No. S249923

IN THE SUPREME COURT
FOR THE STATE OF CALIFORNIA

ROCKEFELLER TECHNOLOGY INVESTMENTS (ASIA) VII,
Plaintiff and Respondent

v.

CHANGZHOU SINOTYPE TECHNOLOGY CO., LTD.,
Defendant and Appellant

REPLY BRIEF ON THE MERITS

After a Published Opinion
of the Second District Court of Appeal Division Three
Case No. B272170

Superior Court of California
County of Los Angeles
Hon. Randolph M. Hammock
Case No. BS149995

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SINOTYPE'S ANSWERING BRIEF FAILS TO ADDRESS THE ISSUE SPECIFIED BY THE COURT IN GRANTING REVIEW

In granting review, the California Supreme Court may specify the issues to be briefed and argued. (California Rules of Court ["CRC"] 8.516(a)(1).) This enables the Court to clarify particular issues of importance and focus arguments on them.

Unless otherwise ordered by the Court, the parties' briefs on the merits and oral argument must be confined to the specified issues. (CRC 8.516(a)(1), "the parties must limit their briefs and arguments to those issues and any issues fairly included in them.")

In this case, the Court limited review to a single issue: "Can private parties contractually agree to legal service of process by methods not expressly authorized by the Hague Convention?"

Defendant and Respondent Changzhou Sinotype Technology Co., Ltd. ("Sinotype") failed to limit its Answering Brief to this issue.

The first half of the Answering Brief (the "AB") (through page 28) is almost entirely about the ***formation and "validity"*** of the Memorandum of Understanding ("MOU") that contains the contractual service of process provisions at issue. The Answering Brief argues that the MOU was "non-binding" under "Chinese business customs" and that Sinotype "did not voluntarily and knowingly agree" to the service of process provisions. (AB at 4.) These

arguments are disguised as "facts" in Sinotype's "Statement of Facts."

The Court should not consider these arguments because they are not relevant to the issue specified by the Court. In fact, Sinotype concedes that "arguments which are not the subject of this review, i.e., that the Judgment is also void because there was no valid and enforceable contract between the parties." (AB at 4.) Sinotype even begins the Statement of Facts by stating that it contains facts not "directly pertinent to the sole question presented, as to whether the parties can contract around ... the Hague Convention." (AB at 8.)

Here, three different judges (the late Justice Richard Neal, Judge Rafael Ongkeko, and Judge Randolph Hammock) found the MOU to be a valid contract.

Judge Hammock considered Sinotype's arguments on the MOU's validity in denying its motion to vacate judgment in the trial court. Under California law, "The power to judge the credibility of witnesses and to resolve conflicts in the testimony is vested in the trial court ...." *In re Carpenter* (1995) 9 Cal.4th 634, 646. "It is an established principle that the credibility of witnesses and the weight to be given their testimony are matters within the sole province of the trier of fact ...." *As You Sow v. Conbraco Industries* (2005) 135 Cal.App.2d 558, 561 (emphasis added). "Where there is conflicting testimony, reviewing courts recognize that the trier of facts has the better opportunity to judge the credibility of witnesses. In such a case, the trial court's findings of fact, to the extent that they

rest upon an evaluation of credibility, should be regarded as ***conclusive on appeal.*** *Estate of Fries* (1965) 238 Cal.App.2d 558, 561 (emphasis added).

In the trial court, Judge Hammock weighed all relevant evidence and decided that Kejian Huang ("Curt"), Sinotype's CEO, was not credible. Judge Hammock ultimately found that Mr. Huang understood what he and Sinotype were doing in hiding from U.S. arbitration and court proceedings for seven years and that they bamboozled Rockefeller Technology Investments (Asia) VII ("Rockefeller Asia"). These factual determinations must be regarded as conclusive on this appeal.

SINOTYPE'S ARGUMENTS ON CHINESE LAW ARE BOTH IRRELEVANT AND WRONG

Sinotype devotes the rest of its Answering Brief to Chinese law, which is irrelevant to the issue of whether private parties can contractually agree to legal service of process by methods not expressly authorized by the Hague Service Convention[1] (the "Hague Convention").

As discussed on pages 31 to 33 of the Opening Brief, the U.S. Supreme Court held in *Volkswagen Aktiengesellschaft v. Schlunk* (1988) 480 U.S. 694, that the reach of the Hague Convention is limited by the internal law

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[1] Sinotype's Answering Brief cites to a number of cases dealing with the Hague Convention. This Reply Brief examines those cases and will demonstrate that none of the cited cases involved contractual service provisions or arbitration agreements. Thus, none of the cited authorities directly address the issue that this Court presented for argument.

of the forum state (in this case, California) – including its statutes and case law regarding the available methods for service of process.

The U.S. Supreme Court found nothing in the Hague Convention that required a court to void service of litigants who did not utilize methods set forth in the Hague Convention. Indeed, such a result would have been inconsistent with the Hague Convention's purpose of improving international service of process. *Id.* at 704.

Sinotype relies on the Chinese government's answers to a questionnaire on the Hague Convention. (AB at 39-40.) The answers prove nothing. They merely state that "informal delivery" of documents is not allowed under Chinese law and that documents served through the Central Authority must be translated into Chinese. These questionnaire answers are silent on whether private parties can contract to specific methods for service of process.

Sinotype also claims that Articles 260 and 261 of the Chinese Civil Procedure Law prohibit contractual Hague waivers. Wrong. Like the Hague Conference's "Principles" on party autonomy and choice of law, Chinese law expressly allows "the parties to a contract involving foreign interests [to] choose the law applicable to the settlement of their contractual disputes." People's Republic of China, Civil Law Article 145.

China's Civil Law defines "the lawful civil rights ... of citizens and legal persons ...." Civil Law Article I. Therefore, Civil Law Article 145 gives its citizens the "right" to choose California law to settle their contractual disputes and to

submit to the jurisdiction of California courts. There is no logical or legal reason why Chinese companies cannot contractually agree to waive the Hague Convention's requirements.

Instead of relying on Civil Law Article 145, Sinotype claims that Articles 260 and 261 of China's Civil Procedure Law prohibits Chinese companies from agreeing to service by FedEx, fax, or email without the Chinese government's consent.

Wrong. Articles 260 and 261 have been re-codified as Articles 262 and 263, which together state:

"Chapter XXIX Judicial Assistance.

Article 262 In accordance with the international treaties concluded or acceded to by the People's Republic of China or with the principle of reciprocity, the people's courts of China and foreign courts may make mutual requests for assistance in the service of legal documents, in investigation and collection of evidence or in other litigation actions.

The people's court shall not render the assistance requested by a foreign court, if it impairs the sovereignty, security or social and public interest of the People's Republic of China.

Article 263 The request for the providing of judicial assistance shall be effected through channels provided in the international treaties concluded or acceded to by the

People's Republic of China; in the absence of such treaties, they shall be effected through diplomatic channels.

A foreign embassy or consulate accredited to the People's Republic of China may serve documents on its citizens and make investigations and collect evidence among them, provided that the laws of the People's Republic of China are not violated and no compulsory measures are taken.

Except for the conditions provided in the preceding paragraph, no foreign organization or individual may, without the consent of the competent authorities of the People's Republic of China, serve documents or make investigations and collect evidence within the territory of the People's Republic of China." (Emphasis added.)

Both Sinotype and the Court of Appeal relied on the bolded language, which is irrelevant for multiple reasons.

First, the Civil Procedure Law is inapposite because it deals with the "trial of civil cases" in China and is applied by the "[P]eople's courts" in China. Civil Procedure Law Articles 1 and 3. It has no application to contracts formed and proceedings conducted outside China, including arbitrations.

Second, Articles 262 and 263 concern people who serve documents and conduct investigations inside China on behalf of foreign governments and assisted by the Chinese government. These Articles have nothing to do with

private parties contracting outside China or the Hague Convention.

Thus, the Court of Appeal has committed a serious error that requires reversal. This is why, in *Animal Science Products, Inc. v. Hebei Welcome Pharmaceutical Co.* (2018) 138 S.Ct. 1865, the U.S. Supreme Court held that courts are not bound by foreign governments' "official statements" on their own domestic laws and that American courts must look to expert testimony and other evidence to interpret foreign laws. Here, the Court of Appeal's opinion was based on a blatant mischaracterization of Chinese law perpetrated by Sinotype's American lawyers in their pleadings.

This published Court of Appeal opinion will upend decades of contractual obligations and unravel thousands of arbitration awards and judgments unless it is corrected by this Court.

U.S. LAW AND INTERNATIONAL LAW ALLOW PRIVATE PARTIES TO CONTRACTUALLY AGREE TO SERVICE OF PROCESS BY METHODS NOT EXPRESSLY AUTHORIZED BY THE HAGUE CONVENTION

If the Court finds that the sections above do not sufficiently refute Sinotype's Answering Brief, the Court may consider the following discussion with respect to service of process by methods supported by U.S. and international law but not specifically authorized by the Hague Convention.

A. The Hague Convention Does Not Put Any Limits on Methods of Service Authorized by California Law

In this case, Sinotype and the California Court of Appeal for the Second District, Division 3 (the "Court of Appeal") challenge Rockefeller Asia with a syllogism worthy of Aristotle:

1. A Treaty ratified by the Senate is the Supreme Law of the United States.
2. The Hague Convention is a treaty ratified by the Senate.
3. Therefore, the Hague Convention is the Law of the United States and its mandate reaches into U.S. municipal law, even to cases in which U.S. and China parties contract in their arbitration agreement for means of service of process not expressly authorized in the Treaty's language. Thus, even actual service of process that is ignored strategically by a recipient for several years violates the U.S. due process clause and is *void ab initio*.

