No. 23-6290

IN THE

SUPREME COURT OF THE UNITED STATES

PIETRO PASQUALE ANTONIO SGROMO
(a/k/a PETER ANTHONY SGROMO) — PETITIONER

vs.

BESTWAY INFLATABLES & MATERIALS CORP.,
BESTWAY(HONG KONG) INTERNATIONAL LTD.,
BESTWAY (USA), INC.,
EUREKA INVENTIONS LLC,
LEONARD GREGORY SCOTT. — RESPONDENT(S)

ON PETITION FOR A WRIT OF MANDAMUS TO

The Ninth Circuit Court of Appeals, San Francisco

PETITION FOR WRIT OF MANDAMUS

Pietro Pasquale Antonio (Peter Anthony) Sgromo

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QUESTIONS PRESENTED

1. Is a judgment rendered in *personam* against a defendant without jurisdiction of his person void?

2. Is an Appeals Court record closed even if a party pleads defective service?

3. Did the Bestway Respondents effectuate service of process against the Petitioner?

4. Did Cross–Claimant Respondents, Scott and Eureka effectuate service of process against the Petitioner?

5. Was Petitioner as a Consultant to Eureka Respondents bound to License Agreements between the Respondent because he signed the License Agreements on his employer's behalf; or is he a stranger to the agreements?

6. Was the Petitioner's signature on the License Agreements as a "Consultant to Eureka" tantamount to an assignment of his intellectual property rights; or was he merely through his conduct consenting to a License? (that is, are Patent License Agreement and Patent Assignment Agreement synonymous terms?).

7. Under what circumstances can a Court overturn the rescindment of License Agreements between the Parties and thereby enforce those contracts?

8. Under what circumstances can a Court admit Parol Evidence to detract from an otherwise Integrated Agreement?

9. When can a patent assignment be oral?

10. Does a common corporate structure between a parent and a subsidiary overcome the requirement that an appropriate written assignment is necessary to transfer legal title from one to the other?

LIST OF PARTIES

[X] All parties appear in the caption of the case on the cover page.

[ ] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

9th Cir. Case No.s:	17-17117; 18-16603; 18-16762; 20-15821 22-15199; 18-16228; 18-17040; 19-15709; 19-15797.
Dist. Ct. Case No.s:	4:19-cv-08170-HSG; 4:17–cv–00205–HSG; 15-CV-701-JSW
JAMS Case No.:	1100080798
Superior Ct. ON CANADA:	2017 ONSC 2524, COURT FILE NO.: CV-16-0529-FW

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF MANDAMUS

Petitioner respectfully prays that a writ of mandamus issue to direct the 9th Circ. Court below to vacate the Dist. Court Order below, or in the alternative direct the 9th Cric. Court to enter a decision in Case No.: 22–15199 on the petition to vacate the Dist. Court Order in Case No.: 4:17-cv-00205-HSG

OPINIONS BELOW

[X] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix 1 to the petition and is
[ ] reported at
; or, [ ] has been designated for publication but is not yet reported; or, [X] is unpublished.

The opinion of the United States district court appears at Appendices 5 & 6
to the petition and is
[ ] reported at
; or, [ ] has been designated for publication but is not yet reported; or, [X] is unpublished.

Case No,s: 18–16228, 18–17040, 19–15709, 19–15797, *Bestway v. Erueka, Scott, Sgromo, Wagmre & Barkless* before the 9th Circ. Court; Case No.s: 4:17-cv-00205-HSG, *Bestway v. Eureka, Scott, Sgromo, Wagmore & Barkless,* 4:19-cv-08170-HSG *Sgromo v. Scott,* 15-CV-701-JSW, *Eureka v. Bestway,* before the NorCal Dist. Court may be affected by this case.

JURISDICTION

"This Court has jurisdiction to grant mandamus relief under the All Writs Act, 28 U.S.C. § 1651.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Due Process clauses in the United States Constitution prohibit courts from exercising personal jurisdiction over a defendant unless the defendant has proper notice of the court's proceedings.
2. A judgment rendered in *personam* against a defendant without jurisdiction of his person is not only erroneous but void, and is not required to be enforced in other States under the full faith and credit clause of the Constitution or the act of Congress passed in aid thereof, § 905, Rev. Stat.
3. The Constitution states only one command twice. The Fifth Amendment says to the federal government that no one shall be "deprived of life, liberty or property without due process of law."
4. The Fourteenth Amendment, ratified in 1868, uses the same eleven words, called the Due Process Clause, to describe a legal obligation of all states. These words have as their central promise an assurance that all levels of American government must operate within the law ("legality") and provide fair procedures.
5. 2007 California Code of Civil Procedure Article 3. Manner Of Service Of Summons CA Codes (ccp:415.10-415.95).
6. Patents in the U.S. are permitted by the Patent Clause of the U.S. Constitution. The patent code is contained in Title 35 of the United States Code. Federal regulations relating to patents are located within Title 37 of the Code of Federal Regulations. Patents are exclusively governed by federal law.
7. U.S. trademark protection is accomplished under the Commerce Clause of the U.S. Constitution. Trademarks are protected federally under the registration system, codified as the Lanham Act (Title 15, Chapter 22, of the United States Code) and administered by the USPTO.
8. The general right to make a contract in relation to his business is part of the liberty of the individual protected by the Fourteenth Amendment of the Federal Constitution. Under that provision no State can deprive any person of life, liberty or property without due process of law. The right to purchase or to sell labor is part of the liberty protected by this amendment, unless there are circumstances which exclude the right.
9. Under the Supremacy Clause, the "Constitution, and the Laws of the United States which shall be made in Pursuance thereof," are "the supreme Law of the Land." Art. VI, cl. 2.

