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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

XIAMEN XIANGYU LOGISTICS  
GROUP CORPORATION,

Petitioner,

v.

WHOLESALE 209, LLC,

Respondent.

No. 2:23-cv-02704-DJC-AC

ORDER DENYING MOTION TO REFUSE  
TO RECOGNIZE FOREIGN ARBITRATION  
AWARD WITHOUT PREJUDICE

Petitioner Xiamen Xiangyu Logistics Group Corporation (“Xiamen”) seeks confirmation of a foreign arbitral award against Respondent Wholesale 209, LLC that Petitioner received from the Xiamen Arbitration Commission (“XMAC”) in China. According to Respondent, Wentao Lyu, who purportedly signed the agreement after incorporating “Wholesale 209” (no LLC), did not have authority to sign the agreement on behalf of Wholesale 209, LLC. According to Respondent, it temporarily rented a warehouse room to Wentao Lyu, who then subsequently established Wholesale 209 while engaging in business transactions with Petitioner that formed the basis for the arbitration award. Respondent opposes the Petition to confirm the foreign arbitral award, arguing that the foreign arbitral award is invalid because Respondent did not

1 receive adequate notice of the proceedings and that, since Respondent did not  
2 consent to the underlying agreement, confirming the award would violate public  
3 policy. For the reasons set forth below, the Court DENIES without prejudice  
4 Respondent's Motion to Refuse to Recognize Arbitration Award (ECF No. 13). The  
5 Court concludes that limited discovery is necessary to determine the threshold issue  
6 of whether Respondent, as opposed to Wholesale 209 and Wentao Lyu, assented to a  
7 contract with Petitioner, and, if so, whether Respondent received notice that satisfied  
8 Due Process.

## 9 **BACKGROUND**

### 10 **I. Factual Background**

11 Petitioner is a Chinese corporation that, among other things, sells aluminum  
12 alloy wheels and manages supply chains. (See Pet. (ECF No. 1) ¶¶ 1, 7.) Respondent  
13 is a California corporation with its principal offices located at 3158 Transworld Drive,  
14 Stockton, California. (See *id.* ¶ 2.) Between August 2021, and December 2021,  
15 Petitioner and Wholesale 209<sup>1</sup> entered into an International Purchase Contract and  
16 nine purchase orders to which Petitioner agreed to sell and Wholesale 209 agreed to  
17 buy certain commodities consisting of aluminum alloy wheels. (See *id.* ¶ 7 (citing  
18 Decl. of Aimée Scala in Supp. of Pet. (ECF No. 2) ("Scala Decl.") Ex. A (ECF No. 2-1)  
19 (the "Contract") (providing a copy of the International Purchase Contract and the nine  
20 purchase orders).) Subsequently, Petitioner "delivered the goods to Wholesale 209  
21 and issued corresponding invoices in the total amount of \$2,162,962.81." (Pet. ¶ 10  
22 (citing Scala Decl. Ex. B (ECF No. 2-2) (providing 176 pages of invoices).) "Wholesale  
23 209 failed to pay the outstanding balance for the goods purchased and received from  
24 [Petitioner], despite multiple demands by [Petitioner] for payment." (*Id.* ¶ 11.)

25 On November 18, 2022, pursuant to the Contract, Petitioner commenced  
26 arbitration proceedings before the Xiamen Arbitration Commission. (See Pet. ¶ 12

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27 <sup>1</sup> The Court distinguishes between Wholesale 209, LLC, which the Court refers to as Respondent, and  
28 Wholesale 209, which the Court refers to as Wholesale 209, the entity incorporated by Wentao Lyu.

1 (citing Scala Decl. ¶ 5); The Contract at 3.) The Xiamen Arbitration Commission held  
2 hearings on February 22, 2023 and May 5, 2023 before an arbitral tribunal consisting  
3 of two arbitrators and one chief arbitrator. (See *id.* ¶ 13 (citing Scala Decl. ¶ 6).) On  
4 July 10, 2023, the Xiamen Arbitration Commission rendered an Award that disposed  
5 of all claims submitted to arbitration in favor of Petitioner. (See *id.* ¶ 15 (citing Scala  
6 Decl. Ex. C (ECF No. 2-3) (providing a copy of the Award notarized by a Chinese  
7 public office); Ex. D (ECF No. 2-4) (providing a copy of the Award translated into  
8 English).) The Award required that Petitioner be paid over \$2 million for the tires, over  
9 \$60,000 in accrued interest, almost \$25,000 in attorney’s fees, and a little over  
10 \$17,000 in arbitral fees, which, to date, has not been done. (See *id.* ¶ 16.)

