No. 23–6290

IN THE

SUPREME COURT OF THE UNITED STATES

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

vs.

HON. TIMOTHY J. RYAN/
BESTWAY INFLATABLES
&MATERIALS CORP.,
BESTWAY(HONG KONG)
INTERNATIONAL LTD.,
BESTWAY (USA), INC., — RESPONDENT(S)

PETITION FOR RE-HEARING BEFORE FULL NINE–MEMBER COURT

Pietro Pasquale Antonio Sgromo
(a/k/a Peter Anthony Sgromo)
Petitioner– *Pro per*
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Pursuant to Rule 44 of this Court, Appellant, Pietro Pasquale Antonio Sgromo (a/k/a Peter Anthony Sgromo), hereby respectfully petitions for re-hearing of this case before a full Nine–Member Court. Rule 44 expressly states that "[a]ny petition for the rehearing of an order denying a petition for a writ of certiorari . . . shall be limited to intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously presented."

TRUMP V. ANDERSON CONFIRMS ONLY CONGRESS *NOT* THE COURTS HAS POWER TO AMEND THE 14TH AMENDMENT DUE PROCESS RULE – ESPECIALLY SERVICE OF PROCESS

Trump v. Anderson, No. 23-719, (Mar. 4, 2024), decided after the present case, is intervening jurisprudence. In that case, this Court ruled that "[p]roposed by Congress in 1866 and ratified by the States in 1868, the Fourteenth Amendment "expand[ed] federal power at the expense of state autonomy" and thus "fundamentally altered the balance of state and federal power struck by the Constitution." [citations]. Section 1 of the Amendment, for instance, bars the States from "depriv[ing] any person of life, liberty, or property, without due process of law" or "deny[ing] to any person . . . the equal protection of the laws." And §5 confers on Congress "power to enforce" those prohibitions, along with the other provisions of the Amendment, "by appropriate legislation."" *Ibid.,* at *4.

The United States is a party to two multilateral treaties on service of process, the Hague Service Convention and the Inter-American Convention on Letters Rogatory and Additional Protocol. Procedures for service.[1] Canada "is a party to the Convention. Plaintiff, therefore, must comply with service via a central authority unless the Convention permits an alternative form of service." *D Squared Plant Traps LLC v. Guangdong Bixing Trading Co.,* Civil Action 23-cv-1907, at *6 (W.D. Pa. Feb. 9, 2024). 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:

[1] https://travel.state.gov/content/travel/en/legal/travel-legal-considerations/internl-judicial-asst/Service-of-Process.html#:~:text=The%20United%20States%20is%20a,Letters%20Rogatory%20and%20Additional%20Protocol.

(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.).

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.

Therefore, in denying certiorari the Order to which the Petitioner seeks review would stand and the Court would be making "new law" that would be in conflict with law–makers intentions. Further, there is intervening jurisprudence that requires the Court to enforce the statutes as written. *Dep't. of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz,* No. 22-846, at *14 (Feb. 8, 2024) ("[p]roper respect for Congress cautions courts against lightly assuming that any of the statutory terms it has chosen to employ are "superfluous"

or "void" of significance. "); see also *Pulsifer v. United States,* No. 22-340, at *64 (Mar. 15, 2024) ("[o]ur role is a more modest one: "[W]hen the statute's language is plain" and "the disposition required by the text is not absurd," "the sole function of the courts . . . is to enforce it according to its terms." Id., at 6 (internal quotation marks omitted). Because that is undoubtedly the case here, we must apply the safety valve as written.").

THE NORCAL DIST. COURT HAS RECENTLY REAFFIRMED ON THE "IN–WRITING" REQUIREMENT FOR PATENT TRANSFERS

Recently, in *Fibrogen, Inc. V. Hangzhou Andao Pharmaceutical Ltd.,* Dist. Court, ND California 2024, at 2C, the very same court from which the Petitioner seeks review, recently decided a very similar case where an employer sought "a declaration against [employees] Kind and Liu that it is "the true and lawful owner of the entire right, title, and interest in and to the Kind Patents." *Ibid.* The Court determined that "[t]o be entitled to such a declaration, FibroGen must "produce a written instrument documenting the transfer of proprietary rights in the patents" citing *Speedplay, Inc. v. Bebop, Inc.,* 211 F.3d 1245, 1250 (Fed. Cir. 2000). *Ibid.* It found FibroGen had not produced a written agreement and dismissed the claim.

