

1 found these matters suitable for disposition on the papers and without oral argument
2 pursuant to Civil Local Rule 7.1.d.1. Doc. No. 13. For the reasons set forth below, the
3 Court **GRANTS** SZIC’s Petition and **DENIES** Respondent Liu’s cross-motion to dismiss
4 or stay.

5 **I. INTRODUCTION**

6 Petitioner SZIC asks the Court to confirm a foreign arbitration award issued on
7 March 22, 2021, by the Beijing Arbitration Commission against Respondent Liu. Except
8 where otherwise noted, the facts contained in this background section are derived from
9 the Petition and its attachments, including the March 22, 2021 award, Doc. No. 1-7,² and
10 are not to be construed as factual findings by this Court.

11 **A. Factual Background**

12 In September 2017, SZIC entered into a one-year loan agreement with Respondent
13 Liu and Sinowel Communication Technology Co., Ltd (the “Loan Agreement”). Pet.
14 ¶¶ 11–12. Pursuant to the Loan Agreement, SZIC was to loan Respondent Liu
15 160,000,000 Yuan, which was to be used to repurchase and release the VIE structure of
16 Beijing Sinowel Communication Technology Co., Ltd. and Beijing Sinowel Asset
17 Administration Co., Ltd. (collectively, the “Target Company”) Pet. ¶ 11; Pet. Ex. D at
18 56.³

19 The Loan Agreement provides that any dispute between the parties was to be
20 governed by the laws of China, and that if amicable negotiations fail, “any party shall
21 have the right to file a lawsuit with Beijing Arbitration Commission, and the dispute shall
22 be settled through arbitration in Beijing in accordance with the rules of Beijing
23 Arbitration Commission.” Pet. ¶¶ 14–15; *see also* Pet. Ex. A at 20.

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26 ² The Court refers to all exhibits appended to the declarations submitted in this matter by the number or
27 letter identified. For example, the Court refers to Doc. No. 1-7 as “Petitioner’s Exhibit D” or “Pet. Ex.
28 D.”

³ Unless otherwise noted, all citations to electronically filed documents refer to the pagination assigned
by the CM/ECF system.

1 Also in 2017, two related agreements were executed. First, SZIC, Respondent Liu,
2 and the Target Company entered into a Cooperation Agreement. Pet. ¶ 16. The
3 Cooperation Agreement provides that when SZIC loans Respondent Liu 160,000,000
4 Yuan under the Loan Agreement, “SZIC’s creditor’s rights could be converted into
5 equities and that, after converting into equities, Respondent should transfer 13.79% of the
6 Target Company to SZIC which, after transfer is final, should fully settle the principal
7 and interest paid pursuant to the Loan Agreement.” *Id.*

8 Second, SZIC, the Target Company, and Ningbo Zhenrong entered into an
9 Investment Agreement, pursuant to which Ningbo Zhenrong was to extend a loan of
10 120,000,000 Yuan to the Target Company for one year to be repaid at 8% interest only if
11 the equity conversion of the Target Company failed. *Id.* ¶ 17. The parties to the
12 Investment Agreement simultaneously drafted an Investment Memorandum, outlining the
13 relevant investment returns and the fund relationship between SZIC and Respondent Liu.
14 *Id.*

15 The funding under the Loan Agreement began on December 22, 2017, and was
16 completed in four installments: two payments on December 22, 2017, in the amounts of
17 120,000,000 Yuan and 20,000,000 Yuan; 10,000,000 Yuan on April 17, 2018; and
18 10,000,000 Yuan on May 3, 2018. Pet. ¶¶ 19, 21; Doc. No. 1-3 ¶ 10; Pet. Ex. D at 47.
19 These payments were made “by SZIC individually and through third parties” including,
20 as relevant here, Ningbo Zhenrong, “as outlined and planned for in the Loan Agreement.”
21 Pet. ¶ 20.

22 One year later, in December 2018, the loan matured, and Respondent Liu failed to
23 repay the liabilities outlined in the Loan Agreement. Pet. ¶¶ 11, 20; Pet. Ex. D at 47.

24 **B. Arbitration History and Record**

25 On July 23, 2020, SZIC submitted an arbitration dispute to the Beijing Arbitration
26 Commission (“BAC”). Pet. Ex. D at 46. The arbitration hearing was held on November
27 12, 2020, before a tribunal of three arbitrators (the “Tribunal”). *Id.* On March 22, 2021,
28 the Tribunal found in SZIC’s favor and awarded SZIC: 140,000,000 Yuan, the principal

1 pursuant to the Loan Agreement; 8% interest totalling 11,200,000 Yuan; liquidated
2 damages at the rate of 5% per day from July 10, 2020 to the date of actual payment;
3 lawyer’s fees in the amount of 400,000 Yuan; and 80% of the arbitration fees, totalling
4 1,080,966.27 Yuan (the “Award”). *Id.* at 65. The Tribunal ordered that Respondent Liu
5 fully perform his obligations under the Award within 15 days of service of the Award.
6 *Id.*

7 On May 8, 2021, an Enforcement Notice issued and was served on Respondent
8 Liu, requiring a freeze and transfer of 152,680,966.27 Yuan. Pet. ¶ 16.

9 On June 2, 2021, the Beijing Fourth Intermediate People’s Court rejected
10 Respondent Liu’s application to revoke the Award. Pet. ¶ 20; Pet. Ex. E at 19.

11 On August 16, 2021, the Beijing Second Intermediate People’s Court rejected
12 Respondent Liu’s objection to the Enforcement Notice and request to unfreeze his assets
13 on the grounds that he never received notice. Pet. ¶ 33; Pet. Ex. F. However, this court
14 unfroze certain bank accounts “because the sale of [Respondent Liu’s] stocks and other
15 freezing measures satisfied the debts he owed to SZIC such that additional asset freezes
16 were unnecessary.” *Id.*

17 On September 9, 2021, the Beijing Second Intermediate People’s Court rejected
18 Respondent Liu’s application for non-enforcement of the Award. Pet. ¶ 34; Pet. Ex. G at
19 19.

20 On November 2, 2022, SZIC’s application to enforce the Award in Singapore
21 pursuant to § 29(l) of the International Arbitration Act of 1994 was granted by the
22 Assistant Registrar for the General Division of the High Court of the Republic of
23 Singapore. Pet. ¶ 36; Pet. Ex. I at 2.

24 On November 15, 2022, the Fourth Branch of the Beijing Municipal People’s
25 Procuratorate denied Respondent Liu’s petition for supervision of the Beijing Fourth
26 Intermediate People’s Court decision. Pet. ¶ 35; Pet. Ex. H at 5.

27 On February 20, 2023, Respondent Liu’s application to set aside the enforcement
28 order in Singapore was denied. Pet. ¶¶ 37–38; Pet. Ex. J.

1 On March 3, 2023, the High Court of the Republic of Singapore issued a judgment
2 in SZIC’s favor and ordered Respondent Liu to pay all sums due. Pet. ¶ 39; Pet. Ex. K.

3 On April 5, 2023, the High Court of the Republic of Singapore denied Respondent
4 Liu’s appeal. Pet. ¶ 40; Pet. Ex. L.

5 **II. LEGAL STANDARD**

6 Confirmation of an arbitration award “is a summary proceeding that converts a
7 final arbitration award into a judgment of the court.” *See Ministry of Def. & Support for*
8 *the Armed Forces of the Islamic Republic of Iran v. Cubic Def. Sys., Inc.* (“*Cubic Def.*”),
9 665 F.3d 1091, 1094 n.1 (9th Cir. 2011). Once an award is confirmed, it has the same
10 force and effect as a judgment in a civil action and may be enforced by any means
11 available to enforce civil judgments. *Id.* The burden of proof in a proceeding to confirm
12 an arbitration award is on the party defending against enforcement. *See Empresa*
13 *Constructora Contex Limitada v. Iseki*, 106 F.Supp.2d 1020, 1024 (S.D. Cal. 2000)
14 (citing *Parsons & Whittemore Overseas Co. v. Societe Generale de L’Industrie du Papier*
15 *(RAKTA)*, 508 F.2d 969, 973 (2nd Cir. 1974)).

16 “Confirmation of foreign arbitration awards is governed by the Convention on the
17 Recognition and Enforcement of Foreign Arbitral Awards, June 10, 1958, 21 U.S.T.
18 2517, known as the New York Convention, and federal law implementing the
19 Convention, 9 U.S.C. §§ 201–208.” *Cubic Def.*, 665 F.3d at 1095. After the United
20 States entered into the New York Convention, Congress enacted Chapter Two of the
21 Federal Arbitration Act (“FAA”), 9 U.S.C. § 201–208, “to provide for the effective and
22 efficient resolution of international arbitral disputes.” *Day v. Orrick, Herrington &*
23 *Sutcliffe, LLP*, 42 F.4th 1131, 1133 (9th Cir. 2022). The New York Convention is
24 intended “to encourage the recognition and enforcement of commercial arbitration
25 agreements in international contracts and to unify the standards by which agreements to
26 arbitrate are observed and arbitral awards are enforced in signatory countries.” *Glencore*
27 *Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1120 (9th Cir.
28 2002) (citations omitted).

1 Within three years after an award falling under the New York Convention is made,
2 “any party to the arbitration may apply to any court having jurisdiction . . . for an order
3 confirming the award as against any other party to the arbitration.” 9 U.S.C. § 207.
4 “Under the Convention, [a] district court’s role in reviewing a foreign arbitral award is
5 strictly limited.” *Changzhou AMEC E. Tools & Equip. Co., Ltd. V. E. Tools & Equip.,*
6 *Inc.*, No. EDCV 11-00354, 2012 U.S. Dist. LEXIS 106967, 2012 WL 3106620, at *14
7 (C.D. Cal. 2012) (quoting *Yusuf Ahmed Alghanim & Sons, W.L.L. v. Toys “R” Us, Inc.*,
8 126 F.3d 15, 19 (2d Cir.1997) (internal quotation marks omitted)); *see also Shanghai Lan*
9 *Cai Asset Mgmt. Co. v. Yueting*, No. CV 18-10255 SJO (MRWx), 2019 U.S. Dist. LEXIS
10 217634, at *7 (C.D. Cal. Mar. 26, 2019). “The court shall confirm the award unless it
11 finds one of the grounds for refusal or deferral of recognition or enforcement of the
12 award specified” in the Convention. 9 U.S.C. § 207. The defenses are construed
13 narrowly and the party opposing recognition or enforcement bears the burden of
14 establishing that a defense applies. *See Polimaster Ltd. v. RAE Sys., Inc.*, 623 F.3d 832,
15 836 (9th Cir. 2010). “The Convention and its implementing legislation have a pro-
16 enforcement bias, a policy long-recognized by the Supreme Court.” *Glencore Grain*, 284
17 F.3d at 1120. Thus, the burden on the party seeking to avoid enforcement of an award “is
18 substantial.” *Polimaster*, 623 F.3d at 836 (internal citation omitted).