## 11 **II. Procedural Background**

12 Petitioner filed its Petition to confirm the Award on November 20, 2023. (See  
13 Pet. at 4.) On January 18, 2024, Respondent filed the instant Motion to Refuse to  
14 Recognize Arbitration Award. (See ECF No. 13; Mem. of L. in Supp. of Respondent  
15 Wholesale 209, LLC’s Mot. to Refuse to Recognize Arbitration Award (ECF No. 13-2)  
16 (“Motion” or “Mot.”).) Petitioner filed its objections, and Respondent replied. (See  
17 Pet’r’s [Corrected] Mem. of P. and A. in Opp’n to Mot. (ECF No. 24) (“Opposition” or  
18 “Opp’n”); Reply (ECF No. 26).) The Court heard oral arguments on the Motion on  
19 June 6, 2024, where Attorney Kent J. Schmidt appeared for Respondent and Attorney  
20 Aimée Scala appeared for Petitioner. The matter is now fully briefed.

## 21 **DISCUSSION**

### 22 **III. Legal Standard**

23 Confirmation of an arbitral award “is a summary proceeding that converts a final  
24 arbitration award into a judgment of the court.” *Ministry of Def. and Supp. for the*  
25 *Armed Forces of the Islamic Republic of Iran v. Cubic Def. Sys., Inc.*, 665 F.3d 1091,  
26 104 n.1 (9th Cir. 2011) (“*Cubic Defense Systems*”) (citation omitted). As a summary  
27 proceeding, confirmation is governed by the summary judgment standard of Federal  
28 Rule of Civil Procedure 56, see *Castro v. Tri Marine Fish Company LLC*, 921 F.3d 766,

1 777 (9th Cir. 2019), just like motions to compel arbitration under the Federal  
2 Arbitration Act, 9 U.S.C. § 2, see *Hansen v. LMB Mortg. Servs., Inc.*, 1 F.4th 667, 670  
3 (9th Cir. 2021) (quoting *Par-Knit Mills, Inc. v. Stockbridge Fabrics Co.*, 636 F.2d 51, 54  
4 n.9 (3d Cir. 1980)). Thus, the Court construes all facts and reasonable inferences in  
5 the non-movant's favor and will only confirm the arbitration award when no genuine  
6 dispute of material fact exists, which requires specific facts from which a reasonable  
7 jury could find in the non-movant's favor. See *Celotex Corp. v. Catrett*, 477 U.S. 317,  
8 322 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 585 (1986).

9 Confirmation of foreign arbitration awards is governed by the Convention on  
10 the Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T.  
11 2517, known as the "New York Convention." See *Cubic Defense Systems*, 665 F.3d at  
12 1095. Federal law implementing the New York Convention is codified at 9 U.S.C.  
13 sections 201-208, which provides, in relevant part, that "[t]he court shall confirm the  
14 award unless it finds one of the grounds for refusal or deferral of recognition or  
15 enforcement of the award specified in the said Convention." 9 U.S.C. § 207.

16 The seven grounds for refusing to confirm an arbitration award are set out in  
17 Article V of the Convention.<sup>2</sup> *Cubic Defense Systems*, 665 F.3d at 1096. These

18 <sup>2</sup> Article V provides the following: 1. Recognition and enforcement of the award may be refused, at the  
19 request of the party against whom it is invoked, only if that party furnishes to the competent authority  
where the recognition and enforcement is sought, proof that:

20 (a) The parties to the agreement referred to in article II were, under the law applicable to them, under  
21 some incapacity, or the said agreement is not valid under the law to which the parties have subjected it  
or, failing any indication thereon, under the law of the country where the award was made; or

22 (b) The party against whom the award is invoked was not given proper notice of the appointment of the  
23 arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

24 (c) The award deals with a difference not contemplated by or not falling within the terms of the  
25 submission to arbitration, or it contains decisions on matters beyond the scope of the submission to  
26 arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from  
those not so submitted, that part of the award which contains decisions on matters submitted to  
arbitration may be recognized and enforced; or

27 (d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the  
28 agreement of the parties, or, failing such agreement, was not in accordance with the law of the country  
where the arbitration took place; or

1 defenses are construed narrowly, and the party opposing recognition or enforcement  
2 bears the burden of establishing that a defense applies. *Id.* See also *Castro*, 921 F.3d  
3 at 773 (describing the burden as “substantial”). “The judicial role in this process is  
4 circumscribed[,]” and “is not intended to involve complex factual determinations,  
5 other than a determination of the limited statutory conditions for confirmation or  
6 grounds for refusal to confirm.” *Castro*, 921 F.3d at 773 (quoting *Zeiler v. Deitsch*,  
7 500 F.3d 157, 169 (2d Cir. 2007)).

