UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No.: 23-cv-23679-JB

SALOMON BTESH,

Petitioner,

v.

ISAAC BTESH,

Respondent.
_____/

ORDER ON RESPONDENT ISAAC BTESH'S MOTION TO DISMISS

THIS CAUSE is before the Court on Respondent, Isaac Btesh's, Motion to Dismiss (the "Motion") the Amended Petition to Confirm and Enforce Arbitral Award[1] filed by Petitioner, Salomon Btesh. ECF No. [58]. Petitioner filed a Response in Opposition to the Motion, ECF No. [63], and Respondent filed a Reply, ECF No. [67]. The Court held oral argument on the Motion (the "Oral Argument"). Additionally, the Court ordered Supplemental Briefing, as such term is defined herein, and heard argument regarding the same. Thereafter, Petitioner filed a Notice of Significant Supplemental Authority. ECF No. [89]. Respondent responded to Petitioner's Notice, ECF No. [90], and Petitioner filed a Reply, ECF No. [91]. Upon due consideration of the parties' written submissions, the pertinent portions of the record, and the relevant authorities, it is hereby **ORDERED AND ADJUDGED** that the Motion is **GRANTED** as set forth herein.

[1] The Petition to Confirm and Enforce Arbitral Award, ECF No. [1], as subsequently amended by ECF No. [51], shall hereinafter be referred to as the "Petition."

I. BACKGROUND

Petitioner commenced this proceeding to enforce an arbitral award pursuant to the Inter-American Convention on International Commercial Arbitration (the "Inter-American Convention"), codified at Chapter Three of the Federal Arbitration Act ("FAA"), 9 U.S.C. § 301 *et seq.*, which incorporates the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention"), codified in Chapter Two of the FAA, 9 U.S.C. §§ 201–208; 301–307; Inter-American Convention on International Commercial Arbitration, United Nations, Jan. 30, 1975, 9 U.S.C. § 301, 1438 U.N.T.S. 245.[2] ECF No. [51]. The relevant facts, as alleged in the Petition, are as follows:

Petitioner, Salomon Btesh, and Respondent, Isaac Btesh, are brothers and Panamanian citizens. ECF No. [51] at ¶¶ 51–52. Their father, Alberto Salomon Btesh Hazzan ("Mr. Btesh Sr."), founded Multibank, Inc. and Multi Financial Group Inc. ("MultiBank"), financial institutions in Panama. *Id.* at ¶ 53. The arbitral award that is the subject of this suit arises from a dispute between the two brothers and their sisters, Raquel Btesh De Michaan and Yvone Btesh De Snaider, regarding their father's interest in MultiBank. *Id.* at ¶¶ 51–53, 59–60.

[2] The parties do not dispute that any confirmation of the arbitral award is governed by the Inter-American Convention. *See* ECF No. [51] at ¶¶ 1, 8; [58] at 5 (stating that the arbitral award falls under the Convention). Indeed, both parties to the Panama Agreement, as defined herein, are citizens of a state that has ratified or acceded to the Inter-American Convention and that is a member state of the Organization of American States, namely, Panama. *See* 9 U.S.C. § 305(1); *Inter-American Convention on International Commercial Arbitration*, UNITED NATIONS, https://treaties.un.org/Pages/showDetails.aspx?objid=08000002800d06cc (last visited March 21, 2025).

Specifically, Petitioner alleges that his father began to suffer from "Dementia and other neurological conditions" around 2012. *Id.* at ¶ 54. Despite their father's reduced mental state, and without Petitioner's knowledge, Respondent reportedly caused their father to transfer his shares in MultiBank to Respondent and his sisters some time in November 2019. *Id.* at ¶ 55. At the same time, Petitioner claims, Respondent "was secretly negotiating the sale of MultiBank to Banco de Bogota." *Id.* at ¶ 56. A few months after Mr. Btesh Sr. passed away, in March 2020, the sale of MultiBank was completed, generating $428,000,000.00 USD in profits, which Respondent allegedly retained for himself. *Id.* at ¶ 57.

Eventually, the parties and their sisters came to an arrangement regarding their "respective interest in the proceeds of the sale of MultiBank . . . and their inheritance claims to their father's estate." *Id.* at ¶ 59. Their agreement, memorialized on January 22, 2020, was signed in Panama by the siblings and two entities organized under the laws of Panama, Fundación Arysa SA and Fundación Joyvon SA (the "Panama Agreement"). *Id.*; ECF No. [51-1] at 19–24. Petitioner claims that because the Btesh siblings are members of the Orthodox Jewish community and "strictly follow *Halacha* law," or Jewish law, they "agreed in paragraph 16 of the [Panama] Agreement to an alternative dispute resolution method pursuant to *Halacha* law." ECF No. [51] at ¶¶ 52, 59. The clause at issue reads as follows:

> In the event of any difference or dispute as to the performance, interpretation, execution and/or scope of this document, THE PARTIES submit exclusively to the alternative dispute resolution methods in

> effect for members of the Israeli Charitable Society Shevet Ahim, waiving any other legal recourse in any jurisdiction.

(the "Arbitration Clause"), ECF No. [51-1] at 24, ¶ 16. Although the parties dispute the meaning of this provision, they appear to agree that it contemplated proceedings before a rabbinical court known as a *Beit Din* or *Beis Din*, which adjudicates matters according to Jewish law. *See* ECF Nos. [51] at ¶ 2; [58] at 4; [63-1] at 2, 4.

According to Petitioner, Respondent breached the Panama Agreement, causing Petitioner to commence an arbitration action under the Arbitration Clause. ECF No. [51] at ¶ 60. It is undisputed that Petitioner commenced three different arbitrations. Petitioner first "requested a Rabbinical arbitration in Panama through Shevet Ahim," which is "a Jewish Congregation in Panama." ECF No. [58] at 2, 4; *see* ECF No. [58-1] at 51, 55. Respondent appeared in response to the summons from Shevet Ahim, but while "that proceeding [was] ongoing, Petitioner started a second arbitration related to the Panama Agreement in Miami through [a rabbinical court] called 'Badatz Miami.'" ECF No. [58] at 4. Because "the matter was already being decided through Shevet Ahim . . . as agreed by the parties," Respondent states that he did not appear before Badatz Miami. *Id.* Petitioner then launched a third arbitration before a rabbinical panel in Miami, Florida (the "Arbitration"), Beis Din of Florida, Inc. ("Beis Din of Florida" or the "Rabbinical Panel"). ECF Nos. [58] at 4; [51] at ¶ 2. Though he was notified of these proceedings, Respondent did not appear, and Beis Din of Florida rendered the "international commercial arbitration award" at issue

here on September 8, 2023 (the "Arbitral Award").[3] ECF No. [51] at ¶¶ 2, 62–65. The Rabbinical Panel found, among other things, that it had jurisdiction over the matter, that the transfer of the MultiBank shares from Mr. Btesh Sr. to Respondent was void, and that Respondent owed Petitioner $134,950,000.00 USD. *Id.* at ¶ 66. Petitioner then brought the instant Petition to confirm the Arbitral Award.

Respondent moved to dismiss the Petition for lack of personal jurisdiction and insufficient service of process. ECF No. [25]. The Court ordered briefing on the issue of service and advised that if service is deemed to have been proper, it would allow jurisdictional discovery for a period of sixty days, after which Respondent could renew his motion to dismiss for lack of personal jurisdiction, as appropriate. ECF No. [26]. Ultimately, Respondent accepted service, and the parties commenced jurisdictional discovery. ECF Nos. [47], [48]. Thereafter, Petitioner amended the Petition, and the instant motion followed. ECF Nos. [51], [58].

II. THE INSTANT MOTION TO DISMISS

The Petition sets forth several bases for personal jurisdiction over Respondent, namely, specific and general jurisdiction under Florida's long-arm statute (Fla. Stat. §§ 48.193(1)(a) and 48.193(2)), general personal jurisdiction under Federal Rule of Civil Procedure 4(k)(2), and personal jurisdiction under Section 9 of the Federal Arbitration Act, 9 U.S.C. § 9. *See* ECF No. [51] at ¶¶ 10–44; *see also* ECF No. [63] at

[3] The arbitration and ensuing Arbitral Award are "international" because the parties hereto are "domiciled or [have] their principal place of business outside the enforcing jurisdiction," namely, in Panama. *See Bergesen v. Joseph Muller Corp.*, 710 F.2d 928, 933 (2d Cir. 1983).

