ORIGINAL

No. 23–6291

IN THE

SUPREME COURT OF THE UNITED STATES

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

vs.

Eureka Inventions LLC, Leonard Gregory Scott — 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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## INTRODUCTION

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.

The Arbitration Agreement solely deals with the sharing of a home in San Francisco, CA and cannot possibly be interpreted as interstate commerce. As such the California Arbitration Act (the "CAA") and not the Federal Arbitration Act (the "FAA") applies. Respondents argue they correctly sought to confirm the award in state court and therefore it is the Petitioner who is in default. This is false— the Respondent is out–of–state (actually out–of–country) and even had they filed in the proper court— Petitioner would have had an additional 30 days to reply. Respondent's successful removal from state court actually included his petition to vacate the award— to which Respondents failed to respond according to the 10– day CAA statute. The Respondent was denied his right to due process to a hearing and coupled with the district court's quashing of subpoenas it is hard to imagine how the Respondent even had an opportunity to present his evidence.

Not only did the arbitrator rule beyond the four–corners of the Agreement and what the parties agreed to arbitrate (e.g. malicious prosecution by SFPD and SFDA) but the arbitrator failed to disclose he once served as the commissioner to the SFPD. The latter in itself is enough to vacate the award. The Agreements Arbitrator considered outside of the integrated LTA were integrated collateral Agreements and had no bearing whatsoever on the LTA. It was discovered in fact, after the award was issued, that the said Agreements outside of the LTA the arbitrator sought to enforce were actually rescinded. And since those agreements were rescinded Sgromo's property (including royalties) were to be returned. There neither is any agreement to arbitrate those royalties let alone place them in escrow. The award simply cannot be corrected without affecting the merits of the award. The court must vacate the award and remand the case to the original jurisdiction of the court— prior to the interference by J. Gilliam (who unlawfully related the case to one in which the Petitioner was neither served, nor to which he was a party over the rescinded agreements).

## CAL CIV CODES §1942 & §1953(A)(4) ARE *NOT* HOSTILE TO ARBITRATION

California's history of seeking to limit parties' rights to compel arbitration has, for years, been at the center of the dispute over the strength and reach of the FAA, 9 U.S.C. § 1 et seq. The landmark case on this issue is *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (2011). In *Concepcion*, the United States Supreme Court addressed a clash between the FAA and California's declaration that arbitration waivers were unconscionable and, thus, unenforceable. The FAA won. Based on the FAA, the Court found California could not reject arbitration agreements, even if such clauses required consumers to arbitrate

individually.

In the ensuing decade, the Court has re-confirmed the *Concepcion* decision against subsequent challenges, including from California. For example, in 2015, the Court confirmed that class action waiver clauses in consumer agreements are enforceable, even in the face of contrary California state law. *DirecTV, Inc. v. Imburgia,* 577 U.S. __, 136 S.Ct. 463, 468, 193 L.Ed.2d 365 (2015). The Court also confirmed that arbitration agreements with a class action waiver remain valid, even where consumers are presented with the practical hurdle that a plaintiff's costs of individually arbitrating might far exceed the potential individual recovery available. *American Express Co. v. Italian Colors Restaurant,* 570 U.S. 228 (2013).

But in 2017, the California Supreme Court held that arbitration clauses that left individual consumers without the ability to obtain public injunctive relief were unenforceable. *McGill v. Citibank, N.A.,* 2 Cal. 5th 945 (2017). Citing *McGill,* the 9th Circ. In *McArdle v. AT&T Mobility LLC,* No. 17-17246, (9th Cir. June 28, 2019) held that "[i]n light of this holding, we hold that the arbitration agreement between *AT&T* and plaintiff *Steven McArdle* is null and void in its entirety. Subsection 2.2(6) of the parties' agreement purports to waive McArdle's right to pursue public injunctive relief in any forum and so is unenforceable under California law." *Id.,* at *2. This Court denied *AT&T's* petition for certiorari.

As §1942.1 could arguably be read to permit agreements to arbitrate prohibited by §1953, subdivision (a)(4), the California Appeals Court in *Jaramillo v. JH Real Estate Partners,* Inc., 111 Cal App 4th 394, 3 Cal Rptr 3d 525 (2003) examined both provisions and harmonized them as follows. Arbitration provisions cannot be included within a residential lease, but a landlord and tenant can enter an entirely separate arbitration agreement complying with the formal requirements of §1942.1 and directed solely to "tenantability" claims without running afoul of section 1953, subdivision (a)(4). *Id.,* see also *Vishnevetska v. Sunset Place Apts., Inc.,* B298573, at *6 (Cal. Ct. App. May 26, 2020).