STATEMENT OF THE CASE & DECLARATION

I am bringing this Writ of Mandamus to instruct the 9th Circ. Court of Appeal to enter a decision on my motion to vacate the Interpleader Action Order from Judge Gilliam, NorCal Oakland D.C. in Case No. 4:17–cv–00205–HSG, Bestway v. Eureka, Scott, Wagmore & Barkless, Sgromo (the "Interpleader Action") because service was defective against me as an individual. The motion was filed on several related cases— DKT No. 81 in Appeal No. 18-16228; DKT No. 58 in Appeal No. 18-17040; DKT No. 52 in Appeal No. 19-15709; DKT No. 48 in Appeal No. 19-15797 where the "motion to recall the Mandate" was denied because "[n]o further filings will be entertained in these closed case." Appx.1. I simply filed the motion on the other 9th Circ. Case, which the District Court related *sua sponte* to the Interpleader Action– Case No.: 22-15199, at DKT No.: 18 where it has been sitting for fifteen (15) months.

There are thirteen agreements between the parties. Two of those agreements are between Eureka and Bestway (the "Subject Licenses"). Those agreements were rescinded by all the parties including myself because I was withdrawing my oral non–exclusive license to Eureka.

The Petitioner – Scott Agreement

Leonard Gregory Scott ("Scott") and I had a romantic relationship. He had been living with me for about one year following a dispute with his wife. He then purchased a home and was insistent I live with him. I was reluctant but moved in and shortly after moving in on February 23, 3013, we signed a *residential lease agreement* which we called the Living Together Agreement (the "LTA") to protect our individual property rights. Scott

was also my Accountant and valued my net worth at $1.3 Million at the time. I had no liabilities. Appx.10

The Petitioner – Bestway Agreements

On or about May 7, 2013, on behalf of my Canadian Corporation— Wide Eyes Marketing Ltd. *"WEM") entered into a non–exclusive license agreement for WEM's U.S. Patent No.: 7,046,440, entitled 3–D Vision System for Swimming Pools, issued May 6, 2006. Appx.11. On April 1, 2020 I assigned the patent and all rights including to sue for past infringements and breaches from WEM to myself. Appx.12. This License Agreement has never been terminated and remains in effect.

On or about October 25, 2013 I entered into a second license agreement for the ramped water slide that I invented with co–inventor Robert W. ("Bob") Ranftl ("Ranftl"), which would eventually be granted U.S. Patent No.: 9,511,298 on December 6, 2016. Appx.13. This License Agreement has never been terminated and remains in effect.

On or about February 22, 2014 I entered into a three–year consulting agreement with Bestway. Because I am a Canadian Citizen Bestway successfully petitioned a three–year Trade North America ("TN") Visa ratified by the Dept. Homeland Security I U.S. Customs and Border Protection. Appx.14. This Agreement automatically terminated on February 20, 2017.

The Eureka – Bestway Agreements

Following Scott's forced retirement, he expressed an interest in forming a consulting company. Scott had many wine clients and I had extensive experience in the Wine & Spirit Industry. On or about June 2013, Eureka was formed with Scott being the sole managing member. I agreed to offer a verbal non–exclusive license to the '440 Patent and the pending '298 Patent in exchange for a royalty. Appx.15.

In turn, acting as a consultant to Eureka and Bestway, I negotiated on Eureka's behalf non–exclusive licenses to the rest of the world for the '440 Patent on August 20, 201 (Appx.16) and the '298 Patent on June 7, 2014 (Appx.17) (collectively the "Subject Licenses"). The Subject Licenses were rescinded on October 2015. Appx.28, §§11(a)(b); see also Appx.29, §§8(a)(b).

The Original Eureka Action

Under my agreements with Bestway I was required to give them first refusal right's on any inventions pertaining to their business. Appx.11, §4; Appx.12 (Bestway's CEO to me: "what is important to us, is that during the cooperation we will have, you should not be working with any other competing company, neither as employee, nor as consultant").

On or about May 27–8, 2014 at Bestway's Headquarters in Phoenix, AZ I presented the "Option Products." Appx. 18. But by December 2014, Bestway low-ball countered my offer and I simply walked away and began to present them elsewhere. At the same time my romantic relationship with Scott had deteriorated and I executed the "roommates" clause in the LTA. Appx.10, ¶8.

In retaliation, Bestway stopped paying royalties altogether. Under the ill advice of counsel, I assisted Eureka to file an action against Bestway in NorCal Dist. Ct.– Oakland, Case No.: Case Number: 15-CV-701-JSW, *Eureka v. Bestway* (the "Original Action"). I merely saw Bestway's non–payment as a stall tactic and chose not to involve myself as an individual or WEM in the action, so as to not jeopardize my Visa with Bestway or my two license agreements.[1]

Scott's Malicious Actions Commence

However, just 10 days after the filing of the Original Action, on February 23, 2015 (and on the anniversary of the LTA) I endured a knife–attack in protecting Scott from a *purported* knife robbery. Appx.19. I was on the 'phone with 9–1–1 when I was attacked and tossed the 'phone to Scott who disappeared until the Police finally arrived 40 minutes later. It is no coincidence the knife attack occurred on the anniversary of entering the LTA. Id. There are contradictions in Scott's statement, such as whether he wasn't sure if the assailant had a box cutter or a real knife. Id.He had a box cutter and it was invisible since a box cutter is held in the palm of one's hand invisible to a victim especially in the dark. Id. Secondly Scott states, the assailant held the knife in his right hand but he was left–handed and the knife was in his left hand. Id. I confronted Scott and accused him of planning the event (Appx.20) in addition to his accomplice whom he had been spending an inordinate amount of time in the months leading up to the attack (Appx.21). Neither have ever denied it.

[1] If Bestway in retaliation terminated my TN Visa I would have 10 days to leave the country.

Immediately following the conviction of the assailant, Scott's emotional and physical abuse escalated (Appx.22) to the point of me calling police on at least two occasions. The first occasion on July 2, 2015 the responding officer convinced me to not press charges since I would not be able to return to Canada as I had final plans to leave in seven (7) days. Appx.23.

Clearly Scott was having none of that, because on July 6, 2015 he became so violent I called the police once again, only to be arrested myself. Appx.23. Numerous false arrests, meritless incarcerations, false accusations, harassment by police and prosecutors followed for eighteen months (18)— to numerous and unnecessary to report here as they will be adjudicated before the Inter–American Commission on Human Rights (IACHR) as the malice and public corruption crosses borders. But on December 2, 2016 the DA dropped all the charges first day of trial. Id.