2–3. Additionally, Petitioner argues this Court has quasi in rem jurisdiction over Respondent's property in Florida. ECF Nos. [51] at ¶¶ 45–50; [63] at 3.

Before the Court is Respondent's Motion to Dismiss for lack of personal jurisdiction. ECF No. [58]. In the Motion, Respondent counters each of Petitioner's grounds for personal jurisdiction and submits a declaration in connection with the same ("Respondent's Declaration"). *See* ECF No. [58-1]. Underlying many of the arguments in the Motion is Respondent's position that the Arbitration Clause, as written, only contemplated "mediation and arbitration before a Rabbinical court or a lay member tribunal" at the Shevet Ahim Jewish Congregation in Panama, and that Respondent never agreed to arbitration in any jurisdiction other than Panama. *Id.* at ¶¶ 28–30; ECF No. [58] at 4.

III. LEGAL STANDARD

"A court without personal jurisdiction is powerless to take further action." *Posner v. Essex Ins. Co., Ltd.*, 178 F.3d 1209, 1214 n.6 (11th Cir. 1999). "A plaintiff seeking to establish personal jurisdiction over a non-resident defendant 'bears the initial burden of alleging in the complaint sufficient facts to make out a prima facie case of jurisdiction.'" *Louis Vuitton Malletier, S.A. v. Mosseri*, 736 F.3d 1339, 1350 (11th Cir. 2013) (quoting *United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1274 (11th Cir. 2009)). If the defendant "challenges . . . jurisdiction 'by submitting affidavit evidence in support of its position, the burden traditionally shifts back to the plaintiff to produce evidence supporting jurisdiction.'" *Id.* (quoting *Madara v. Hall*, 916 F.2d 1510, 1514 (11th Cir. 1990)) (additional citations omitted). Affidavits

disputing personal jurisdiction must do more than "den[y] in a conclusory way any . . . actions that would bring [the defendant] within the ambit of the [jurisdictional] . . . statute." *Posner*, 178 F.3d at 1215. Nor is it sufficient for the defendant to summarily declare that the long-arm statute does not apply to him. *Id.* Rather, to "trigger a duty for [p]laintiffs to respond with evidence . . . supporting jurisdiction," the affidavits must "set forth specific factual declarations within the affiant's personal knowledge." *Id.*

Likewise, to rebut an affidavit which disputes the proper exercise of personal jurisdiction, a plaintiff cannot "merely reiterate the factual allegations in the complaint." *Bloom v. A.H. Pond Co., Inc.*, 519 F. Supp. 1162, 1168 (S.D. Fla. 1981) (citing *Electro Eng'g Prods. Co., Inc. v. Lewis*, 352 So. 2d 862, 864 (Fla. 1977); *Compania Anonima Simantob v. Bank of Am. Int'l of Fla.*, 373 So. 2d 68, 71 (Fla. 3d DCA 1979)). Instead, "the plaintiff is required to substantiate the jurisdictional allegations in the complaint *by affidavits* or *other competent proof* . . . ." *Bloom*, 519 F. Supp. at 1168 (emphasis added).

IV. DISCUSSION

A. Personal Jurisdiction Under The State Long-Arm Statute

To determine if personal jurisdiction exists,

> "[a] federal court . . . undertakes a two-step inquiry . . . : the exercise of jurisdiction must (1) be appropriate under the state long-arm statute, and (2) not violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution."

Mazer, 556 F.3d at 1274. Under Florida's long-arm statute, "a defendant can be subject to either specific personal jurisdiction (jurisdiction in suits arising out of or

relating to the defendant's contacts with Florida) or general personal jurisdiction (jurisdiction over any claims against a defendant, notwithstanding any connection *vel non* with Florida . . . .)." *McCullough v. Royal Caribbean Cruises, Ltd.*, 268 F. Supp. 3d 1336, 1343 (S.D. Fla. 2017). In evaluating the "reach of the Florida long-arm statute," federal courts "are required to construe [Florida law] as would the Florida Supreme Court." *Madara*, 916 F.2d at 1514. "Absent some indication that the Florida Supreme Court would hold otherwise, [federal courts] are bound to adhere to decisions of [Florida's] intermediate courts." *Sculptchair, Inc. v. Century Arts, Ltd.*, 94 F.3d 623, 627 (11th Cir. 1996) (citing *Polskie Linie Oceaniczne v. Seasafe Transp. A/S*, 795 F.2d 968, 970 (11th Cir. 1986)). For the reasons noted below, the Court does not have either specific or general jurisdiction over Respondent.

1. Specific Jurisdiction

The Court first considers whether it has specific personal jurisdiction over Respondent under Florida's long-arm statute. Petitioner invokes the following provisions of Florida's long-arm statute:

> A person, whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection thereby submits himself or herself . . . to the jurisdiction of the courts of this state for any cause of action arising from any of the following acts:
>
> 1. Operating, conducting, engaging in, or carrying on a business or business venture in this state or having an office or agency in this state. . . .
>
> 7. Breaching a contract in this state by failing to perform acts required by the contract to be performed in this state.

§ 48.193(1)(a)(1), (7), Fla. Stat. (2024). The term "arising from" contemplates "direct affiliation, nexus, or substantial connection . . . between the basis for the plaintiffs' cause of action and the defendants' . . . activity in the state." *Nw. Aircraft Cap. Corp. v. Stewart*, 842 So. 2d 190, 194 (Fla. 5th DCA 2003). "In order to establish that a defendant is 'carrying on business' for the purposes of [subsection 1 of] the long-arm statute, the activities of the defendant must be considered collectively and show a general course of business activity in the state for pecuniary benefit." *Future Tech. Today, Inc. v. OSF Healthcare Sys.*, 218 F.3d 1247, 1249 (11th Cir. 2000) (per curium). To this end, courts consider "the presence and operation of an office in Florida, . . . the possession and maintenance of a license to do business in Florida, . . . the number of Florida clients served, . . . and the percentage of overall revenue gleaned from Florida clients . . . ." *Horizon Aggressive Growth, L.P. v. Rothstein-Kass P.A.*, 421 F.3d 1162, 1167 (11th Cir. 2005) (citations omitted).

Petitioner alleges that Respondent, personally or through an agent, has (1) operated, conducted, engaged in, or carried on a business venture in Florida or has an office or agency in Florida; and (2) has breached a contract within Florida by failing to perform acts required by contract to be performed in this state, including failure to pay Petitioner in Florida and causing Petitioner to suffer damages via fraudulent acts and omissions directed to Florida. ECF No. [51] at ¶¶ 38, 43. Petitioner does not specify the alleged "business venture" nor identify the contract allegedly breached. The Court has reviewed the Petition and identified fifteen

different allegations that may be relevant to specific jurisdiction under Section 48.193(1)(a):

(1) Respondent holds assets in the United States, including Florida. ECF No. [51] at ¶ 16;

(2) in 2009, Respondent and his wife purchased a home in Miami-Dade County (the "Miami Home") which—although subsequently transferred to a wholly-owned for-profit company organized under the laws of Panama called NMB Aventura Realty, Inc. ("NMB")—remains their Florida residence. *Id.* at ¶¶ 18–20;

(3) Respondent was represented in these real estate transactions by a Florida-licensed attorney who resides and works in this judicial district ("Florida Counsel"). *Id.* at ¶ 18;

(4) NMB maintains bank accounts in this district which are controlled by Respondent and are used to pay property taxes and other personal expenses, including those associated with the Miami Home. *Id.* at ¶ 21;

(5) Florida Counsel pays the real estate taxes associated with the Miami Home and operation of NMB, thereby acting as Respondent's agent in this district. *Id.*;

(6) at all relevant times, Respondent has had at least one agent in the United States, including in Florida, for purposes of transacting business in the United States and Florida. *Id.* at ¶ 36;