The 9th Circ. is abandoning its own settled jurisprudence that "[i]n the context of an assignment of a patent, [the parties] can agree verbally until the cows come home, and that patent isn't assigned until there's a writing." *U.S. v. Solomon*, 825 F.2d 1292, 1296 (9th Cir. 1987). The rules governing the transfer and assignment of patent rights clearly envision a scheme of written assignment by providing that patents "shall be assignable in law by an instrument in writing." 35 U.S.C. § 261; see also *Solomon*, at 1296. The District Court's ruling that "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" is laughable because it solely relies on the unsubstantiated declaration of Scott (Appx.6, p.2, ¶1) and the bank records of Scott and Eureka show any payments to Sgromo but the opposite. Appx.46.

And the Court simply has the facts wrong that "Sgromo" could even make such an "offer" because at all relevant times, Sgromo's Canadian Corporation Wide Eyes Marketing Ltd. ("WEM") owned the '440 Patent. Appx.11. Not even will "common corporate structure . . . 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." *Abraxis*

Bioscience, Inc. v. Navinta LLC, 625 F.3d 1359, 1366 (Fed. Cir. 2010).

As for the '298 Patent, it did not even exist at the time of the license agreements. Sgromo and co–inventor, Bob Ranftl did not file for patent protection until July 15, 2015 (Appx.13) well past the signing of the non-exclusive license agreements between Eureka and Bestway on June 17, 2014 (see Appx.17). And Sgromo only owns 50% of the patent and had nothing more than an oral exclusive license with Ranftl in order to enter into a non-exclusive oral license agreement with Eureka. Appx.42, sworn affidavit of Ranftl, at ¶¶7–8. By denying certiorari this Court is now endorsing oral patent assignments and only Congress can change the Patent Act– not the Court.

Based on the above intervening jurisprudence alone certiorari should be granted. Notwithstanding there are numerous precedents and well–settled laws that the underlying Order violates and that represents "other substantial grounds not previously presented." As shall be proven below, the District Court's ruling that the intellectual property and the royalties and intellectual property under the Disputed License Agreements belong to Eureka is completely egregious. See Case 4:17-cv-00205-HSG, *Bestway v. Eureka et al.,* DKT No.: 90, pp.8–9; see also *Ibid.,* at Appx.6. ("the salient evidence they proffer is the '440 Patent License Agreement and the Water Slide License Agreement [the "Subject Licenses"]. On their face, the agreements plainly establish that Eureka is entitled to any royalties flowing from the '440 Patent License Agreement and the Water Slide License Agreement.").

THE NORCAL DIST. COURT ORDER IS BASED ON THE EGREGIOUS CONCLUSION OF LAW THAT AGREEMENTS CANNOT BE RESCINDED.

The Subject Licenses were expressly rescinded in two separate settlement agreements– one between the Respondents (see Appx.28) and the other between Petitioner and Bestway. The clause that rescinds the Subject Licenses can be found at Appx.28, §§11(a)(b) and Appx.29, §§8(a)(b). "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 [as in the present case], 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." (Cal. 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.) *Akin v. Certain Underwriters at Llloyd's London,* (2006) 140 Cal.App.4th 291, 296.