Scott Defaults and Lacks Standing in the Original Action

During the chaos between Scott and myself, Bestway filed a counter–claim against Eureka for failing to offer it the Option Products. Eureka defaulted but soon Bestway acknowledged that Eureka had no rights whatsoever to the Option Products and all it has was a non–exclusive license to the '298 & '440 Patents (Appx.15) which terminated at the time of my resignation from Eureka before it filed its counter–claim against Eureka (Appx.26, Scott Decl., ¶¶2–3). As a result, Bestway and Eureka dismissed their claims against each other "with prejudice." Appx.27. Bestway and Eureka further released each other from the Subject Licenses including any unknown claims. Appx.28, §§11(a)(b).

The Petitioner – Bestway Settlement & Option Product License Agreements (the "Option Agreements")

I also entered into a settlement agreement with Bestway that expressly rescinded any obligations I may have had as a stranger to the Subject Licenses. Appx.29, §§8(a)(b). Incorporated by reference to the Settlement Agreement between me and Bestway were six (6) additional licenses to the Option Products (Appx.30–35) and resolved Bestway's conversion of my H2O–GO! wordmark (Appx.87) which Bestway filed and received trademark protection without my permission. Additionally, the licensed grants were broad enough to include consulting work I had completed for Bestway in obtaining the Coleman License (Appx.36) and the Disney License (Appx.37). Essentially the License Grant in the Agreements covered "without limitation, all patent, trade secret, copyright, trademark, know-how, and other proprietary and intellectual property rights . . . all merchandising rights in the Licensed Product, including but not limited to the packaging, commercials, displays, trademarks and copyrights" (Appx.30–35, §§2.01–.02) for a royalty of five percent (Id., §5) if Bestway decided to "have manufactured, market, promote, advertise, use, offer-to-sell, sell, distribute, and import the Licensed Product and any extensions, modifications or improvements thereto" (Id., §2.01)— which it ultimately did of all the aforementioned intellectual property.

But on March 28, 2017 Bestway on its own free will terminated the Option Agreements (Appx.44) and all rights immediately terminated (Appx.30–35, §§3.04(a)). Upon termination all rights reverted to me. Appx.29, 9th recit. ("Mr. Sgromo, through his company W&B, has agreed to license to Bestway the exclusive rights to exploit the Option Products; . . ."). The USPTO determined that upon termination all rights returned to the Petitioner. Appx.44. Bestway had full notice and an opportunity to appeal this decision to the Federal Circuit Court of Appeals but chose to not do so. *Droplets, Inc. v. E*Trade Bank*, 887 F.3d 1309, 1321 (Fed. Cir. 2018) ("[a] party to an inter partes review or a post-grant review who is dissatisfied with the final written decision of the Patent Trial and Appeal Board under section 318(a) or 328(a) (as the case may be) may appeal the Board's decision only to the United States Court of Appeals for the Federal Circuit.")

Criminal Charges Dropped and the Interpleader Begins

After negligently and falsely misrepresenting that the Original Action Court had Ordered royalties from the Subject Licenses to be paid into an escrow account (Appx.45) pending a private arbitration between Scott and myself occurred under the LTA (Appx.10) (an arbitration clause which is null and void under California Law) and the charges dropped (Appx.24) it is no coincidence that Bestway immediately field the Interpleader Action (Appx.7). Bestway initially served the Interpleader Complaint with LegalZoom (Appx.38) who rejected service because it is not an agent for Wagmore & Barkless ("W&B"). I agreed to waive Summons of Service for W&B only (Appx.39) since it was a California LLC (which had no connection to the Subject Licenses and did not even exist at the time of the Original Action)— but I demanded Bestway serve me personally in

accordance with the Hague Convention.

Bestway *purports* to have served me in my individual capacity– personally on April 5, 2017 at my residence at 184 N. Hill St., Thunder Bay, Ontario, CANADA P7A 5V9. See Case no.: 4:17–cv–00205–HSG (the Interpleader Action) DKT No.: 63, ecf p.2, ("Plaintiff's served the complaint on the defendant Sgromo on April 5, 2017 (ECF No. 26)"). This is an impossibility because I was in Toronto, Ontario Canada (1500 km or a sixteen (16) hr. drive and a two (2) hour flight) at all relevant times. My travel to Toronto from March 23 to April 9, 2017 is well documented because on April 6, 2017 the day after the *purported* service of process, I survived an attack by confessed serial killer Bruce McArthur in Toronto's LGBTQ2+ Village. This was covered by National News providers like Global Television Network who certainly checked all the facts and dates. See Appx.40, at SgroAug22Decl, ¶1, Exh–1, ll.10–12, 15–16, ("[i]t was late March 2017 when Sgromo was visiting Toronto and went on this dating site and received a message from an old acquaintance, Bruce McArthur. The pair agreed to meet here at O'Grady's with some friends . . . [a]fterwards McArthur offered Sgromo a ride back to his hotel and that's when things took a turn.). I also attended a follow–up appointment with my surgeon at St. Michael's Hospital in Toronto on April 4, 2017. Id., ¶2, Exh–2. On April 6, 2017 just hours prior to being strangled by Mr. McArthur, I also personally delivered legal documents to Mr. Peter Choe, Esq. at his offices in downtown Toronto. This was confirmed in email exchange. Id., ¶3. On April 7, 2017 I met with yet another attorney in downtown Toronto for a meet & confer on a motion. Id., ¶4. I also attempted to meet with Bestway's legal counsel in Toronto to begin the ADR process in certain license agreements. I had

suggested dates of April 4th & 5th 2017 in which they could meet in Toronto. Id., ¶5; Exh–5 ("[w]e write in response to our previous email correspondence dated April 4 and 5, 2017. As I indicated in that correspondence, we do not have any authorization from our clients to meet with you in person while you are in Toronto termination of any agreements between you and our clients . . ."). I did not leave Toronto, Canada until Tuesday April 11, 2017 as I had rescheduled a coffee meeting with the General Manager, Dean Odorico of a popular bar in the LGBTQ2+ Village of Toronto (across the street from the restaurant in which he had met Mr. McArthur the night of the attack). Id., ¶6.