(7) Respondent "directly and indirectly" owns bank accounts and securities accounts at a registered broker dealer in this district and throughout the United States. *Id.* at ¶ 22;

(8) Respondent owns and operates "at least one automobile that is registered under his name in the Florida Department of Motor Vehicles." *Id.* at ¶ 23;

(9) Respondent "directly or through business entities . . . is the registered owner of several telephone numbers with area codes that originate" in this district. *Id.*;

(10) Respondent has traveled to or from the United States more than seventy times over the past eighteen years, and over forty times during the past six years alone, with more than half of the trips over the past six years being to Florida. *Id.* at ¶¶ 24–25;

(11) Respondent "directly or through business entities" regularly transfers funds in and out of the United States for personal and business reasons. *Id.* at ¶ 27;

(12) Respondent "directly or through business entities" pays taxes and pays to insure property in the United States, including in Florida. *Id.* at ¶¶ 28–29;

(13) Respondent "directly or through business entities" employs, contracts with, and otherwise procures services from persons and entities in the United States, including in Florida. *Id.* at ¶ 30;

(14) Respondent "directly or through business entities" earns and has earned substantial revenue, assets, or other benefits in the United States, including in Florida. *Id.* at ¶ 31; and

(15) Respondent registered a copyright with the United States copyright office for a book he wrote called "The Pharoah's Dream," which is sold and available for download on Amazon, and that, on information and belief, Respondent has marketed and earned revenue from sale of the book in the United States, including Florida. *Id.* at ¶ 34.

Upon closer inspection, however, these allegations either fall short of satisfying the statute or are amply rebutted by Respondent. Specifically, as to the first, seventh, and fourteenth allegations, Respondent denies having personal securities accounts located in Florida or a mortgage or other lien on real property in Florida. *See* ECF No. [58-1] at 3–4, ¶¶ 12, 15, 18. Indeed, he states that his only Florida assets are one car, which he uses on vacation, and the personal property and furniture located in the Miami Home, a property he does not personally own. *See* ECF Nos. [58] at 21; [58-1] at 3, ¶¶ 12, 16.

Relevant to the sixth, tenth, and fourteenth allegations, Respondent attests that his visits to Florida were "for personal reasons unrelated to business," that he is "not employed in Florida," and that he "do[es] not have or maintain an office or

agency in Florida." ECF No. [58-1] at 2, ¶¶ 6–8. He further attests that in his "individual capacity, [he] do[es] not and ha[s] never operated, conducted, engaged in, or carried on business or a business venture in Florida," nor has he "purposefully availed [him]self of the privileges of regularly doing business in Florida as an individual." *Id.* at 2, ¶ 9. This undermines Petitioner's sixth and fourteenth allegations and contextualizes the remaining alleged contacts as being of a personal nature.

Respondent also specifically addresses Petitioner's fourteenth and fifteenth allegations, that he has earned substantial revenue, assets, or other benefits in Florida, including through sale of his book, "The Pharoah's Dream." Although Respondent admits that he wrote the book, which is available for download on Amazon, this is not enough. *See Nu Image, Inc. v. Does 1-3, 932*, No. 2:11-CIV-545-FTM, 2012 WL 1890829, at *3 (M.D. Fla. May 24, 2012) (finding allegations insufficient to justify the exercise of personal jurisdiction where the defendant reportedly "distributed and offered for distribut[ion]" copyrighted material "all over, but [with] no specific ties to the State of Florida . . . such that defendant would reasonably foresee being hauled into its jurisdiction"). Further, Respondent states that he has "not received any royalties or compensation in connection" with the book. *Id.* at 2–3, ¶¶ 10–11. Indeed, just $146.91 in royalties was generated by this project, the entirety of which was collected by Respondent's publisher, as documented in records attached to Respondent's Declaration. *Id.* at 3, ¶ 11; *see also* ECF No. [58-1] at 8–16.

Next, as it relates to the Miami Home, Respondent rebuts the second, third, fourth, and fifth allegations, as it cannot be reasonably disputed that this property is owned by NMB, *not* Respondent personally. ECF No. [58-1] at 3, ¶¶ 12, 15. NBM itself "is not a Florida company and does not conduct business in Florida"—rather, "[i]ts sole purpose is to own" the Miami Home. *Id.* at 3, ¶ 13. Given that the Miami Home is the only real property identified in the Petition as allegedly belonging to Respondent, the fifth and twelfth allegations regarding Respondent's payment of taxes and insurance on property in the United States, including in Florida, carries less weight. Even more, and relevant to the eighth allegation, Respondent denies having "personally contracted to insure a person, property, or risk located within Florida, with the exception of car insurance for [his] vehicle that [he] use[s] on vacation." *Id.* at 3, ¶ 16.

The same is true of Petitioner's claim that Respondent has an agent in Florida. The individual that Petitioner characterizes as Respondent's Florida agent is Sanford Reinhard, who "manages the affairs relating to" the Miami Home. However, Respondent has sworn, under penalty of perjury, that Mr. Reinhard is not his employee, agent, or legal representative in any capacity. *Id.* at 3, ¶ 14. This detracts from the third, fifth, sixth allegations. As to the fourth and seventh allegations, Respondent states that he has "one bank account at JP Morgan Bank in *New York* with a small balance used to pay credit cards and other expenses[,]" and he does not otherwise own accounts located in Florida. *Id.* at ¶¶ 17, 18 (emphasis added). Finally, although Respondent admits, as claimed in the ninth

allegation, that he uses a telephone number with an area code originating in Florida, he clarifies that he uses it in his personal capacity when traveling in the United States or outside Panama. *Id.* at 4, ¶ 19.

This leaves the eleventh and thirteenth allegations, in which Petitioner contends that Respondent regularly transfers funds in and out of the United States and employs, contracts with, and otherwise procures services from persons in the United States, including in Florida. ECF No. [51] at ¶¶ 27, 30. Petitioner supplies no further specificity as to the alleged funds, contracts, or services at issue. However, given Respondent's sworn testimony that he does not conduct business in Florida, does not have an office or agency in Florida, and only visits Florida for personal reasons, these contacts, even when accepted as true, do not satisfy the stated basis for long-arm jurisdiction, that Respondent "operat[ed], conduct[ed], engag[ed] in, or carri[ed] on a business . . . venture in [Florida] or ha[s] an office or agency in [Florida]." § 48.193(1)(a), Fla. Stat. (2024).

Petitioner did not present competent evidence to dispute Respondent's Declaration or otherwise support the exercise of specific jurisdiction over Respondent. Indeed, it is clear from review of the Petition, as well as Respondent's Declaration, that there are no factual allegations indicating that Respondent maintained or operated an office in Florida, possessed or maintained a license to do business in Florida, served clients in Florida, or gleaned revenue from Florida clients. *See Horizon*, 421 F.3d at 1167. Similarly, there is no allegation that shows

a general course of business activity in Florida conducted for pecuniary benefit. *See Future Tech.*, 218 F.3d at 1249.

Nor do Petitioner's allegations regarding NMB win the day, as he has shown no basis, on this record, to attribute the activities of a corporation to its shareholders or directors for purposes of personal jurisdiction. *See Newberry v. Rife*, 675 So. 2d 684, 685 (Fla. 2d DCA 1996) ("The mere fact that one holds shares in or is a director of a corporation is not the functional equivalent of doing business in the state.") (citing *A.B.L. Realty Corp. v. Cohl*, 384 So. 2d 1351 (Fla. 4th DCA 1980)); *Kitroser v. Hurt*, 85 So. 3d 1084, 1089–90 (Fla. 2012) (discussing the corporate shield doctrine, which holds that a nonresident with no connection to Florida "will not be subject to the personal jurisdiction of Florida courts simply because he or she is a corporate officer or employee"); *Mease v. Warm Mineral Springs, Inc.*, 128 So. 2d 174, 179 (Fla. 2d DCA 1961) ("The stockholders do not have vested in them title in the corporate property."). In sum, this eliminates as grounds for personal jurisdiction Respondent's alleged business activities in Florida.