In the present case, the Respondents may argue (if certiorari is granted) the addendum entitled "Living Together Agreement" (the "LTA") (see Appx.5) to the residential lease agreement is a separate arbitration agreement but this argument must fail for several reasons. The addendum "Living Together Agreement" is not a "separate" agreement; it and the arbitration clause (Appx.5, ¶10) were part and parcel of the residential lease with the Petitioner and therefore, §1953, subdivision (a)(4) thus applies to void the arbitration agreement and award sought to be enforced by the respondents in this case. *Vishnevetska v. Sunset Place Apts., Inc.,* B298573, at *6-7 (Cal. Ct. App. May 26, 2020) (the trial court held that Sunset had not waived the right to seek arbitration. Instead, the trial court denied arbitration based on the statutory arguments made by Petitioner's, relying on §§1942.1 and 1953 as well as the interpretation of those two statutes.). Further, Petitioner's complaint is an affirmative action against a landlord to enforce tenant rights and obligations, the arbitration provision at issue is contained in

the lease agreement, and that provision waives full discovery rights and the right to a jury trial." *Id.*, at *7. These include conversion of Petitioner's personal property, including royalty income, false accusations of domestic violence and conversion of Petitioner's personal and intellectual property when the LTA forbids it. Appx.5, ¶¶1–3.

Second, §1942.1 permits a written arbitration agreement between a tenant and a landlord for tenantability claims so long as the agreement "set[s] forth the provisions of [s]ection 1941 to 1942.1, inclusive." (§ 1942.1.) Here, neither the lease nor the arbitration clause in the Addendum "LTA" specifically refers to §§1941 through 1942.1. It is axiom that §§1941 through 1942.1 are *not* hostile to arbitration and therefore, should not be preempted by the FAA. *Reynolds v. Royal Garden Apartments, Inc.,* B298112, at *6-7 (Cal. Ct. App. Aug. 11, 2020)

Finally, the arbitration clause in the residential lease agreement is unconscionable. Unconscionability has both a procedural and a substantive element. While both must be present, they need not be present in the same degree and are evaluated on a sliding scale. *Pinnacle Museum Tower Assn. v. Pinnacle Market Development (US), LLC* (2012) 55 Cal.4th 223, 247. "[T]he more substantively oppressive the contract term, the less evidence of procedural unconscionability is required to come to the conclusion that the term is unenforceable, and vice versa." *Armendariz v. Foundation Health Psychcare Services, Inc.*, (2000) 24 Cal.4th 83, 114.)

Here the 2013 Residential Lease Agreement is a standardized contract. Just eighteen (18) days prior to the closing of the home. Petitioner on or about Nov. 12, 2012 had not agreed to move into the residence. Appx.5 ("I haven't agreed to move in. I think it's best you move in get your life in order and then we can decide what kind of relationship we want to have when the time is right. As I said. I am quite happy at [my current apartment] and may just move closer to work. I really don't need any more drama in my life.") Nonetheless on or about Jan. 1, 2013 Petitioner decided to move into the residence. On Feb. 23, 2014, Respondents, with superior bargaining power imposed the contract and gave Petitioner only the opportunity to adhere to the contract or reject it. *Graham v. Scissor-Tail, Inc.* (1981) 28 Cal.3d 807, 817 [defining adhesion contracts].) Under section 2 of the FAA, written arbitration provisions in any contract involving commerce are "valid, irrevocable, and enforceable," unless the terms are unenforceable under general applicable contract law doctrines such as fraud, duress, or unconscionability. (9 U.S.C. § 2; see also *Doctor's Associates, Inc. v. Casarotto* (1996) 517 U.S. 681, 687.); see also *Stagliano v. O.N. Equity Sales Co.,* CIVIL ACTION No. 20-1760 (E.D. Pa. June 15, 2020), (holding arbitration is a matter of consent, not coercion and parties are free to structure their agreements as they see fit)

## DECISIONS VIOLATE SETTLED PRECEDENCE IN *VOLT & CONCEPCION*

Federal law strongly favors the enforcement of arbitration agreements. The Federal Arbitration Act, 9 U.S.C. §1 et seq. (FAA), which reflects the "liberal federal policy favoring arbitration," pre-empts state law, and state court opinions applying state law, that run counter to the federal policy of upholding arbitration agreements. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011). No one denies that lower courts must follow this Court's holding in *Concepcion*. The fact that *Concepcion* was a closely divided case, resulting in a decision from which four Justices dissented, has no bearing on that undisputed obligation. Lower court judges are certainly free to note their disagreement with a decision of this Court. But the "Supremacy Clause forbids state courts to dissociate themselves from federal law because of disagreement with its content or a refusal to recognize the superior authority of its source." *Howlett v. Rose,* 496 U.S. 356, 371, 110 S.Ct. 2430, 110 L.Ed.2d 332 (1990) ; *cf. Khan v. State Oil Co.,* 93 F.3d 1358, 1363–1364 (C.A.7 1996), vacated, 522 U.S. 3, 118 S.Ct. 275, 139 L.Ed.2d 199 (1997). The Federal Arbitration Act is a law of the United States, and *Concepcion* is an authoritative interpretation of that Act. Consequently, the judges of every State must follow it. U.S. Const., Art. VI, cl. 2 ("the Judges in every State shall be bound" by "the Laws of the United States"). *Directv, Inc. v. Imburgia,* 577 U.S. 47, 53 (2015)