THE NORCAL DIST. COURT ORDER IS BASED ON THE EGREGIOUS CONCLUSION OF LAW THAT PRIVITY RULE OF CONTRACT IS NOW EXPANDED TO STRANGERS

Even if the Court were to find that rescission was *not* effectuated [which it was] denying certiorari would abandon the so-called "privity rule" to this country. "Before a stranger can avail himself of the exceptional privilege of suing for a breach of an agreement, to which he is not a party, he must, at least show that it was intended for his direct benefit." *Robins Dry Dock Repair Co. v. Flint,* 275 U.S. 303, 307-08 (1927), citing *German Alliance Insurance Co. v. Home Water Supply Co.*, 226 U.S. 220, 230. Here the District Court's determination that because "Sgromo also "served as a consultant to Eureka," and "had full authority to enter into license agreements with third parties on Eureka's behalf" (Appx.6, p.2, ¶1) therefore was bound by the Subject Licenses is completely egregious because the Agreements are expressly between Eureka and Bestway. By way of example, the '440 Patent License Agreement states:

> "This Agreement embodies the entire understanding of EUREKA and LICENSEE and supersedes all previous communications, representations, or understandings, either oral or written, between EUREKA and LICENSEE relating to this Agreement." [emphasis provided] Appx.13, §23(C).

"[Th]is case is not an exception from the general rule that privity of contract is required." *Keller v. Ashford,* 133 U.S. 610, 621 (1890). "The 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." *National Savings Bank of D.C. v. Ward,* 100 U.S. 195 (1879), (citing Lord Abinger and Baron Alderson in which introduced the so-called "privity rule" to this country.

THE NORCAL DIST. COURT ORDER IS BASED ON THE EGREGIOUS CONCLUSION OF LAW THAT INTEGRATION CLAUSES IN AGREEMENTS ARE MEANINGLESS

The integrated Agreement between Petitioner and Scott (the "LTA") (Appx.10) governs any dispute over property rights and expressly states:

> "We agree that all property owned by either of us at 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....royalty income .... business interests.... legal settlements". . . Id., ¶1.
>
> "[Scott] acknowledges that a significant portion of [Sgromo's] income comes from his business Wide Eyes Marketing Ltd. (and possibly other LLC names)....and that he often conducts business from home and as such will list [the home] as a place of "doing business" in royalty agreements. [Scott] acknowledges this does not give him ownership rights of any kind..." Id., ¶2.

The contract clause, found in Article I, §10 of the Constitution, prohibits the states from impairing the obligations of *existing contracts* as is the case here. *Ogden v. Saunders*, 25 U.S. 213 (1827). Denying certiorari would simply violate this well settled tenet.

A WRIT OF MANDAMUS IS REQUIRED BECAUSE THERE STILL IS NO FINAL ORDER IN THE CASE AND THE 9TH CIRC. REFUSES TO REVIEW THE NON–FINAL ORDER

In the present case, the 9th Circ. Court initially issued an Order that the Interpleader Court had failed to issue an Order in compliance with "Fed. R. Civ. P. 54(b)," citing *Chacon v. Babcock*, 640 F.2d 221, 222 (9th Cir. 1981) (order is not appealable unless it disposes of all claims as to all parties or judgment is entered in compliance with rule). See Appx.2. The Court further cited, *Frank Briscoe Co., Inc. v. Morrison-Knudsen Co., Inc.*, 776 F.2d 1414, 1416 (9th Cir. 1985) ("order disposing of fewer than all claims or parties is not appealable absent express determination from district court that there is no just reason for delay under Rule 54(b)."). Id. The Petitioner then filed a writ of mandamus requesting the 9th Circ.

Court direct the Dist. Court to void the Order for defective service. The 9th Circ. "den[ied] the motion" because "[n]o further filings will be entertained in these closed cases." See Appx.1. Not even the "AMENDED JUDGMENT" carries the required Rule 54(b) language. See Appx.5; see also Case 4:17-cv-00205-HSG, *Bestway v. Eureka et al.,* DKT No.: 157. The Petitioner is left without any remedy.