Petitioner's allegation that Respondent breached a contract in Florida by failing to perform acts required by contract to be performed in this state is equally unconvincing. *See* § 48.193(1)(a)(7), Fla. Stat. (2024). For one, as mentioned, Petitioner does not identify the contract allegedly breached. Instead, Petitioner states that Respondent failed to pay Petitioner in Florida and caused Petitioner to suffer damages via fraudulent acts and omissions directed to Florida. *See* ECF No. [51] at ¶¶ 38, 43. As Respondent correctly notes, "courts have consistently

determined that the place of payment does not confer specific jurisdiction under Florida's long-arm statute." ECF No. [58] at 14 (quoting *Ferenchak v. Zormati*, 572 F. Supp. 3d 1284, 1293 (S.D. Fla. 2021)).

However, even if the Court were to overlook these flaws and then assume the Panama Agreement is the contract allegedly breached in Florida, the sole allegation tying that agreement to Florida was sufficiently rebutted by Respondent's Declaration, and Petitioner made no effort to support it in his reply. Specifically, Respondent's Declaration states that the Panama Agreement contained no requirement that payment be made in Florida, and that Respondent paid Petitioner these funds in New York, pursuant to Petitioner's own instructions. ECF Nos. [58] at 13–14; [58-1] at 5, ¶ 26.

When these deficient allegations are stripped away, all that remains is the contention that Respondent caused Petitioner to suffer damages via fraudulent acts and omissions directed to Florida. But it is unclear how this statement supports the exercise of specific jurisdiction based on a breach of contract in Florida. Moreover, vague and formulaic mentions of fraudulent acts and omissions, devoid of any factual specificity, need not be considered by the Court and do not satisfy the cited provisions of the long-arm statute. *See Twombly*, 550 U.S. at 555 (explaining that pleadings must contain "more than labels and conclusions, and a formulaic recitation of . . . elements will not do"). Therefore, these statements cannot substantiate specific jurisdiction over Respondent in this state.

As a final note, Petitioner has failed to show, or even allege, the necessary connection between the purported contacts on the one hand and this suit on the other. ECF No. [58] at 14. Indeed, there is no indication that this action arises out of Respondent's alleged contacts with Florida, such as the activities of NMB, the purchase and transfer of the Miami Home, Respondent's vehicle, Respondent's book, or Respondent's trips to Florida. As to the contention that Respondent breached a contract in this state, Petitioner's failure to specify what contract was breached prevents the Court from being able to determine whether such a contact is related to this case, and in any event, this contact, alone, could not justify the exercise of specific jurisdiction over Respondent. Thus, Florida's long-arm statute does not support application of specific jurisdiction to Respondent in this case.

Although this ends the specific jurisdiction inquiry,[4] in the interest of completeness, the Court will examine whether the exercise of specific jurisdiction comports with due process. To this end, courts examine whether the "defendant 'purposefully availed' himself of the privilege of conducting activities within the forum state, thus invoking the benefit of the forum state's laws; and . . . whether the exercise of personal jurisdiction comports with 'traditional notions of fair play and substantial justice.'" *Louis Vuitton Malletier*, 736 F.3d at 1355 (citations omitted).

> "[F]or purposeful availment, we assess the nonresident defendant's contacts with the forum state and ask whether those contacts (1) are

[4] *See Smith v. Trans-Siberian Orchestra*, 689 F. Supp. 2d 1310, 1312 (M.D. Fla. 2010) (explaining that the due process analysis is not required if the long-arm statute has not been satisfied).

> related to the plaintiff's cause of action; (2) involve some act by which the defendant purposefully availed himself of the privileges of doing business within the forum; and (3) are such that the defendant should reasonably anticipate being haled into court in the forum."

Id. at 1357 (citing *U.S. S.E.C. v. Carrillo*, 115 F.3d 1540, 1542 (11th Cir. 1997)). Here, as previously noted, Petitioner has not established that Respondent's alleged contacts with the forum are related to the instant action. Moreover, Petitioner has failed to sufficiently allege, in light of Respondent's Declaration, that Respondent has purposefully availed himself of the privileges of doing business within the forum such that he should have reasonably anticipated being haled into court in this state. On this record, the Court is unable to conclude that Respondent was personally involved in business activities in Florida at all, much less to the degree that would have placed him on notice of the possibility of being sued within this state. The Court is simply not persuaded that owning a vacation home in Florida through a Panamanian company or having a car and telephone number in this district for use while on vacation are sufficient contacts such that Respondent should have reasonably anticipated being haled into court in this state.

As to traditional notions of fair play and substantial justice, courts can consider several factors, including: "(1) 'the burden on the defendant'; (2) 'the forum's interest in adjudicating the dispute'; (3) 'the plaintiff's interest in obtaining convenient and effective relief'; and (4) 'the judicial system's interest in resolving the dispute.'" *Louis Vuitton Malletier*, 736 F.3d at 1358 (quoting *Licciardello v. Lovelady*, 544 F.3d 1280, 1288 (11th Cir. 2008)); *Asahi Metal Indus. Co. v. Superior Ct. of Cal.*, 480 U.S. 102, 113 (1987)).

Here, Petitioner provides no analysis of these factors, and indeed, his papers are silent as to whether they are satisfied. Instead, he argues that "arbitral enforcement proceedings under the Convention do not implicate the due process concerns or restrictions applicable to plenary proceedings . . . ." ECF No. [63] at 15. As explained *infra*, the Court does not agree. Further, the record is clear that neither party is a resident of this forum, nor does this suit entail enforcement of any laws specific to this forum. Given these considerations, "[i]t is not clear why the limited resources of the federal courts should be spent resolving disputes between two foreign [individuals] with little to no connection to our country. . . . [A] finding of jurisdiction in this case would turn the notion of 'fair play and substantial justice' on its head." *Base Metal Trading, Ltd. v. OJSC "Novokuznetsky Aluminum Factory"*, 283 F.3d 208, 216 (4th Cir. 2002). Under these circumstances, the Court cannot conclude that the exercise of personal jurisdiction over Respondent comports with traditional notions of fair play and substantial justice. *See H20Liquidair of Fla., LLC v. Hendrx Corp.*, No. 06-22591-CIV-SEITZ, 2008 WL 11409457, at *7 (S.D. Fla. Mar. 11, 2008) (finding that "[l]itigating a case against a foreign company in Florida, when the foreign company's only cognizable contact to the forum" is minimal and arises "from a contract made outside Florida, is, at best, out of accord with traditional notions of fair play and substantial justice"). Consequently, the due process prong of the personal jurisdiction analysis is unsatisfied, such that this Court cannot exercise specific jurisdiction over Respondent in this case.

2. General Jurisdiction

Petitioner asserts that Respondent is subject to this Court's general jurisdiction under Florida's long-arm statute. As to the legal standard at issue, the parties disagree. Respondent argues that the standard for general jurisdiction is higher than the one for specific jurisdiction, requiring extensive and pervasive business contacts with the forum. Specifically, Respondent cites the standard articulated by Supreme Court's decisions in *Daimler* and *Goodyear*, which called for a defendant to be "'essentially at home in the forum State'" seeking to exercise general jurisdiction. *See Daimler AG v. Bauman*, 571 U.S. 117, 122 (2014) (quoting *Goodyear v. Dunlop Tires Operations, S.A. v. Brown*, 546 U.S. 915, 919 (2011)); ECF No. [58] at 9–10. Petitioner does not quibble with this precedent and concedes that the exercise of general jurisdiction over a foreign defendant is a "'rare occurrence' post-*Daimler*[,]" such that, "absent exceptional circumstances, [general jurisdiction] lies only where the defendant is domiciled." ECF No. [63] at 14.

Instead, Petitioner asserts that "*Daimler* does not apply to this summary proceeding under the Convention."[5] *Id.* at 15. Petitioner argues that applying the *Daimler* standard to an arbitral enforcement proceeding

> would conflict with the Supreme Court's recognition since *Shaffer v. Heitner*, 433 U.S. 187 (1977) that the due process standards applicable to plenary proceedings are minimal compared to . . . those applicable in *summary* proceedings . . . , which involve almost no judicial review and are directed to the enforcement of an already-adjudicated debt.