19 **III. EVIDENTIARY OBJECTIONS**

20 As a preliminary matter, the parties have filed numerous evidentiary objections to
21 the various declarations submitted in this matter. *See* Doc. Nos. 9-2, 12-4, 17, 21, 27. It
22 is not entirely clear how the Federal Rules of Evidence factor into this proceeding. The
23 FAA provides that all applications related to arbitration awards “shall be made and heard
24 in the manner provided by law for the making and hearing of motions,” 9 U.S.C.
25 § 6. This includes petitions to compel arbitration, *id.* § 4, and petitions to confirm,
26 modify, or vacate an award, *id.* §§ 9–12. The same applies for petitions to compel, *id.*
27 § 206, and confirm, *id.* § 207, foreign arbitration awards falling under the New York
28 Convention, *id.* § 208 (providing that Chapter 1, 9 U.S.C. §§ 1–16, applies to foreign

1 arbitration proceedings brought under Chapter 2). The Supreme Court has noted that “[a]
2 directive to a federal court to treat arbitration applications ‘in the manner provided by
3 law’ for all other motions is simply a command to apply the usual federal procedural
4 rules. . . .” *Morgan v. Sundance, Inc.*, 596 U.S. 411, 419 (2022) (quoting 9 U.S.C. § 6);
5 *see also* Fed. R. Civ. P. 81(a)(6)(B) (providing that the Federal Rules of Civil Procedure
6 apply in proceedings “relating to arbitration” brought under Title 9 of the United States
7 Code).

8 When faced with a petition or motion brought pursuant to the FAA, many courts
9 apply a standard similar to the summary judgment standard under Rule 56. *Thompson v.*
10 *La Petite Acad., Inc.*, No. 2:22-cv-04348-AB-JPR, 2023 U.S. Dist. LEXIS 115329, at *8
11 (C.D. Cal. Apr. 28, 2023) (quoting *Alvarez v. T-Mobile USA, Inc.*, 2011 U.S. Dist. LEXIS
12 146757, 2011 WL 6702424 at * 3 (E.D. Cal. Dec. 21, 2011)). Pursuant to Rule 56, “[a]
13 party may object that the material cited to support or dispute a fact cannot be presented in
14 a form that would be admissible in evidence.” Fed. R. Civ. P. 56(c)(2); *Block v. City of*
15 *Los Angeles*, 253 F.3d 410, 418–19 (9th Cir. 2001) (explaining that at summary
16 judgment, “a party does not necessarily have to produce evidence in a form that would be
17 admissible at trial”); *see also Comite de Jornaleros de Redondo Beach v. City of Redondo*
18 *Beach*, 657 F.3d 936, 964 n.7 (9th Cir. 2011) (“Rule 56 is precisely worded to exclude
19 evidence only if it’s clear that it cannot be presented in an admissible form at trial.”). As
20 a result, “[t]he focus is on the admissibility of the evidence’s contents, not its form.”
21 *Estate of Hernandez—Rojas ex rel. Hernandez v. United States*, 62 F. Supp. 3d 1169,
22 1174 (S.D. Cal. 2014) (citing *Fonseca v. Sysco Food Servs. of Ariz., Inc.*, 374 F.3d 840,
23 846 (9th Cir. 2004)). Consequently, courts have recognized that evidentiary objections
24 on grounds such as speculation, hearsay, and lack of authentication are inappropriate
25 “where it is apparent that the evidence is capable of being reduced to admissible evidence
26 at trial.” *Thompson*, 2023 U.S. Dist. LEXIS 115329, at *8 (quoting *Alvarez*, 2011 U.S.
27 Dist. LEXIS 146757, at *10 (itself quoting *Adams v. Kraft*, 828 F. Supp. 2d 1090, 1108
28 n.5 (N.D. Cal. 2011))). With this in mind, the Court turns to each set of objections.

1 **A. Respondents' Objections to Petition Declaration**

2 To begin, Respondents Zhang and Liu object to several paragraphs in Pu Gang's
3 declaration, Doc. No. 1-3 ("Gang Decl."), which Petitioner submitted in support of the
4 Petition. *See* Doc. No. 9-1; Doc. No. 12-4. Petitioner filed a response to Respondent
5 Liu's objections. Doc. No. 18.

6 Respondent Liu objects to the entire declaration in a footnote, asserting that it is
7 unduly prejudicial and confusing and therefore subject to exclusion pursuant to Federal
8 Rule of Evidence 403. Doc. No. 12-4 at 1 fn.1. The Court **OVERRULES** this objection.
9 Pu Gang's declaration is not, as a whole, unduly prejudicial or confusing. And
10 Respondent Liu's position that he was denied due process in the underlying arbitration
11 has no bearing on the admissibility of this declaration.

12 The Court **OVERRULES** the objections to ¶ 2. Pu Gang is an Executive Partner
13 of SZIC and therefore has sufficient personal knowledge of the underlying events,
14 including the terms of the Loan Agreement. Fed. R. Evid. 602. His testimony as to the
15 terms of the Loan Agreement does not contain any legal conclusions, Fed. R. Evid. 703,
16 nor does this paragraph contain testimony on an "ultimate issue," or is otherwise subject
17 to exclusion under Federal Rule of Evidence 704.

18 The Court **OVERRULES** the objections to ¶ 3. This paragraph does not contain
19 any legal conclusions. Moreover, Pu Gang makes this statement based on his personal
20 knowledge of these facts. Fed. R. Evid. 701. Further, Pu Gang does not attempt to lay
21 foundation for any evidence by way of this paragraph. Fed. R. Evid. 901.

22 The Court **SUSTAINS IN PART** the objections to ¶ 4. This paragraph does not
23 contain any legal conclusions. However, to the extent Pu Gang speaks to the content and
24 terms of the Loan Agreement and Cooperation Agreement, his testimony is barred by the
25 best evidence rule. Fed. R. Evid. 1002.

26 The Court **SUSTAINS IN PART** the objections to ¶ 6. Federal Rule of Evidence
27 611(a) has no apparent applicability here. This paragraph is not argumentative. Fed. R.
28 Evid. 403. Pu Gang does not attempt to lay foundation for any evidence by way of this

1 paragraph. Fed. R. Evid. 901. And Pu Gang, as an Executive Partner of SZIC, has
2 sufficient personal knowledge of the underlying events, including the lending and
3 agreements. Fed. R. Evid. 602. Further, his testimony as to these events is not a legal
4 conclusion, Fed. R. Evid. 703, nor is this impermissible testimony on an “ultimate issue,”
5 Fed. R. Evid. 704. However, to the extent Pu Gang speaks to the content and terms of the
6 Loan Agreement and Investment Agreement and Memorandum, his testimony is barred
7 by the best evidence rule. Fed. R. Evid. 1002.

8 The Court **OVERRULES** the objections to ¶ 8. Federal Rule of Evidence 611(a)
9 has no apparent applicability here and this paragraph is not argumentative. Fed. R. Evid.
10 403. Further, Pu Gang, as an Executive Partner of SZIC, has sufficient personal
11 knowledge of the underlying events, including the lending under the Loan Agreement.
12 Fed. R. Evid. 602. And his testimony as to these events does not contain any legal
13 conclusions, Fed. R. Evid. 703, nor is it impermissible testimony on an “ultimate issue,”
14 Fed. R. Evid. 704.

15 The Court **SUSTAINS** the objections to ¶ 9. The best evidence rule prohibits Pu
16 Gang from testifying to the content and terms of the Loan Agreement. Fed. R. Evid.
17 1002.

18 The Court **SUSTAINS IN PART** the objections to ¶ 10. Federal Rule of Evidence
19 611(a) has no apparent applicability here. This paragraph is not argumentative. Fed. R.
20 Evid. 403. Pu Gang, as an Executive Partner of SZIC, has sufficient personal knowledge
21 of the underlying events, including the lending under the Loan Agreement. Fed. R. Evid.
22 602. His testimony as to these events is not a legal conclusion, Fed. R. Evid. 703, nor is
23 this an “ultimate issue,” Fed. R. Evid. 704. However, to the extent Pu Gang offers
24 testimony as to the content of the Loan Agreement, Cooperation Agreement, and
25 Investment Agreement and Memorandum, his statements are barred by the best evidence
26 rule. Fed. R. Evid. 1002.

27 The Court **OVERRULES** the objections to ¶ 11. The Court finds that this
28 paragraph is not unduly prejudicial, confusing, or argumentative, and that it contains no

1 legal conclusions. Fed. R. Evid. 403. Additionally, Federal Rule of Evidence 611(a) has
2 no apparent applicability here.

3 The Court **SUSTAINS** the objections to ¶¶ 13, 14, and 16. The content of the
4 documents in the underlying arbitration record, including the Award and the Enforcement
5 Notice, are subject to the best evidence rule. Fed. R. Evid. 1002.

6 The Court **OVERRULES** the objections to ¶ 17. The Court finds that this
7 paragraph is not unduly prejudicial, confusing, or argumentative. Fed. R. Evid. 403.
8 Additionally, Federal Rule of Evidence 611(a) has no apparent applicability here.
9 Finally, this paragraph contains no legal conclusions. Fed. R. Evid. 703.

10 The Court **OVERRULES** the objections to ¶ 18. This paragraph is not
11 argumentative or subject to exclusion under Federal Rules of Evidence 403 or 611(a).

12 The Court **OVERRULES** the objections to ¶ 19. This paragraph is not
13 argumentative or unduly prejudicial, and it contains no legal conclusions. Fed. R. Evid.
14 403. Further, Federal Rule of Evidence 611(a) has no apparent applicability here.

15 The Court **SUSTAINS IN PART** the objections to ¶¶ 20, 22, 24, 30. These
16 paragraphs are not argumentative, nor do they contain any legal conclusions. Fed. R.
17 Evid. 403. Moreover, Pu Gang has sufficient personal knowledge of the underlying
18 events, including the history of the arbitration. Fed. R. Evid. 602. However, to the extent
19 Pu Gang seeks to testify to the content of the documents in the arbitration record, his
20 statements are barred by the best evidence rule. Fed. R. Evid. 1002.

21 **B. Petitioner’s Objections to Opposition and Cross-Motion Declarations**

22 Next, Petitioner objects to the four declarations Respondent Liu offers in support
23 of his opposition and cross-motion. Doc. No. 17. Respondent Liu filed a response in
24 opposition to these objections. Doc. No. 22.

25 **1. Ding Declaration**

26 Petitioner objects to paragraphs in Ding Zhexuan’s declaration. Doc. No. 12-1
27 (“Ding Decl.”). Ding Zhexuan was the legal director of the Target Company from
28 December 2015 to October 2020. Ding Decl. ¶ 4.

1 The Court **OVERRULES** the objections to ¶¶ 6 and 8. Out-of-court statements
2 made by a representative of the opposing party are not hearsay. Fed. R. Evid.
3 801(d)(2)(A).