The Appellee, Changzhou Sinotype Technology Co., Ltd., is a company organized in the People's Republic of China.[2] It is 70% owned and controlled by its U.S. parent, Sinotype Technology International ("STI").[3] Kejian Huang,

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[2]See, JAMS Opinion No. 1220044102 (Justice Neal) (the "Award"); see also, Kejian Huang Decl.

[3]See, Award; see also, Kejian Huang Decl. Rockefeller Asia believes that Kejian Huang transferred his majority holdings in Sinotype to

who holds a graduate degree from the University of California at Berkeley, is Chairman and General Manager of both the China and U.S. companies.[4] In addition to identifying himself as a resident of China to the lower courts, Kejian Huang has identified himself as a California resident with the California Secretary of State's office for more than 20 years, with addresses in San Francisco and Rowland Heights, for the purposes of qualifying as an agent for service of process for STI.[5] The Appellant, Rockefeller Asia, is one of a number of special purpose vehicles that were organized to provide investment and management support to high technology ventures in Asia.[6]

Rockefeller Asia argues that the Court of Appeal erred in ruling that the Hague Convention has any significant role in the United States' municipal law applicable to this case. This is particularly true as municipal law regards private parties' right of party autonomy in agreements, especially arbitration agreements, in which the parties consent to legal service of process by methods not explicitly authorized by the Hague Convention. The Hague Convention is international law. However, as the Reply Brief will show, the role of international law, including the Hague Convention, within municipal law depends upon a country's domestic legislation and judicial interpretations.

STI some years ago without Rockefeller Asia's knowledge or consent.

[4] See, Kejian Huang Decl.

[5] See, Office of the California Secretary of State, Statement of Information; Document Nos. G80348 (July 20, 2018); E-E15567 (March 5, 2011); and 1977026 (August 21, 1996).

[6] See, Award.

Sinotype's theory that the Hague Convention controls the municipal law of the United States applicable to this case, relies strongly on the oft-quoted portion of the "Supremacy Clause" of the United States Constitution.[7] This portion of the Supremacy Clause includes the language "*... all Treaties made, or which shall be made under the authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby ....*" Standing alone, these words imbue the Hague Convention with overwhelming legal force in support of Sinotype's theory, a theory that was accepted by the Court of Appeal below. Assuming the presence of such legal force in the Hague Convention, the Court of Appeal held that the Hague Convention "does not allow parties to set their own terms of service by contract."[8]

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[7] The incomplete portion of the U.S. Constitution's Supremacy Clause (Article VI, Section 2) dealing with the force of treaties in the U.S. legal system is often confused with the U.S. Constitution's Treaty Clause (Article II, Section 2, Clause 2) dealing with the creation and ratification of treaties.

[8] The Court of Appeal also held that the service delivered to Sinotype's chairman and general manager was void because, quoting its opinion exactly: "The Hague Convention does not permit Chinese citizens to be served by mail." In this second holding, the Court of Appeal has imparted an unusual entitlement of immunity to Chinese citizens for any modern treaty, much less a prescription for U.S. municipal law. The Court of Appeal did not clarify whether its holding of immunity applied to China citizens only while they were physically in China or whether its holding shielded them throughout the world, perhaps in analogy to a unique diplomatic immunity. Nevertheless, Rockefeller Asia's Opening Brief previously demonstrated that Article 145 of the China Civil Law and Sections 3 and 8 of the China International Economic & Trade Arbitration Commission permits both domestic and foreign parties to an

However, a reading of the entire Section 2 of Article VI provides a much different view of the role of treaties in our legal fabric. "*This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.*"[9] Thus, Section 2 of Article VI provides a "triune source of law" (i.e., the Constitution, federal legislation, and treaties) for establishing municipal law. Therefore, we must look to the United States' national experience in blending together those three, often divergent, and perhaps murky fountains

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arbitration agreement to serve through multiple means, including, postal means, express couriers, facsimile, and e-mail. With regards to the conclusive weight that the Court of Appeal afforded to Sinotype's representations as to China law, Rockefeller Asia also recognizes that the Court of Appeal opinion of June 1, 2018 did not have occasion to review, only a few days later, the U.S. Supreme Court published opinion in *Animal Science Products, Inc. et al. v. Hebei Welcome Pharmaceuticals Co. Ltd., et. al.* (2018) 138 S.Ct. 1865. Although the case arose in the context of Federal Rules of Civil Procedure ("FRCP") Rule 44, Justice Ginsburg's opinion served to strike down the "reasonable" deference standard to a foreign government's submissions as to its law; the *Animal Science* standards should be applied to an even greater degree when the evidence as to foreign law is brought forward by a party in the case, especially when U.S. municipal law is the law of decision. Therefore, Rockefeller Asia reiterates that the Court of Appeal erred in its assumption that the Hague Convention imposes China law in U.S. courts, especially when the parties' arbitration agreement has chosen another governing law.

[9] U.S. Const. art. VI, cl. 2.

to answer the challenge of the instant case.

Municipal law is the national, domestic, or internal law of a sovereign state defined in opposition to international law. It includes national law, state, territorial law, and local law.[10] "International law as such can confer no rights cognizable in the municipal courts. Only insofar as the rules of international law are recognized as included in the rules of municipal law are rules of national law allowed in municipal courts to give rise to rights and obligations."[11] In *Pacquete Habana (1900) 175 U.S. 677*, the Supreme Court recognized the incorporation of "customary international law" into municipal law with regards to the seizure of fishing vessels but distinguished the incorporation into municipal law of positive international law as expressed in "treaties, decrees, and other public acts."[12] The Hague Convention is a treaty. As such, it is distinguishable from customary international law.[13]

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[10] Luc Reydams, *Universal Jurisdiction: International and Municipal Legal Perspectives: Oxford Monographs in International Law* (2004).

[11] James Atkin, *Akehurst's Modern Introduction to International Law* (1991).

[12] *The Pacquete Habana* 175 (1900) U.S. 677, 702. In stating this important distinction of U.S. law, the Court drew upon De Cussy, Ferdinand Carnot: *Maritime Law of Nations* (1856) 2 *De Cussy* 164, 165.

[13] "Customary International Law" refers to those aspects of international law that become binding on nations through general acceptance rather than through treaties and other documents. An example of Customary International Law is "diplomatic immunity." See, Daniel M. Bodansky, *The Concept of Customary International Law* (1996) 16 Mich. J. Int'l L. 3, at 667-669.

Nonetheless, the Hague Convention's status as a treaty does not, alone, necessarily imbue its terms with municipal force. No treaty, including the Hague Convention, can be applied in municipal law if it conflicts with a controlling legislative, executive, or judicial act.[14] The Hague Convention's language presents no such conflict per se because its obligation on the United States does not necessarily conflict with any act of U.S. municipal law. The Hague Convention's sole treaty obligation accepted by the United States into its municipal law through enabling legislation poses no such conflict. The U.S.'s sole obligation as a signatory state was satisfied with the passage of U.S. legislation establishing a "Central Authority" in the U.S. Department of Justice ("DOJ") that operates pursuant to Articles 2,3 and 4 of the Hague Convention.

The Central Authority's role in the DOJ is a limited one, i.e., to facilitate foreign persons' service of domestic persons to foreign tribunals. The Hague Convention does not require that the United States, or any other signatory, create and operate a Central Authority as the sole, exclusive means through which foreign persons may effect service on U.S. persons. Indeed, the signatory nation need only provide a Central Authority as an option to foreign persons. It is "not obligatory" to foreign persons and they are free under the treaty to serve domestic persons via other means, including direct service of mail.[15]

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[14] See, Restatement (Fourth) of the Foreign Relations Law of the United States (2018)

[15] Report of the Senate Committee on Foreign Relations on the

The DOJ has contracted the Central Authority's service of process function to a private contractor.[16] The contractor, ABC Legal of Seattle, handles foreign persons' requests for service of process in civil and commercial matters to U.S. persons. The limited specifics of the DOJ's satisfaction of this sole treaty obligation are contained in its "Notice to the Ministry of Foreign Affairs of the Kingdom of the Netherlands (the Hague)" as required by Section 31 of the Hague Convention (the "Section 31 Notice"). Through this Section 31 Notice, U.S. Government reports on its discharge of its treaty obligation to afford judicial assistance *to foreign tribunals and to litigants before such (foreign) tribunals*. No additional treaty obligation is identified.

The Section 31 Notice identifies no obligation of the Central Authority to participate in activities such as

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Convention on the Service Abroad of Judicial and Extrajudicial Documents, S. Exec. Rep. No. 6, 90th Cong., 1st Sess. 13 (April 12, 1967) (Statement of Phillip W. Amram) ("S. Exec. Rep. No. 6"). Phillip Abram was a prominent attorney, legal scholar, and expert on private law who served as the Chairman of the Hague Conference on International Private Law. His primary area of expertise was in legal disputes between citizens of different countries, a field upon which the instant case is placed. Under his testimony, a country's required Central Authority does not process outgoing service of process to foreigners and need only provide foreigners with an option for incoming service to its residents. If Amram's testimony is a correct interpretation of the Hague Convention's mandate, i.e. that *every* signatory's Central Authority provides only an option to other means for a country's incoming service, even incorporation of the entire Convention into U.S. law would not be, *ipso facto*, a basis for a court voiding a U.S. party's service of a foreign party, even a China party.