Nothing in *Concepcion* or the FAA nullifies provisions of §§1942.1 and 1953(a)(4). They hold sway when parties elect judicial resolution of their disputes, and should similarly control when parties choose that tenant–protective law to govern their arbitration agreements. *Volt*, at 475 (where parties had "incorporat[ed] ... California rules of arbitration into their agreement," they had "no FAA-guaranteed right to compel arbitration" on terms inconsistent with those California rules). Thus, even after *Concepcion*, one could properly refer to §§1941 through 1942.1 waiver proscription as "California law." *Directv, Inc. v. Imburgia*, 577 U.S. 47, 64 (2015)

## DESPITE §§1941–1942.1 THE CAA *NOT* THE FAA CONTROLS CONFIRMATION OF THE AWARD

"While the FAA therefore pre-empts application of state laws which render arbitration agreements unenforceable, "[i]t does not follow, however, that the federal law has preclusive effect in a case where the parties have chosen in their [arbitration] agreement to abide by state rules." To the contrary, because "[t]he thrust of the federal law is that arbitration is strictly a matter of contract," the parties to an arbitration agreement should be "at liberty to choose the terms under which they will arbitrate." [internal citations omitted] *Volt Info. Scis., Inc. v. Bd. of Trs.,* 489 U.S. 468, 472 (1989). The FAA does not apply where no nexus to interstate commerce exists and to arbitration agreements that lawfully (and perhaps unwisely) invoke state arbitration law instead of the FAA. 9 U.S.C. §§1, 402, see also *Chamber of Com.*

*of United States v. Bonta*, 13 F.4th 766, 771 (9th Cir. 2021), rehear. 45 F.4th 1113 (9th Cir. 2022). The FAA contains no express pre-emptive provision, nor does it reflect a congressional intent to occupy the entire field of arbitration. *Bernhardt v. Polygraphic Co.,* 350 U.S. 198 (1956) (upholding application of state arbitration law to arbitration provision in contract not covered by the FAA).

In the present case, the contract is for a residential lease agreement in the city and county of San Francisco. There is no nexus of interstate commerce whatsoever. Further, the parties clearly agreed to be bound by California Law— Cal Civ Code §1785.26 (Appx.5, ¶6); Cal Civ Code §1941.3 (Id., ¶13); Cal Civ Code §1954 (Id., ¶18); COSTA–HAWKINS RENTAL HOUSING ACT – Cal Civ Code §§1954.5, et seq. (Id., ¶38); and Cal Civ Code §827 (Id., ¶39). It is impossible to see how the parties agreed to anything but state law. In fact, there is no mention of the FAA anywhere in the residential lease agreement or the "LTA" Addendum. "[B]y incorporating the California rules of arbitration into their agreement, the parties had agreed that arbitration would not proceed in situations which fell within the scope of Calif. Code *Volt*, ay 475 (1989); see also *Cerneka v. Russell No. 8 Santa Monica Props., LLC,* No. B288972, at *4-5 (Cal. Ct. App. June 28, 2018, citing *Jaramillo*, at p. 403) (despite the residential lease agreement containing the following clause "THE FEDERAL ARBITRATION ACT (9 U.S.C. § 1 ET SEQ) TO DETERMINE IF ANY SPECIFIC DISPUTE IS SUBJECT TO ARBITRATION, AND ALSO TO DETERMINE THE ENFORCEABILITY, VALIDITY, INTERPRETATION, OR APPLICATION OF THIS PARAGRAPH," the Court nonetheless opined that the tenants with little bargaining power who had no idea the appellants were going to ask them to execute these agreements until the documents were presented to them years into their tenancies and denied Landlord's demand for arbitration.). Affirming the lower courts' decisions in the present case would render the CAA meaningless.

In fact, the FAA allows parties to contract to conduct arbitration proceedings under state procedural rules. *Singh Mgmt. Co. v. Singh Dev. Co.,* No. 18-1566 (6th Cir. May 20, 2019). Therefore, the Arbitration Award must be vacated because the Respondent defaulted on Petitioner's timely Petition to Vacate the Award. While it is true that "[a] response shall be served and filed within 10 days after service of the petition except that if the petition is served in the manner provided in paragraph (2) of subdivision (b) of § 1290.4, the response shall be served and filed within 30 days after service of the petition"— see also Cal. Code Civ. Proc. § 1290.4 ("[s]ervice outside this State shall be made by mailing the copy of the petition and notice and other papers by registered or certified mail. Personal service is the equivalent of such service by mail . . . [n]otwithstanding any other provision of this title, if service is made in the manner provided in this paragraph, the petition may not be heard until at least 30 days after the date of such service."). Sgromo was served out of the country and the 30 day grace period would apply even if Respondents filed in the proper court.