4 The Court **SUSTAINS** the objection to ¶ 9. The Court finds that this paragraph—
5 wherein Ding Zhexuan recounts a phone conversation with Arbitrator Zhan Hui—
6 contains hearsay and does not fall within the residual exception to hearsay. Fed. R. Evid.
7 807. Respondent Liu explains that Ding Zhexuan was Respondent Liu’s arbitration
8 attorney and is an officer of the court and therefore that his statements carry a sufficient
9 guarantee of trustworthiness. Doc. No. 11 at 2–3. But Ding Zhexuan does not declare
10 that he was Respondent Liu’s arbitration attorney or that he is an officer of the court.⁴
11 Further, these out-of-court statements were not made during other judicial or quasi-
12 judicial proceedings. Accordingly, Respondent Liu fails to offer sufficient guarantees of
13 trustworthiness on this basis. Fed. R. Evid. 807(a)(1). Even assuming Respondent Liu
14 offered sufficient guarantees of trustworthiness, he fails to explain how this evidence is
15 more probative than any other evidence that he could obtain through reasonable efforts.
16 Fed. R. Evid. 807(a)(2). And it is not clear to the Court that this evidence could
17 nevertheless be reduced to admissible form at trial.

18 The Court **OVERRULES** the objections to ¶ 10. Ding Zhexuan makes his
19 declaration on personal knowledge and as a percipient witness. Fed. R. Evid. 602, 901.

20 **2. Zimmerman Declaration**

21 Petitioner objects to paragraphs in James M. Zimmerman’s declaration. Doc.
22 No. 12-2 (“Zimmerman Decl.”). Mr. Zimmerman is an attorney licensed to practice in
23 California and is a registered Foreign Lawyer with the “Beijing Justice Bureau/Chinese
24 Ministry of Justice.” Zimmerman Decl. ¶ 1.

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27 ⁴ The Court acknowledges that “Ding Zhexuan, legal manager of Beijing Best Wealth Investment &
28 Administration Co., Ltd.” appears listed as one of seven attorneys for Respondent Liu at the top of the
Award. Pet. Ex. D at 45. But Ding Zhexuan does not declare that he is an attorney, officer of the court,
or that he represented Respondent Liu during the arbitration.

1 The Court **OVERRULES** all of the objections to Mr. Zimmerman’s declaration.
2 Respondent Liu offers Mr. Zimmerman as an expert on the issue of arbitrations in China.
3 Although he is not licensed to practice law in China, the Court finds this fact alone is not
4 dispositive because he offers sufficient foundation for his knowledge, including his
5 experience with Chinese arbitrations, *id.* ¶ 3, which the Court lacks. Fed. R. Evid. 702.

6 **3. Xie Declaration**

7 Petitioner next objects to the declaration of Minmin Xie. Doc. No. 12-3 (“Xie
8 Decl.”). Minmin Xie is an attorney licensed to practice law in China. Xie Decl. ¶ 1. The
9 Court similarly **OVERRULES** all of the objections to Minmin Xie’s declaration.
10 Minmin Xie is a Chinese attorney and has specialized knowledge of and experience with
11 China’s evidentiary laws, which the Court lacks. Fed. R. Evid. 702.

12 **4. Liu Declaration**

13 Finally, Petitioner objects to paragraphs contained in Respondent Liu’s declaration.
14 Doc. No. 12-5 (“Liu Decl.”).

15 The Court **OVERRULES** the objections to ¶ 9. Respondent Liu may testify to his
16 understanding of the purpose of the Loan Agreement, and the Court finds that these
17 paragraphs do not contain any legal conclusions or improper speculation. Fed. R. Evid.
18 701, 1002.

19 The Court **SUSTAINS** the objections to ¶ 10. The Court finds that this statement
20 contains improper legal conclusions and is barred by the best evidence rule. Fed. R.
21 Evid. 701, 1002.

22 The Court **SUSTAINS IN PART** the objections to ¶¶ 12, 13, 15–18, 20–22, and
23 24. These statements do not contain legal conclusions or improper speculation. Fed. R.
24 Evid. 701. However, to the extent Respondent Liu seeks to testify to the content of the
25 Cooperation Agreement, Investment Agreement, Memorandum, or Letter of Cooperation,
26 his statements are barred by the best evidence rule. Fed. R. Evid. 1002.

27 The Court **SUSTAINS IN PART** the objections to ¶ 27. Respondent Liu may
28 testify as a percipient witness. Fed. R. Evid. 602. However, pursuant to the best

1 evidence rule, an audio or video recording or transcript is required to prove what took
2 place at the arbitration hearing. Fed. R. Evid. 1002.

3 The Court **OVERRULES** the objections to ¶ 32. Respondent Liu can offer his
4 opinion in this respect as it is neither a legal conclusion, improper speculation, nor
5 prohibited by the best evidence rule. Fed. R. Evid. 701, 1002.

6 The Court **SUSTAINS** the objections to ¶ 35. For the same reasons discussed
7 above, the Court finds that this statement also does not fall within the residual exception
8 to hearsay. Fed. R. Evid. 807. Ding Zhexuan never states that he was Respondent Liu's
9 arbitration attorney or that he is an officer of the court. Further, these out-of-court
10 statements were not made during other judicial or quasi-judicial proceedings.

11 Accordingly, Respondent Liu fails to offer sufficient guarantees of trustworthiness on this
12 basis. Fed. R. Evid. 807(a)(1). Further, even assuming Respondent Liu offered sufficient
13 guarantee of trustworthiness, he fails to explain how this evidence is more probative than
14 any other evidence that he could obtain through reasonable efforts. Fed. R. Evid.
15 807(a)(2).

16 Moreover, even if the Court finds that the statements made to Ding Zhexuan
17 statement were subject to the residual hearsay exception, Respondent Liu's statement
18 appears to contain hearsay within hearsay, and he offers no other exception or exclusion.
19 Fed. R. Evid. 805. Finally, it is not clear to the Court that this evidence could
20 nevertheless be reduced to admissible form at trial.

21 The Court **SUSTAINS IN PART** the objections to ¶¶ 36 and 39. The Court finds
22 that these paragraphs do not contain any legal conclusions or improper speculation. Fed.
23 R. Evid. 701. However, to the extent Respondent Liu seeks to testify to the content of the
24 Arbitration Award, his statements are barred by the best evidence rule. Fed. R. Evid.
25 1002.

26 **C. Respondents' Objections to Petition Reply Declarations**

27 Respondents Zhang and Liu have also lodged objections to the declarations
28 Petitioner submits in support of its opposition to Respondent Liu's cross-motion and

1 reply in support of its Petition. Doc. No. 21. Petitioner filed a response in opposition to
2 these objections. Doc. No. 28.

3 **1. Gang Declaration**

4 Petitioner offers a second declaration from Pu Gang in support of its omnibus
5 opposition to Respondent Liu’s cross-motion and reply in support of the Petition. Doc.
6 No. 16-1 (“Gang Opp. Decl.”).

7 The Court **OVERRULES** the objections to ¶ 3. This statement is not barred by
8 the best evidence rule because Pu Gang is not testifying to the content of the Investment
9 Agreement and Memorandum. Fed. R. Evid. 1002. Nor is this statement unduly
10 prejudicial or confusing. Fed. R. Evid. 403.

11 The Court **OVERRULES** the objections to ¶¶ 5, 6, and 7. Pu Gang is an
12 Executive Partner of SZIC and therefore has sufficient personal knowledge of the
13 underlying events, including the transfer of funds under the Loan Agreement and Ningbo
14 Zhenrong’s involvement. Fed. R. Evid. 602. His testimony as to the terms of the Loan
15 Agreement does not contain any legal conclusions, Fed. R. Evid. 703, nor does he testify
16 to an “ultimate issue,” Fed. R. Evid. 704. And because Pu Gang does not seek to lay the
17 foundation of any item of evidence through these paragraphs, Respondents’ lack of
18 foundation objections are without merit. Fed. R. Evid. 901.

19 The Court **OVERRULES** the objections to ¶ 9. Declarant Pu Gang is an
20 Executive Partner of SZIC and therefore has sufficient personal knowledge of the
21 underlying events, including the arbitration proceedings. Fed. R. Evid. 602. His
22 statements do not contain any legal conclusions, Fed. R. Evid. 703, nor do these
23 statements bear on an “ultimate issue,” Fed. R. Evid. 704. Because Pu Gang does not
24 seek to lay the foundation of any item of evidence through these paragraphs,
25 Respondents’ lack of foundation objections are without merit. Fed. R. Evid. 901.
26 Finally, this paragraph does not contain any out-of-court statements. Fed. R. Evid. 802.

27 The Court **OVERRULES** the objections to ¶ 10. This paragraph does not contain
28 any legal conclusions or hearsay. Fed. R. Evid. 602, 802. Moreover, Pu Gang makes this

1 statement based on his personal knowledge of these facts, and he does not seek to lay the
2 foundation for any item of evidence. Fed. R. Evid. 701, 901.

3 The Court **OVERRULES** the objections to ¶¶ 11–13. Pu Gang is an Executive
4 Partner of SZIC and therefore has sufficient personal knowledge of the underlying
5 events, including the arbitration proceedings and Petitioner’s collection efforts,
6 Respondent Liu’s involvement with the Target Company, and the Chinese litigation the
7 parties are currently involved in. Fed. R. Evid. 602. His statements do not contain any
8 legal conclusions, Fed. R. Evid. 703, nor do these statements bear on an “ultimate issue,”
9 Fed. R. Evid. 704. Further, because Pu Gang does not seek to lay the foundation for any
10 item of evidence through these paragraphs, Respondents’ lack of foundation objections
11 are without merit. Fed. R. Evid. 901. Finally, this paragraph does not contain any out-of-
12 court statements. Fed. R. Evid. 802.

13 **2. Jian Declaration**

14 Petitioner also offers a declaration from Zhang Jian in support of its omnibus
15 opposition to Respondent Liu’s cross-motion and reply in support of the Petition. Doc.
16 No. 16-2 (“Jian Decl.”).

17 The Court **OVERRULES** the objections to ¶ 2. The Court finds that this
18 paragraph is not subject to the best evidence rule, Fed. R. Evid. 1002, nor is it unduly
19 prejudicial or confusing, Fed. R. Evid. 403.

20 The Court **OVERRULES** the objections to ¶ 4–6. Zhang Jian makes his
21 declaration on personal knowledge, and these paragraphs contain no legal conclusions or
22 improper speculation. Fed. R. Evid. 602. Additionally, Zhang Jian is not offering expert
23 testimony, Fed. R. Evid. 703, and because he does not seek to offer or authenticate any
24 evidence, the lack of foundation objections are without merit. Fed. R. Evid. 901.

25 **3. Ho Declaration**

26 Finally, Petitioner offers a declaration from Yi-Chin Ho in support of its omnibus
27 opposition to Respondent Liu’s cross-motion and reply in support of the Petition. Doc.
28 No. 16-3 (“Ho Decl.”). Yi Chin-Ho is an attorney representing Petitioner in this matter.

1 Ho Decl. ¶ 1. Attorney Ho offers a declaration and seeks to lay the foundation for two
2 exhibits. Ho Decl. ¶¶ 3–4.

3 Respondents Zhang and Liu object to paragraphs 3 and 4 on relevance grounds.
4 Fed. R. Evid. 401. The Court **OVERRULES** the objections. The Court finds that the
5 two exhibits are relevant—they are two Chinese court rulings and are part of the
6 arbitration record and procedural history of this matter.