But what is truly telling is Bestway's attack on my allegations that Bestway was involved in not only the February 23, 3015 attack on me but the April 6, 2017 attack. Id., ¶5. The former occurred 10 days after the filing of the Original Action and the latter, nine (9) days before the attack and the day after the purported service of process. Bestway's defective service was premature and they should have waited until I was actually murdered to file their bogus proof of service. But all this is irrelevant because service was defective and Bestway cannot prove that I was in Thunder Bay, Ontario on April 5, 2017 because it was an impossibility– and the discussion begins and ends there.

I DECLARE UNDER FEDERAL PENALTY OF PERJURY THE ABOVE TO BE TRUE TO THE BEST OF MY KNOWLEDGE,

.....

Pietro Pasquale Antonio Sgromo
(a/k/a Peter Anthony Sgromo)

REASONS FOR GRANTING THE PETITION

"As the writ is one of "the most potent weapons in the judicial arsenal," [citation], three conditions must be satisfied before it may issue. [citation]. First, "the party seeking issuance of the writ [must] have no other adequate means to attain the relief he desires," [citation] — a condition designed to ensure that the writ will not be used as a substitute for the regular appeals process, [citation]. Second, the petitioner must satisfy `"the burden of showing that [his] right to issuance of the writ is "clear and indisputable."'" [citation]. Third, even if the first two prerequisites have been met, the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstance. [citation]. These hurdles, however demanding, are not insuperable. This Court has issued the writ to restrain a lower court when its actions would threaten the separation of powers by "embarrass[ing] the executive arm of the Government," [citation], or result in the "intrusion by the federal judiciary on a delicate area of federal-state relations."' [citation]. *Cheney v. U.S. Dist. Court for D.C,* 542 U.S. 367, 380-81 (2004).

The District Court entered default judgement against Sgromo in his individual capacity, after the Clerk refused. But the court did not have jurisdiction over the defendant in his individual capacity because service was defective. *Omni Capital Intern., Ltd. v. Rudolf Wolff & Co., Ltd.,* 484 U.S. 97, 104 (1987); see also *Wetmore v. Karrick,* 205 U.S. 141, 149 (1907), ("[i]t is also an elementary doctrine of this court that a judgment rendered *in personam* against a defendant without jurisdiction of his person is not only erroneous but void" and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decisions," citing *Pennoyer v. Neff,* 95 U.S. 714.); *Harris v.*

Hardeman et al, 55 U.S. 334, 339 (1852) ("[t]he court entering such judgment by default could have no jurisdiction over the person as to render such personal judgment, unless, by summons or other process, the person was legally before it."); *Crider v. Zurich Ins. Co.,* 380 U.S. 39, 49 (1965) ("where the court that entered the default judgment lacked subject matter jurisdiction of the controversy, [the] law permits collateral attack on the validity of the default judgment."); *Swan Land and Cattle Company v. Frank,* 148 U.S. 603, 614-15 (1893) ("[t]his court has repeatedly held that a personal judgment is without any validity if it be rendered against a party served only by publication of a summons, but upon whom no personal service of process within the State was made, and who did not appear."— citing, *Pennoyer*; *Harkness v. Hyde* , 98 U.S. 476; *St. Clair v. Cox* , 106 U.S. 350. "); *American Surety Co. v. Baldwin,* 287 U.S. 156, 168 (1932) ("[i]t is true that entry of judgment without notice may be a denial of due process even where there is jurisdiction over the person and subject matter."); *Hassler v. Shaw,* 271 U.S. 195, 199 (1926) ("[t]hus it is manifest that the record shows a judgment against a defendant never served with process and without any attachment of property — a judgment void upon its face unless the record discloses that the defendant came in and submitted to the jurisdiction, although not served."); *Hovey v. Elliott,* 167 U.S. 409, 444-45 (1897) ("[i]t cannot be doubted that where a judgment is rendered without the issuance and service of summons against a party who did not enter an appearance, the court rendering it is without jurisdiction to do so, and it can be assailed as void whenever presented as a muniment of right against another."); *Clark v. Wells,* 203 U.S. 164, 170–71 (1906) ("[i]t must be taken at the outset as settled that no valid judgment *in personam* can be rendered against a defendant

without personal service upon him in a court of competent jurisdiction or waiver of summons and voluntary appearance therein"— citing *Pennoyer*; *Caledonian Coal Co. v. Baker* , 196 U.S. 432, 444, "); *Simon v. Southern Railway* , 236 U.S. 115, 132 (1915) ("[a]s the [Defendant] made no appearance the default judgment was void"); *King v. Cross* , 175 U.S. 396, 398 (1899) ("a judgment rendered by a court against a defendant who is neither within its jurisdiction, by his person or his property, is wholly void, and any attempt to enforce such judgment amounts to a denial of due process of law.")

Rule 60(b) provides, in part, "the court may relieve a party . . . from a final judgment . . . for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; . . . (3) fraud . . . misrepresentation, or other misconduct of an adverse party; (4) the judgment is void. . . ." *Id.*. A final judgment is void, and therefore must be set aside under FedR.Civ.P. 60(b)(4), "only if the court that considered it lacked jurisdiction . . . over the parties to be bound." *United States v. Berke,* 170 F.3d 882, 883 (9th Cir. 1999). "[A] motion to vacate for lack of jurisdiction *may be made at any time.* " [emphasis added] *S.E.C. v. Internet*, 509 F.3d 1161, 1165 (9th Cir. 2007).

"Under Rule 60(b)(4) a deferential standard of review is not appropriate because if the underlying judgment is void, it is a *per se* abuse of discretion for a district court to deny a movant's motion to vacate the judgment under Rule 60(b)(4)" *Central Vermont Public Service Corp. v. Herbert,* 341 F.3d 186, 189 (2d Cir. 2003). Unlike a motion to set aside default judgment for equitable reasons, there is no discretion for a district court to exercise under Rule 60(b)(4); either a judgment is void or it is valid. *Thomas P. Gonzales Corp. v. Consego Nacional de Produccion de Costa Rica,* 614 F.2d 1247, 1256 (9th Cir.

