 F.3d 1161, 1166 (9th Cir. 2007).

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In *Internet Sols.,* the defendant seeking to vacate the default knew of the action prior to the entry of default. *See id.* In *Life Alert,* "the motion for default judgment was undisputedly served by mail to defendant's correct address." 2014 WL 2115189, at *3. This case is distinguishable because there is no indication—or at least evidence—that Zeng had actual knowledge of the action prior to entry of default, (*see* Zeng Decl. ¶ 13 (no notice until initiation of proceedings in China)), and Zeng disputes the propriety of the address where the default was mailed. (*See* Motion at 4, Cairl Decl. (Docket No. 45-3) ¶ 6 (motion for default mailed to Defendants' last known addresses)).

It appears that Zeng's overall calculation was to challenge the judgment in China rather than the United States. There is no explanation made for why Zeng did not move to vacate the default as soon as she received notice of the Chinese proceedings or otherwise seek to stay enforcement of the judgment, no evidence that Zeng was incapable of understanding the Chinese proceedings or the action before this Court that formed the basis for the Chinese action, and no evidence that Zeng did not receive actual notice, even if it was after entry of default.

Accordingly, there is no explanation for the delay in the filing of the Motion other than Zeng's own culpable conduct: Zeng sought to attempt to resolve the dispute in China, which was certainly her prerogative, but she cannot now equitably seek to vacate the default judgments only after having failed to prevail in the Chinese proceedings and without having otherwise made any attempt to

address the default judgment entered over four years ago. *Cf. TCI Grp.,* 244 F.3d at 696 ("[T]he moving party is [not] absolved from the burden of demonstrating that, in this particular case, the interest in deciding the case on the merits should prevail over the very important interest in the finality of judgments").

"The ambiguity [in proof of service] is in no small part the result of the over[four]-year delay since service was supposedly effectuated." *Life Alert,* 2014 WL 2115189, at *3. "This delay, which is primarily the result of defendant's tardiness in bringing this motion, means that it is difficult, if not impossible, to definitively resolve whether or not plaintiff was in fact properly served." *Id.* Zeng "received actual notice of the action" after entry of default, but chose not to challenge the entry of default, without explanation, for four years. *Id.*

Because the Court finds Zeng's conduct to be culpable, Zeng has not shown good cause to set aside the default. *See Creative Photographers,* 2019 WL 8628718, at *2 (quoting *Am. Assn of Naturopathic Physicians,* 227 F.3d at 1108-09).

However, even if Zeng's conduct were not culpable, the underlying service of the Complaint and Summons appears to have been proper.

B. Service

The Court previously analyzed the issue of service in the both the Default Order and Second Default Order

and found service proper under Rule 4. (*See* Default Order at 9-11, Second Default Order (Docket No. 52) at 2). Plaintiff provided evidence that the private investigator hired by Plaintiff located and personally served Victoria Chang with process for all Defendants in the action, including Zeng, and Chan said "okay" upon receipt of the papers. (*See* Default Order at 9). Plaintiff 's investigator also undertook extensive investigation to locate Zeng, including traveling to identified addresses, but the Court noted that service did not appear to comply with California Code of Civil Procedure section 415.20 because the El Monte address where Chan was served did not fit into one of the categories enumerated by section 415.20, and therefore directed Plaintiff to serve by publication as authorized by California Code of Civil Procedure section 415.50(a)(1). (*See id.* at 9-10).

Zeng disputes that service by publication was proper because it was not "likely to result in actual notice," given that Plaintiff knew Zeng was residing in China, Zeng does not speak English, Zeng does not read the Los Angeles Times, and Zeng never saw the notice, as well as that the publication was erroneous because the case number listed was incorrect. (Motion at 4-5).

The Opposition argues service was proper because publication was only authorized after Plaintiff 's extensive efforts to properly serve, there is no requirement the publication actually be seen, and any error was harmless. (*See* Opposition at 10-11).

The Reply argues Plaintiff concedes the publication was erroneous and not likely to give actual notice

as required, and that Zeng was therefore denied a fundamental right. (*See* Reply at 5-6).

As an initial matter, Zeng provides no authority stating that Plaintiff was required to publish the notice in a newspaper circulated in a foreign city, and the Court questions whether such a requirement would be practicable, effective, or respectful of the sovereignty of foreign jurisdictions.