7 **D. Petitioner’s Objections to Cross-Motion Reply Declarations**

8 Lastly, Petitioner has filed objections to the declarations Respondent Liu submits
9 with his reply in support of his cross-motion. Doc. No. 27. Respondent Liu filed a
10 response in opposition to these objections. Doc. No. 29.

11 **1. Liu Declaration**

12 Respondent Liu submits a second declaration with his reply in support of his cross-
13 motion to dismiss or stay. Doc. No. 20-1 (“Liu Reply Decl.”).

14 The Court **OVERRULES** the objections to ¶ 6. This paragraph does not contain
15 any legal conclusions. Fed. R. Evid. 701.

16 The Court **OVERRULES** the objections to ¶ 10. Respondent Liu makes his
17 declaration on personal knowledge and this statement contains no legal conclusions or
18 improper speculation. Fed. R. Evid. 602. Additionally, Respondent Liu does not seek to
19 authenticate any evidence. Fed. R. Evid. 901.

20 The Court **OVERRULES** the objections to ¶ 12. This paragraph does not contain
21 any legal conclusions. Fed. R. Evid. 701.

22 **2. Xie Declaration**

23 Respondent Liu offers a second declaration from Minmin Xie in support of his
24 reply. Doc. No. 20-2 (“Xie Reply Decl.”).

25 The Court **OVERRULES** the objections to ¶ 5. Minmin Xie is a Chinese attorney
26 and has specialized experience with Chinese litigation, which the Court lacks. Fed. R.
27 Evid. 702. He offers proper expert testimony, and his declaration does not contain
28 improper legal conclusions or speculation.

1 The Court **SUSTAINS IN PART** the objections to ¶ 6. Minmin Xie’s statements
2 are within the realm of proper expert testimony, and this paragraph does not contain legal
3 conclusions or improper speculation. Fed. R. Evid. 702. However, to the extent Minmin
4 Xie seeks to offer testimony as to the contents of the “Regulatory Opinions of the Beijing
5 Higher People’s Court on Requirements for Materials to File Civil Cases,” his statements
6 are subject to exclusion under the best evidence rule. Fed. R. Evid. 1002.

7 The Court **OVERRULES** the objections to ¶ 7. Minmin Xie offers proper expert
8 testimony, and this paragraph does not contain legal conclusions or improper speculation.
9 Fed. R. Evid. 702. Further, this paragraph is not unduly prejudicial or confusing. Fed. R.
10 Evid. 403.

11 **3. Zhang Declaration**

12 Respondent Liu offers a declaration from Respondent Zhang in support of his
13 reply. Doc. No. 20-3 (“Zhang Reply Decl.”). The Court **OVERRULES** Petitioner’s
14 objections to ¶¶ 4–6. Respondent Zhang makes her declaration based on her personal
15 knowledge. These paragraphs do not contain any legal conclusions or improper
16 speculation, and because Respondent Zhang does not seek to lay the foundation for any
17 evidence, Petitioner’s lack of foundation objection is without merit. Fed. R. Evid. 901.

18 **IV. DISCUSSION**

19 In accordance with the New York Convention, Petitioner asks the Court to confirm
20 the Award. Doc. No. 1. Respondents argue that the Court should deny the Petition on
21 various grounds. Doc. Nos. 9, 12. Additionally, Respondent Liu moves to dismiss the
22 Petition for lack of personal jurisdiction, *forum non conveniens*, and for failure to join an
23 indispensable party. Alternatively, Respondent Liu moves to stay this action pending
24 resolution of litigation in China. Doc. No. 12. Because Respondent Liu challenges the
25 Court’s personal jurisdiction over him, the Court first addresses his cross-motion.

26 **A. Cross-Motion to Dismiss**

27 As noted, Respondent Liu asks the Court to dismiss the Petition for lack of
28 personal jurisdiction, *forum non conveniens*, and failure to join an indispensable party.

1 Doc. No. 12 at 14–22. The Court addresses each of these arguments in turn.

2 **1. Personal Jurisdiction**

3 Courts reviewing petitions to confirm arbitration awards, including those falling
4 under the New York Convention, are obligated to find personal jurisdiction before
5 enforcing an award. *Glencore Grain*, 284 F.3d at 1121 (“We hold that neither the
6 Convention nor its implementing legislation removed the district courts’ obligation to
7 find jurisdiction over the defendant in suits to confirm arbitration awards.”). “Where, as
8 here, there is no applicable federal statute governing personal jurisdiction, the district
9 court applies the law of the state in which the district court sits.” *Schwarzenegger v. Fred*
10 *Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004) (citing Fed. R. Civ. P. 4(k)(1)(A)).
11 “California’s long-arm statute, Cal. Civ. Proc. Code § 410.10, is coextensive with federal
12 due process requirements, so the jurisdictional analyses under state law and federal due
13 process are the same.” *Mavrix Photo, Inc. v. Brand Techs., Inc.*, 647 F.3d 1218, 1223
14 (9th Cir. 2011).

15 In support of the Court’s jurisdiction over Respondents, Petitioner alleges that
16 Respondents are residents of San Diego County, California, but acknowledges that their
17 primary residence is in Beijing. Pet. ¶ 5.

18 Respondent Liu argues that the Court lacks specific and general personal
19 jurisdiction over him. First, he asserts that there is no general personal jurisdiction
20 because he is not “at home” here. Doc. No. 12 at 14 (citing *Daimler AG v. Bauman*, 571
21 U.S. 117, 122 (2014)). According to Respondent Liu, although he is physically present
22 within the District now, he does not intend to remain here indefinitely. Liu Decl. ¶ 4.

23 A natural person is considered “at home” for general personal jurisdiction purposes
24 where he or she is domiciled. *Daimler*, 571 U.S. at 137; *see also Kanter v. Warner-*
25 *Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001) (“A person’s domicile is her permanent
26 home, where she resides with the intention to remain or to which she intends to return.”).
27 An individual’s domicile is determined by several factors, including: current residence,
28 location of personal and real property, location of bank accounts, location of spouse and

1 family, and driver’s license and automobile registration. *Lew v. Moss*, 797 F.2d 747, 750
2 (9th Cir. 1986).

3 Second, Respondent Liu asserts that there is no specific personal jurisdiction over
4 him because the minimum contacts test is not satisfied. Doc. No. 12 at 15 (citing *Mavrix*
5 *Photo*, 647 F.3d at 1227–28). Under California law, whether the Court may exercise
6 specific personal jurisdiction over a non-resident defendant depends on the following
7 three-prong test:

8
9 (1) The non-resident defendant must purposefully direct his activities or
10 consummate some transaction with the forum or resident thereof; or perform
11 some act by which he purposefully avails himself of the privilege of
12 conducting activities in the forum, thereby invoking the benefits and
13 protections of its laws; (2) the claim must be one which arises out of or relates
14 to the defendant’s forum-related activities; and (3) the exercise of jurisdiction
15 must comport with fair play and substantial justice, i.e. it must be reasonable.

16 *Schwarzenegger*, 374 F.3d at 802 (quoting *Lake v. Lake*, 817 F.2d 1416, 1421 (9th Cir.
17 1987)). The party asserting the court’s personal jurisdiction bears the burden of
18 satisfying the first two prongs. *Sher v. Johnson*, 911 F.2d 1357, 1361 (9th Cir. 1990).
19 Once satisfied, the burden then shifts to the party disputing jurisdiction to set forth a
20 “compelling case” that the exercise of jurisdiction would not be reasonable. *Burger King*
21 *Corp. v. Rudzewicz*, 471 U.S. 462, 476–78 (1985).

22 Respondent Liu’s arguments and discussion of these two personal jurisdiction tests
23 relies on the faulty premise that he is an “out-of-state defendant.” *Martinez v. Aero*
24 *Caribbean*, 764 F.3d 1062, 1066 (9th Cir. 2014). He is not. Critically, Respondent Liu
25 does not factually dispute that he is presently residing in this District.

26 “Among the most firmly established principles of personal jurisdiction in
27 American tradition is that the courts of a State have jurisdiction over nonresidents who
28 are physically present in the State.” *Burnham v. Superior Court of Cal.*, 495 U.S. 604,
610 (1990). Pursuant to this principle, courts recognize what is often called “tag” or
“transient” jurisdiction—the jurisdictional theory that service upon a person physically

1 present in a forum, even if only temporarily and engaged in activity unrelated to the
2 litigation, suffices to confer jurisdiction. *Bourassa v. Desrochers*, 938 F.2d 1056, 1058
3 (9th Cir. 1991) (quoting *Burnham*, 495 U.S. at 632 (Brennan, J., concurring)); *see also*
4 *Ridgway v. Phillips*, 383 F. Supp. 3d 938, 945 (N.D. Cal. 2019) (quoting *Martinez*, 764
5 F.3d at 1067). In other words, it is well-settled that a court may, consistent with the Due
6 Process Clause, exercise personal jurisdiction over a defendant who was physically
7 present within the state when they were served. *Martinez*, 764 F.3d at 1067 (explaining
8 that in *Burnham*, the Supreme Court “reaffirmed th[is] historical rule” after *International*
9 *Shoe*); *Bourassa*, 938 F.2d at 1058 (“In *Burnham*, the Supreme Court recently affirmed
10 the constitutional validity of transient jurisdiction.”)

11 Here, Respondent Liu admits he is presently in California. Liu Decl. ¶ 4. And he
12 does not dispute that he has been living at the Rancho Santa Fe address where the Petition
13 was served, Doc. No. 3, or that he has continuously lived there since April 2022, Gang
14 Opp. Decl. ¶ 10.

15 In reply, Respondent Liu argues that he was not personally served with the
16 Petition. Doc. No. 20 at 3–4. To the extent Respondent Liu challenges the sufficiency of
17 service of the Petition here, generally, the Court notes that it can disregard this argument
18 as it was inappropriately raised in his reply brief. *Zamani v. Carnes*, 491 F.3d 990, 997
19 (9th Cir. 2007) (“The district court need not consider arguments raised for the first time
20 in a reply brief.”); *see also FT Travel--New York, LLC v. Your Travel Ctr., Inc.*, 112 F.
21 Supp. 3d 1063, 1079 (C.D. Cal. 2015) (“Courts decline to consider arguments that are
22 raised for the first time in reply.”) (collecting cases); *see also Fed. R. Civ. P. 12(h)(1)*
23 (providing that challenges to service are waived if not properly raised). Relatedly,
24 Respondent Liu’s declaration submitted in reply contains almost entirely new evidence
25 on this issue, *see* Liu Reply Decl., which was similarly inappropriate, *Provenz v. Miller*,
26 102 F.3d 1478, 1483 (9th Cir. 1996). Nevertheless, to the extent Respondent Liu
27 challenges the Court’s personal jurisdiction over him based upon a lack of proper or
28 personal service, the Court reaches this argument.