Therefore, even if Respondents filed in the proper court (which they did not) Petitioner would have had to file a response by June 24, 2019. Respondents readily admit Petitioner filed his notice of removal to federal court on June 13, 2019— but "[h]e did not file [a response] by that date." This is simply false. The notice of removal contained 's motion to vacate and was Docketed by the Eastern Dist of Texas Court on June 19, 2019. *Gillihan v. Shillinger,* 872 F 2d 935, 938 (10th Cir. 1989), (holding that .the state limitations period is suspended during the pendency of the federal suit— a plaintiff is accorded a grace period of 30 days to refile). Regardless— it was Respondents' duty to read the removal beyond the mere title of the motion because "[a] Pro Se litigant's pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers" *Conard v. Pennsylvania State Police*, No.091523, at *11 (June 11, 2010); citing— *Haines v. Kemer*, 404 U.S. 519, 520-21, 92 S. Ct. 594 30 L. Ed. 2d 652 (1972); see also *Estelle V. Gamble*, 429 U.S. 97 S. Ct. 285, 292, 50 L. Ed. 2d 251 (1976).

**ARBITRATION THE LOWER COURTS MISAPPLY *SOVAK*— CAA NOT THE FAA APPLY**

*Sovak*, concerned the allocation of power between courts and arbitrators with regards to *waiver* in the arbitration context such that *waiver* of the right to compel arbitration is a rule for arbitration, such that the FAA controls. This case does not deal with principles that affect the "allocation of power between alternative tribunals." 280 F.3d 1266, 1269 (9th Cir.), (opinion amended on denial of reh'g, 289 F.3d 615 (9th Cir. 2002)." In *Fujian Pacific Electric Co. v. Bechtel Power Corp.,* this Honorable Court distinguished "between rules of law that determine the "substantive rights and obligations" of the parties, which are determined by state law . . . "" No. C 04-3126 MHP, at *5 (N.D. Cal. Nov. 18, 2004). This is supported by the fact that "[t]he CAA and the FAA provide different grounds for vacatur of an arbitration award." *Johnson v. Gruma Corp.,* 614 F.3d 1062, 1065 (9th Cir. 2010).

To achieve what Respondents now seek, however, Respondents— who drafted the agreement— should have included in the LTA "a choice–of–law clause *expressly* incorporating . . . the FAA's procedural provisions" [emphasis added], *Valencia*, 173–174, (concluding agreement stating the "[i]nterpretation of this agreement . . . shall be governed by the [FAA ]" was nonetheless *insufficient* to incorporate FAA procedural provisions)[emphasis provided]; compare *Ibid.*, with *Wyatt v. Own a Car of Fresno* (Feb. 20, 2019, No. F075692) 2019 WL 698017 at *1 (concluding that only an "arbitration provision, which states that any arbitration 'shall be governed by the [FAA] and not by any state law concerning arbitration,' incorporates the FAA's procedural provisions")[emphasis provided]; see also *Mave Enterprises, Inc. v. Travelers Indemnity Co.,* (2013) 219 Cal.App.4th 1408, 1429 ("the procedural provisions of the [CAA]" apply in California courts "absent a choice–of–law provision expressly mandating the application

of the procedural law of another jurisdiction".) [emphasis provided]. But, Respondents failed to do this and readily admit that "[t]here is no choice of law clause in the Living Together Agreement" (see Case No.: 4:19-cv-08170-HSG, *Sgromo v. Scott,* DKT No.: 10, p.8, ¶4)— "[t]he LTA is silent on the subject of choice of law" (*Id.,* p.10, ¶3)— "[t]he LTA does not have a California choice of law clause, much less language similar to the arbitration clause in *Valencia.*" (*Id.,* p.16, ¶4); see also *Cronus Invs., Inc. v. Concierge Servs.,* 35 Cal.4th 376, 394 (Cal. 2005), (parties are free to incorporate the procedural provisions of the FAA into an arbitration agreement) *Id.,* p.394.)

The LTA as Respondents readily admit reflects no express election of FAA procedures. In fact the LTA makes no reference to the FAA whatsoever and the court should conclude the enforceability of the LTA and the arbitration award, are enforceable under the applicable California state statute governing arbitrations. See also *Aliff v. Vervent, Inc.,* Case No.: 20-cv-00697-DMS-AHG (S.D. Cal. Sep. 24, 2020), (finding evidence, including plaintiff's own admissions). Moreover, the FAA applies to arbitration agreements *affecting interstate commerce* . [emphasis added] 9 U.S.C. § 2. When it applies, the FAA preempts state laws that conflict with its provisions or obstruct its objective to enforce valid arbitration agreements. *AT&T Mobility LLC v. Concepcion,* 563 U.S. 333, 339, 341–43 (2011). This is not an agreement affecting interstate commerce. It exclusively revolves around the sharing of a home in San Francisco, CA. Nothing in the agreement extends beyond thecounty and city of San Francisco. It is therefore established the CAA *not* the FAA apply.