[5] Petitioner advocates for this standard with respect to the federal long-arm statute and the Florida counterpart. The Court rejects Petitioner's reasoning as to both.

Id. Petitioner offers no binding authority in support of this claim. Instead, Petitioner cites *AlbaniaBEG Ambient Sh.p.k. v. Enel S.p.A.*, 73 N.Y.S. 3d 1 (N.Y. App. Div. 2018). The Court finds *AlbaniaBEG* unpersuasive. In that case, a New York state appellate court found that *Daimler* was not applicable under reasoning which was confined to proceedings "under [New York state law], to recognize and enforce previously rendered foreign judgments." *Id.* at 11. Not only is the case not binding on this Court, but its reasoning is unpersuasive in that it relies on New York state law.

Petitioner also relies on *Sequip Participações S.A. v. Marinho*, No. 15-cv-23727-MC-LENARD/GOODMAN, 2018 WL 10593628 (S.D. Fla. Oct. 16, 2018), claiming that the standard for general jurisdiction over a foreign defendant in arbitration confirmation cases is whether "'the activities of the nonresident are of sufficient quality that [he] should in fairness expect to defend' himself in Florida." ECF No. [63] (alteration in original) (quoting *Sequip*, 2018 WL 10593628, at *7). But as Respondent notes, *Sequip* cites the *Daimler* standard to find general jurisdiction over the respondent. *See Sequip*, 2018 WL 10593628, at *6–7 (citing *Daimler*, 571 U.S. at 139); *see also* ECF No. [67] at 9.

The same is true of the only other cases Petitioner cites on this point, *Peavy* and *Kadylak*, neither of which dispenses with *Daimler* in the general jurisdiction context. *See Peavy v. Axelrod*, No. 17-cv-0142-KD-MU, 2017 WL 3444747, at *5 (S.D. Ala. June 27, 2017) (citing *Daimler*, 571 U.S. at 139); *Kadylak v. Royal Caribbean Cruise, Ltd.*, No. 14-24149-Civ-Scola, 2016 U.S. Dist. LEXIS 186965, at

*4–6 (S.D. Fla. Feb. 24, 2016) (denying a motion for reconsideration of an order denying a motion to dismiss for lack of personal jurisdiction, finding that the court was not required to include the "essentially at home" language to correctly apply the controlling standard).

On the contrary, "courts routinely apply *Daimler* to summary confirmation proceedings under the . . . Convention." ECF No. [67] at 10; *see, e.g.*, *Sequip*, 2018 WL 10593628, at *6 (finding the *Daimler* standard satisfied in a proceeding under the Convention to confirm an arbitral award); *Sonera Holding B.V. v. Cukurova Holding A.S.*, 750 F.3d 221, 225 (2d Cir. 2014) (citing *Daimler* in an appeal of a district court's denial of a motion to dismiss an application for enforcement of an arbitral award under the Convention); *see also Sharp Corp. v. Hisense USA Corp.*, 292 F. Supp. 3d 157, 169–70 (D.D.C. 2017) (citing *Daimler* in a proceeding to enforce an order of a foreign arbitral panel); *First Inv. Corp. of Marshall Islands v. Fujian Mawei Shipbuilding, Ltd.*, 703 F.3d 742, 751–52 (5th Cir. 2012) (holding that "although confirming an award may be a 'summary proceeding,' it is inaccurate to say that a party's rights are not affected" such that "the constitutional protections that enable a party to defend itself against being called into court in a jurisdiction with which the party has no ties" are alleviated).

Simply put, Petitioner has presented no basis for the Court to discard the Supreme Court's general jurisdiction jurisprudence or to find that a different, less stringent standard is controlling. *See Herederos De Roberto Gomez Cabrera, LLC v. Teck Res. Ltd.*, 43 F.4th 1303, 1308 (11th Cir. 2022) (holding that adopting a

different personal jurisdiction standard for certain kinds of cases—"rather than the traditional minimum contacts test—would create unnecessary tension with personal-jurisdiction precedents more generally"). Accordingly, the Court proceeds with the general jurisdiction analysis, as set forth in *International Shoe*, *Daimler*, and their progeny.

Section 48.193(2) of the Florida Statutes provides that "[a] defendant who is engaged in substantial and not isolated activity within . . . [Florida], whether such activity is wholly interstate, intrastate, or otherwise, is subject to the jurisdiction of the courts of this state, whether or not the claim arises from that activity." *Id.* "[G]iven that the reach of the general jurisdiction provisions of the Florida long-arm statute is coextensive with the limits of the Due Process Clause, the Court need only determine whether its exercise of jurisdiction over th[is] [Respondent] 'would exceed constitutional bounds.'" *McCullough*, 268 F. Supp. 3d at 1343 (quoting *Carmouche v. Tamborlee Mgmt., Inc.*, 789 F.3d 1201, 1204 (11th Cir. 2015)). In this regard, the Court must ascertain if Respondent has "certain minimum contacts with [Florida] such that the maintenance of [this] suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)).

The Court has already determined that Respondent's alleged contacts with Florida are insufficient to warrant the exercise of specific jurisdiction. The remaining contacts delineated in the Petition, ones that were not directed at the

specific jurisdiction portions of the statute, are equally insufficient for purposes of this Court's general jurisdiction.

Specifically, as to the general jurisdiction claims, Petitioner adds that Respondent's contacts with Florida are "substantial, continuous, and pervasive" and "arise directly and via entities he controls and go back more than 40 years." ECF No. [51] at ¶ 17. Further, Petitioner asserts that Respondent engages in substantial and not isolated activity within this state in that Respondent is an active member of Safra Synagogue in Miami-Dade County, holds a permanent seat at Shul of Bal Harbor in Miami Dade County, and is an active philanthropist in a charitable organization located in Miami-Dade County. *Id.* at ¶¶ 16, 17, 26, 39.

The claim that the Respondent is an active philanthropist in a charitable organization located in Miami-Dade County was not supported by any detail or support, and as such, is insufficient on its face. The only contacts alleged with specificity are the ones pertaining to Safra Synagogue and Shul of Bal Harbour. However, both were adequately addressed in Respondent's Declaration. Indeed, Respondent explains that he does "not regularly attend the Safra Synagogue because [he] do[es] not reside in Florida," and "[w]hile [he] hold[s] a seat at the Shul of Bal Harbour because of a one-time donation more than twenty-five years ago, [he] do[es] not normally attend that synagogue" and does not recall visiting that shul in more than fifteen years. ECF No. [58-1] at 4, ¶ 20.

In his Reply, Petitioner does not provide any competent evidence to bolster the asserted contacts. Further, even if they were not negated by Respondent, they

would not push his Florida contacts over the high threshold to establish general jurisdiction in this state. *See Am. Overseas Marine Corp. v. Patterson*, 632 So. 2d 1124, 1127 (Fla. 1st DCA 1994) (quoting *Reliance Steel Prods. Co. v. Watson*, 675 F.2d 587, 589 (3d Cir. 1982)) ("The requirement of continuous and systematic general business contacts establishes 'a much higher threshold' than the 'minimum contacts' required to assert specific jurisdiction, 'for the facts required to assert this general jurisdiction must be 'extensive and pervasive.'"); *Magwitch, LLC v. Pusser's W. Indies Ltd.*, 200 So. 3d 216, 218 (Fla. 2d DCA 2016) (quoting *Canale v. Rubin*, 20 So. 3d 463, 466 (Fla. 2d DCA 2009)) ("General jurisdiction requires far more wide-ranging contacts with the forum state than specific jurisdiction, and it is thus more difficult to establish.").

Indeed, in the case of individuals, such as Respondent, "'the paradigm forum for the exercise of general jurisdiction is the individual's domicile . . . .'" *Daimler*, 571 U.S. at 137 (2014) (quoting *Goodyear*, 564 U.S. at 924). Here, it is undisputed that Respondent is a citizen of, and domiciled in, Panama, *not* Florida. ECF Nos. [51] at ¶ 6; [58-1] at 2, ¶¶ 3–5.