Additionally, while it is regrettable that the publication mistakenly listed the wrong case number, which the Court did not notice in consideration of the entry of default judgment, the Court must agree with Plaintiff that such an error is harmless. As Plaintiff points out, and is widely known with respect to service by publication, it is not necessary, nor entirely expected, that a defendant will actually see the publication—service by publication is only permitted after extensive efforts are undertaken by a plaintiff to otherwise serve a defendant, and is generally reserved as a last resort when it seems a defendant is intentionally evading service. *See Rios v. Singh,* 65 Cal. App. 5th 871, 882, 280 Cal. Rptr. 3d 404 (2021) (defendant is not required to actually see service by publication, as "for purposes of due process, actual receipt or actual knowledge is not required; notice by means reasonably calculated to provide actual notice is sufficient") (citations omitted).

Plaintiff here attempted to serve Zeng by several other methods, including personal service and substituted service, after hiring a private investigator to try to find

Zeng. The Court ordered service by publication after Plaintiff attempted to serve Zeng via Victoria Chan out of an abundance of caution.

Additionally, although the case number listed was incorrect, there are several reasons why the publication was still reasonably calculated to give notice beyond Plaintiffs prior extensive efforts. First, the publication states Zeng's name several times, is specifically directed to Zeng, and notes that a lawsuit has been filed against Zeng. (*See* Publication (Docket No. 37) at 1). Second, the number that was published, albeit incorrect, is the case number for another lawsuit pending before this Court—*Chen v. California Investment Immigration Fund, LLC* in which Zeng is also named and never appeared. The Court finds it implausible that a defendant, seeing their name in a published notice, would look up the case number, find that the case number is for a different action that also names the same defendant, and then deem themselves absolved of knowledge of either lawsuit—especially when the plaintiff has already attempted service in several other manners.

The Court therefore finds that service was proper under California law. "So long as a party receives sufficient notice of the complaint, Rule 4 is to be 'liberally construed' to uphold service." *Travelers Cas. and Sur. Co. of Am. v. Brenneke,* 551 F.3d 1132, 1135 (9th Cir. 2009) (quoting *Chan v. Soc'y Expeditions, Inc.*, 39 F.3d 1398, 1404 (9th Cir. 1994)). The facts before the Court suggest Zeng intentionally avoided service here, particularly after service upon Victoria Chan in this case as well as upon

Victor Chan in the *Chen* case, and it is unworkable to allow a defendant to evade service, sit on knowledge of a judgment for almost four years, and then seek to vacate the judgment after proceedings in another nation are deemed unfavorable.

Because service under California law was proper, Plaintiffs were not required to comply with the strictures of service set forth by the Hague Convention. *See Volkswagenwerk Aktiengesellschaft v. Schlunk,* 486 U.S. 694, 707 (1988) ("Where service on a domestic agent is valid and complete under both state law and the Due Process clause, our inquiry ends and the [Hague] Convention has no further implications").

Zeng has not shown that any putative error deprived her of due process given that the service was "'reasonably calculated, under all the circumstances, to apprise [the] interested parties of the pendency of the action.'" *Espinosa,* 559 U.S. at 271-72 (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.,* 339 U.S. 306, 314). Zeng has therefore not demonstrated that the "judgment lacked even an 'arguable basis' for jurisdiction." *Id.* (quoting *Nemaizer,* 793 F.2d at 65).

There is no basis for the Court to set aside the default, as Zeng has not demonstrated good cause to vacate the default due to her notice of the action and unexplained failure to intervene for almost four years, and the underlying service was proper. The Motion is therefore **DENIED**.

Appendix E

To the extent that the Court relies upon evidence to which Zeng objects, the objections are **OVERRULED**. To the extent the Court does not, the objections are **DENIED *as moot***.

In connection with the Opposition, Plaintiffs request the Court take judicial notice of various documents. (*See* RJN (Docket No. 65)). Because the Court did not rely on these documents in the disposition of the Motion, and consideration would not change the outcome, the RJN is **DENTED *as moot***.

IT IS SO ORDERED.

APPENDIX F — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT, FILED JANUARY 24, 2024

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 22-56141

ANQIN WANG, AN INDIVIDUAL,

Plaintiff-Appellee,

v.

FANG ZENG,

Defendants.

and

CALIFORNIA INVESTMENT MIGRATION FUND, LLC; *et al.*,

Defendant-Appellant.

D.C. No. 2:17-cv-08936-MWF-RAO
Central District of California, Los Angeles

ORDER

Before: WARDLAW, LEE, and BUMATAY, Circuit Judges.

The petition for panel rehearing, Dkt. No. 38, is DENIED.