**RESPONDENTS DEFAULTED ON PETITION TO VACATE.**

Here Respondents simply misrepresent the facts and misapply the settled law. Even if Respondents filed their petition to confirm on May 15, 2019 (which they did *not*), Respondents misapply § 1290.6— "[u]nder . . . §1290.6, Sgromo would have had to file his response on May 25, 2019" and falsely state that Sgromo "did not file anything by that date." see Case No.: 4:19-cv-08170-HSG, *Sgromo v. Scott,* DKT No.: 10, p.17, ¶3. While it is true that "[a] response shall be served and filed within 10 days after service of the petition *except* that if the petition is served in the manner provided in paragraph (2) of subdivision (b) of § 1290.4, the response shall be served and filed within 30 days after service of the petition"— see also Cal. Code Civ. Proc. § 1290.4 ("[s]ervice outside this State shall be made by mailing the copy of the petition and notice and other papers by registered or certified mail. Personal service is the equivalent of such service by mail . . . [n]otwithstanding any other provision of this title, if service is made in the manner provided in this paragraph, the petition may not be heard until at least 30 days after the date of such service."). Sgromo was served out of the country and the 30 day grace period would apply even if Respondents filed in the proper court.

Therefore, even if Respondents filed in the proper court (which they did *not*) Sgromo would have had to file a response by June 24, 2019. Respondents readily admit Sgromo filed his notice of removal to federal court on June 13, 2019— but "[h]e did not file [a response] by that date." This is simply false. The notice of removal contained 's motion to vacate and was Docketed by the Eastern Dist. of Texas Court on June 19, 2019. Appx.14, at DKT No.: 1; see also *Gillihan v. Shillinger*, 872 F 2d 935, 938 (10th Cir. 1989), (holding that .the state limitations period is suspended during the pendency of the federal suit— a plaintiff is accorded a grace period of 30 days to refile). Regardless— it was Respondents' duty to read the removal beyond the mere title of the motion because "[a] *Pro Se* litigant's pleadings are to be construed liberally and held to a less stringent standard than formal pleadings drafted by lawyers" *Conard v. Pennsylvania State Police*, No.091523, at *11 (June 11, 2010); citing— *Haines v. Kemer*, 404 U.S. 519, 520-21, 92 S. Ct. 594 30 L. Ed. 2d 652 (1972); see also *Estelle V. Gamble,* 429 U.S. 97 S. Ct. 285, 292, 50 L. Ed. 2d 251 (1976).

**PETITIONER DID *NOT* HAVE AN OPPORTUNITY TO BE HEARD— RE: ARBITRATOR'S FAILURE TO DISCLOSE HIS SFPD INVOLVEMENT**

Respondents argue that "Sgromo's new evidence on appeal is a news item indicating that Justice Low served on the San Francisco Police Commission in 1992. It was not presented to the district court. There is no reason for the Court to entertain that evidence." [citations omitted].See Appx.14, at DKT No.: 10, p.20, ¶2.

It is the general rule, of course, that a federal appellate court does not consider an issue not passed upon below— but as Respondents readily admit there are exceptions. *Id.,* p.19, ¶2. In *Hormel v. Helvering,* the Court explained that this is "essential in order that parties may have the opportunity to offer all the evidence they believe relevant to the issues . . . [and] in order that litigants may not be surprised on appeal by final decision there of issues upon which they have had no opportunity to introduce evidence." 312 U.S. 552, 556 (1941). In the present case this Honorable Court has no idea what evidence, if any, petitioner would, or could, offer in defense— of this but this is only because petitioner has had no opportunity to proffer such evidence.

Here, the arbitrator issued subpoenas *inter alia* to the SFPD but the AR Review Court quashed them after it took over the case— before the Appellant even had an opportunity to reply to Respondents' motion to relate the case. See Case No.: 4:19–cv–08170–HSG, *Sgromo v. Respondents et al.,* Nor Dist Cal– Oakland, DKT No.s: 48–9; see also DKT NO.: 3–2, p.240, at**48–9. It should be noted the AR Review Court *sua sponte, ex parte* issued an "ORDER RELATING CASE TO CASE NO. 17–CV–00205–HSG "ORDER REASSIGNING CASE. Case reassigned to Judge Haywood S Gilliam, Jr for all further proceedings. Magistrate Judge Kandis A. Westmore no longer assigned to case" and while "Notice is hereby given that a Case Management Conference has been set for March 17, 2020, before Judge Haywood S. Gilliam, Jr."

No conference was held, the Appellant was given no opportunity to be heard and *sua sponte, ex–parte* J. Gilliam confirmed the award. *Id.*, DKT No.s: 25–9.

It is hard to imagine how Petitioner had any opportunity to present whatever legal arguments he may have in defense of the statute. Sgromo was justified in not presenting those arguments to the Court of Appeals, and in assuming, rather, that he would at least be allowed to answer the petition, should the Court of Appeals reinstate it. *Singleton v. Wulff,* 428 U.S. 106, 120 (1976); see also *Turner v. City of Memphis*, 369 U.S. 350 (1962), (where "injustice might otherwise result"); see also *Singleton v. Wulff,* 428 U.S. 106, 120-21 (1976), (injustice was more likely to be caused than avoided by deciding the issue without petitioner's having had an opportunity to be heard.). Further, the discovery was only made when the SFPD ignored the quash and fulfilled the discovery request on or about April 2020. see Case No.: 4:19-cv-08170-HSG, *Sgromo v. Scott,* DKT No.: 3–2, pp.253–54.