1 Respondent Liu was not personally served.⁵ Doc. No. 3. He was served with the
2 Petition by mail. Fed. R. Civ. P. 5(b)(2)(C). In compliance with Rule 5, Petitioner
3 mailed a copy of the Petition and its attachments to the Rancho Santa Fe address. Doc.
4 No. 3 at 6. Respondent Liu does not dispute that this is the location where he resides nor
5 does he argue that this is not his current or last known address. Alternatively, assuming
6 Rule 4 applies, Respondent Liu was duly served by delivery to his residence. Fed. R.
7 Civ. P. 4(e)(1)–(2). Rule 4 is to be liberally construed here as Respondent Liu does not
8 dispute that he received actual notice of this action. *Direct Mail Specialists, Inc. v. Eclat*
9 *Computerized Techs., Inc.*, 840 F.2d 685, 688 (9th Cir. 1988) (“Rule 4 is a flexible rule
10 that should be liberally construed so long as a party receives sufficient notice of the
11 complaint.”) (internal quotation marks and citation omitted). Petitioner attempted
12 personal service twice, left the Petition at the Rancho Santa Fe property with an adult
13 who represented themselves to be a co-tenant, Doc. No. 3 at 3, and mailed the Petition to
14 this same address thereafter. The Court finds on this record that Petitioner substantially
15 complied with Rules 4(e)(1) and (2).⁶

16 _____
17
18 ⁵ In challenging this Court’s personal jurisdiction over him, Respondent Liu primarily argues that he was
19 not personally served with the Petition. Doc. No. 12 at 3–4. Respondent Liu alternatively contends that
20 service did not comply with California Code of Civil Procedure § 415.20. *Id.* at 4. Federal Rule of Civil
21 Procedure 4, which governs service of a summons and complaint, allows for the application of
22 California’s service of process rules in federal court. Fed. R. Civ. P. 4(e)(1). Thus, Respondent Liu has
23 apparently taken the position that Rule 4 governs service of the Petition here.

24 However, Respondent Liu has failed to address the service of process provision contained within
25 the FAA. Section 9 provides that “[i]f the adverse party is a resident of the district within which the
26 award was made,” service is to be accomplished by following the law for service of a motion in that
27 district. 9 U.S.C. § 9. Rule 5 governs service of motions in federal court. On the other hand, “[i]f the
28 adverse party [is] a nonresident, then the notice of the application shall be served by the marshal of any
district within which the adverse party may be found in like manner as other process of the court.” *Id.*

It is not clear how the service rules set forth in § 9 factor into this proceeding, where the Award
was not made in any United States district and where Respondents claim to be nonresidents of the state
but are nevertheless residing here. In any event, because Respondent Liu does not argue he was subject
to service by U.S. Marshal, the Court assumes without deciding that Petitioner was not required under 9
U.S.C. § 9 to serve Respondents in this manner.

⁶ Rule 4(e)(1) authorizes service pursuant to state law, and California permits substituted service by,
among other methods, leaving a summons and complaint with an adult at the party’s usual residence or
place of business with service by mail after. Cal. Code Civ. P. § 415.20.

1 The Court can find no rule in *Burnham* that the exercise of personal jurisdiction
2 based upon physical presence only comports with due process if the nonresident
3 defendant is personally served. Doc. No. 20 at 3. True, in *Burnham*, the nonresident
4 defendant was personally served while present in the forum. 495 U.S. at 607. But many
5 courts, including the Supreme Court, have not so limited the constitutional validity of
6 jurisdiction based on physical presence. *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S.
7 873, 880 (2011) (“Presence within a State at the time suit commences through service of
8 process is another example” of a person submitting to personal jurisdiction); *see also*
9 *Ewing v. 8 Figure Dream Lifestyle, Ltd. Liab. Co.*, No. 18-CV-1063-AJB-AGS, 2019
10 U.S. Dist. LEXIS 54574, at *22 (S.D. Cal. Mar. 29, 2019) (“General jurisdiction over an
11 individual is permissible only where he has been served with process while voluntarily in
12 the forum, is domiciled in the forum, or consents to the court’s jurisdiction.”); *Greystone*
13 *Hous. Found., Inc. v. Fantasy Holdings, Ltd. Liab. Co.*, No. 16-CV-0300-AJB-DHB,
14 2017 U.S. Dist. LEXIS 74683, at *6 (S.D. Cal. May 16, 2017) (same); *Karalis v. Carn*,
15 No. 3:24-cv-01143-JSC, 2024 U.S. Dist. LEXIS 88871, at *4 (N.D. Cal. May 16, 2024)
16 (“A federal court obtains personal jurisdiction over a defendant if it is able to serve
17 process on him.”) (quoting *Butcher’s Union Loc. No. 498, United Food & Com. Workers*
18 *v. SDC Inv., Inc.*, 788 F.2d 535, 538 (9th Cir. 1986)).

19 Moreover, as the Supreme Court in *Burnham* concluded: “The short of the matter
20 is that jurisdiction *based on physical presence alone* constitutes due process because it is
21 one of the continuing traditions of our legal system that define the due process standard
22 of ‘traditional notions of fair play and substantial justice.’” 495 U.S. at 619 (emphasis
23 added). For this reason, California’s long-arm statute similarly recognizes the exercise of
24 personal jurisdiction based on presence. Judicial Council comment to Cal. Code Civ. P.
25 § 410.10 (“All the recognized bases of judicial jurisdiction are included. In the case of
26 natural persons, such bases currently include presence, . . .”).

27 Respondent Liu lives in California. He has continuously been physically present in
28 this district, voluntarily, for the last two years. Gang Opp. Decl. ¶ 10. Thus, he is subject

1 to service of process in this state and, if served accordingly, subject to this Court's
2 personal jurisdiction. *Burnham*, 495 U.S. at 615 (“We do not know of a single state or
3 federal statute, or a single judicial decision resting upon state law, that has abandoned in-
4 state service as a basis of jurisdiction.”); *cf. J. McIntyre*, 564 U.S. at 881 (“By contrast,
5 those who live or operate primarily outside a State have a due process right not to be
6 subjected to judgment in its courts as a general matter.”).

7 Therefore, based on Respondent Liu's physical presence in the Southern District of
8 California and the fact that he was properly served here, the Court is satisfied that it has
9 personal jurisdiction over him. *See, e.g., United Tactical Sys. LLC v. Real Action*
10 *Paintball, Inc.*, 108 F. Supp. 3d 733, 742 (N.D. Cal. 2015) (“As in *Burnham*, the fact that
11 these [third party defendants] did not purposefully avail themselves of California's laws
12 and protections does not necessarily mean they are protected from litigation here if tag or
13 transient jurisdiction is established.”); *Marino v. Nery's USA, Inc.*, No. 14-CV-497-BEN
14 (JMA), 2015 U.S. Dist. LEXIS 181427, at *17 (S.D. Cal. Feb. 25, 2015) (finding that the
15 defendant “was served in the state of California, which is sufficient to establish general
16 personal jurisdiction”). Accordingly, the Court **DENIES** Respondent Liu's motion to the
17 extent he seeks dismissal of the Petition for lack of personal jurisdiction.⁷

18 **2. The Doctrine of Forum Non Conveniens**

19 Next, Respondent Liu asserts that the Petition should be dismissed based on the
20 doctrine of *forum non conveniens*. Doc. No. 12 at 15–18. “The principle of *forum non*
21 *conveniens* is simply that a court may resist imposition upon its jurisdiction even when
22 jurisdiction is authorized by the letter of a general venue statute.” *Gulf Oil Corp.*
23 *v. Gilbert*, 330 U.S. 501, 507 (1947); *see also Carijano v. Occidental Petroleum Corp.*,
24 643 F.3d 1216, 1224 (9th Cir. 2011).

25
26
27 ⁷ Although Respondent Zhang does not dispute this Court's personal jurisdiction over her, the record
28 similarly reflects that she is currently living in California and was served at the same residence in
Rancho Santa Fe. Doc. No. 4. Consequently, for these same reasons, the Court finds that it has personal
jurisdiction over Respondent Zhang.

1 As the Ninth Circuit has explained:

2 The doctrine of *forum non conveniens* is a drastic exercise of the court's
3 "inherent power" because, unlike a mere transfer of venue, it results in the
4 dismissal of a plaintiff's case. The harshness of such a dismissal is especially
5 pronounced where, as here, the district court declines to place any conditions
6 upon its dismissal. Therefore, we have treated *forum non conveniens* as "an
7 exceptional tool to be employed sparingly," and not a "doctrine that compels
8 plaintiffs to choose the optimal forum for their claim." *Dole Food Co. v.*
9 *Watts*, 303 F.3d 1104, 1118 (9th Cir. 2002) (quoting *Ravelo Monegro*, 211
10 F.3d at 514) (internal quotations omitted). The mere fact that a case involves
11 conduct or plaintiffs from overseas is not enough for dismissal.

12 *Carijano*, 643 F.3d at 1224.

13 The party moving to dismiss based on *forum non conveniens* bears the burden of
14 showing both that there is an adequate alternative forum, and that the balance of private
15 and public interest factors favors dismissal. *Dole Food Co. v. Watts*, 303 F.3d 1104,
16 1118 (9th Cir. 2002). "The standard to be applied to a motion for dismissal on the
17 ground of *forum non conveniens* is whether defendants have made a clear showing of
18 facts which establish such oppression and vexation of a defendant as to be out of
19 proportion to plaintiff's convenience, which may be shown to be slight or nonexistent."
20 *Id.* (quoting *Cheng v. Boeing Co.*, 708 F.2d 1406, 1410 (9th Cir. 1983)) (cleaned up).

21 Respondent Liu argues that China is an adequate alternative forum. Doc. No. 12 at
22 16. According to Respondent Liu, he is a resident of China and Petitioner is a Chinese
23 company, and both are subject to, or have submitted to, jurisdiction in China. *Id.* He also
24 refers to pending litigation in China, initiated by the Target Company in 2024, between
25 Petitioner, Respondent Liu, the Target Company, and Ningbo Zhenrong, which involves
26 "the rights of Petitioner, Liu, Ningbo Zhenrong and the Target Company regarding
27 Ningbo Zhenrong's remittance of the 120 million RMB to the Target Company." Doc.
28 No. 12 at 13; *id.* at 17.

However, as Petitioner argues in opposition, *forum non conveniens* is not one of
the enumerated grounds under Article V to refuse to confirm a foreign arbitration award.

1 Doc. No. 16 at 15–16. This would appear to foreclose application of the doctrine in these
2 circumstances. But even assuming the doctrine of *forum non conveniens* applies to
3 arbitration confirmation proceedings such as this one, the Court finds that Respondent
4 Liu has not met his burden.

5 With respect to the private interest factors, *see Carijano*, 643 F.3d at 1229
6 (identifying the seven private interest factors), it is highly relevant that this is a summary
7 proceeding. The fact that China is the location where witnesses or evidence resides, and
8 that the events precipitating the arbitration took place in China, carries very little if any
9 weight. To that end, there will be no trial or evidentiary hearing during these
10 proceedings, so there will be no costs associated with bringing any remote witnesses to
11 trial nor will there be any issues compelling their testimony. Additionally, Respondent
12 Liu is currently living in California, not China. Liu Decl. ¶ 4. Therefore, on balance, the
13 private interest factors do not weigh in Respondent Liu’s favor.