THE DISTRICT'S COURT ORDER IS IN CONFLICT WITH THE USPTO ORDER AND WITHOUT THIS COURT'S INTERVENTION THERE REMAINS A CONFLICT

In reviewing the relevant License Agreements found in Appx.28–35, the USPTO determined that "LICENSE AGREEMENT TERMINATED [citing Appx.43] AND ALL RIGHTS GRANTED [citing §2, of Appx.30–35] IMMEDIATELY TERMINATE [citing "IBID., SECT. 3.04"]; LICENSOR RETAINS OWNERSHIP [ID., PP.7-8, SECT. 9.01 & 9.04] IN IP THAT ORIGINATED WITH HIM [SEE PP.12-18]. Appx.45. Indeed the intellectual property falls within the licensed grants which unambiguously are defined as:

> "without limitation, all patent, trade secret, copyright, trademark, know-how, and other proprietary and intellectual property rights) . . . and any extensions, modifications or improvements thereto. . . further grants to Bestway the sole and exclusive worldwide rights . . . any invention which is embodied in the Licensed Product or which is the subject of any patents to issue from any patent applications which have been or may be filed covering all or any portion of the Licensed Product (the "License")." Appx.30–35, §2.

And the Agreements expressly state that Petitioner "will hold all patent rights to the initial concepts or designs of the License Product provided . . . to Bestway hereunder." Id., §9.01. There is no question ALL the intellectual property originated solely with the Petitioner. Appx.11, 13, 18, 36 & 37; see also Appx.29, 2nd recit., ("Mr. Sgromo was responsible for creating and developing most, if not all of the toy products . . . licensed by Eureka;"); see also Id., 8th recit. ("WHEREAS, Mr. Sgromo and Bestway both believe that Mr. Sgromo has superior claims to the Option Products").

SETTLEMENT AGREEMENTS ARE SOLEMN UNDERTAKINGS AND OFFICERS OF THE COURT MUST MAKE EVERY EFFORT TO SEE TERMS ARE FULLY & TIMELY CARRIED OUT

Public policy strongly favors settlement of disputes without litigation . . . Settlement agreements should therefore be upheld whenever equitable and policy considerations so permit. By such agreements are the burdens of trial spared to the parties, to other litigants waiting their turn before over-burdened courts, and to the citizens whose taxes support the latter. An amicable compromise provides the more speedy and reasonable remedy for the dispute. R.Q. v. Tehachapi Unified Sch. Dist., Case No.: 1:16-cv-01485 LJO-JLT, at *5 (E.D. Cal. Nov. 26, 2019) citing, *D. H. Overmeyer Co. v. Loflin,* 440 F.2d 1213 (5th Cir. 1971). "Freedom of contract allows individuals to order their affairs and exchange goods and services, without coercion, in accord with their personal values and priorities. The Arizona Constitution so venerates contractual freedom that it is enshrined in [its] Declaration of Rights. Article 2, §25 commands, "[n]o . . . law impairing the obligation of a contract, shall ever be enacted." That provision requires this Court to indulge every presumption in favor of upholding a contract negotiated as this one was, and to assign a substantial burden of demonstrating unenforceability to the [Bestway Defendants] challenging the terms to which it willingly and knowingly agreed. *Dobson Bay Club II DD, LLC v. La Sonrisa De Siena, LLC*, 393 P.3d 449, 458 (Ariz. 2017).

The Eureka–Bestway License Agreements were rescinded in Settlement Agreements (Appx.28–9) ending the original dispute in the District Court. The Court is eschewing the terms of settlement and this cannot stand. This alone is grounds to grant certiorari. Why would any litigant settle litigation out of Court if the Court refuses to honor the terms of settlement?

CONCLUSION

The Writ of Mandamus should be GRANTED.

Originally Submitted the 18th day of March, 2024, and resubmitted this 12th day of April, 2024

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Pietro Pasquale Antonio Sgromo
(a/k/a Peter Anthony Sgromo) *Pro–per* Petitioner

CERTIFICATE OF COUNSEL

I HEREBY CERTIFY THAT THIS PETITION FOR REHEARING IS PRESENTED IN GOOD FAITH AND NOT FOR DELAY.

I ALSO CERTIFY THAT THE GROUNDS ARE LIMITED TO INTERVENING CIRCUMSTANCES OF SUBSTANTIAL OR CONTROLLING EFFECT OR TO OTHER SUBSTANTIAL GROUNDS NOT PREVIOUSLY PRESENTED

.....

PIETRO PASQUALE ANTONIO SGROMO
(A/K/A PETER ANTHONY SGROMO)
PETITIONER– *PER PRO*