## THE SETTLEMENT AGREEMENTS AND THE LTA ARE DISPOSITIVE ON THE SUBSTANTIAL RIGHTS AND OBLIGATIONS OF THE PARTIES

The LTA is an integrated agreement and clearly outlines the parties' rights and obligations:

> "[w]e agree that all property owned by either of us as of the date of this agreement, obtained during the agreement shall be considered to be and shall remain the separate property of each. Appx.5, ¶1.
>
> 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, . ." Ibid.§1.
>
> "Greg [Respondents] acknowledges that a significant portion of Pete[r Sgromo]'s income 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 [it] as a place of "doing business" in royalty agreements. [Respondents] acknowledges that this does not give him ownership rights of any kind in Wide Eyes Marketing or any other LLC [Sgromo] owns. . . ." Id., §2.
>
> "Neither of us shall be liable or responsible for the individual debts incurred by the other in his own name or company name." [emphasis added] Id., §3.
>
> § . . . §

"At the end of the 4–month trial period . . . if [Respondents] terminates the living arrangement he will [be] responsible for reasonable moving and reasonable temporary living expenses." [emphasis added] Id., p.30, §8.

"We agree to resolve any dispute rising from this agreement first between us . . . [i]f the issue cannot be resolved within 30–days then the parties agree to b[i]nding arbitration in San Francisco using JAMS expedited process or a similar expedited affordable arbitration. . ." [emphasis added], Id., §10.

§§ . . . §§

"**ENTIRE AGREEMENT**: The foregoing constitutes the entire Agreement between the parties and may be modified only in writing signed by all parties . . ." (emphasis provided), Id., p.36, §39.

Eureka, Appellant as an individual and on behalf of his California LLC— Wagmore & Barkless ("W&B") and Bestway entered into Settlement Agreements where by *all* the aforementioned parties agreed to:

"(a) . . . 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 § 1542 of the Civil Code of California, which the parties acknowledge they have read and understood . . . " Appx.28, §§11(a)(b); see also Appx.29, §§8(a)(b)

§§ . . . §§

> "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. Appx.28, §13(b).

It is hard to imagine how the arbitrator drew his decision from the essence of the Agreement when WEM expressly was not a party to the LTA; the parties agreed that any amendments to the Agreement must be made in writing; and the terms of the settlement agreements reached by all the parties who are now all collaterally estopped from challenging any rights in any way that are related to the intellectual property. Respondents simply do not like the Agreements they signed. The parties never agreed to arbitrate the patent and intellectual property rights whatsoever and Sgromo's demands were simply for the monies which Respondents converted and by law were required to return to Sgromo because arbitration is "a matter of consent and not coercion"— the Court must not, and will not, require the parties to arbitrate where they have not agreed to do so." *Equal Emp't Opportunity Comm'n v. Waffle House, Inc.,* 534 U.S. 279 (2002)Waffle House, Inc., 534 U.S. at 294, 122 S.Ct. 754 ("arbitration "is a matter of consent, not coercion.") (internal quotation marks and citations omitted); *Volt Information Science s Inc. v. Board of Trustees of Leland Stanford Junior Univ.,* 489 U.S. 468, 478, 109 S.Ct. 1248, 103 L.Ed.2d 488 (1989) (recognizing
that not even the "FAA require parties to arbitrate when they have not agreed to do so").

## ARBITRATOR & COURTS MISAPPLY *KOREA*

The tort of intentional interference with prospective economic advantage (intentional interference) provides a remedy to those "who suffer[ ] the loss of an advantageous relationship" due to the actions of "a malicious interloper." *Zimmerman v. Bank of America*, (1961) 191 Cal.App.2d 55, 57, 12 Cal.Rptr. 319.) "[T]he mere fact that a prospective economic relationship has not attained the dignity of a legally enforceable agreement does not permit third parties to interfere with performance." *Buckaloo v. Johnson*, (1975) 14 Cal.3d 815, 827, 122 Cal.Rptr. 745, 537 P.2d 865, disapproved on other grounds in *Della Penna v. Toyota Motor Sales, U.S.A., Inc.* (1995) 11 Cal.4th 376, 393, fn. 5, 45 Cal.Rptr.2d 436, 902 P.2d 740.) The tort is considerably more inclusive than actions for interference with contract, and therefore does not depend on the existence of a valid contract. *Korea Supply Co. v. Lockheed Martin Corp.,* (2003) 29 Cal.4th 1134, 1157, 131 Cal.Rptr.2d 29, 63 P.3d 937.

Indeed , the first element of the tort was never at issue in *Korea Supply*, which addressed an entirely different question: whether the third element of the tort— intentionally wrongful acts designed to disrupt the plaintiff's existing economic relationship—requires a plaintiff to allege the defendant acted with the specific intent to interfere with the plaintiff's business expectancy. *Korea Supply* held the plaintiff need not do so, and that "it is sufficient to plead that the defendant knew that the interference was certain or substantially certain to occur as a result of its action." *Korea Supply*, p.1153. This patently has nothing to do with the need to plead and prove the plaintiff's business expectancy in the first place. *Roy Allan Slurry Seal, Inc. v. American Asphalt South, Inc.,* 234 Cal.App.4th 748, 775 (Cal. Ct. App. 2015).