[16]The United States Department of Justice, *Service Requests* (March 27, 2019), *available at* https://www.justice.gov/civil/service-requests.

presented by the instant case (i.e., regulation of service of process efforts of private contracting parties, especially arbitral parties, who seek service upon foreign persons in matters before U.S. courts).[17] Notably, the enabling legislation provides no private right of action to individuals, and no court, except the Court of Appeal in this case, has found one.

The travaux at the time of the Hague Convention's ratification in the U.S. Senate is most instructive in support of the conclusion that the Hague Convention creates neither a private right of action nor introduces any significant change to U.S. judicial process. In the words reiterated by Dean Rusk, the Secretary of State at the time of the Hague Convention's ratification, "In its broadest aspects, the [Hague] Convention makes no changes in U.S. practices."[18] "The most significant aspect of the [Hague] Convention is the fact that it requires so little change in the present procedures in the United States."[19] "The [Hague] Convention leaves our common law due process principles unaffected and unchanged."[20] "By our internal law, we already give to foreign litigants all that this [Hague] Convention would require us to provide."[21] "The [Hague] Convention requires no changes in our law of judicial

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[17] The Central Authority's policy and practice is to return to the domestic party any service of process that the domestic party intended for a foreign party. *Id.*
[18] S. Doc. C, 90th Cong., 1st Sess., 5-6, 20 (1967) ("S. Exec. Doc. C").
[19] S. Exec. Doc. C, at 8.
[20] S. Exec. Rep. No. 6, at 11.
[21] S. Exec. Rep. No. 6, at 9.

assistance."[22]

In summary, the travaux at the time of the Hague Convention's ratification demonstrates that it was not intended to affect federal, state, and local law except, as Phillip W. Amram testified, the Hague Convention may require "a minor change in the practice of some of our states in long-arm and automobile accident cases."[23]

Twenty years later, in *DeJames v. Magnificence Carriers, Inc.* (1981) 654 F.2d 280, a federal court examined the same travaux and reached the same conclusion about the reach of the Hague Convention. Interestingly, *DeJames* differed from the instant case in several ways. First, it was an Amram case, i.e., an accident case in which the parties had entered into neither a service of process agreement nor an arbitration agreement. Second, DeJames, the plaintiff, had actually served the defendant, Hitachi, in Japan accordingly to the precise provisions of the Hague Convention.

Nonetheless, the court agreed that the service on Hitachi in Japan performed pursuant to the Hague Convention should be quashed because Hitachi did not satisfy New Jersey's long arm statute as to "minimum contacts." The case is important, *inter alia*, for the proposition that a state statute can supersede, and even nullify, the explicit service requirements of the Hague

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[22] S. Exec. Rep. No. 6, at 16.

[23] Amram's testimony contributed to the use of the term "Amram cases" to label unplanned incidents in the U.S. between parties from different countries.

Convention.

Although cited by Sinotype in its Reply Brief, *DeJames* does not supply support for either Sinotype's argument or for the holding of the Court of Appeal. However, the *DeJames* opinion offers substantial insight into the interpretation of the Hague Convention that is helpful in the instant case.

The *DeJames* court quoted the Senate Executive Report that recommended the Hague Convention's ratification as stating that the Hague Convention "is in keeping with the spirit and purpose of the law on this subject which is presently in effect in the United States and it will provide increased protection (due process) for American citizens who are involved in litigation abroad."[24] With regards to the service of process issue at the crux of the instant case, the court wrote: "[T]he testimony before the Senate Committee on Foreign Relations supports our view that the treaty was not intended to effect a change in the authority of the courts in the United States to obtain personal jurisdiction over a foreign defendant."[25] The court continued: "The testimony of each person appearing before the Senate Committee emphasized that the treaty would not effect any substantial change in the operation of the courts in the United States, but would provide American citizens greater due process protection in litigation abroad."[26]

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[24] S. Exec. Rep., No. 6, at 3.
[25] *DeJames v. Magnificence Carriers, Inc.* (1981) 654 F.2d 280, 289.
[26] *Id.* at 289-290.

The court continued with another important aspect of a limited role for the Hague Convention. "[T]he treaty (also) applies to parties desiring to make service on state court proceedings. The nature of the judicial system in the United States, which includes not only the federal courts but also the many state systems with their differing procedural requirements, was one of the primary justifications for entering into a treaty that would provide a uniform, valid method of effecting service."[27] Even the dissenting Judge Gibson agreed: "Like the majority, I believe the [Hague] Convention, rather than creating an independent source of adjudicatory competence, facilitates and provides a uniform method of service of process pursuant to some already extant state or federal statute or rule."[28] There can be no doubt that the Court of Appeal completely ignored the weight of this travaux evidence as to the proper interpretation and application of the Convention.

The uniformity in methods of service shown as intended by the Senate's ratification of the Hague Convention is challenged by Sinotype's theory of the Convention and the adoption of Sinotype's theory by the Court of Appeal below. At the time of the Hague Convention's ratification, Lloyd Wright, then President of the American Bar Association, commented on the difficulties presented by a multi-state approach to service in the U.S.[29] Wright's warning hits the mark when we see the

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[27] *Id.* at 288.
[28] *Id.* at 290.
[29] See, Commission on International Rules of Judicial Procedure

Court of Appeal holding that, even in cases of written party agreements regarding service, the Hague Convention requires California courts to void certain service of process abroad with knowledge that New York State[30] and virtually every other U.S. jurisdiction acknowledges a much narrower interpretation of the Hague Convention's mandate in party autonomy cases.[31]

Uniform interpretation and application of the mandate is important because, under United States law, the term "treaty" has a more restricted sense than that of an "international agreement." Indeed between 1949 and 2000 the United States entered into more than 16,000

Establishment, S. Rep. No. 2392, 85th Congress, 2nd Sess. (1958).

[30] See, e.g., *Alfred E. Mann Living Trust v. ETIRC Aviation S.A.R.L.* (2010) 78 A.D. 3d 137 (E-mail service pursuant to agreement did not violate Hague convention).

[31] As noted in Rockefeller Asia's Opening Brief, neither are California courts uniform with the Court of Appeal's reasoning and holding. See, e.g., *Masimo Corp. v. Mindray DS USA, Inc.* 2013 WL 12131723 (C.D. Cal. 2013) (Per the parties' agreement, U.S. plaintiff served Chinese defendant via postal channels. Defendant moved to quash service as a violation of the Hague Convention. The court held that the Hague Convention's mandate did not require voiding the service to the China defendant and cited decisions, such as *Nat'l Equipment Rental, Ltd. v. Szukhent* (1964) 375 U.S. 311, in which parties may agree in advance to jurisdiction of a given court, to permit notice to be served by the opposing party, or even to waive notice all together; see also, *Voltage Pictures, LLC v. Gulf Film, LLC* 2018 WL 2110937 (C.D. California 2018) (The parties' agreement provided for arbitration under the Independent Film & Television Alliance Arbitration Rules ("IFTA") and service under California law. Voltage served confirmation notice via postal channels to Gulf Film per Cal. Code of Civ. Proc. § 415.40; Gulf Film moved to void the service as prohibited by the Hague Convention. The court held that the parties' agreement removed any obstruction from the Convention.)

international agreements but fewer than 1,000 were entered into as treaties.[32] In the absence of "rules of the road" developed in the courts over scores of decades, the relationship between international law, treaties, and U.S. municipal law would be incoherent and unmanageable. Therefore, these distinctions are important and portray the varied and perhaps competing influences on municipal law.

B. A Treaty Does Not Supersede California Laws Unless the Treaty Provisions are Self-Executing

An international agreement is negotiated and concluded by the President but becomes a treaty only upon ratification by the Senate. However, most importantly, the treaty that results after Senate ratification of an international agreement may be either "self-executing" or "non-self-executing." The difference between a "self-executing treaty" and a "non-self-executing treaty" is very important, especially in the task before us of determining the Hague Convention's municipal force in the United States. Self-executing treaties apply directly as part of the supreme law of the land without the need for further action. Non-self-executing treaties become judicially enforceable only through the implementation of legislation. Whether a treaty is deemed to be self-executing depends on an examination of the intention of the signatories and the interpretation of the courts.[33]

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[32] *Treaties and Other International Agreements: The Role of the U.S. Senate* (Congressional Report Service).

[33] These distinctions are set out in Carlos Manuel Vazquez, Four

Sei Fujii v. The State of California (1952) 38 Cal.2d 718, demonstrates that the transformation of international norms into domestic law is a process determined by national law, not of international law. In *Sei Fujii*, the California Supreme Court reviewed the challenge of an alien resident, Sei Fujii, to a judgment of Judge Wilbur Curtis of the Los Angeles Superior Court that certain real property, a lot of ground in the Boyle Heights section of Los Angeles county purchased by Fujii, had escheated to the State under California's Alien Land Law.[34] *Id.* at 720. Fujii contended that the statute had been invalidated by the United Nations Charter (the "U.N. Charter"), a treaty that had been both signed by the United States and ratified by the U.S. Senate. *Id.*

In April 1950, a three-judge panel of the California Court of Appeal agreed with Fujii's theory on the domestic force of the U.N. Charter and unanimously overturned the Superior Court's ruling. In the Court of Appeal's opinion agreeing with Fujii, Judge Emmett J. Wilson wrote that the Alien Land Law was unconstitutional because it contravened Chapter 1, Section 1 of the U.N. Charter, a treaty that had been both signed by the United States and

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Doctrines of Self-Executing Treaties, 89 Am. J. Int'l Law 695, 695-6 (1955).