Short of that, "the Supreme Court has provided two other instances in which the exercise of general jurisdiction over an individual is proper: where the individual consents to the forum's jurisdiction, and where the individual is present within the forum when served with process." *McCullough*, 268 F. Supp. 3d at 1350 (citing *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873 (2011) (plurality opinion)). Only these three circumstances have been held to justify the exercise of general

jurisdiction over an individual. *Id.* (collecting cases). Here, Respondent was served in Panama, not within this judicial district. *See* ECF No. [44]. This leaves consent to the Court's jurisdiction as the only basis for the constitutionally proper exercise of general jurisdiction over Respondent.

B. Consent to Jurisdiction

Looking at the plain language of the Arbitration Clause, the provision makes no mention of Florida, nor do the parties otherwise expressly consent to Florida's jurisdiction in the Panama Agreement. *See* ECF No. [58-1] at 21–24; *Rose v. M/V "GULF STREAM FALCON"*, 186 F.3d 1345, 1350 (11th Cir. 1999) ("It is well settled that the actual language used in the contract is the best evidence of the intent of the parties and, thus, the plain meaning of that language controls."). Nevertheless, Petitioner argues that Respondent *did* consent to Florida's jurisdiction. As pled in the Petition, this argument relies on a series of stacked inferences; specifically, that (1) the Arbitration Clause constitutes an agreement by the parties to arbitrate disputes under Jewish law; (2) Beis Din of Florida applied Jewish law in issuing its award, such that the parties' dispute was properly submitted to that forum; (3) Beis Din of Florida "concluded that it had jurisdiction in Florida to enter the Arbitral Award"; and (4) and Respondent waived any right to challenge that holding by knowingly and intentionally failing to appear in the Arbitration. ECF No. [51] at ¶¶ 2–3, 14. These propositions are crucial, as Petitioner claims that the rules of procedure governing the Arbitration (the "Beth Din Rules") deem the parties to

have consented that judgment upon the Arbitral Award may be entered in any federal or state court having jurisdiction thereof. *Id.* at ¶ 15.

Respondent contends that Petitioner's reading of the Arbitration Clause is inaccurate and attests that Shevet Ahim is a Jewish congregation in Panama whose only alternative dispute resolution methods are mediation and arbitration at the congregation before a rabbinical court or lay member tribunal. ECF No. [58-1] at 5, ¶¶ 27–28. Indeed, Respondent specifically denies having submitted to any jurisdiction other than Panama and claims he "deliberately structured [his] conduct . . . to litigate any issue with Petitioner related with the Panama Agreement in Panama, not Florida." *Id.* at 5–6 ¶¶ 29–30.

In response, Petitioner insists that Respondent consented to Florida's jurisdiction because the parties "contract[ed] to apply dispute resolution procedures that codify such consent." ECF No. [63] at 9. Specifically, Petitioner is referring to (1) Jewish law, which the parties allegedly selected to govern their disputes, and (2) the Beth Din Rules, to which Respondent supposedly is bound to by waiver. *Id.* at 10. According to Petitioner, both sources "establish Respondent's consent (whether affirmatively or by waiver) to this Court's personal jurisdiction over him." *Id.* The Court does not agree.

Starting with Jewish law, Petitioner argues that "the Rabbinical Panel considered the Panama Agreement and held that the parties 'clear[ly]' and 'unequivocal[ly]' agreed that Halachic Law would govern the substantive and procedural aspects of their disputes." *Id.* Petitioner further argues that this

holding is not subject to judicial review. *Id.* at 11. Building on this premise, Petitioner submits that Jewish law deems the parties to have consented to jurisdiction "of the local court where the arbitrator rendered the final award." *Id.* In support of this reasoning, Petitioner attaches the Declaration of Rabbi Meir Simcha Lerner (the "Lerner Declaration"), ECF No. [63-1], which discusses Jewish law as it relates to the instant dispute.

Assuming that a consent-to-confirmation provision establishes consent to personal jurisdiction, Petitioner's theory that Jewish law is the source of such a provision finds little support in the Lerner Declaration or other materials in the record. Indeed, even if the Court accepts that the parties agreed to be governed by Jewish law, despite the absence of those words in the Arbitration Clause, neither Petitioner's response nor the Lerner Declaration cite to any tenet of Jewish law that show Respondent's consent to this Court's jurisdiction. Instead, the Lerner Declaration states that the Beth Din Rules codify Jewish law, and that Section 33(c) of the Beth Din Rules contains a consent-to-confirmation provision, which the Court will separately examine below. ECF No. [63-1] at 3–4, ¶¶ 8, 13. There is a missing link in this line of reasoning, as it plainly fails to demonstrate that the consent-to-confirmation clause in the Beth Din Rules can be found in Jewish law.[7] In other words, there is no indication that Jewish law provides an independent basis for a

[7] Codification does not necessarily mean that every rule is derived directly from *Halacha*. Presumably, the Beth Din Rules could include provisions derived from other sources.

finding of consent-to-confirmation in this district. On this record, the Court has little basis to reach any conclusions regarding the implications of Jewish law on the question of whether Respondent consented to personal jurisdiction in this case.

The Beth Din Rules, of course, are a different matter. Petitioner submitted to the Court a document titled, "Rules and Procedures, Beth Din of America." *See* ECF No. [63-1] at 6–29. As claimed by Petitioner, this document contains a provision that states that "[p]arties to these Rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any Federal or state court having jurisdiction thereof." *Id.* at 25, ¶ 33(c). Thus, whether the parties consented to be bound by the Beth Din Rules is relevant.

First, the Beth Din Rules state that they apply to "every matter presented to the Beth Din for resolution." ECF No. [63-1] at 7, ¶ 1(d). "Beth Din" is defined as "the Beth Din of America," which is not the tribunal before which the Arbitration took place. *Id.* at 7, ¶ 1(a). The Rules further state that "[t]he parties shall be deemed to have made these Rules a part of their agreement to seek arbitration . . . whenever they submit their dispute for resolution by the Beth Din." *Id.* at 8, ¶ 2(a). Here, based on the record, Petitioner unilaterally submitted the parties' dispute for resolution, a submission directed to Beis Din of Florida, not Beis Din of America. *See* ECF No. [51-1] at 2–3 (explaining that Petitioner commenced the arbitration at Beis Din of Florida against his siblings, who did not appear).

Petitioner nevertheless submits that the Beth Din Rules are "applicable by default to *Beis Din* proceedings throughout the United States, including the Beis

Din of Florida." ECF No. [63-1] at 2, ¶ 7. Citing to the Lerner Declaration and the Declaration of Vladislav Tseytkin, Petitioner argues that "Respondent 'waived any right to challenge, and by default accepted . . . the application of . . . the Beth Din Rules' to the dispute by knowingly and intentionally refusing to participate in the Arbitration." ECF No. [63] at 11 (alteration in original) (quoting ECF No. [63-1] at 3–4, ¶¶ 10, 12) (citing ECF No. [29-1] at ¶ 5). Petitioner argues that because the Beth Din Rules deem the parties to have consented to entry of judgment upon the arbitration award in a federal or state court having jurisdiction thereof, and jurisdiction "extends to the courts presiding in the place where the awarding Beis Din is located, in this case, Miami," Respondent consented to this Court's exercise of personal jurisdiction. *See* ECF Nos. [63] at 11–12; [63-1] at 4, ¶¶ 13–16.

Respondent, supported by his own expert, specifically denies having agreed to be governed by the Beth Din Rules, which are not mentioned in the Arbitration Clause. *See* ECF Nos. [67] at 4–5; [67-1] at ¶ 11. Additionally, he rejects the notion that Beis Din of Florida could have proceeded and issued a ruling in his absence, such that the Beth Din Rules could not have applied to him by waiver. *See* ECF Nos. [67] at 4–5; [67-1] at ¶¶ 6–15.

Petitioner has not carried his burden of showing that Respondent consented to this Court's personal jurisdiction by virtue of the Beth Din Rules. The cases Petitioner cites for the proposition that consent to personal jurisdiction is shown when parties agree to apply dispute resolution procedures that codify such consent are distinguishable from the facts here. For one, some of the cases do not grapple

with consent to jurisdiction at all. *See, e.g.*, *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 529 (2019) (evaluating whether an arbitrator or a court should decide threshold issues of arbitrability when the parties expressly incorporated rules that delegated this authority to the arbitrator, but the district court found the claim of arbitrability to be "wholly groundless").