1980); see also *S.E.C.*, at 1165 (9th Cir. 2007) ("[a] default judgment is void where the court lacks personal jurisdiction due to insufficient service of process."). Therefore, a district court need not consider the merits of the defense, prejudice to the plaintiff, or culpability of the defendant under Rule 60(b)(4). *Eclipse Group LLP v. Fortune Mfg. Co., Ltd.,* No. 14cv0441-GPC-WVG, at *2-3 (S.D. Cal. Dec. 8, 2014).

While "[a] defendant is not required to respond to a complaint that has not been served pursuant to Fed.R.Civ.P. 4." (*Poslof v. Walton*, 1:11-cv-01407 LJO BAM, at *1 (E.D. Cal. Mar. 2, 2012))— "a defendant moving to vacate a default judgment based on improper service of process, where the defendant had actual notice of the original proceeding but delayed in bringing the motion until after entry of default judgment, bears the burden of proving that service did not occur." (*S.E.C.,* at 1165). "The rule also comports with general principles of fairness." *Id.,* at 1166. This rule has been adopted by a number of district courts. *Burda Media, Inc. v. Viertel,* 417 F.3d 292, 299 (2d Cir. 2005). This Court has aptly stated that it also reviews *de novo* whether default judgment is void because of lack of personal jurisdiction due to insufficient service of process. *Mason v. Genisco Tech. Corp.,* 960 F.2d 849, 851 (9th Cir. 1992). However, the "district court's factual findings regarding jurisdiction are reviewed for clear error." *Panavision Int'l, L.P. v. Toeppen* , 141 F.3d 1316, 1320 (9th Cir. 1998).

Federal Rule of Civil Procedure 4(f)(2)(A), which provides for service in a foreign country "by a method that is reasonably calculated to give notice" as "prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction." However, to serve an individual in a foreign country, Rule 4(f) provides that: "[u]nless 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 . . . 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. Fed. R. Civ. P. 4(f)(1).

The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters ("Hague Service Convention"), referenced in Rule 4(f)(1), "is a multinational treaty that governs service of summons on persons in signatory foreign countries." *Nuance Comm'n, Inc. v. Abby Software House* , 626 F.3d 1222, 1238 (9th Cir. 2010) (citing *Volkswagenwerk Aktiengesellschaft v. Schlunk,* 486 U.S. 694, 698 (1988)); see Hague Service Convention, Nov. 15, 1965, 20 U.S.T. 362, T.I.A.S., 6638. The Hague Service Convention is "mandatory in all cases to which it applies." Id. at 705. The Hague Service Convention "requires each state to establish a central authority to receive requests for service of documents from other countries." *Volkswagenwerk* , at 698– 99; see Hague Service Convention, art. 2, Nov. 15, 1965, 20 U.S.T. 362, T.I.A.S., 6638. Once a central authority receives a request in the proper form, it must serve the documents by a method prescribed by the internal law of the receiving

state or by a method designated by the requester and compatible with that law." *Volkswagenwerk* , at 699. Canada, the foreign jurisdiction at issue here, is a signatory to the Hague Service Convention. 1989 Can. T.S. No. 2.

Canadian law authorizes personal service. *Mitchell v. Theriault,* 516 F. Supp. 2d 450, 456–57 (M.D. Pa. 2007) (citing Service of Documents SOR/1998-106 § 127 (Can.)). Under the Canada Federal Court Rules ("Canada Rule"), "[a]n originating document that has been issued . . . shall be served personally." Federal Court Rules, SOR/98-106, s. 127(1) (Can.). Personal service on an individual may be made:

> (a) by leaving the document with the individual;
> (b) by leaving the document with an adult person residing at the individual's place of residence, and mailing a copy of the document to the individual at that address;
> (c) where the individual is carrying on a business in Canada, other than a partnership, in a name or style other than the individual's own name, leaving the document with the person apparently having control or management of the business at any place where the business is carried on in Canada;
> (d) by mailing the document to the individual's last known address, accompanied by an acknowledgement [sic] of receipt form in Form 128, if the individual signs and returns the acknowledgement [sic] of receipt card or signs a post office receipt;
> (e) by mailing the document by registered mail to the individual's last known address, if the individual signs a post office receipt; or
> (f) in any other manner provided by an Act of Parliament applicable to the proceeding. Federal Court Rules, SOR/98-106, s. 128(1) (Can.).

Cal Cod of Civ Proc is similar— ". A summons may be served by personal delivery of a copy of the summons and of the complaint to the person to be served. Service of a summons in this manner is deemed complete at the time of such delivery. Id., §415.10.

Bestway *purports* to have served Defendant Sgromo – in his individual capacity– personally on April 5, 2017 at his then residence at 184 N. Hill St., Thunder Bay, Ontario, CANADA P7A 5V9. See Case 4:17–cv–00205–HSG DKT No.: 63, ecf p.2, ("Plaintiff's served the complaint on the defendant Sgromo on April 5, 2017 (ECF No. 26)"). This is impossibility because Sgromo was in Toronto, Ontario Canada (1500 km or a sixteen (16) hr. drive and a two (2) hour flight) at all relevant times and has easily met his burden. Sgromo's travel to Toronto from March 23 to April 9, 2017 is well documented because on April 6, 2017 Sgromo survived an attack by *confessed* serial killer Bruce McArthur in Toronto's LGBTQ2+ Village. This was covered by National News providers like Global Television Network who certainly checked all the facts and dates. See generally, Appx.40.

Eureka and Scott do not even purport to have served Petitioner or W&B the cross–complaint. Petitioner ignored in his individual capacity answering the complaint and as Judge Gilliam acknowledges, "[i]n Plaintiffs' and Crossclaimants' joint motion for entry of default, the parties represented that Sgromo "confirmed he would not be filing an answer in this case," . . . "I am not giving [this] action any more time. . . . In a nutshell, [I] do not have to even answer anything anymore and will not." Appx.6, fn.6. In fact, Judge Gilliam clearly knew that Petitioner did not answer the complaint in his individual capacity (Id., at "B"); see also Id., fn.4 ("his [Sgromo] failure to answer notwithstanding "). Judge Gilliam had a duty or at least to direct a law clerk to ensure that proper service was effectuated, but he did not and surely, as shall be argued below no law clerk in their right mind would ever recommend the laughable and crass egregious conclusions of law in the Order.