#### 8 **IV. Analysis**

9 Here, Respondent invokes two defenses under Article V and argues as an initial  
10 matter that the Contract is “null and void” under Article II(3). (See Mot. at 13-17; Reply  
11 at 3-10.) Specifically, Respondent first argues that the Contract is “null and void”  
12 because this is a case of, at best, mistaken identity, or, at worst, deceit by the  
13 “fraudster, Wentao Lyu” who rented space from Respondent before starting  
14 Wholesale 209 and then, allegedly without Respondent’s consent, signing the  
15 Contract with Petitioner as Wholesale 209, LLC. (See Mot. at 12-14; Reply at 3-7.) In  
16 the alternative, Respondent asserts that it was given deficient notice because the  
17 purported notice was provided in Chinese, a language Respondent’s employees do  
18 not speak and that was never used in the Contract. (See Mot. at 14-17; Reply at 7-9.)  
19 Finally, Respondent asserts that confirming the Award would violate public policy of  
20 the United States. (See Mot. at 17; Reply at 10.) Because the Court concludes that  
21 there is a genuine dispute of material fact over whether Respondent assented to the  
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23 (e) The award has not yet become binding on the parties, or has been set aside or suspended by a  
24 competent authority of the country in which, or under the law of which, that award was made.

25 2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in  
the country where recognition and enforcement is sought finds that:

26 (a) The subject matter of the difference is not capable of settlement by arbitration under the law of that  
27 country; or

28 (b) The recognition or enforcement of the award would be contrary to the public policy of that country.

1 Contract with Petitioner, including whether Respondent's actions created apparent  
2 authority in Wentao Lyu, the Court need not address Respondent's other defenses.

3 **A. The Submitted Evidence Is Sufficient for this Summary Proceeding**

4 As an initial matter, Respondent objects to the evidence Petitioner submitted in  
5 connection with the Petition, arguing that the materials lack foundation because  
6 Attorney Scala does not have personal knowledge of the business transactions  
7 involving Petitioner and Wholesale 209. (See Mot. at 11-12; Reply at 2-3.) This  
8 argument fails because, as this is a summary proceeding under which Federal Rule of  
9 Civil Procedure 56 applies, any facts and evidence suffice here so long as that fact or  
10 evidence *could* be admitted at trial. See Fed. R. Civ. P. 56(c)(4); e.g., *Fraser v.*  
11 *Goodale*, 342 F.3d 1032, 1036-37 (9th Cir. 2003) (admitting contents of diary at  
12 summary judgment, which were hearsay, because the content could be admitted at  
13 trial through testimony or through refreshing the author's recollection).

14 Similarly, Respondent argues that Attorney Scala's Declaration is insufficient  
15 because it is not based on personal knowledge. For summary judgment declarations,  
16 however, "a proper foundation need not be established through personal knowledge  
17 but can rest on any manner permitted by Federal Rule of Evidence 901(b) or 902."  
18 *S.E.C. v. Phan*, 500 F.3d at 913 (quoting *Orr v. Bank of Am.*, 285 F.3d 764, 774 (9th Cir.  
19 2002)). Here, there are two key pieces of evidence: (1) the Contract and the related  
20 purchase orders; and (2) the Award from the Xiamen Arbitration Commission, along  
21 with the notarized English translation of it. (See Reply at 2-3.) Respondent argues that  
22 neither are admissible as self-authenticating foreign documents. (See *id.*) However,  
23 the foundation for the Contract and the attached purchase orders can be established  
24 by Petitioner's testimony comes trial under Federal Rule of Evidence 901(b)(1).

25 As for the Award, Federal Rule of Evidence 902(8) permits documents to be  
26 authenticated if "accompanied by a certificate of acknowledgment that is lawfully  
27 executed by a notary public or another officer who is authorized to take  
28 acknowledgments." Thus, Federal Rule of Evidence 902(8) satisfies both steps of the

1 authentication chain for the Award at this stage because both the copy of the Award in  
2 Chinese and the translation of it in English are signed under seal by certified notaries  
3 who are public officials and presumed to correctly discharge their duties. See, e.g.,  
4 *Emigrant Mortg. Co., Inc. v. Bourke*, --- F. Supp. 3d ----, ----, No. 21-11133-JCB, 2024  
5 WL 199962, at \*7 (D. Ma. Jan. 18, 2024) (collecting cases). See also Wright and Miller,  
6 *Federal Practice and Procedure* § 7137 (nothing that a foreign document that has  
7 been acknowledged or notarized may be self-authenticating under Rule 902(8)).  
8 Respondent has not brought forth any argument that these notaries did not properly  
9 discharge their duties, so the Court presumes that they did and that the Chinese copy  
10 of the Award and the English translation of it are authenticated documents.