14 Turning to the public interest factors, *see Carijano*, 643 F.3d at 1232 (identifying
15 the five public interest factors), the Court finds that the burden, congestion, and costs on
16 the Court do not weigh in favor of dismissal because, again, this is a summary
17 proceeding. And while the local interest in the underlying dispute—a contract dispute
18 between a Chinese citizen and Chinese company concerning a loan agreement executed
19 in China—may be low, the United States is a party to the New York Convention and
20 therefore has an interest in confirming enforceable foreign arbitration awards. And these
21 arbitration confirmation proceedings do not call on the Court to apply any foreign law.
22 Accordingly, the public interest factors similarly do not weigh in favor of dismissal.

23 Finally, Respondent Liu fails to identify any tangible burden, or facts establishing
24 “oppression and vexation,” by having to respond to this Petition here as opposed to in
25 China. For these reasons, the Court **DENIES** Respondent Liu’s motion to dismiss based
26 on the doctrine of *forum non conveniens*. *See Zhejiang Meds. & Health Prods. Imp. &*
27 *Exp. Co. v. Blue Cal. Co.*, No. CV 08-06327 RGK (FFMx), 2009 U.S. Dist. LEXIS
28 141024, at *10 (C.D. Cal. Apr. 23, 2009).

1 **3. Failure to Join Indispensable Parties**

2 Finally, Respondent Liu moves to dismiss the Petition on the grounds that Ningbo
3 Zhenrong and the Target Company are indispensable parties that cannot be joined. Doc.
4 No. 12 at 18–22. Federal Rule of Civil Procedure 19 governs the joinder of required
5 parties. Courts analyzing Rule 19 employ a three-step analysis: (1) is the absent party
6 necessary; (2) if so, is it feasible to join the absent party; and (3) if joinder is not feasible,
7 can the action proceed without the absent party or “is the absent party indispensable,”
8 thereby requiring dismissal of the action. Fed. R. Civ. P. 19(a); *Salt River Project Agric.*
9 *Imp. & Power Dist. v. Lee*, 672 F.3d 1176, 1179 (9th Cir. 2012); *United States v. Bowen*,
10 172 F.3d 682, 688 (9th Cir. 1999).

11 An absent party is “required” under Rule 19(a) if:

12 (A) in that person’s absence, the court cannot accord complete relief among
13 existing parties; or

14 (B) that person claims an interest relating to the subject of the action and is so
15 situated that disposing of the action in the person's absence may:

16 (i) as a practical matter impair or impede the person’s ability to protect
17 the interest; or

18 (ii) leave an existing party subject to a substantial risk of incurring
19 double, multiple, or otherwise inconsistent obligations because of the
20 interest.

21 Fed. R. Civ. P. 19(a)(1)(A)–(B).

22 The failure and inability to join a required party is not an enumerated defense to
23 confirmation under Article V, so Rule 19 appears inapplicable to this proceeding. *See*
24 *Shanghai Lan*, 2019 U.S. Dist. LEXIS 217634, at *10–11 (confirming arbitration award
25 over objection that indispensable party was not joined). But even assuming Rule 19 may
26 be properly raised in defense to confirmation proceedings under the New York
27 Convention, Respondent Liu does not explain how these parties are required under either
28 Rule 19(a)(1)(A) or (b) except to say that they are necessary parties because “at the heart

1 of the parties’ dispute” is whether “the transfer of 120 million RMB” was a loan from
2 Ningbo Zhenrong to the Target Company or from Petitioner to Respondent Liu. Doc.
3 No. 12 at 19.

4 At the heart of this proceeding is whether the Court must confirm the Award or
5 whether one of the seven grounds to refuse confirmation set forth in Article V are
6 present. In particular, whether: Respondent Liu was denied due process, Doc. No. 12 at
7 22–24; the Award was beyond the scope of the submission, *id.* at 24–26; or enforcement
8 of the Award is contrary to public policy, *id.* at 26–29. The underlying dispute that was
9 submitted to and resolved by the BAC Tribunal is not at issue in this proceeding.

10 Moreover, neither Ningbo Zhenrong nor the Target Company were parties to the
11 arbitration or named as responsible for the Award. Accordingly, the Court finds that
12 Ningbo Zhenrong and the Target Company are not required parties as defined by Rule
13 19(a)(1). Because Respondent Liu has failed to demonstrate that they are necessary
14 parties, the Court need not and does not reach the remainder of the Rule 19 analysis.
15 *Temple v. Synthes Corp., Ltd.*, 498 U.S. 5, 8 (1990) (“[N]o inquiry under Rule 19(b) is
16 necessary, because the threshold requirements of Rule 19(a) have not been satisfied.”).
17 Consequently, the Court **DENIES** Respondent Liu’s motion to dismiss the Petition.

18 **B. Motion to Stay**

19 In the alternative, Respondent Liu asks the Court to stay this action pending
20 resolution of litigation in China. Doc. No. 12 at 29–30. According to Respondent Liu,
21 the Target Company initiated a lawsuit in China in 2024 against Petitioner, Liu, and
22 Ningbo Zhenrong regarding “Ningbo Zhenrong’s transfer of 120 million RMB to the
23 Target Company” Doc. No. 12 at 29.

24 As discussed above, the Court “shall confirm the award unless it finds one of the
25 grounds for refusal or deferral of recognition or enforcement of the award specified” in
26 the Convention. 9 U.S.C. § 207. Respondent Liu does not identify any enumerated basis
27 to defer these proceedings. Instead, he briefs the factors for a *Landis* stay. *See Landis*
28 *v. N. Am. Co.*, 299 U.S. 248, 254 (1936).

1 Assuming the Court has the inherent authority to stay arbitration confirmation
2 proceedings pending other litigation, the Court finds that a stay is not warranted here. In
3 *Landis*, the Supreme Court recognized the general principle that “[a] district court has
4 discretionary power to stay proceedings in its own court.” *Lockyer v. Mirant*, 398 F.3d
5 1098, 1109 (9th Cir. 2005) (citing *Landis*, 299 U.S. at 254). A district court may stay a
6 case “pending resolution of independent proceedings which bear upon the case,” even if
7 those proceedings are not “necessarily controlling of the action before the court.” *Leyva*
8 *v. Certified Grocers of Cal., Ltd.*, 593 F.2d 857, 863–64 (9th Cir. 1979).

9 In determining whether to grant a stay, courts in the Ninth Circuit weigh the
10 “competing interests which will be affected by the granting or refusal to grant a stay,”
11 including:

12
13 [1] the possible damage which may result from the granting of a stay, [2] the
14 hardship or inequity which a party may suffer in being required to go forward,
15 and [3] the orderly course of justice measured in terms of the simplifying or
16 complicating of issues, proof, and questions of law which could be expected
to result from a stay.

17 *Lockyer*, 398 F.3d at 1110 (quoting *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir.
18 1962) (identifying the *Landis* factors)). The burden is on the movant to show that a stay
19 is appropriate. See *Clinton v. Jones*, 520 U.S. 681, 708 (1997) (citing *Landis*, 299 U.S. at
20 255).

21 Here, Petitioner concedes that a stay will not result in any harm. Doc. No. 16 at
22 23. But the Court is not satisfied that the pending litigation in China has any bearing on
23 this proceeding or that Respondents face any hardship in the absence of a stay. But for
24 the general description that the Chinese lawsuit is “with respect to Ningbo Zhenrong’s
25 transfer of 120 million RMB to the Target Company is pending in China,” Doc. No. 12 at
26 29, Respondent Liu provides no information as to what claims are before the Chinese
27 court or matters are being litigated. The Court assumes on this limited record that the
28 Chinese litigation will revisit the issue of whether the loan from Ningbo Zhenrong was

1 made on behalf of Petitioner and pursuant to the Loan Agreement. But as far as the Court
2 is concerned, this dispute was already resolved by the BAC, and the only disputes before
3 the Court in this proceeding are the defenses under Article V that Respondents put forth.
4 Moreover, this is a summary proceeding that is fully briefed and there is nowhere
5 forward for Respondents to go. For these reasons as well, the orderly course of justice
6 does not call for a stay and there is simply no risk of inconsistent judgments.
7 Accordingly, the Court **DENIES** Respondent Liu’s alternative request for a stay.

8 **C. Petition to Confirm the Award**

9 Turning to the Petition, SZIC asks the Court to confirm the Award and names both
10 Liu and Zhang as Respondents. However, as Respondent Zhang points out in opposition,
11 she was neither a party to the Loan Agreement nor named as a respondent in the
12 arbitration. Doc. No. 9 at 2; Doc. No. 9-1 (“Zhang Decl.”) ¶¶ 6–8, 10–15. Rather,
13 according to the Petition, Respondent Zhang is Respondent Liu’s wife, and this appears
14 to be the sole basis for naming her as a respondent on the Petition. Pet. ¶ 5.⁸

15 The FAA is clear that for arbitration awards falling under the New York
16 Convention, “any party to the arbitration may apply to any court having jurisdiction . . .
17 for an order confirming the award *as against any other party to the arbitration.*” 9
18 U.S.C. § 207 (emphasis added). Respondent Zhang was not a party to the arbitration.
19 Pet. Ex. D at 45 (identifying Petitioner as the Applicant and Respondent Liu as the only
20 Respondent). And she is not named on the Award. *See generally* Pet. Ex. D.

21 Nevertheless, in support of its position that naming Respondent Zhang was proper,
22 Petitioner explains that she is “listed as the Target Company’s legal representative in the
23 Loan Agreement and the Cooperation Agreement (Petition Exs. A-B), and she is a party
24 to the Investment Agreement and Memorandum (Petition Ex. C).” Doc. No. 16 at 23.

27
28 ⁸ Respondent Zhang is mentioned once in the Petition, Pet. ¶ 5, and Petitioner expressly disclaims her involvement in the arbitration, *id.* at 2 fn.1.

1 Petitioner then explains that Respondent Zhang is jointly and severally liable on the
2 Award and that she owns property and assets in California. *Id.* at 23–24.

3 The fact that other courts have found Respondent Zhang jointly liable for the
4 Award, or permitted enforcement against her, *see* Doc. No. 16 at 24, has no bearing on
5 this summary proceeding through which the Court is merely tasked with determining
6 whether one of the seven grounds to refuse confirmation of the Award are present. The
7 Court’s authority to reduce the Award to a judgment here comes from Congress’ grant of
8 such power, 9 U.S.C. § 207, and Petitioner offers no legal authority for its position that
9 the Court can confirm an arbitration award against a person who was not a party to the
10 arbitration. *Cf. United States ex rel. John A. Weber Co. v. Milcon Contr.*, 523 F. Supp.
11 3d 1203, 1211 (D. Haw. 2021) (declining to confirm an arbitration award against a surety
12 who was not a party to the arbitration). Accordingly, the Court finds that it was
13 statutorily improper under the FAA for Petitioner to name Respondent Zhang as a
14 respondent and the Court lacks the authority to confirm the Award as against her. The
15 Court therefore **DISMISSES** the Petition as it relates to Respondent Zhang.