Further, in each, the agreement in question clearly and expressly incorporated rules that the courts then applied to the parties. For example, the agreement examined in *Weststar Associates, Inc. v. Tin Metals Co.* provided that disputes would be decided by arbitration under the Construction Industry Arbitration Rules of the American Arbitration Association ("AAA Rules"). 752 F.2d 5, 6 (1st Cir. 1985). The AAA Rules provided that "[p]arties to these Rules shall be deemed to have consented that judgment upon the award rendered by the arbitrator(s) may be entered in any Federal or State Court having jurisdiction thereof." *Id.* As relevant here, the appellant in *Weststar Associates* secured an arbitral award in its favor after a dispute arose between the parties. *Id.* Then, the appellant filed an action to confirm that award. *Id.* The district court "dismissed the complaint on the ground that it did not have personal jurisdiction over" the appellee. *Id.*

On appeal, the First Circuit held that personal jurisdiction existed over the appellee, who had "consented to the jurisdiction of the district court by agreeing to settle any disputes arising out of the contract according to the AAA rules," rules that contained a consent-to-confirmation clause. *Id.* at 7–8. In other words, the

court's finding of consent was premised on a provision in a set of rules that the parties' contract clearly and explicitly incorporated. *See also Boustead Sec. LLC v. UNation, Inc.*, No: 8:22-cv-1329-CEH-CPT, 2023 WL 2374074, at *4 (M.D. Fla. Mar. 6, 2023) (analyzing jurisdiction by reference to a consent-to-confirmation provision in a set of rules the parties had unambiguously incorporated into their agreement).

Similarly, in *JPay, Inc. v. Kobel*, 904 F.3d 923 (11th Cir. 2018), and *WasteCare Corp. v. Harmony Enterprises, Inc.*, 822 F. App'x 892 (11th Cir. 2020), the Eleventh Circuit referred to rules the parties had explicitly incorporated into their respective agreements to determine who had the power to settle questions of arbitrability (*i.e.*, the court or an arbitral panel). *WasteCare*, 822 F. App'x at 895–96 (finding the parties had agreed to submit the issue of arbitrability to the arbitrators based on a provision within the AAA rules, which the parties specifically integrated into their contract); *JPay*, 904 F.3d at 937–39 (finding the parties had delegated questions of arbitrability to the arbitrator by manifestly agreeing to apply rules that granted arbitrators the power to rule on their own jurisdiction).

That is simply not the case here, where the plain language of the Arbitration Clause makes no reference to rules other than "the alternative dispute resolution methods in effect for members of the Israeli Charitable Society Shevet Ahim," and there is no indication that those methods contemplate application of Section 33(c), or the Beth Din Rules, for that matter. ECF No. [51-1] at 24, ¶ 16.

Petitioner cites to no authority, and the Court is not aware of any, that suggests that consent to personal jurisdiction can be inferred from a set of rules

never mentioned in the parties' agreement. On the contrary, caselaw in this Circuit is clear that "[i]f [parties] want certain rules to apply to the handling of [their] arbitration, the contract must say so clearly and unmistakably." *Gulfstream Aero. Corp. v. Oceltip Aviation 1 Pty Ltd.*, 31 F.4th 1323, 1325 (11th Cir. 2022); *see also Acheron Portfolio Tr. v. Mukamal*, No. 21-12111, 2022 WL 16707942, at *4 (11th Cir. Nov. 4, 2022). Here, the Panama Agreement as a whole, and the Arbitration Clause in particular, does not refer to the Beth Din Rules at all, much less "clearly and unmistakably." *Gulfstream Aero.*, 31 F.4th at 1325. In short, Petitioner's argument hinges upon rules the parties did not reference in their agreement but which he claims are nevertheless controlling because of Respondent's failure to appear at the Arbitration. *See* ECF No. [63] at 9–10. For purposes of showing consent to personal jurisdiction, this theory is a bridge too far.

To accept the Petitioner's reading is to find that the Respondent consented to jurisdiction anywhere, a finding that is too broad and unsupported for the Court to entertain. Indeed, Petitioner essentially takes the position that by not appearing in the Arbitration, Respondent consented to jurisdiction in this Court. But of course, if Respondent *had* appeared at the Arbitration, there could be little argument that he would have consented to the jurisdiction of that Rabbinical Panel, one that he claims he never consented to under the Panama Agreement. Likewise, by appearing at the Arbitration, Respondent would have weakened his argument against this Court's personal jurisdiction. In other words, Petitioner reads the Panama Agreement as allowing him to file for arbitration *anywhere* in the world,

making Respondent subject to jurisdiction anywhere, regardless of whether he appeared. This reading is too broad on this record.

Mindful that the question at hand is whether Respondent consented to this Court's jurisdiction over him such that due process concerns are satisfied, and given the high standard for the exercise of general jurisdiction, the Court finds Petitioner has failed to carry his burden. On these facts, the Court cannot exercise general jurisdiction over Respondent.

C. Federal Rule of Civil Procedure 4(k)(2)

Petitioner alleges that Respondent is subject to personal jurisdiction in the State of Florida under Federal Rule of Civil Procedure 4(k)(2). This Rule provides that:

> [f]or a claim that arises under federal law, serving a summons or filing a waiver of service establishes personal jurisdiction over a defendant if:
>
> (A) the defendant is not subject to jurisdiction in any state's courts of general jurisdiction; and
>
> (B) exercising jurisdiction is consistent with the United States Constitution and laws.

Fed. R. Civ. P. 4(k)(2). "The exercise of personal jurisdiction comports with due process if the non-resident defendant has established 'certain minimum contacts with the forum such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice.'" *Oldfield v. Pueblo De Bahia Lora, S.A.*, 558 F.3d 1210, 1220 (11th Cir. 2009) (quoting *Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414 (1984)). For purposes of Rule 4(k)(2), the proper forum for analyzing a party's contacts with the forum is the United States as a whole. *Id.*

"[I]t is a rare occurrence when a court invokes jurisdiction" on this basis. *Thompson v. Carnival Corp.*, 174 F. Supp. 3d 1327, 1337 (S.D. Fla. 2016). Rule 4(k)(2) was "conceived" to address "a gap in personal jurisdiction" that became evident when "foreign defendants . . . lacked single-state contacts sufficient to bring them within the reach of a given state's long-arm statute . . . but who had enough contacts with the United States as a whole to make personal jurisdiction over them in a United States court constitutional." *U.S. v. Swiss Am. Bank*, 191 F.3d 30, 39–40 (1st Cir. 1999). Given this background, courts have notably exercised Rule 4(k)(2) jurisdiction in terrorism cases, where foreign defendants may have lacked sufficient contacts with a specific state but had substantial connections to the United States at large. *See, e.g.*, *Mwani v. Osama Bin Laden*, 417 F.3d 1, 13–14 (D.C. Cir. 2005) (applying Rule (4)(k)(2) to exercise jurisdiction over Osama Bin Laden, who had orchestrated multiple attacks on American soil); *Morris v. Khadr*, 415 F. Supp. 2d 1323, 1336 (D. Utah 2006) (noting, in applying Rule 4(k)(2), that "terrorism inherently is the sort of 'conduct and connection with' the United States that should cause a foreign terrorist to 'reasonably anticipate being haled into court' here").

Here, as his alternative argument, Petitioner claims that this action arises under federal law and that Respondent is not subject to jurisdiction in any state's courts of general jurisdiction. ECF No. [51] at ¶ 40. Further, he alleges that exercising jurisdiction over Respondent is consistent with the United States Constitution and laws. *Id.*

The instant suit arises under the Inter-American Convention, codified at Chapter Three of the FAA, a federal statute. *Id.* at ¶ 1. Thus, Petitioner's suit arises under federal law, satisfying the first condition of Rule 4(k)(2). Likewise, by alleging that "Respondent is not subject to jurisdiction in any state's courts of general jurisdiction," Petitioner has met the second Rule 4(k)(2) condition. *Id.* at ¶ 40. For purposes of this step, it is sufficient that Respondent has not identified a state where a suit is possible. *See Oldfield*, 558 F.3d at 1218 n.22. This leaves the final prong of Rule 4(k)(2).