[34] Although the 1923 California Alien Land Law applied only to agricultural property and Fujii's purchase was of a residential lot in Boyle Heights, California's Attorney General Fred Howser argued that Fujii could not purchase any land under the Alien Land Law. Under federal law, Fujii was not eligible for U.S. citizenship.

ratified by the U.S. Senate.[35] In an argument similar to the one voiced by California Court of Appeal more than 60 years later, Judge Wilson reasoned that the U.S.'s 1945 ratification of the U.N. Charter had transformed it into an international treaty whose provisions took precedence over domestic laws. Thus, the treaty was domestic law and empowered individuals with the right to enforce it.[36]

Then, as now, the California Supreme Court granted review of the Court of Appeal decision. In the section of Justice Phillip Gibson's majority opinion addressing the issue of direct applicability of provisions of the U.N. Charter, the Court looked to Article II, Section 2, Clause 2 of the U.S. Constitution (the "Treaty Clause") which defines treaties and well as to the later portion of Article VI, Section 2 (the "Supremacy Clause") which sets forth treaties as one of the cornerstones of United States municipal law. Drawing from both clauses, Gibson wrote that it was "not disputed that that the (U.N.) charter was a treaty, and [that] our federal Constitution provides that treaties made under

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[35] *Sei Fujii v. State*(1950) 217 P.2d 481, 483.

[36] The Court of Appeal's ruling unleashed a storm of national controversy over the contention that the U.N. Treaty had become U.S. domestic law. Manley O. Hudson, president of the American Journal of International Law and a judge at the Permanent Court of International Justice who was twice nominated for the Nobel Peace Prize, argued in an influential Harvard Law Review article that the Court of Appeal's ruling was mistaken because the provisions of the U.N. Charter were addressed to the political departments of member states, not their judiciaries. He submitted that the provisions were not self-executing but represented a goal to be achieved by legislation. Hudson's argument seems to have had influence on the California Supreme Court's reasoning.

the authority of the United States are part of the supreme law of the land and that the judges in every state are bound thereby." *Sei Fujii v. State,* 38 Cal.2d at 721. In setting forth an issue relevant to the one that we face in the instant case, the Gibson Court also added this important caveat: "A treaty, however, does not automatically supersede local laws which are inconsistent with it unless the treaty provisions are self-executing." *Id.*

The Court continued, citing Chief Justice Marshall: "A treaty is 'to be regarded in courts of justice as equivalent to an act of the Legislature, whenever it operates of itself, without the aid of any legislative provision. But when the terms of the stipulation import a contract-when either of the parties engages to perform a particular act, the treaty addresses itself to the political, not the judicial department; and the Legislature must execute the contract before it can become a rule for the court.'" *Id.* at 721; citing *Foster v. Neilson* (1829) 2 Pet. (U.S.) 253, 314.

Applying the former Chief Justice Marshall's analysis, the Court held that the U.N. Charter was not self-executing and, therefore, the Treaty did not supersede inconsistent state law as provided in the "Supremacy Clause." *Sei Fujii v. State* 38 Cal.2d at 722. The Court supported its holding on the grounds that the U.N. Charter's relevant principles concerning human rights lacked the quality and certainty required to create justiciable rights for private persons. As supporting evidence for its conclusion, the Court looked to the intent of the parties as manifested by the U.N. Charter's language, especially in its preamble, and by the

circumstances surrounding its execution.[37]

C. The Hague Convention is Not a Self-Executing Treaty

When applied to the Hague Convention, an analysis similar to the one used by the California Supreme Court in *Sei Fujii* leads to a similar conclusion. The Hague Convention, although a treaty, is not a self-executing treaty. Therefore, its municipal force, if any, is limited to its enabling legislation which established a Central Authority in the DOJ. The Court of Appeal neither followed nor distinguished the *Fujii* opinion and holding of the California Supreme Court.

The Hague Convention's preamble reveals its aspirational goal is to improve the efficiency and effectiveness of the international system of service of process. Its intent, as noted by several courts that thoroughly examined the travaux at the time of its Senate's ratification, is to make little change in state law. Its municipal force is limited to the enabling legislation, passed by both houses of Congress and signed by the President, simply establishing a Central Authority, pursuant to the Convention's Articles 2, 3 and 4, to facilitate incoming service of process by supplementing, not eliminating, other means. Therefore, none of the purpose, intent, travaux, or

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[37] In another section of the opinion, the California Supreme Court determined that Fujii's farm did not escheat to the state because the Alien Land Law violated the 14th Amendment and Due Process clauses of the U.S. Constitution. These due process issues are not relevant to the treaty analysis.

enabling legislation (if any) of either treaty created in U.S. municipal law any enforceable rights and obligations in individuals.

Justice Gibson's ruling and reasoning in *Sei Fujii* on the incorporation of treaties into municipal law have never been challenged successfully in other courts in the United States. Moreover, the United States Supreme Court has stated that some treaties are not "self-executing" and that such "non-self-executing" treaties had limited effect when ratified and must be implemented by statute before their provisions may be given effect." *Medellin v. Texas* (2008) 552 U.S. 491. Looking toward *Sanchez-Llamas* (2006) 548 U.S. 331 as to the right and remedy of an individual to enforce a treaty provision, *Medellin* held that, absent a clear and express statement to the contrary in the relevant treaty, domestic procedural rules govern a treaty's implementation. *Medellin v. Texas* (2008) 128 S.Ct. 1346, 1350 (citing, *Sanchez-Llamas* (2006) 548 U.S. at 351).

An examination of the Hague Convention and its enabling legislation does not demonstrate the Court's requirements and the requirements are not discussed in the Court of Appeal's opinion. Neither the language of the Hague Convention nor its enabling legislation, creating a Central Authority to provide optional and non-exclusive assistance to foreign parties attempting to serve domestic parties in the U.S., imbue the Hague Convention with the force assigned to it by the Court of Appeal.

Volkswagenwerk Aktiengesellschaft v. Schlunk

(1988) 486 U.S. 694, is a U.S. Supreme Court case cited by lower courts in virtually every subsequent examination of the reach into U.S. municipal law of the Hague Convention. *Schlunk* provides no support for Sinotype's argument or for the Court of Appeal's holding. Quite the opposite, *Schlunk* draws heavily from the travaux in setting down a clear limit to the Hague Convention's reach into the validity of service of the relevant forum. *Schlunk* held that the Hague Convention did not require U.S. courts to void service of process conducted outside of the Hague Convention's mandate.

Schlunk was an "Amram case" (i.e., it arose from an unplanned event), a motor car accident that involved a U.S. plaintiff and a German defendant. Like China, Germany had entered its reservation to the Hague Convention's Article 10(a) which authorizes service by postal means. The matter presented no issues of party autonomy to enter into service of process agreements and no issues of federal protection of arbitration agreements.

The issue was whether Schlunk, under the laws of the relevant forum, Illinois, could serve process via postal means to the foreign company, Volkswagen, without falling under the Hague Convention's famous rubric in its Article I "occasion to transmit a judicial document for service abroad." *Id.* The Court held that that Article I did not apply if the laws of the forum permitted service on an involuntary agent for service of process. *Id.* Illinois' long-arm statute did. *Id.*

The opinion recognized that the Hague Convention

"shall apply ... where there is an occasion to transmit a judicial ... document for service abroad." *Id.* However, most importantly for our present task, the opinion continued, "Since the [Hague] Convention itself does not prescribe a standard for determining the legal sufficiency of the delivery, the internal law of the forum state controls." *Id.* In *Schlunk*, the controlling forum state was Illinois and the role of its internal law was determinative that the legal sufficiency of service on a foreign defendant was complete upon its delivery to a resident agent.

The opinion continued to explain, "This interpretation is consistent with the negotiating and the general purposes of the [Hague] Convention." *Id.*at 695. Justice Brennan's concurrence saw that the majority opinion was "depriving the [Hague] Convention of any mandatory effect." *Id.* at 708. He also reiterated that the majority's opinion clearly held "The [Hague] Convention's framers intended to leave each contracting nation, and each of the 50 states within our nation free to decide for itself under which circumstances the [Hague] Convention would control." *Id.*

Therefore, *Schlunk* dictated a non-exclusive role for the Hague Convention in determining the validity of U.S. persons' service of process on foreign persons. It held that the Hague Convention did not void plaintiff's service of process performed by methods not only not expressly authorized by the Hague Convention but also did not void even those methods in violation of the Hague Convention if plaintiff achieves service on the defendant pursuant to the law of the relevant forum.

In the instant case, the United States, not California, is the forum for the relevant "internal law" because of the presence of so many federal issues. Therefore, U.S. municipal law provides the measure of the service of process. The United States municipal law governing the instant case is as found in federal legislation, including, the Federal Arbitration Act, 9 U.S.C. 1 et. seq. (the "FAA"), the enabled portions of treaties such as the Hague Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "1958 New York Convention" or "1958 Convention"), other U.S. Supreme Court opinions on treaties, and even applicable sections of the Constitution itself.[38] As a treaty, the Hague Convention cannot surmount those three citadels of U.S. national law, i.e., the Constitution, federal legislation, and judicial decisions. Therefore, the Court of Appeal erred when it voided, *ab initio*, as a due process violation Rockefeller Asia's actual, acknowledged, and multiple services of process of Sinotype over a period of more than two years.[39]

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[38] In view of the role of federal legislation in this case, especially the force of the FAA in arbitration cases, Rockefeller Asia is not emphasizing the support that the concept of party autonomy receives from more general sections of the Constitution such as the commerce clause, the foreign trade clause, and especially the freedom of contract clause, Article I, Section 10, which guarantees persons freedom of contract from impairment by a state, limited only by public interest and the police power. Neither of those limits are pertinent to the instant case and no state recognizes contracting parties' voluntary agreements to service of process as a predicate for those limitations.