16 Turning to the merits of the Petition, for the reasons set forth below, the Court
17 finds that the Award falls under the New York Convention, and that Respondent Liu fails
18 to meet his burden of demonstrating that the Award should not be confirmed.

19 First, the parties do not dispute, and the Court finds, that the Award falls under the
20 New York Convention. A foreign arbitration agreement or arbitral award “falls under”
21 the New York Convention if it “aris[es] out of a legal relationship, whether contractual or
22 not, which is considered as commercial” unless such relationship that is entirely between
23 United States citizens. 9 U.S.C. § 202. “Courts generally address four factors to
24 determine whether to enforce an arbitration agreement under the Convention.” *Balen*
25 *v. Holland Am. Line Inc.*, 583 F.3d 647, 654 (9th Cir. 2009) (citations omitted). These
26 four factors examine whether the suit to enforce the foreign arbitration involves: (1) “an
27 agreement in writing within the meaning of the Convention” that (2) “provides for
28 arbitration in the territory of a signatory of the Convention” and (3) “arises out of a legal

1 relationship, whether contractual or not, which is considered commercial,” as well as
2 whether (4) “a party to the agreement is not an American citizen, or that the commercial
3 relationship has some reasonable relation with one or more foreign state.” *Balen*, 583
4 F.3d at 655 (quoting *Bautista*, 396 F.3d at 1294 n.7) (internal quotation marks omitted);
5 *see also* 9 U.S.C. § 202.

6 The Loan Agreement, to which the Petitioner and Respondent Liu are signatories,
7 is an agreement in writing within the meaning of the Convention. Pet. Ex. A. Second,
8 the Loan Agreement calls for arbitration in Beijing according to the rules of the BAC. *Id.*
9 at 20. Third, because the Loan Agreement provides that SZIC loan was to repurchase
10 and release the VIE structure of the Target Company, the Court agrees that the instant
11 action arises out of a legal commercial relationship between Petitioner and Respondent
12 Liu. *See* 9 U.S.C. § 202 (“Commercial” “includ[es] a transaction, contract, or agreement
13 described in section 2,” namely “a contract evidencing a transaction involving
14 commerce”). Finally, Petitioner is a Chinese corporation with its principal place of
15 business in Shenzhen, Guangdong Province. Pet. ¶ 4; Pu Gang Decl. ¶ 1. Therefore,
16 Petitioner is not an American citizen. Accordingly, the Court finds that the Award falls
17 under the New York Convention and the Court therefore has jurisdiction over this matter
18 pursuant to 9 U.S.C. § 203.

19 As a result, the Court must confirm the Award unless it finds one of the seven
20 defenses applicable. The seven grounds for refusing to confirm an award are set out in
21 Article V, which provides:

22
23 (1) Recognition and enforcement of the award may be refused, at the request
24 of the party against whom it is invoked, only if that party furnishes to the
25 competent authority where the recognition and enforcement is sought, proof
26 that:

27 (a) The parties to the agreement . . . were, under the law applicable to
28 them, under some incapacity, or the said agreement is not valid under

1 the law to which the parties have subjected it or, failing any indication
2 thereon, under the law of the country where the award was made; or

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

6 (c) The award deals with a difference not contemplated by or not falling
7 within the terms of the submission to arbitration, or it contains decisions
8 on matters beyond the scope of the submission to arbitration, provided
9 that, if the decisions on matters submitted to arbitration can be
10 separated from those not so submitted, that part of the award which
contains decisions on matters submitted to arbitration may be

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

14 (e) The award has not yet become binding on the parties, or has been
15 set aside or suspended by a competent authority of the country in which,
16 or under the law of which, that award was made.

17 (2) Recognition and enforcement of an arbitral award may also be refused if
18 the competent authority in the country where recognition and enforcement is
19 sought finds that:

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

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

24 New York Convention, Art. V.

25 These defenses are construed narrowly and the party opposing recognition or
26 enforcement bears the burden of establishing that a defense applies. *See Polimaster*, 623
27 F.3d at 836. “The Convention and its implementing legislation have a pro-enforcement
28 bias, a policy long-recognized by the Supreme Court.” *Glencore Grain*, 284 F.3d at

1 1120. Thus, the burden on the party seeking to avoid enforcement of an award “is
2 substantial.” *Polimaster*, 623 F.3d at 836 (internal citation omitted).

3 Respondent Liu presses three of the Article V defenses. Doc. No. 12 at 22–31.

4 ***1. Denial of Due Process – Article V(1)(b)***

5 First, Respondent Liu contends that he was denied due process in violation of
6 Article V(1)(b) of the New York Convention. Doc. No. 12 at 22–24. Pursuant to Article
7 V(1)(b), a court may deny enforcement if “[t]he party against whom the award is invoked
8 was not given proper notice of the appointment of the arbitrator or of the arbitration
9 proceedings or was unable to otherwise present his case.” New York Convention, art. V,
10 § 1(b). This provision “essentially sanctions the application of . . . United States
11 standards of due process.” *Karaha Bodas Co., L.L.C. v. Perusahaan Pertambangan*
12 *Minyak Dan Gas Bumi Negara*, 364 F.3d 274, 298 (5th Cir. 2004); *see also Lihua Song v.*
13 *Que*, No. 23-cv-02159-RFL, 2024 U.S. Dist. LEXIS 101438, at *3 (N.D. Cal. May 31,
14 2024). Accordingly, an arbitration hearing must “meet[] the minimal requirements of
15 fairness—adequate notice, a hearing on the evidence, and an impartial decision by the
16 arbitrator,” with the parties having had “an opportunity to be heard at a meaningful time
17 and in a meaningful manner.” *Karaha Bodas*, 364 F.3d at 299 (internal quotation marks
18 omitted). However, “[t]he right to due process does not include the complete set of
19 procedural rights guaranteed by the Federal Rules of Civil Procedure.” *Id.* (footnote
20 omitted). “This provision does not authorize a court to refuse to recognize or enforce an
21 award unless it finds a denial of fundamental fairness in the arbitration proceedings.”
22 *Bartlit Beck LLP v. Okada*, 25 F.4th 519, 523 (7th Cir. 2022).

23 Here, Respondent Liu asserts that he was denied the opportunity to confront and
24 cross-examine “crucial witnesses” in violation of his due process rights. Doc. No. 12 at
25 24. According to Respondent Liu:

26
27 At the substantive heart of the issues in arbitration was whether the 120
28 million RMB Ningbo Zhenrong transferred to the Target Company was a loan
from Petitioner to Liu, as per the Loan Agreement and as argued by Petitioner,

1 or whether it was a convertible equity investment in the Target Company by
2 Ningbong Zhenron, as in the Investment Agreement, Memo and Letter of
3 Commitment and as argued by Liu.

4 *Id.* at 23.

5 Respondent Liu contends that at the arbitration hearing, Petitioner offered
6 “explanation notes”—“self-serving” notes submitted at the arbitration hearing
7 “purportedly authored by Ningbo Zhenrong”—in support of its position on this matter.

8 *Id.* Respondent Liu contends he was not given the opportunity to cross-examine, for
9 example, the author of the “explanation notes.” *Id.*

10 “[A] party does not have an absolute right to cross-examination.” *Sunshine Mining*
11 *Co. v. United Steelworkers of Am., etc.*, 823 F.2d 1289, 1295 (9th Cir. 1987) (citing
12 *Hoteles Condado Beach, La Concha & Convention Center v. Union de Tronquistas Local*
13 *901*, 763 F.2d 34, 40 (1st Cir. 1985)). “The arbitrator must, however, give each of the
14 parties to the dispute an adequate opportunity to present its evidence and arguments.” *Id.*
15 Here, Respondent Liu summarily asserts that he was “denied the right to examine crucial
16 witnesses.” Doc. No. 12 at 24. But he does not identify a single person by name that he
17 was unable to cross-examine—Respondent Liu only identifies unknown persons. Doc.
18 No. 12 at 23 (“Liu did not get an opportunity to confront and cross-examine witness(es),
19 such as whoever authored the ‘explanation’ notes, and/or whoever had percipient
20 knowledge of any facts supporting them.”).

21 More importantly, the record, namely, the transcript of the arbitration hearing,
22 reflects that Respondent Liu was not denied due process. First, Respondent Liu was
23 represented by counsel, and he was given the opportunity to submit evidence and present
24 argument at the hearing. *See generally* Doc. No. 12-5 at 14–26 (“Hrg. Tr.”). Further, all
25 parties agreed to the procedures, including the method and manner of cross-examination.
26 Hrg. Tr. at 14. And specifically with respect to the “explanation notes,” it appears from
27 the record that Respondent Liu raised concerns to the Tribunal and that an exchange
28 involving authenticity issues and “cross-examination opinion” took place. Hrg. Tr. at

1 20–21 (discussing Exhibit 5). Further, at the conclusion of the hearing, the parties were
2 invited to submit written “cross-examination opinion.” Hrg. Tr. at 25. At bottom,
3 Respondent Liu fails to explain how these procedures were inadequate, how he was
4 prejudiced by the absence of an ability to cross examine these unknown witnesses, or
5 how the arbitration was fundamentally unfair as a result of his inability to conduct this
6 cross-examination.

7 Respondent Liu’s evidence does not change this outcome. First, he offers hearsay
8 evidence from Ding Zhexuan. Even assuming the Court accepts this evidence under the
9 residual exception to hearsay, Ding Zhexuan only suggests that there was some
10 miscommunication four months after the hearing as to whether there would be a second
11 hearing. Ding Decl. ¶ 9. His testimony does not undermine the sufficiency and fairness
12 of the procedures Respondent Liu had already received at the hearing.

13 Respondent Liu also offers a declaration from James M. Zimmerman, an attorney
14 with expert knowledge of and experience with Chinese arbitrations, including those under
15 the BAC. Zimmerman Decl. ¶¶ 1–3. Mr. Zimmerman testifies to various BAC
16 procedures that amount to, in his opinion, “systemic and institution conditions and
17 limitations that impact the fairness and impartiality of the BAC dispute resolution
18 process.” Zimmerman Decl. ¶ 6. But there is no explanation of how these procedures as
19 applied in this arbitration proceeding deprived Respondent Liu of his right to due process.
20 Mr. Zimmerman also discusses the procedures of selecting arbitrators and challenging
21 arbitrator selections, specifically Petitioner’s selection of Arbitrator Jingmin Zhai.
22 Zimmerman Decl. ¶¶ 8–9. Mr. Zimmerman appears to question Arbitrator Zhai’s
23 impartiality. *Id.* But Respondent Liu does not argue that Arbitrator Zhai engaged in any
24 misconduct or that Respondent Liu’s due process rights were in any way affected by
25 Arbitrator Zhai’s presence on the Tribunal. Further, Mr. Zimmerman calls into question
26 Arbitrator Zhai’s candor in his declaration statement, Zimmerman Decl. ¶ 9, but
27 Respondent Liu does not argue that his due process rights were violated or affected by
28 this declaration.