It is no coincidence that on January 30, 2017 the Clerk entered a minute entry that "[t]he Clerk of this Court will now randomly reassign this case to a District Judge because either (1) a party has not consented to the jurisdiction of a Magistrate Judge, or (2) time is of the essence in deciding a pending judicial action for which the necessary consents to Magistrate Judge jurisdiction have not been secured" (See Interpleader Action, DKT No.: 7) when service was yet to be *purportedly* effectuated sixty–six (66) days later.

It is also no coincidence that Judge Gilliam Ordered that "[w]ithin 30 days of the entry of this Judgment, the Bestway Companies shall deposit with the registry of the Court the present value of the Royalty Payment, accrued under the '440 Patent License Agreement and the Slide License Agreement, . . . " and "[t]he Royalty Payment deposited with the registry of the Court shall be disbursed in accordance with this Court's findings on summary judgment that Defendant Scott was at the time of the '440 Patent License Agreement, Dkt. No. 79-6, the owner of all right, title, and interest to U.S. Patent No. 7,046,440; that Defendant Eureka was the owner of all rights with respect to the products that are the subject of the Water Slide License Agreement, Dkt. No. 79-7, at the time that the Water Slide Agreement was entered; and that Defendants Scott and Eureka are entitled to all royalties accrued under the '440 Patent License Agreement and the Water Slide License Agreement" (Appx.5, ¶¶2–3; see also Interpleader Action, DKT No.: 157, ¶¶2–3) when the bank statements reveal no such funds have been deposited (see Appx.46) into either Scott or Eureka's Bank Accounts listed in the Subject Licenses or Settlement Agreement (Appx.16, §5; Appx.17, §3(c); Appx.28, §4(b)(ii), respectively). Rhetorical question—exactly to whom are the royalties being "disbursed"? This warrants

a criminal reference to the Dept. of Justice and the FBI—unless of course, judges are above the law. In Petitioner's experience being arrested without cause, remanded into custody without due process, excessive bail of $300,000.00 for a misdemeanor (with no criminal record)— to the Petitioner the answer is axiom. Partitioner submits that all the violence and malicious prosecution he was subject to was a means to an end— to rob him of his decade of accretion.

Petitioner filed a motion to vacate the Order for defective service on the Interpleader Appeal before the 9th Circ. "as a motion to recall the Mandate [at] Entry No. 81 in Appeal No. 18-16228; Docket Entry No. 58 in Appeal No. 18-17040; Docket Entry No. 52 in Appeal No. 19-15709; Docket Entry No. 48 in Appeal No. 19-15797" (Appx.1) but the Court "den[ied] the motion [because n]o further filings will be entertained in these closed cases." Id. Petitioner simply filed the motion on the Related Case D.C. No.: 4:19-cv-08170-HSG, *Sgromo v. Scott et al.,* 9th Circ. Case No.: 22–15199 but the motion has been sitting on the Court Docket since September 06, 2022 (see Id., DKT No.: 18). The Court did issue a mandate denying the appeal to vacate the arbitration itself and that is pending on *writ of certiorari* before this Court (Case No. to yet be assigned). A *writ of mandamus* is therefore necessary as the Petitioner has no other remedy available to him; the right to issuance of the writ is "clear and indisputable"; and appropriate since it has been on the Docket for fifteen (15) months.

It is Therefore Irrelevant Petitioner is Not a Party to the Subject Licenses

In *Savings Bank v. Ward*, 100 U.S. 195 (1879), this Court, in its seminal case discussing privity, noted that "[t]he only safe rule is to confine the right to recover to those who enter into the contract; if we go one step beyond that, there is no reason why we should not go fifty."

In the present case, the District Court bound Petitioner in his individual capacity to the Subject Licenses because he signed the agreements as a "consultant to Eureka." The Subject Licenses are expressly between Bestway and Eureka. By way of example the '440 Patent License Agreement first recital expressly states:

> "**THIS LICENSE AGREEMENT** is effective . . . by and between Eureka Inventions LLC, . . . and Bestway (USA) Inc., . . . Bestway (Hong Kong) International Ltd., . . . Bestway Inflatables & Materials Corp. . . ." Appx.15 & 16, 1st recit.

The integration clause expressly states:

> This Agreement embodies the entire understanding of EUREKA and LICENSEE and supersedes all precious communication, representations, or understanding, either oral or written between EUREKA and LICENSEE relating to this Agreement. See e.g. Appx.15, §23(C).

This is simply laughable. If this decision were to stand, even if service was proper (which it was *not*), the Court should then abandon the privity of contract rule. And Inherent in the liberty to contract is the freedom to abstain from contracting. *Standard Oil Co. v. United States,* 221 U.S. 1, 2 (1911). Yet the District Court bound him in his individual capacity when Bestway itself admitted at the start of the Interpleader Action he is not a party to the Subject Agreements. Appx.41.