Immediately following Sgromo's second arrest, Scott representing himself and Eureka despite agreeing that "Sgromo conducts Wide Eyes Marketing Ltd. (and possibly other LLC names)— business from home and as such will list [it] as a place of "doing business" in royalty agreements. [Respondents] acknowledge that this does not give him ownership rights of any kind in Wide Eyes Marketing or any other LLC [Sgromo] owns " (see Case No.: 4:19-cv-08170-HSG, *Sgromo v. Scott,* DKT No.: 3–2, p.29, §2) and that Respondents agreed Sgromo would receive no unwanted interference form Respondents and his family (*Ibid.*, §§6–7) contacted Sgromo's client Polygroup— "Ricky [Tong], [t]his is Greg Respondents. I'm Peter's partner and I'm the owner of [ ] Eureka. I'm stepping in as Peter's not well at the moment." (see Case No.: 22–15199, *Sgromo v. Scott,* 9th Circ. SF, Appx., at p.246). And three (3) weeks later after more than seven (7) months of negotiations Polygroup replied to Sgromo— "we have decided that we cannot more forward with your proposal at this time due to all the uncertainty and changes to Eureka and your relationship with them." *Id.*, p.247. In a sworn affidavit Tong testified "[a]s Sgromo's dispute with Eureka and his partner Greg Respondents became apparent, Polygroup ceased discussions with Sgromo and Eureka. The lack of clarity was unacceptable to Polygroup." *Id.,* p.251, ¶13.

Therefore, it is irrelevant the parties never agreed to arbitrate this dispute as interference is proven. see Case No.: 4:19-cv-08170-HSG, *Sgromo v. Scott,* DKT No.: 10, p.26, ¶3 (Respondents admit "Justice Low declined to join Eureka, and the arbitration proceeded against Respondents alone; "[a]nd he did not determine the ownership rights of third parties, but rather explained that "[t]he arbitration concerns the LTA and deals with all property, business interest and investments as between Sgromo and Respondents" (see Case No.: 22–15199, *Sgromo v. Scott,* 9th Circ. SF, Appx., p.27, ¶1)— compared to "Justice Low noted that the license agreement between Eureka and Bestway reaffirmed that Respondents was the owner of the patent. Sgromo signed that license agreement." *Id.,* p.24, ¶3).

## THE AWARD FAILS TO DRAW ITS ESSENCE FROM THE ARBITRATION AGREEMENT & REPRESENTS A MANIFEST DISREGARD FOR LAW

Legal encumbrances deemed to run with the patent in prior case law involved only the right to use the patented product, not a duty to arbitrate. *Datatreasury Corp. v. Wells Fargo & Co.* (No. 2007-1317; April 16, 2008). The parties neither agreed to arbitrate intellectual property rights nor the malicious prosecution and the analysis should begin and end there.

Respectfully, in one felled swoop the arbitrator not only made a decision in which he lacked *subject–matter jurisdiction* but— arbitrarily remade the contract; decided issues not submitted to arbitration; issued an award that violates well– defined public policy; and none can be modified without affecting the merits. This is because the arbitration award eschews the Arbitration Agreement (the "LTA ") and draws its essence from the Bestway–Eureka License Agreements— to which Sgromo is not a party. Therefore, it is irrelevant that the Licenses were nothing more than a bare license— as it is irrelevant the Licenses were rescinded and simply do not exist; or that the arbitrator recognized the *alter ego* doctrine because the covenants under those agreements cannot be enforced.

"The strong public policy in favor of arbitration does not extend to those who are not parties to an arbitration agreement" *Datatreasury Corp. v. Wells Fargo & Co.*. at 142, 119 Cal.Rptr.2d 489 (internal quotation marks omitted); see also *NORCAL Mut. Ins. Co. v. Newton*, 84 Cal.App.4th 64, 76, 100 Cal.Rptr.2d 683 (2000) ("[t]he common thread is the existence of an agency or similar relationship between the non–signatory and one of the parties to the arbitration agreement. In the absence of such a relationship, courts have refused to hold non–signatories to arbitration agreements.").*Comedy Club, Inc. v. Improv West Associates,* 553 F.3d 1277, 1287 (9th Cir. 2009). It should be noted the Appellee misapplies *Comedy Club Inc.*. DKT No.: 10, p.21–22.

By way of example, The AR Review Court erred when it found the arbitrator "did not determine the ownership rights of third parties, but rather explained that ""[t]he arbitration concerns the LTA and deals with all property, business interest and investments *as between Sgromo and Respondents*"" and that the arbitrator "explicitly stated that the arbitration only concerned the Respondents and Mr. Sgromo." DKT No.: 3–2, p.10, §C, ¶4. Whether Sgromo and WEM are part of the same corporate structure and are not "complete strangers," therefore, is irrelevant because there was no valid written assignment from WEM to Sgromo. 35 U.S.C. § 261 (assignments of patents must be in writing); see also *Enzo APA& Son, Inc. v. Geapag A.G.,* 134 F.3d 1090, 1093 (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). Because WEM owned the '440 Patent; was not a party to the LTA

and no valid assignment occurred from WEM to Sgromo– the lack of verifying the electronic signature is moot.