1 Accordingly, the Court finds that Article V(1)(b) does not provide a basis for the
2 Court to deny confirmation of the Award.

3 **2. *Beyond the Scope of Submission – Article V(1)(c)***

4 Next, Respondent Liu argues that the Award was beyond the scope of the matter
5 submitted to arbitration. Doc. No. 12 at 24–26. This defense, enumerated at Article
6 V(1)(c), allows a court to refuse to confirm a foreign award if:

7
8 The award deals with a difference not contemplated by or not falling within
9 the terms of the submission to arbitration, or it contains decisions on matters
10 beyond the scope of the submission to arbitration, provided that, if the
11 decisions on matters submitted to arbitration can be separated from those not
12 so submitted, that part of the award which contains decisions on matters
13 submitted to arbitration may be recognized and enforced.

14 New York Convention, art. V, § 1(c).

15 According to Respondent Liu, the arbitration was initiated based on the Loan
16 Agreement, which included an arbitration provision and to which Respondent Liu was a
17 signatory. Doc. No. 12 at 25. Respondent Liu explains that the Loan Agreement did not
18 govern the transfer of 120 million Yuan from Ningbo Zhenrong to the Target Company.
19 *Id.* Rather, Respondent Liu contends that this loan was made pursuant to the Investment
20 Agreement, which does not include an arbitration clause and to which Respondent Liu is
21 not a signatory. *Id.* Thus, “Petitioner had no right to initiate arbitration of events that
22 occurred pursuant to the Investment Agreement. And, the Arbitration Tribunal had no
23 jurisdiction to address matters related to the Investment Agreement.” Doc. No. 12 at 26.

24 The Court is not persuaded by this argument, which appears to rehash the merits of
25 the parties’ dispute that was submitted to arbitration and is beyond the scope of these
26 proceedings. The Loan Agreement’s arbitration provision provides, in full:

27 4.2 Any dispute arising from the interpretation or performance of this
28 Agreement shall first be settled through amicable negotiation. If negotiation

1 failed, then any party shall have the right to file a lawsuit with the Beijing
2 Arbitration Commission, and the dispute shall be settled through arbitration
3 in Beijing in accordance with the rules of Beijing Arbitration Commission.

4 Pet. Ex. A at 20.

5 Accepting Respondent Liu’s narrative, the underlying dispute involved, in part,
6 whether Petitioner’s performance (funding the loan) included Ningbo Zhenrong’s loan of
7 120 million Yuan. Doc. No. 12 at 23. So the issue of whether the loan from Ningbo
8 Zhenrong was made pursuant to the Loan Agreement or the Investment Agreement, as
9 Petitioner contends, falls within the scope of the arbitration clause in the Loan Agreement
10 and therefore the submission. Beyond this, Respondent Liu’s argument on this defense is
11 devoid of any reference to the Award and therefore he fails to demonstrate how any part
12 of the Award is beyond the scope of the matter submitted. Accordingly, the Court finds
13 that Article V(1)(c) of the New York Convention does not provide a valid basis for the
14 Court to refuse to confirm the Award.

15 **3. *Contrary to Public Policy – Article V(2)(b)***

16 Finally, Respondent Liu argues that confirmation of the Award would be contrary
17 to the public policy. Doc. No. 12 at 27. The Convention’s public policy defense, Article
18 V(2)(b), states:

19
20 Recognition and enforcement of an arbitral award may . . . be refused if the
21 competent authority in the country where recognition and enforcement is
22 sought finds that . . . (b) The recognition or enforcement of the award would
be contrary to the public policy of that country.

23 New York Convention, art. V, § 2(b).

24 “In recognition of a presumption favoring upholding international arbitration
25 awards under the Convention, this defense is construed narrowly” and “applies only
26 when confirmation or enforcement of a foreign arbitration award ‘would violate the
27 forum state’s most basic notions of morality and justice.” *Cubic Def.*, 665 F.3d at 1096–
28 97 (internal citations and quotation marks omitted). “Although this defense is frequently

1 raised, it ‘has rarely been successful.’” *Id.* at 1097 (quoting Andrew M. Campbell,
2 Annotation, *Refusal to Enforce Foreign Arbitration Awards on Public Policy Grounds*,
3 144 A.L.R. Fed. 481 (1998 & supp.) (collecting cases)).

4 As an initial matter, Respondent Liu argues that the Award violates California’s
5 public policy. Doc. No. 12 at 27–29. But violation of the public policy of California, or
6 any particular state, is technically not an enumerated defense. The New York
7 Convention’s public policy defense states that in order for the Court to refuse to confirm
8 an award, enforcement must be “contrary to the public policy of that country,” here, the
9 United States. New York Convention, art. V, § 2. Thus, to the extent Respondent Liu
10 asks the Court to deny confirmation of the Award because confirmation would violate
11 California’s public policy, this is not an enumerated defense, and the Court therefore
12 rejects this argument.

13 The Court nevertheless considers whether confirmation of the Award would
14 violate public policy of the United States. In support of this defense, Respondent Liu
15 first reiterates that he was denied the right to cross-examine unknown witnesses,
16 including the preparer of the “explanation notes” and witnesses with percipient
17 knowledge of the facts contained therein. Doc. No. 12 at 27. As discussed above, the
18 Court is not persuaded that Respondent Liu was denied due process in this respect.
19 Accordingly, for these same reasons, the Court finds that recognition of the Award does
20 not contravene the United States’ public policy.

21 Second, Respondent Liu argues that “there is evidence Petitioner acted
22 unscrupulously sought to corrupt the process.” Doc. No. 12 at 29. In support, he relies
23 exclusively on the declaration of Ding Zhexuan, who states:

24
25 6. Petitioner approached me several times when the Arbitration was ongoing.
26 In particular, around approximately August 2020 to October 2020, Mr. Yan
27 Lianggang (“Mr. Yang”), a representative of Petitioner, approached me and
28 offered me certain benefits as long as I was willing to help Petitioner during
the Arbitration. I did not accept it.

1 7. The Arbitration panel consisted of three arbitrators. Liu could nominate one
2 arbitrator. I recommend Arbitrator Zhan Hui (“Arbitrator Zhan”) to Liu. Liu
3 nominated Arbitrator Zhan, who became one of the three arbitrators.

4 8. During the Arbitration, Mr. Yang asked me to introduce Arbitrator Zhan to
5 him. I refused.

6 Ding Decl. ¶¶ 6–8.

7 Further, Respondent Liu refers back to the Zimmerman Declaration. As discussed
8 above, Mr. Zimmerman testifies to various BAC procedures, which he opines amount to
9 “systemic and institution conditions and limitations that impact the fairness and
10 impartiality of the BAC dispute resolution process.” Zimmerman Decl. ¶ 6.
11 Mr. Zimmerman also offers information on Arbitrator Zhai, the arbitrator Petitioner
12 selected. Zimmerman Decl. ¶ 8. Mr. Zimmerman explains that it is his understanding
13 that Arbitrator Zhai “once held several prominent positions in the High People’s Court of
14 Beijing” including “director of the Beijing Commission on Discipline and Inspection
15 responsible for supervising Communist Party officials and activities within the court,
16 which is a powerful political role.” *Id.* According to Mr. Zimmerman, “[i]n these roles,
17 Mr. Zhai had the ability to exert much influence over the arbitration process to the benefit
18 of Petitioner and to the detriment of Respondent.” *Id.* Respondent Liu concludes that
19 “[i]n light of Petitioner’s attempt to corrupt the arbitration proceedings and the
20 susceptibility of arbitration in China to corruption, the Arbitration Award should not be
21 confirmed. New York Convention, Art. V(2)(b).” Doc. No. 12 at 29.

22 Respondent Liu identifies no public policy. And his arguments are not specific as
23 to why confirmation of this Award would violate any public policy of the United States.
24 There was, by Respondent Liu’s own evidence, no corruption. And to the extent
25 Respondent Liu takes the position that all arbitrations before local arbitration institutions
26 in China, such as the BAC, are corrupt, Doc. No. 12 at 27–28, the Court will not find on
27 this record that *any* award issued by the BAC violates the United States’ basic notions of
28 morality and justice.

1 Consequently, the Court finds that confirmation of the Award is not contrary to
2 public policy of the United States.

3 **D. Award of Costs**

4 In its prayer for relief, Petitioner asks for costs incurred in bringing this action.
5 Pet. at 17. In his opposition and cross-motion, Respondent Liu argues that the Court
6 should not award Petitioner costs because he raised colorable arguments in good faith.
7 Doc. No. 12 at 30–31.

8 The question of whether a party defending against enforcement under the New
9 York Convention raised colorable arguments in good faith bears on the matter of
10 attorney’s fees, not costs. *Cubic Def.*, 665 F.3d at 1104 (“It is well settled, however, that
11 even absent express statutory authority, federal courts have authority to award attorney’s
12 fees when the losing party has acted in bad faith, vexatiously, wantonly or for oppressive
13 reasons.”); *see also BU8 Sdn. Bhd. v. CreAgri, Inc.*, No. C-14-4503-EMC, 2015 U.S.
14 Dist. LEXIS 27950, at *31 (N.D. Cal. Mar. 6, 2015); *Sheet Metal Workers Int’l Asso.*
15 *Local Union # 420 v. Kinney Air Conditioning Co.*, 756 F.2d 742, 747 (9th Cir. 1985).
16 Here, Petitioner does not ask the Court for an award of attorney’s fees. So Respondent
17 Liu’s arguments are inapposite. Moreover, Federal Rule of Civil Procedure 54 provides,
18 in relevant part:

19
20 (1) *Costs Other Than Attorney’s Fees.* Unless a federal statute, these rules, or
21 a court order provides otherwise, costs—other than attorney’s fees—should
22 be allowed to the prevailing party. But costs against the United States, its
23 officers, and its agencies may be imposed only to the extent allowed by law.
24 The clerk may tax costs on 14 days’ notice. On motion served within the next
25 7 days, the court may review the clerk’s action.

26 Fed. R. Civ. P. 54(d)(1); *see also* CivLR 54.1.

27 Respondent Liu does not point to any statute, rule, or court order providing that
28 Petitioner should not be entitled to recover its costs as the prevailing party in this
proceeding. But more importantly, the taxation of costs is a routine, ministerial function

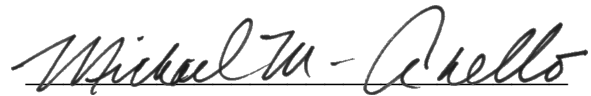
1 of the Clerk's Office, and judgment has not yet been entered and Petitioner has not yet
2 filed an application and bill of costs. Accordingly, the Court declines to rule on any
3 request by Respondent Liu to deny Petitioner costs at this time.

4 **V. CONCLUSION**

5 For the foregoing reasons, the Court **DENIES** Respondent Liu's cross-motion to
6 dismiss or stay and **GRANTS** the Petition. The Court **CONFIRMS** the Award and
7 **DIRECTS** the Clerk of Court to enter judgment accordingly.

8 **IT IS SO ORDERED.**

9 Dated: September 10, 2024

10 

11 HON. MICHAEL M. ANELLO
12 United States District Judge
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