It is Therefore Irrelevant the Subject Licenses were Rescinded

"The word `rescind' implies that both parties have agreed that the contract shall be at an end as if it had never been. " *Roehm v. Horst*, 178 U.S. 1, 9 (1900). "When a contract is rescinded, it ceases to exist. If the action to rescind or an action based on an alleged rescission or abandonment is successful, the contract is forever ended and its covenants cannot thereafter be enforced by any action." *Lemle v. Barry*, 181 Cal. 1, 5 (Cal. 1919). "A contract is extinguished by its rescission." (Civ. Code, § 1688.) "Rescission not only terminates further liability but restores the parties to their former position by requiring each to return whatever he or she received as consideration under the contract, or, where specific restoration cannot be had, its value. [Citations.]" (1 Witkin, Summary of Cal. Law (10th ed. 2005) Contracts, § 926, p. 1023.) An action for rescission and an action for breach of contract are alternative remedies because rescission is based on the disaffirmance of the contract while a damages award for breach of contract is based on its affirmance. Therefore, the election of one of these alternative remedies bars recovery under the other. *Akin v. Certain Underwriters at Lloyd's London* (2006) 140 Cal.App.4th 291, 296. In the present case, Bestway, Eureka, W&B, and Sgromo all agreed that:

> **"Release**
> (a) With the exception of any claim relating to any term and/or the performance of this Agreement, [the parties] hereby release each other from all actions, causes of action, suits, rights, debts, sums of money, accounts, accountings, covenants, contracts, controversies, agreements, promises, indemnities, liabilities, damages, judgments, executions, claims, or demands of every nature whatsoever, in law or equity or arbitration, whether based on contract, tort, statutory or other legal or equitable theory of recovery, whether known or unknown, asserted or unasserted, which one may have against the other arising at any time prior to the Effective Date, including all claims that in any way relate to, arise from, or are in any manner connected to the Subject Licenses.

(b) The Parties hereto expressly acknowledge and agree that this Agreement fully and finally releases and forever resolves all claims referenced in subparagraph (a) above, including those that are unknown, unanticipated or unsuspected or that may hereafter arise as a result of the discovery of new and/or additional facts, and the parties expressly waive all rights under Section 1542 of the Civil Code of California, which the parties acknowledge they have read and understood and which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IS KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Appx.27, §§11(a)(b); Appx.28, §§8(a)(b)

The District Court violated this settled rule of law when it enforced its covenants and did so beyond what those covenants even implied. The Order is so egregious it is crass and laughable. One of the most important concepts used during the ascendancy of economic due process was liberty of contract. The original idea of economic liberties was advanced by Justices Bradley and Field in the *Slaughter-House Cases* (83 U.S. (16 Wall.) 36 (1873)) and elevated to the status of accepted doctrine in *Allgeyer v. Louisiana*, (165 U.S. 578 (1897)). Freedom of contract was also alluded to as a property right, as is evident in the language of the Court in *Coppage v. Kansas*— "[i]ncluded in the right of personal liberty and the right of private property—partaking of the nature of each—is the right to make contracts for the acquisition of property. 236 U.S. 1, 14 (1915).

It is Therefore Irrelevant the Claims to the Subject Licenses were Merged into the Option Agreements

"In determining the issue, the court must consider not only whether the written instrument contains an integration clause, but also examine the collateral agreement itself to determine whether it was intended to be a part of the bargain. [Citations.] However, in determining the issue of integration, the collateral agreement will be examined only

insofar as it does not directly contradict an express term of the written agreement; `it cannot reasonably be presumed that the parties intended to integrate two directly contradictory terms in the same agreement.' *Banco Do Brasil, S.A. v. Latian, Inc.,* 234 Cal.App.3d 973, 1002 (Cal. Ct. App. 1991), citing *Gerlund v. Electronic Dispensers International* (1987)] 190 Cal.App.3d at p. 271.)

In the present case, in addition to the **RELEASE** the Settlement Agreement between Petitioner and Bestway states in the recitals:

> ; "WHEREAS, Peter Sgromo, who is a principal of W&B, is a former consultant of Eureka Inventions, LLC ("Eureka"). As a consultant, Mr. Sgromo was responsible for creating and developing most, if not all of the toy products developed, sold and/or licensed by Eureka; and"
>
> WHEREAS, in August 2013, Eureka and Bestway entered into a first license agreement . . . to make and sell products covered by the U.S. Patent No. 7,046,440 ("the '440 Patent License"); and
>
> WHEREAS, in June 2014, the Eureka and Bestway entered into a second license agreement . . . [for] a water slide product to Bestway (the "Slide License");
>
> "WHEREAS, the Eureka and Bestway are litigants in a civil action pending in the United States District Court for the Northern District of California, Oakland Division, captioned Eureka Inventions, LLC v. Bestway (USA), Inc. et al., Civil Action No. 3:15-cv-00701-JSW (DMR) (the "Lawsuit") concerning certain rights to be provided and obligations to be performed under the '440 Patent License and the Slide License; and
>
> WHEREAS, Bestway and Eureka have mutually agreed to terminate and conclude the Lawsuit; and" . . . Appx.28, 2nd to 6th recit's.
>
> "Entire Agreement. This Agreement constitutes the entire understanding and agreement between the parties and supersedes all prior agreements, representations, or understandings between the Parties relating to the subject matter hereof. Any preceding agreements relating to the subject matter hereof, whether written or oral, are hereby merged into this Agreement." Id., §13(b).

In the Interpleader Action, Bestway complaint – in relevant part – sought the following relief: "[t]he parties be commanded to appear and to assert what claims, if any, they make to the funds held in escrow reflecting past royalty payments for the '440 Patent and Slide License Agreements; . . . the party entitled to receive the funds . . . such that that the Plaintiffs be . . . held harmless from paying out the proceeds of . . . past royalty payments for the '440 Patent and Slide License Agreements accordingly; [a] judicial determination be made of the party entitled to receive the funds for future royalty payments . . . regarding the '440 Patent and Slide License Agreements . . ." Appx.7, at A.–C. Judge Gilliam allowed the covenants to be relitigated when the Settlement Agreements expressly disallowed this.

"The parol evidence rule " 'is not a rule of evidence *but is one of substantive law.*'" [emphasis provided] *Casa Herrera, Inc. v. Beydoun,* (2004) 32 Cal.4th 336, 343.). It is a "well-established rule that parol evidence is inadmissible to contradict or vary a written contract. A written contract must be in force as a binding obligation to make it subject to this rule." *Burke v. Dulaney*, 153 U.S. 228, 238 (1894). Judge Gilliam's Order violates this well established rule of *substantive law* and even if service was effectuated (which it was *not*) the Order should be vacated on this rule of law alone.