[39] As Rockefeller Asia argued in its Opening Brief, the Court of Appeal erred when it held that Sinotype's due process rights were

D. California's "General Manager Rule" Applies

Yamaha Motor Company, Ltd. v. Superior Court (2009) 174 Cal.App.4th 264, sets forth an additional, second basis under *Schlunk* which would validate Rockefeller Asia's service of an individual - i.e., Sinotype's chairman and general manager, Kejian Huang - even if the relevant forum is the state of California in addition to the forum of the United States.

In *Yamaha*, Judge David Sill, then presiding judge of the California Court of Appeal for the Fourth District, set forth an analysis of *Schlunk* that also focused on the Hague Convention's Article 1 language, "where there is occasion to transmit a judicial or extrajudicial document abroad." With a close reading of *Schlunk*, Judge Sill saw that the Hague Convention was not implicated when service on a foreign company's agent in fact required, as a realistic and practical matter, the agent to transmit the service abroad to his principal, the foreign defendant.[40] Thus, the relevant

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violated when Rockefeller Asia served Sinotype pursuant to the means to which they had agreed in their arbitration agreement. Rockefeller Asia cited to a number of U.S. Supreme Court cases that held that parties to a commercial agreement may agree to waive due process rights. See, e.g., *D.H. Overmyer Co. Inc. of Ohio v. Frick Co.* (1972) 405 U.S. 174; *Nat'l Equip. Rental, Ltd. v. Szukhent* (1964) 375 U.S. 311; *Mullane v. Cent. Hanover Bank & Tr. Co.* (1950) 339 U.S. 306.

[40] Judge Sill underscored the need for, and importance of, a role in the judicial interpretation of the literal language of the Hague Convention when he notes that although California Code of Civ. Proc. § 413.10 expressly contemplates that its rules governing summonses "are subject to" the provisions of the Hague Convention, the language "are subject to" does not mean "pursuant to the rules of." *Yamaha Motor Co.*, 174 Cal.App.4th at 271.

measure of the Hague Convention's mandate in the California forum under *Schlunk* becomes the amenability of a domestic agent, even if involuntary, to California forum's service rules, not the amenability of service of the foreign principal itself. Therefore, service on a foreign company is valid if the company's "general manger" receives service, whether voluntary or not. CCP 416.10(b) provides that process may be served on a corporation "by delivering a copy of the summons and complaint ... to.... a general manager." A general manager is defined very liberally as "any agent of the corporation of sufficient character and rank to make it reasonably certain that the defendant will be apprised if service is made." See, *Khachatryan v. Toyota Motor Sales, U.S.A. Inc.* (2008) 578 F.Supp.2d 1224, 1226. Under California law, an individual can be a "general manager" if it is determined that service on that individual will likely ensure notice to the foreign corporation of any notice or process served upon it affecting interests. *Overland Machine Prod., Inc. v. Swingline, Inc.* 224 (1964) Cal.App.2d 46,48. Upon service to a general manager who likely will ensure notice to the foreign corporation, "the requirement of the statute is answered." *Eclipse Fuel Eng'g Co. v. Superior Court In & For City & Cty. of San Francisco* (1957) 148 Cal.App.2d 736, 746. The extraordinary reach of service pursuant to California's General Manager rule is set out in *Cosper v. Smith & Wesson* (1959) 53 Cal.2d 77. Despite the renumbering of Section 6500 of the Corporations Code to Section 2110 of the Corporations Code, *Cosper* remains California's prime repository on

service under the General Manager Rule.

California Corporations Code 2110 states that valid service on a foreign corporation consists of delivery of the service to the foreign corporation's "general manager in the state." Cal. Corp. Code § 2110. The crux here is whether the words "general manger in the state" apply to the general manager responsible for the foreign company's business in California *only* while he is in California or, if he has at least minimum contacts with California, may he be served anywhere? Given minimum contacts to satisfy due process, no California law requires that an individual, otherwise eligible to being served, must be in California when served.

Logically, if he were a California resident, as Kejian Huang is, the General Manager responsible for the foreign company's activities in California could be served while he is in Seattle negotiating a license with Microsoft or while attending a University of Berkeley road football game in Eugene, Oregon. Certainly, Kejian Huang's business activities in California as Chairman and General Manager for Sinotype, his California residency, and his California homestead easily satisfy California's minimum contacts requirements for an individual executive regardless of whether he is physically served at his California office, his China office, his St. Tropez beach house, his St. Moritz ski lodge, his London Apartment, his Manhattan hotel, his Hong Kong penthouse or wherever his and his companies budget plans allow.[41] Regardless of his location, under

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[41] Kejian Huang's declaration is clear that he received the seven

Schlunk's framework, the service on Sinotype was "complete" under California law upon its service upon general manager Kejian Huang as a foreign company's general manager of its California activities. His location at the time of service is irrelevant assuming that the deliveries otherwise are sufficient for due process. In other words, the statute is satisfied by the general manager's level of responsibility for the foreign company's activities in California, not by his physical location at the time of service. Therefore, if California's general manager rule does not require physical presence in California for a person with minimum California contacts, the Court of Appeal erred in voiding the service, *ab initio*, on him as general manager/ agent.

Rockefeller Asia's Opening Brief argues that any influence that the Hague Convention may exert over the parties' arbitral agreement setting forth means of service of process is minimal in view of the force of the 1958 Convention to the extent that the 1958 Convention was implemented into U.S. municipal law by the FAA.[42] The

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services of process over a more than two-year period (whether he chose to read them or not) but his declaration does not state his geographical location when he opened the seven FedEx and E-mail services. He could have opened them, especially his email, anywhere in the world. However, as argued above, the location for service of an individual general manager is irrelevant if the general manager rule is otherwise satisfied.

[42] Like many other treaties, the 1958 Convention is not self-executing. Section 202 of the FAA provides that "an arbitration agreement ... arising out of a legal relationship, whether contractual or not, which is considered commercial .... including a ... contract, or agreement described in Section 2 of this title [i.e., 9 U.S.C. 2] falls

1958 Convention is a treaty among 159 signatories, including the United States and China, that requires courts of contracting states to give effect to private agreements in writing to arbitrate. An "agreement in writing" includes "an arbitral clause in a contract or an arbitration agreement signed by the parties." See Convention, Article II § 2. In the instant case, the agreement clearly identified the means of service to be followed and the Court of Appeal did not follow the FAA's command to give effect to the parties' agreement to arbitrate.

Rockefeller Asia's Opening Brief showed that the Supreme Court also has set forth very strongly the limits on municipal law it imposes upon the judiciary's power to disregard private parties' arbitration agreements in whole or in part. Indeed, the Court's decision in *Buckeye Check Cashing, Inc. v. Cardegna* (2006) 546 U.S. 440, indicates that this dispute should not be before the courts at all. *Buckeye* held that whether an agreement is voidable or *void ab initio*, the FAA applies because it requires that contracts with arbitration clauses be treated like all other and all such decisions be made by the arbitrator, not the court. In its Opening Brief, Rockefeller Asia cited a number of cases in which overwhelmingly the FAA severely restricts any role of courts in regulating arbitration agreements. See, e.g., *Volt Info. Scis., Inc. v. Bd. Of Trustees of Leland Stanford Junior Univ.* (1989) 489 U.S. 468; *Dean Witter Reynolds, Inc. v. Byrd* (1985) 470 U.S. 213; *Henry Schein, Inc. v.*

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under the [1958] Convention." 9 U.S.C.A. § 202.

Archer & White Sales, Inc. (2019) 139 S.Ct. 524; *Rent-A-Ctr., West., Inc. v. Jackson* (2010) 561 U.S. 63, 66.

SINOTYPE'S ALLEGATIONS OF "FACTS" IN ITS ANSWERING BRIEF ARE NOT PROPERLY BEFORE THE COURT AND ARE DEMONSTRABLY FALSE

Although the limited issue set forth by the Court for decision in this case is one of law not fact, Sinotype admits that Kejian Huang's unsubstantiated allegations of misrepresentations, manipulations, misunderstandings, and fraud in its Answering Brief is intended to motivate this Court "to understand something about the contract at issue." Sinotype's objective requires identification and refutation of certain factual claims if Sinotype's purpose, as it pursued in its written and oral presentation to the courts below, is to invoke the inherent equitable powers of the Court as it unsuccessfully attempted before Judge Hammock in the Superior Court.[43] Indeed, the Court of Appeal's opinion below seems heavily weighted with allegations that Sinotype decided not to bring forth in the dispute resolution process of more than two years that led to the arbitral award of Judge Richard Neal, the award's review and approval by JAMS International Committee, and the award's confirmation into a judgment by Judge Rafael Ongkeko.

Sinotype alleges that it did not learn of the existence of the October 23, 2014 default judgment until March 2015.

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[43] Reporter's Transcript, Nov.2, 2017, Pg.9.

(AB at 5.) The records, including Kejian Huang's own declaration, show that Sinotype received actual knowledge of the default judgment through FedEx and e-mail service in late October 2014 and that Sinotype had received actual notice of the arbitration through FedEx and e-mail seven times in the almost three-year period beginning in February 2012. Sinotype filed its motion to quash service and set aside the judgment on January 29, 2016 – almost four years later. Both the Hague Convention and its Article 10(a) are silent as to e-mail service but its Article 16, dealing with the effect of "no-shows," looks toward a defendant's actual knowledge of the service, independent of the form of the service. Once again, the Convention's focus upon actual notice is consistent with its intention and purpose.