Neither can such a conclusion be drawn from the essence of the LTA because it requires a "written agreement transferring ownership" (see Case No.: 4:19-cv-08170-HSG, *Sgromo v. Scott,* DKT No.: 3–2, §1) and expressly states that sharing the residence "does not give [Scott] ownership rights of any kind in WEM." (*Id.*, §2). While the AR Review Court found the arbitrator "correctly reasoned, Eureka was not a party to the LTA . . .[and] did not determine the ownership rights of third parties, and correctly explained "[t]he arbitration concerns the LTA and deals with all property, business interest and investments "as between Sgromo and Respondents" (*Id.,* p.10 §C, ¶¶4–5) it offers no explanation how WEM transferred its ownership rights "to Eureka as repayment to Respondents of the [*purported*] unpaid rent and loans made." [emphasis added] *Id.,* p.19, §I, ¶7; see also Appx.5, §3 ("[n]either shall be liable or responsible for the individual debts incurred by the other in his own name or company name.")]

Equally, the purported '298 Patent and H2O–GO! marks "Assignment" is executed on May 6, 2019 but backdated to September 26, 2017 but references "the June 17, 2014 Agreement between the parties" (see Case No.: 4:19-cv-08170-HSG, *Sgromo v. Scott,* SupplAppx275–78) but that is the rescinded, non–exclusive license agreement to which Sgromo was not a party (Id., Appx.32). It does not exist because "Eureka and Bestway release[d] each other [inter alia] from all . . . 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 . . . and the parties expressly waive all rights under Cal Civ Code § 1542" (see Case No.: 4:19-cv-08170-HSG, *Sgromo v. Scott,* DKT No.: 3–2, pp.119–20, §§11(a)(b)). The "June 17, 2014, license agreement" referenced in the purported Assignment [SgroSuppAppx277, 1st recit.) is unambiguously defined as the "Slide License" (DKT No.: 3–2, p.113, 4th recit.) and the Eureka '440 License and the Slide License are "collectively" referred to as "the Subject Licenses" (*Id.*, p.115, §3). No more precise words in the English language could have been employed to mutually terminate and rescind the "Subject Licenses" and any relationship whether explicit or implied (cf. Civ. Code, §§ 13; 1541; see also Larsen v. Johannes, 7 Cal. App. 3d 491, 499 (Cal. Ct. App. 1970)) —and the parties thereto were discharged and released. (Rest., Contracts § 402, subd. (1).)

Still, any writing must be authenticated before the writing, or secondary evidence of its content, may be received in evidence. Evid. Code, § 1401; see also *People v. Valdez* (2011) 201 Cal.App.4th 1429, 1435. "Authentication of a writing means (a) the introduction of evidence sufficient to sustain a finding that it is the writing that the proponent of the evidence claims it is or (b) the establishment of such

facts by any other means provided by law." Cal. Evid. Code, § 1400; see also *Valdez*, p.1435, (proponent meets its burden of producing evidence to show authenticity of writing "'when sufficient evidence has been produced to sustain a finding that the document is what it purports to be.'"); *People v. Skiles* (2011) 51 Cal.4th 1178, 1187, [126 Cal.Rptr.3d 456, 253 P.3d 546] ("[w]riting can be authenticated by circumstantial evidence and by its contents.") and Respondents did not prove by a preponderance of the evidence that Sgromo was the person who electronically signed the October 7, 2010 Patent Assignments. Cal. Civ. Code, § 1633.9, subd. (a). Substantial evidence supports this finding. *Ruiz v. Moss Bros. Auto Group, Inc.,* 232 Cal.App.4th 836, 842 (Cal. Ct. App. 2014); see also *Orr v. Bank of America,* 285 F.3d 764, 777 (9th Cir. 2002), ("[a] declaration of an attorney who lacks personal knowledge of a document is inadequate to authenticate the document properly.").

## CONCLUSION

This Honorable Court should be satisfied the Arbitration Award should be vacated and the Writ of Certiorari should be GRANTED.

Originally Submitted the 18th day of March, 2024, and resubmitted this 11th day of April, 2024.

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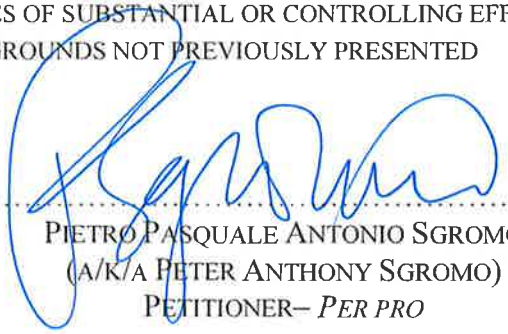
Pietro Pasquale Antonio Sgromo
(a/k/a Peter Anthony Sgromo) *Pro–per* Petitioner

## 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



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PETITIONER– *PER PRO*