It is Therefore Irrelevant that Patent License Agreement and Patent Assignment Agreement are *Not* Synoymous Terms

"`[L]icense' and `assignment' have separate and distinct meanings, i.e., the right to use the [ ] patents versus an ownership interest in them." *Motorola Inc. v. Amkor Technology,* 958 A.2d 852, 860 (Del. 2008). Only assignments need be in writing under 35 U.S.C. § 261— but Licenses may be oral. *Enzo APA Son v. Geapag A.G.,* 134 F.3d

1090, 1093, 45 USPQ2d 1368, 1371 (Fed. Cir. 1998). Common corporate structure does not overcome the requirement that even between a parent and a subsidiary, an appropriate written assignment is necessary to transfer legal title from one to the other. *Lans v. Digital Equipment Corp*, 252 F.3d 1320, 1328 (Fed. Cir. 2001) (holding that a plaintiff-inventor, who assigned his patent to a corporation in which he was the sole shareholder and managing director prior to filing the action, lacked standing to sue).

Since *De Forest Radio Tel. Co. v. United States*, 273 U.S. 236, 241 (1927), Courts have attempted to identify and isolate various avenues to an implied license. As a result, courts and commentators relate that implied licenses arise by acquiescence, by conduct, by equitable estoppel (estoppel in pais), or by legal estoppel. *AMP, Inc. v. United States,* 389 F.2d 448, 452 nn. 4-5, 156 USPQ 647, 649 nn. 4-5 (Ct.Cl. 1968); Robert L. Harmon, Patents and the Federal Circuit Section(s) 6.2(c) (3d ed. 1994 Supp. 1996); 6 Ernest B. Lipscomb III, Walker on Patents Section(s) 20:14-20:17 (3d ed. 1987 Supp. 1995). These labels describe not different kinds of licenses, but rather different categories of conduct which lead to the same conclusion: an implied license.

In the present case Judge Gilliam's determination that Petitioner's signature on the Subject Licenses as "Consultant to Eureka" was somehow tantamount to an assignment is laughable. Petitioner's initial signature on the Subject Licenses (Appx.16 & 17) merely meant that by his conduct he was simply consenting to an oral license agreement to Eureka (see also Appx.15, Sgromo to Scott and his counsel on suggestion he should assign the '440 Patent to Scott— "[n]o. Let's just go with paying me a royalty"). Further, at all relevant times the '440 Patent was owned by WEM and it was not assigned

to Sgromo until April 1, 2020. Appx.12. Judger Gilliam's determination that "In June 2013, Sgromo "offered to transfer his ownership rights in the intellectual property to Eureka," as a way to repay Scott for money he had given or loaned to him over the course of their relationship" (Appx.5, at A) is simply laughable. The Bank records of Scott and Eureka (Appx.46) evidence that Sgromo had deposited 100's of thousands of dollars into the Eureka Account which Scott has yet to repay. The LTA is clear:

> "We agree that all property owned by either of us of the date of this agreement, obtained during the agreement shall be considered to be and shall remain the separate property of each. Neither of us will have any claim to the separate property of the other absent a written agreement transferring ownership. This includes but is not limited to personal income, retirement income, investment income, royalty income, income from inheritances, business interests, legal settlements or real estate income and interest" Appx.10, §1.
>
> ¶ . . . ¶
>
> **"ENTIRE AGREEMENT:** the foregoing constitutes the entire Agreement between the parties and may be modified only in writing signed by all parties . . ." Id., §39

Secondly, Petitioner is only the fifty–percent (50%) owner of the '298 Patent and only had an exclusive license to the remaining 50% granted by co–owner Robert W. Ranftl. Appx.42, ¶¶6–10. The parol evidence rule is a rule of substantive law under which the integrated terms of a written agreement supersede all prior and contemporaneous agreements, making evidence contrary to those terms irrelevant as a matter of law. *Lund v. Jevne (In re Lund)*, 357 F. App'x 139, 141 (9th Cir. 2009), citing *Casa Herrera, Inc.*, at 502.

It is impossible to see how there was any valid transfer of any intellectual property rights. But clearly for Judge Gilliam the liberty to contract is not a protected constitutional right but subject to the arbitrary and capricious whims of a district judge who Petitioner alleges is involved in nothing more than public corruption. A criminal reference here is warranted. Unless of course judges are above the law.

CONCLUSION & PRAYER FOR RELIEF

In addition to the District Court Order being vacated for deficient service, the Court should make the following DECLATORY ORDERS:

1. An ORDER directing the 9th Circ. Court to vacate the Interpleader Action ORDER for defective service, or in the alternative, an ORDER directing the 9th Circ. Court to enter a decision and ORDER to the motion;
2. A DECLARATORY ORDER that neither the Petitioner nor W&B nor WEM were ever parties to the Eureka–Bestway Subject Licenses;
3. A DECLARATORY ORDER that the Subject Licenses have been rescinded and no further of any of their covenant be enforced in any subsequent action;
4. A DECLARATORY ORDER that at the time of the Interpleader Action the '440 Patent belonged to WEM;
5. A DECLARATORY ORDER that as of April 1, 2020 the '440 Patent was lawfully assigned from WEM to Petitioner;
6. A DECLARATORY ORDER that the Peititioner and Robert W. Ranftl have always been the co–owners of the '298 Patent;

7. A DECLARATORY ORDER that the H2O–GO! trademarks and trade dress belong to the Petitioner;
8. A DECLARATORY ORDER that the Option Agreements have been terminated and any rights to the intellectual property outlined in #3–6 granted to Bestway immediately terminated on February 28, 2018;
9. A DECLARATORY ORDER that the non–exclusive Oral License Agreement for rights to the intellectual property outlined in #3–6 granted to Scott and Eureka terminated on July 2015;
10. An ORDER that the District Court immediately remit all royalties received under the rescinded Subject Licenses to the Petitioner with interest along with a full accounting of receipts and disbursements of said royalties to any and all parties;
11. A criminal reference to the Dept. of Justice and the FBI; and
12. Such further relief this Court determines right and just.

The petition for a writ of mandamus should be granted.

Respectfully submitted,

Pietro Pasquale Antonio (Peter Anthony) Sgromo
Petitioner— *Pro per*

Date: 11-03-2023