Sinotype states in its Answering Brief, "*Sinotype is a frontrunner in the market for China font technology but the market is a small one. Sinotype's revenues from 2007 to 2014 average roughly less than $1 million per year.*" (AB at 8.) Yet, in a 2014 published article, Kejian Huang stated that Sinotype's fonts were used in 180 million devices in that year alone.[44] Because Sinotype chose not to participate in the financial analysis of itself conducted by Judge Richard Neal at the arbitration,[45] Sinotype's true financials are not before this Court. However, Sinotype's poverty claims in the Answering Brief vary greatly from the

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[44] Caleb Belohlavek, Pan-CJK Parnter Profile: Sinotype (September 18, 2014) *available at:* https://blog.typekit.com/2014/09/18/pan-cjk-partner-profile-sinotype/

[45] See, Award.

evidence available to Judge Neal during the arbitration. This financial evidence included materials that Sinotype had created and distributed to various bankers and potential investors, was supplemented by industry sources and was reviewed by Judge Neal during the damage "prove-up" phase of the arbitration.[46]

Moreover, the accountings for revenues, earnings, and taxes reported by multinational technology companies, including Sinotype's licensee, Apple, that creates and licenses intangible property (as do China's Sinotype and its U.S. parent, STI) are commonly placed advantageously in some chosen jurisdictions rather than others.[47] Indeed, even a high technology company whose accounts report many millions of dollars of annual losses year after year may enjoy a market value of into the billions of dollars.[48]

Sinotype also states in its Answering Brief: *"Sinotype's Kejian Huang thought that the agreement between the parties was a 'Bei Wang Lu', which is non-binding under China law."* (AB at 9.) As an executive of Sinotype and its parent STI for over 20 years, the evidence is clear that Kejian Huang negotiated and executed contracts in California in English with most of the leading technology firms, including Apple, Adobe, Microsoft and

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[46]*Id.*

[47]Fortune Magazine, *Understanding Apple's Taxes*, October 31, 2017; New York Times, August 31, 2017.

[48]Modern analysts have new metrics for successful technology companies that are independent of the traditional. For example, Tesla has annual losses of hundreds of millions of dollars but commands a market value of over $40 billion dollars. See, Yahoo Finance Website (Tesla).

virtually all of the major market participants. As Judge Hammock of the Superior Court wrote, Kejian Huang is no "bumpkin." The 2008 Agreement between the parties states that California law, not China law, governs the agreement. The 2008 Agreement also states that upon execution it comes into "full force and effect" (2008 IV, 3); that it can be modified not orally but only in a "writing signed by both parties" (2008 IV, 3); that Kejian Huang represents that he is "fully authorized" to execute it (2008 IV, 4); and that both parties represent that each has the "substantial and sufficient business experience" of "sophisticated investors." (2008 I,5). Upon evidence, Judge Neal found that Sinotype had received the consideration.[49] Thus Sinotype's claim that the 2008 Agreement is non-binding is false.

Although both irrelevant and false, Sinotype's Answering Brief colors Kejian Huang's meetings with Rockefeller Asia's then CEO Faye Huang as being held at "off-site" locations. (AB at 15.) Sinotype would have the Court believe that the 2008 Agreement was a "sting" operation perpetrated upon its CEO by a "grifter" at a LAX snack bar as Kejian Huang was rushing to catch a plane. Kejian Huang ignores his initial meetings at Rockefeller Asia's offices at the Library Office Tower,[50] subsequent meetings at the law offices of the K&L Gates,[51] as well as meetings at the investment banking offices of Houlihan

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[49] Award
[50] 633 West Sixth Street, Los Angeles, CA 90017.
[51] 10180 Santa Monica Blvd., Los Angeles, CA 90067.

Lokey.[52] On each such occasion Sinotype's executives joined Kejian Huang to answer questions and to make presentations in search of funds.[53]

In its Answering Brief, Sinotype discusses the long form agreements prepared by K&L Gates in June 2010, prior to the road show. (AB at 18.) These documents were identified in the 2008 Agreement but postponed because of the 2008-2009 financial meltdown. These documents are irrelevant because they were never negotiated and executed to replace the 2008 Agreements. However, the effort to negotiate them at the time of the roadshow demonstrates the operating relationship of the parties that began with the 2008 Agreement and ended with its 2010 breach by Sinotype as stated in the Award. As demonstrated by the Award, Sinotype objected to Rockefeller Asia's 12.5% equity share only after the roadshow bankers estimated that Sinotype's value had increased seven times from $80 million to $600 million since Rockefeller Asia lent its financial and managerial support two years prior.[54] Upon receiving this good news, Kejian Huang offered to substitute Rockefeller Asia's 12.5% interest with an interest equal to 3% of the $600 million valuation and to remove Rockefeller Asia's minority protections.[55] Despite

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[52] 10281 Constellation Blvd., Los Angeles, CA 90067.
[53] See, Kejian Huang Decl.
[54] As outstanding as that return is, it was outpaced by equivalent investments in other instruments of high technology companies. See, e.g., Yahoo Finance Website: (Apple), (Amazon), (Facebook), (Alphabet).
[55] See, Kejian Huang Decl.

Rockefeller Asia's objections and protests, Kejian Huang brazenly and confidently responded that he would see that Sinotype was immune from any remedies that Rockefeller Asia might seek in U.S. Courts and that hope of any redress in China was hopeless.[56] After substantial attempts at informal resolution were unsuccessful, per the terms of the parties' arbitration agreement, Rockefeller filed a demand for arbitration with the Judicial Arbitration & Mediation Service ("JAMS") in early 2012.

In its Answering Brief's account of the relevant factors in the parties' relationship in the years 2008, 2009, and 2010, Sinotype omits the crushing influence of the 2008 international financial meltdown that followed the execution of the 2008 Agreement and required adjustment of some previously anticipated steps. In the month following the execution of the 2008 Agreement in February, Bear Stearns "suffered a run on the bank" and had to be rescued by J.P. Morgan Chase.[57] Shortly after, Indy Mac Bank was placed into federal conservatorship followed by the placing into receivership of Fannie Mae and Freddie Mac.[58] The bankruptcy of Lehman Brothers, a long established Wall Street bank followed along with Bank of

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[56] See, Award. See also, Faye Huang Decl.
[57] Paul Weiss, LLP: Report to the Association of Corporate Counsel, *The Financial Crisis 10 Years Later: Lessons Learned*, (September 15, 2018), pg. 1, *available at*https://www.paulweiss.com/practices/litigation/financial-institutions/publications/the-financial-crisis-10-years-later-lessons-learned?id=27324.
[58] *Id.* at pg. 2.

America's rescue of Merrill Lynch, J.P. Morgan Chase's acquisition of Washington Mutual, and Wells Fargo's acquisition of Wachovia.[59] The U.S. government invested $700 billion into financial institutions, the automobile industry, and government housing initiatives.[60] The S&P plunged more than 56% between October 2007 and March 2009.[61]

The global financial meltdown virtually prohibited financial investments in smaller foreign firms as well and required millions of dollars in capital, travel expenses, and consulting support for a period of two years without a penny of recoupment. Against this background, the global strength of Rockefeller Asia's support of Sinotype was vital.

Sinotypes Answering Brief states: "*In or about January 2012, Curt ["Kejian Huang"] received a letter via FedEx, the cover of which mentioned 'arbitration' .... Curt ["Kejian Huang"] ignored the letter. He also ignored all subsequent FedEx packages and emails... as he did not want to be harassed ... and he did not believe that the parties' negotiations came to a binding agreement.*" (AB at 22.) The correct history is that written proofs of service in the JAMS files, prepared by JAMS case managers, show that at least seven services of process[62] were delivered to Kejian Huang as Chairman and General Manager of Sinotype. These were delivered not only through FedEx, i.e.,

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[59] *Id.*
[60] *Id.* at pg. 3.
[61] *Id.* at pg. 4.
[62] See, Award.

postal means[63], but also via e-mail, a means of service of process that is not "postal means," that is not identified or included anywhere either in the text of the Hague Convention or in Section 10(a) of the Hague Convention to which China took a reservation. Through Kejian Huang's sworn declaration, Sinotype admits to its Chairman Kejian Huang's receipt of service of process via e-mail - although the declaration omits to state at which locations and in what jurisdictions Kejian Huang was located during the two years over which he received the seven services of process.[64] E-mail was a means of service to which Sinotype had consented in the 2008 Agreement.[65] Thus, even if the Court of Appeal found that the Hague Convention and China's Article 10(a) reservation has been incorporated into U.S. municipal law, China's prohibition of postal means would not extend to a prohibition and invalidation of service performed via the "non-postal" means of service, i.e. e-mail.

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[63] Rockefeller Asia does not contest that "Postal Means" or "Postal Channels" includes Federal Express and similar private couriers such as UPS and DHL.

[64] Obviously, Kejian Huang, as Sinotype's Chairman and General Manager, could have received and opened anywhere in the world the seven services during the two years. The declaration does not identify whether he was at his California office, his California residence, his China office, his China house or some other location when each of the seven services of process occurred over the two-year period. Moreover, as a non-citizen U.S. resident, Kejian Huang's absence from the United States for more than six months would affect his "green card" status. See, Website, Department of Homeland Security, U.S. Citizenship & Immigration Services.

[65] Although the parties' agreement provided for service via facsimile as well as FedEx and e-mail, Rockefeller Asia focuses on Kejian Huang's very clear admission of service by e-mail, as well as FedEx, in his declaration and as stated in Sinotype's Answering Brief.

Therefore, Sinotype's admitted service of process by e-mail, although not an expressly authorized means of service under the Convention, was not rendered void by China's Article 10(a) reservation as to service via postal means.