11 **B. The Contract's Validity Is Genuinely Disputed**

12 Here, Respondent denies that it had entered into the Contract with Petitioner  
13 containing the arbitration clause, arguing that the Contract is "null and void" because  
14 of Wentao Lyu's "fraud" and/or because of a lack of assent. Fraud and assent are  
15 threshold issues "that can be applied neutrally on an international scale." *Bautista v.*  
16 *Star Cruises*, 396 F.3d 1289, 1302 (11th Cir. 2005) (quoting *DiMercurio v. Sphere*  
17 *Drake Ins. PLC*, 202 F.3d 71, 80 (1st Cir. 2000)). And, here, crucially, the threshold  
18 issue of the formation of the contract cannot be delegated to the arbitrator, see  
19 *Ahlstrom v. DHI Mortg. Co., Ltd., L.P.*, 21 F.4th 631, 635 (9th Cir. 2021) (citing *Granite*  
20 *Rock*, 561 U.S. at 299-300), even though there is language in the Contract  
21 incorporating the rules of the Xiamen Arbitration Commission that might suggest an  
22 intent to delegate threshold issues to the arbitrator.

23 As a result of their international application, threshold issues under the New  
24 York Convention like fraud and assent are governed by "federal substantive law," *Setty*  
25 *v. Shrinivas Sugandhalaya LLP*, 3 F.4th 1166, 1168 (9th Cir. 2021), which, in turn, looks  
26 to "general principles for interpreting contracts." *Casa del Caffè Vergnano S.P.A. v.*  
27 *ItalFlavors, LLC*, 816 F.3d 1208, 1211 (9th Cir. 2016) (quoting *GECCMC 2005-C1*  
28 *Plummer St. Office L.P. v. JPMorgan Chase Bank*, 671 F.3d 1027, 1033 (9th Cir. 2012)).

1 “Often these general principles are found in the Restatement (Second) of Contracts[,]”  
2 *id.* (citing *Clevo Co. v. Hecny Transp., Inc.*, 715 F.3d 1189, 1194 (9th Cir. 2013)), and  
3 other Restatements, including tentative drafts that have been approved of the  
4 American Law Institute’s Restatement on International Commercial Arbitration for  
5 “helpful guidance and background[,]” *Castro*, 921 F.3d at 774; see *id.* at 774 n.3.

6 Under the Second Restatement of Contracts, mutual assent or a “meeting of the  
7 minds” is a required element of any contract or “bargain,” regardless of form.  
8 *Restatement (Second) of Contracts* §§ 17 cmts. b–c; 18 (Am. L. Inst. 1981) (Oct. 2023  
9 Update). Here, this case all comes down to whether there was a meeting of the minds  
10 between Petitioner and Respondent rather than between Petitioner and Wholesale  
11 209 and Wentao Lyu. Respondent denies signing the agreement and instead argues  
12 that it was signed by Mr. Lyu, a fact that Petitioner appears to accept for purposes of  
13 this motion. (Opp’n at 9–10.) The parties dispute, however, whether Lyu was  
14 authorized to sign on behalf of Wholesale 209, LLC.

15 The Court concludes that there is a genuine dispute of material fact regarding  
16 Petitioner’s theory of ratification. While the signing of the rental agreement, standing  
17 alone, is insufficient to show ratification and infer an agency relationship as argued by  
18 Petitioner, see (Opp’n at 9–10;) *Restatement (Second) of Agency* § 27 cmt. b (Am. L.  
19 Inst. 1958) (June 2024 Update), it appears that Respondent paid for and sold some of  
20 the tires shipped to Lyu by Petitioner (see ECF No. 13-2 ¶¶ 2-7 (providing the  
21 declaration of the “person “in charge of the day-to-day operations of Wholesale 209,  
22 LLC since its founding in 2013.”).) Even if Respondent disclaims responsibility for Lyu’s  
23 signing of the Contract, Respondent may still be bound by the Contract by receiving  
24 or retaining a benefit from the Contract that Respondent knew or should have known  
25 could not have been for Respondent unless it was bound by the Contract. See  
26 *Restatement (2d) of Agency* § 98 cmt. a; see also *id.* § 99.