THE NEW YORK CONVENTION AND THE FEDERAL ARBITRATION ACT

In its Answering Brief, Sinotype asserts that the Supreme Court case of *D.H. Overmyer Co. Inc. of Ohio v. Frick Co.*(1972) 405 U.S. 174, is "*totally irrelevant.*" (AB at 42.) As set out in Rockefeller Asia's argument, *D.H. Overmyer* is one of a number of clear Supreme Court decisions holding that parties to a commercial agreement may waive due process rights. See, also *Nat'l Equip. Rental, Ltd. v. Szukhen t*(1964) 375 U.S. 311; *Mullane v. Cent. Hanover Bank & Tr. Co.* (1950) 339 U.S. 306.

In its Answering Brief, Sinotype argues that "*The so-called "New York Convention" ... actually has no bearing on this case, (it) is a method of enforcing foreign arbitral awards whereby a litigant can take a foreign arbitral award and enforce it in the defendant's home country.*" (AB at 43-44.) Sinotype's statement that the 1958 Convention has no bearing on this case is incorrect. Article I of the 1958 Convention provides that its application extends to arbitral awards not considered as domestic awards in the signatory state where their recognition and enforcement are sought. An award is not considered "domestic" if it is made in the enforcement state under the arbitration law of that state involving a foreign or international element. This

conclusion results from the implementing U.S. legislation as interpreted by U.S. federal courts. *Bergesen v. Joseph Muller Corp.*(1982) 548 F.Supp. 650. In support of this view, the *Bergesen* court relied upon Section 202 of the U.S. legislation implementing the 1958 Convention. Section 202 provides that while awards which stem from a relationship in which all the all the parties are U.S. citizens are deemed not to fall under the 1958 Convention unless the relationship has some reasonable relationship with one or more foreign States. Certainly, a dispute between a U.S. company and a China company possesses the requirement of such a relationship sufficient to label the arbitration as non-domestic.[66] Therefore, Sinotype's argument fails when it objects to the application of the 1958 Convention to this dispute arising from an arbitral agreement between a China party and a U.S. party.

In the United States, the FAA incorporates the 1958 Convention. As Rockefeller Asia argues in its Opening Brief, without response from Sinotype's Answer Brief, the FAA is federal legislation and is of great value in determining the proper interpretation of the Hague Convention to be applied by state courts and legislatures. Its terms, including the applicable decisions of the U.S. Supreme Court, determine the municipal law applicable to the parties' arbitral agreement, including their service of process agreement, and transcend whatever mandate is posed on

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[66] See, *The New York Convention of 1958: An Overview*, Albert Jan van den Berg. President of the Netherlands Arbitration Institute. Rotterdam.

those agreements by the Hague Service Convention. Indeed, the U.S. Supreme Court decision in *Buckeye Check Cashing, Inc. v. Cardegna* (2006) 546 U.S. 440, raise issue of whether the courts can be involved at all in this matter, even to determine whether the underlying contract is void. The Opening Brief also identified other applicable Supreme Court decisions that excluded judicial involvement with arbitration agreements. These include *Volt Info. Scis., Inc. v. Bd. Of Trustees of Leland Stanford Junior Univ.* (1989) 489 U.S. 468; *Dean Witter Reynolds, Inc. v. Byrd* (1985) 470 U.S. 213; *Henry Schein, Inc. v. Archer & White Sales, Inc.* (2019) 139 S.Ct. 524; *Rent-A-Ctr., West, Inc. v. Jackson* (2010) 561 U.S. 63, 66.

U.S. LAW AND CALIFORNIA LAW SUPPORT PARTY AUTONOMY

In its Answering Brief, Sinotype rejects concerns over the effect of the Court of Appeals decision as *"The proverbial sky will fall."* (AB at 45.) Sinotype dismisses too easily the probable consequences that will follow the Court of Appeal's unique ruling undermining the role of party autonomy in service of process agreements, especially those associated with an arbitral agreement. Sinotype's hyperbole is ill-founded. One single example of the potential consequences of the Court of Appeal's decision is shown by the arbitral role played by the International Film & Television Alliance ("IFTA") in Los Angeles that presides over scores of arbitrations every year. In the past decade, almost 100 of those arbitrations resulted in default

judgments for plaintiffs. Virtually all of the arbitral parties executed the IFTA's Model International Licensing Agreement which reads, "Both parties waive application of the Hague Convention for Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters." See IFTA Arbitration/IFTA Website. Under the Court of Appeal's decision, which outlaws party agreements to escape the Hague Convention, each and every one of those defaulting defendants now may petition to have service upon them to be held "*void ab initio*" as a step to setting aside those judgments, especially since the Court of Appeal held that such challenges were not limited by any statute of limitations. The burden on legal and judicial resources, as well as on the affected industries, will be substantial. Prospectively the Court of Appeal's ruling means that IFTA and other such organizations must relocate their arbitral activities outside of California into one of the very many jurisdictions that recognize an important role for party autonomy in arbitral and other agreements.

In its Answering Brief, Sinotype simply assumes *"Parties cannot contract around express provisions in the Hague Convention."* (AB at 46.) Sinotype offers no case or authority involving a party agreement in support of its position on the issue posed by the Court.

In its arguments in the first section of this Reply Brief, Rockefeller Asia has demonstrated that U.S. judicial and legislative law is overwhelming in showing that the Hague Convention has no role in the municipal laws governing parties' consent to written agreements as to service of

process, especially in contracts calling for arbitration of disputes. Rockefeller Asia also has underscored that the U.S. judicial and legislative law is clear that the Hague Convention created no U.S. municipal right of action in individuals and no U.S. legislation exists that would create such a right. In contrast, Sinotype's Answering Brief offers absolutely no case or scholarship in support of its theory that the Hague Convention invalidates municipal law governing party autonomy in agreements as to means of service of process.

THE AUTHORITIES CITED IN SINOTYPE'S ANSWERING BRIEF FAIL TO SUPPORT ITS LEGAL THEORY

This Reply Brief now will examine each of the principal cases that Sinotype advances.[67] Significantly, not one of the Sinotype cases involves "party autonomy," i.e., a contract or arbitral agreement in which the parties identify and "agree to legal service of process by methods not expressly authorized by the Hague Convention."

In *Water Splash, Inc. v. Menon (2017)* 137 S. Ct. 1504, the Court held that the Hague Service Convention did not prohibit service by mail, thereby resolving a long-running split in both federal and state courts. The *Water Splash* holding provides no support to Sinotype because it does not state that the Convention prohibits service by e-mail,[68] that

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[67] *DeJames,* which is also cited in Sinotype's Answer Brief, was discussed earlier as support for Rockefeller Asia's argument.

[68] Kejian Huang's declaration states clearly that he received the

the Convention requires voiding service of process via methods that it does not expressly authorize, or that service incongruent with the means explicitly authorized in the Hague Convention are *void ab initio*. The case presented no issue of party autonomy.

In other words, Sinotype's use of *Water Splash* begs the question. Justice Alito's opinion does not state how to identify "cases governed by the Hague Service Convention." It simply states that, when the Convention applies, it allows service by postal means "if two conditions are met: first, the receiving state has not objected to service by mail; and second, service by mail is authorized under otherwise applicable law." The Court noted that the Texas Court of Appeal had not reached the issue of whether the service was authorized under the law of the forum state of Texas.

As Rockefeller Asia's Opening Brief demonstrates, the receiving state in this case, China, has not objected to service by postal means outside of whatever weight is associated with its reservation to the Conventions Section 10(a). In conformity with the Hague Conference Principles, [69]as Rockefeller Asia has consistently evidenced, Article 145 of China's Civil Law expressly allows "the parties to a contract involving foreign interests (to) choose the law

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agreed-upon services via e-mail as well as FedEx. E-mail is not "postal means" so whether the Hague Convention prohibits service by post is not determinative of the legality, much less the voiding, of Sinotype's actual and admitted services per the agreement.

[69] Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters, 20 U.S.T. 361, T.I.A.S. No. 6638, 658 U.N.T.S. 163.

applicable to the settlement of their contract disputes." This is exactly what Sinotype and Rockefeller Asia did. Thus, per *Water Splash*, Article 145 excuses the parties from the Hague mandate. Of similar effect is Article 8 of the Arbitration Rules of China's International and Trade Arbitration Commission: Service of Documents and Periods of Time.[70] Given this correct statement of China law, severe doubt arises as to both Sinotype's theory and China law's role in the foundation of the Court of Appeal's opinion.

In its Answering Brief, Sinotype advances four California Court of Appeal opinions: *Floveyor International, Ltd. v. Superior Court* (1997), 59 Cal. App. 4th 789; *Honda Motor Co. v. Superior Court* (1992) 10 Cal. App 4th 1043; *Dr. Ing. H.C.F. Porsche v. Superior Court* (1981)123 Cal.App.3d 755; and *Kott v. Superior Court* (1996) 45 Cal. App. 4th 1126 to support its theory, adopted by the Court of Appeal below, that Rockefeller Asia's service per agreement is *void ab initio* for failing to comply with the Hague Convention. (AB at 29.) An examination of the issues and facts before the courts in each of these cases demonstrates that none of the cases provide any grounds for Sinotype's theory.

In *Floveyor*, the petitioner, a British Company,

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[70] Article 8(1) reads: "All documents, notices, and written materials in relation to the arbitration may be delivered in person, or sent by registered mail or express mail, fax, or by any other means considered proper by the Arbitration Court or by the arbitral tribunal." Article 8(2) provides that the arbitration documents can be addressed as agreed by the parties. Article 8(3) provides that arbitration documents shall be deemed to be properly served on the party if, *inter alia*, delivered to the addressee.

challenged the denial of its motion to quash service from Shick, a U.S. company on the grounds that the service failed to conform to the Hague Convention. Unlike in the present case, the companies had not entered into a written agreement setting forth the means of service of process. As in the present case, actual service had been performed. The court found no conflict between the requirements of Hague Convention and the service of process that was delivered on Floveyor in England. Thus, the *Floveyor* opinion offers no light on the instant case.

In *Honda*, the Court considered the issue of whether a California resident, Stephen Opperwall, could obtain valid service of process on a Japanese national, Honda Motor, by private mail service ("postal channels") under Article 10(a) of the Hague Convention. In this motor accident case, the parties had neither entered previously into an agreement governing the means of service of process nor had agreed to arbitrate disputes arising between them. As a signatory to the Hague Convention, Japan had posed reservations to Article 10(b) and Article 10(c) of the Hague Convention but not to Article 10(a). Therefore, Japan was subject to Section 10(a) and the issue for the court was whether Article 10(a)'s language "send judicial documents, by postal channels, directly to persons abroad," should be interpreted to include "to effect service of documents" by postal channels. Obviously, if Article 10(a) permitted service by postal channels, and if Japan had not entered a reservation on Article 10(a) then plaintiff Opperwell's service via postal channels was not in violation of the Hague Convention.

The *Honda* case has no precedential value to Sinotype for three reasons: 1) the case does not deal with the issue of party autonomy, i.e., the right of private parties to enter an agreement regulating service of process; 2) Honda Motors held the Hague Convention did not permit service by postal means because Section 10(a)'s language should not be interpreted to include service by postal means; and 3) the Supreme Court's holding in *Water Splash* that the Hague Convention Article 10(a) permits service via postal means, effectively overturns the holding in *Honda*. Therefore, the case's reasoning leading to that occasion is without value to resolution of the instant case.

In *Dr. Ing H.C.F. Porsche A.G.*, the Court considered the sole issue of whether plaintiff Kimberly Schilling, a California resident, acquired personal jurisdiction over defendant, Porsche, a German company in a lawsuit following her decedent's death in an auto accident in Sacramento County. The parties had not entered an agreement governing service of process or an arbitration agreement. In the absence of any such agreements, the court saw the critical issue as "the effect, if any of the failure of plaintiff's to perfect service of process in accord with the Hague Convention." Pursuant to Article 21 of the Hague Convention, Germany chose to oppose the use of methods of service of process otherwise permitted by Articles 8 and 10. The court concluded that even a showing that Porsche had actual notice was insufficient to avoid the effect of noncompliance with the Hague Convention. The Porsche case is inapposite to the current case because its parties had

not entered neither into an agreement consenting to means of service of process nor an agreement for arbitration in compliance with statutes.

In *Kott,* the Court upheld a role for the Hague Convention in cases in the absence of consideration of party autonomy, i.e., the absence of an arbitration agreement or a service of process agreement. The Court considered "whether service of process by publication in Los Angeles county is invalid under the Hague Service Convention once plaintiffs learned petitioner was a resident and citizen of Canada. The case is inapposite because it does not present the issue of a party agreement to service of process not expressly authorized by the Hague Convention. Specifically, the parties had entered into no agreement governing service of process and were not parties to an arbitration agreement subject to the FAA, the 1958 New York Convention, and U.S. Supreme Court holdings. Nevertheless, the *Kott* decision demonstrates the court's successful pursuit of the Hague Convention's purpose, i.e., the improvement of international service of process, by not following the express and limited meaning of its language.

The case recognizes that the Hague Convention is explicit that "This Convention shall not apply where the address of the person to be served with the document is not known." *Id.* at 1133. Here, plaintiff Beachport did not know Kott's address despite the efforts of its counsel, its private detectives, and its process servers. Nonetheless, the court did not observe this clear and express limitation of the Hague Convention's power.

Instead, the court exercised some flexibility in interpreting the Convention's language in order to promote its intent and purpose. It reversed the trial courts refusing to quash service and held that "service by publication in this case was invalid due to plaintiff's failure to exercise due diligence to locate petitioner in Canada before seeking court authorization to accomplish service by publication in a Los Angeles newspaper." *Id.*at 1130. In other words, the *Kott* court read a "due diligence" standard into the enforcement of the express language of the Convention's literal mandate.

Although *Kott* is inapposite to the issue at hand because of the absence of any agreement by the parties' on means of service, its opinion is an example of a Court going beyond the express provisions of the Hague Convention's mandate in order to advance the Hague Convention's purpose of facilitating service of process abroad. Indeed, Judge Johnson's reading of a "due diligence standard" into the Hague Convention's language opened the door to a broader reach of the Hague Convention's purpose to serve foreign defendants. Similarly, in the instant case, the Court of Appeal's judicially imposed requirement that parties are forbidden to agree to means of service of process "not expressly authorized by the Hague Convention" is in fact counterproductive to the Hague Convention's purposes and intent.

Like *Kott*, several courts have taken a liberal view of the means of service of process available under the Hague Convention, especially in cases in which a domestic plaintiff's due diligence and good faith in serving a foreign

defendant is not disputed. Rockefeller Asia's Opening Brief identified a number of such diligence and good faith cases from multiple jurisdictions in which judges went beyond the limits of the express language of the Convention to allow a domestic plaintiff to serve a foreign defendant.

In its Answering Brief, Sinotype looked to *DeJames v. Magnificence Carriers, Inc.* (1981) 654 F.2d 280, to support the Court of Appeal's holding and found none. (AB at 36.) As Rockefeller Asia argued previously in this Reply Brief, the *DeJames* case, in quashing service on a foreign defendant that was actually served pursuant to the Hague Convention's mandate, illustrates that a New Jersey statute can override the Convention's rules of service. Thus, not only does *DeJames* offer no support for Sinotype's theory, but its powerful language limits the Hague Convention's mandate by drawing, like *Schluk,* upon local law as well as on the travaux that accompanied the Hague Convention's ratification by the Senate.[71]

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[71] On July 2, 2019, the Hague Conference on Private International Law completed a new treaty on enforcement of judgments, known as the 2019 Hague Judgments Convention. The Conference's press release labeled the treaty as "a game changer in international dispute resolution." Nevertheless, due to the Convention's recent completion date, Sinotype's Answering Brief could not have addressed the principles of this "New Hague Convention" and Rockefeller Asia also shall not either, absent instructions from the Court as to additional briefing. Rockefeller Asia notes that the treaty has not been executed, ratified, and enacted into municipal law by either the U.S. or China.

CONCLUSION

The Hague Service Convention does not have the municipal force that the Court of Appeals attributes to it. The evidence is that the Convention is not self-executing, its enabling legislation is very limited, it does not create rights of action in individuals, and its reach is curtailed under federal legislation and judicial precedents, especially in party autonomy cases. The appropriate interpretation of the Hague Convention in the United States begins with the Hague Convention's aspirational desires in its Preamble: (1) "A desire to create appropriate means to ensure that judicial and extra judicial documents to be served abroad shall be brought to the notice of the addressee in sufficient time and (2) "A desire to improve the organization of mutual judicial assistance for that purpose by simplifying and expediting that procedure." Its means to those ends were requirements that each of the signatory nations establish a Central Authority, i.e., a specialized but optional, post office intended to improve foreign persons' in other countries a better opportunity to serve process on the signatory's domestic persons. The object was to make such service easier, quicker, and cheaper for the parties, especially those who, through party autonomy, contribute to the Hague Convention's objectives by pre-planning and consenting to an agreement of service of process. The object was not to create a maze for strategic players to exploit. The Convention's positive intents and purposes are ignored and overwhelmed by the Court of Appeal's decision to void

the result of the parties' compliance with the agreement on service in their arbitration contract. The Court of Appeal's decision not only defies those aspirations but obstructs the applicable provisions of the FAA and the 1958 New York Convention and contributes to the disappointments, delay, and expense that the Convention was enacted to ameliorate. More broadly, as the Reply Brief urges, the Court of Appeal's decision effectively outlaws the enforcement of party agreements on service within, interferes with the enforcement of arbitration agreements by the FAA, obstructs individuals' protection under the Contracts Clause (when not involving a state's police power), competes with Congress' authority under the Commerce Clause, and, under the facts of the instant case, challenges Congress' regulation of foreign commerce under Article I, Section 8, Clause 3 of the Constitution, and destroys attempts to effect the unitary cohesiveness of the multitude of jurisdictions in the U.S. as regards international dispute resolution.

Respectfully submitted,

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X. CERTIFICATE OF COMPLIANCE WITH WORD COUNT

Pursuant to Rule 8.204(c)(1) of the California Rules of Court, I certify that the attached Reply Brief on the Merits is proportionally spaced, has a Georgia 13-point typeface, and contains 13,918 words, excluding the face sheet, table of contents and table of authorities. I determined the word count by using the automatic Word Count feature of Microsoft Word 2017.

/s/ CHIA HENG (GARY) HO

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PROOF OF SERVICE

I am over the age of 18 and not a party to the above entitled action; my business address is 707 Wilshire Blvd., Suite 4880, Los Angeles, California 90017.

On August 7, 2019, I served the within **REPLY BRIEF ON THE MERITS** on the interested parties in this action by first-class mail to:

Steve Qi Qi Law Offices of Steve Qi & Associates 388 East Valley Boulevard, Suite 200 Alhambra, CA 91801 Steven L. Sugars Law Office of Steven L. Sugars 388 East Valley Boulevard, Suite 200 Alhambra, CA 91801	

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed August 7, 2019, at Los Angeles, California.

/s/ CHIA HENG (GARY) HO

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