27 Here, there is a crucial and ambiguous factual issue: whether Respondent  
28 affirmed the Contract after it received and retained a benefit from the Contract by



1 selling “some of the product that had been shipped[ ]” to Respondent’s location. (ECF  
2 No. 13-2 ¶ 7.) Respondent puzzlingly argues that it sold the wheels because it  
3 believed the wheels “had been shipped to [Respondent] pursuant to [its] relationship  
4 with Lyu’s new company.” (*Id.*) But Respondent and Lyu only agreed to a rental or  
5 lease contract, *not* a contract to store and sell tires. (See *id.* ¶ 4; ECF No. 13-2 at 7-14  
6 (providing Exhibit A, which contains the lease agreement).) Thus, there is a genuine  
7 dispute of material fact regarding whether Respondent ratified Lyu’s conduct because  
8 even a forged contract may be potentially ratified by receiving or retaining a benefit.  
9 See *Restatement (2d) of Agency* § 85 cmt. b.

10 As a result, the Court DENIES without prejudice Respondent’s Motion subject to  
11 additional discovery consistent with Federal Rule of Civil Procedure 56(d)(2) and (e)(1).

12 **C. The Notice and Public Policy Defenses Under Article V**

13 Because the Court concludes that there is a genuine dispute of material fact  
14 regarding the threshold issue of assent between Petitioner and Respondent, the Court  
15 does not address Respondent’s other defenses under Article V. However, the Court  
16 notes that the public policy defense and the notice defense are intertwined. That is  
17 because “[t]he public policy exception in Article V(2)(b) . . . is very narrow, and applies  
18 only where enforcement of the award would violate the most basic notions of morality  
19 and justice of the forum where enforcement is sought.” *Europcar Italia S.p.A. v.*  
20 *Maiellano Tours, Incorporated*, 156 F.3d 310, 315 (2d Cir. 1998).

21 Further, Respondent’s notice defense under the New York Convention requires  
22 courts to look to the forum’s standard of due process. See *Iran Aircraft Industries v.*  
23 *Avco Corp.*, 980 F.2d 141, 145 (2d Cir. 1992). “The fundamental requirement of due  
24 process is the opportunity to be heard at a meaningful time and in a meaningful  
25 manner.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). And notice only need be  
26 reasonably calculated under the circumstances to apprise the interested parties of the  
27 pendency of the action and afford them an opportunity to present their objections.  
28 See *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306, 314-15 (1950).

1 Here, it is not clear whether Respondent had actual notice before the first  
2 hearing on February 15, 2023. However, it appears that Respondent had actual notice  
3 by March 2, 2023, before the second hearing on May 5, 2023. While this subsequent  
4 notice may be insufficient, see *CEEG (Shanghai) Solar Science & Technology Co., LTD*  
5 *v. Lumos, LLC*, 829 F.3d 1201 (10th Cir. 2016), the Court will permit additional limited  
6 discovery regarding the issue of notice under the New York Convention, consistent  
7 with Federal Rule of Civil Procedure 56(d)(2) and (e)(1).

### 8 **CONCLUSION**

9 For the reasons set forth above, the Court DENIES without prejudice  
10 Respondent's Motion to Refuse to Recognize Arbitration Award (ECF No. 13). The  
11 Court concludes that there is a genuine dispute of material fact regarding the  
12 threshold issue of whether Respondent, as opposed to Wholesale 209 and Wentao  
13 Lyu, assented to and formed a contract with Petitioner. Therefore, the parties are  
14 ORDERED to file a Joint Status Report within 30 days that provides a proposed  
15 schedule for limited discovery related to the issues of apparent authority and mutual  
16 assent as well as notice under the New York Convention, along with any topics in  
17 Federal Rule of Civil Procedure 26(f) that the parties deem relevant; and that also  
18 provides proposed dates for a trial on the issues identified in this Order. The parties  
19 are also instructed to provide any updates on the third-party complaint Respondent  
20 seeks to bring against Wentao Lyu and Wholesale 209. (See ECF No. 13-1 at 22; ECF  
21 No. 26 at 11.)

22  
23 IT IS SO ORDERED.

24 Dated: July 16, 2024

  
25 Hon. Daniel J. Calabretta  
26 UNITED STATES DISTRICT JUDGE

27 DJC3 - Wholesale209.23cv2704.Mot.Reject.Foreign.Arbitral.Award  
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