In addition to Respondent's alleged Florida-based contacts, which the Court has already evaluated, Petitioner claims Respondent has the following contacts with the United States:

> (1) Respondent attended and obtained bachelor's degrees from Tulane University (approximately 1977-1981) and the University of Oklahoma (approximately 1984-1985), and obtained a master's degree from the University of Louisville in or about 2006.
>
> (2) Respondent has supported and donated substantial sums to the Chabad at Tulane, was an honoree at the 2000 Chabad's 25th Anniversary dinner, and in approximately 2013, had the newly built Chabad in New Orleans named as the "Btesh Family Chabad House."

ECF No. [51] at ¶¶ 32–33. Petitioner's allegations regarding "The Pharoah's Dream" are also relevant here because that book was supposedly published in the United States. *See id.* at ¶ 34. Having already considered the import of Respondent's contacts with Florida, the Court must consider whether Respondent's alleged contacts with the United States are such that the exercise of personal jurisdiction over Respondent comports with the Constitution. They are not.

These ostensible contacts with the United States are addressed in Respondent's Declaration. The Court has already discussed "The Pharoah's Dream" herein, including Respondent's testimony that he has "not received any royalties or compensation in connection" with the book. ECF No. [58-1] at 2–3, ¶¶ 10–11. Further, Respondent admits he "made periodic donations to Tulane University Chabad in New Orleans, Louisiana" and only lived there "during the years [he] attended Tulane University." *Id.* 4, at ¶ 21.

As Petitioner acknowledges, "general personal jurisdiction is a 'rare occurrence' post-*Daimler* and, absent exceptional circumstances, lies only where the defendant is domiciled," which is Panama. ECF No. [63] at 14 (citations omitted); *see also Thompson*, 174 F. Supp. 3d at 1338 n. 9 ("In the wake of the Supreme Court's decision in *Daimler*, it appears unlikely that general jurisdiction over a foreign defendant could ever be available under 4(k)(2)."). Even when considered in tandem with Respondent's purported contacts in Florida, Respondent's alleged contacts with this country are, at best, too attenuated, inconsistent, and frankly insignificant for purposes of the federal long-arm statute. The Court is unwilling to find that attending university in the United States, several decades ago, and publishing a book in the United States, which generated no royalties for the Respondent, create the exceptional circumstances that warrant exercise of general jurisdiction under Rule 4(k)(2). *See Holland Am. Line Inc. v. Wartsila N. Am., Inc.*, 485 F.3d 450, 462 (9th Cir. 2007) ("Indeed, in the fourteen years since Rule 4(k)(2) was enacted, none of our cases has countenanced jurisdiction under the rule.").

In short, Petitioner has failed to allege the continuous and systematic contacts required to show that maintenance of the suit in this forum would does not offend traditional notions of fair play and substantial justice. On this record, the Court declines to exercise general jurisdiction over Respondent under Rule 4(k)(2).

D. Section 9 of the FAA

Petitioner contends that Respondent is subject to this Court's personal jurisdiction based on Section 9 of the FAA. ECF No. [51] at ¶ 41. That provision states that:

> If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, . . . then . . . any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. . . . If the adverse party shall be 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.

9 U.S.C. § 9. Petitioner argues the "straight-forward application" of this provision creates an avenue for this Court's exercise of personal jurisdiction over Respondent because (1) "the parties' agreement does not specify the court that may enter judgment" on the Arbitral Award; (2) Beis Din of Florida entered the Arbitral Award in this district; and (3) Petitioner properly served Respondent with notice of this action. ECF No. [63] at 2.

Petitioner's argument, however, ignores Section 9's first requirement—that the parties consented to judicial confirmation of their arbitral award. As explained above, Petitioner has failed to show Respondent so consented. Thus, Petitioner cannot meet the necessary precondition for personal jurisdiction under Section 9. To avoid this outcome, Petitioner argues that Section 9's first requirement does not apply here because the FAA only applies to Convention cases to the extent the FAA is not inconsistent with the Convention.[11] Because Section 9 contains a consent-to-confirmation provision, while the comparable provision in the Convention, Section 207, does not, Petitioner argues Section 9's consent-to-confirmation requirement is inapplicable. *See id.* at 7–8. According to Petitioner, this leaves the remainder of Section 9 for use by parties in Convention cases, including the portion pertaining to personal jurisdiction. *Id.*

As an initial matter, whether Section 9 constitutes an independent statutory grant of personal jurisdiction remains an unsettled issue based on the current state of the caselaw. *See, e.g.*, *PTA-FLA, Inc. v. ZTE USA, Inc.*, No. 3:11-cv-510-J-32JRK, 2015 U.S. Dist. LEXIS 187448, at *13–14 (M.D. Fla. Aug. 5, 2015) ("Unlike subject-matter jurisdiction, [Section 9 of] the FAA does provide a means for obtaining personal jurisdiction over the parties to an arbitration in a subsequent confirmation proceeding."); *Weststar*, 752 F.2d at 7 (stating that "9 U.S.C. § 9 was precisely meant

[11] Chapter One of the FAA applies to cases arising under the Convention, as codified in Chapters Two and Three of the FAA, to the extent the FAA is not in conflict with the Convention. *See* 9 U.S.C. §§ 208, 307; *see also Escobar v. Celebration Cruise Operator, Inc.*, 805 F.3d 1279, 1284 (11th Cir. 2015).

to enable the district court for the district within which the award was made to exercise personal jurisdiction over the parties to the award."); *Ace Am. Ins. Co. v. Hallier*, No. 2:14-cv-00703-APG-NJK, 2015 WL 1326446, at *1–6 (D. Nev. Mar. 25, 2015) (analyzing personal jurisdiction under a state long-arm statute despite applicability of Section 9); *Don't Look Media LLC v. Fly Victor Ltd.*, 999 F.3d 1284, 1293 (11th Cir. 2021) ("[C]ourt[s] must determine that the exercise of jurisdiction [pursuant to statute] comports with due process.").

Putting aside the issue of whether Section 9 can be applied in this fashion, Petitioner's theory finds no support in the language of Section 9, which conditions jurisdiction over a party on both parties' agreement that judgment will be entered upon the award. *See Home Ins. Co. v. RHA/Pa. Nursing Homes, Inc.*, 113 F. Supp. 2d 633, 634 (S.D.N.Y. Oct. 2, 2000) (citing *Varley v. Tarrytown Assocs., Inc.*, 477 F.2d 208, 210 (2d Cir. 1973)) (finding Section 9 inapplicable where "[t]he arbitration clauses . . . at issue neither provide[d] for the entry of judgment confirming awards made pursuant to them nor incorporate[d] any arbitration rules that so provide"). Such an agreement bears on the personal jurisdiction inquiry. To be sure, parties that provide for judicial confirmation of an arbitration award in their agreement arguably *are* consenting to personal jurisdiction in the court where the application for confirmation is ultimately made. The agreement here, however, contain no such provision.

Although Section 207 appears less stringent than Section 9 in that it omits the consent-to-confirmation requirement, its silence on personal jurisdiction signals

that ordinary personal jurisdiction requirements remain in full force and effect. *See First Inv. Corp. of Marshall Islands v. Fujian Mawei Shipbuilding, Ltd.*, 703 F.3d 742, 750 (5th Cir. 2012) ("Congress could no more dispense with personal jurisdiction in an action to confirm a foreign arbitral award than it could under any other statute."); *Id.* ("Regardless of Congress's intent in failing to explicitly include a personal jurisdiction requirement, a court is not thereby relieved of its responsibility to enforce those constitutional protections that guard a party from appearing in a forum with which it has no contacts."); *Base Metal Trading*, 283 F.3d at 212 ("[W]hile the Convention confers subject matter jurisdiction over actions brought pursuant to the Convention, it does not confer personal jurisdiction when it would not otherwise exist. In other words, a plaintiff still must demonstrate that personal jurisdiction is proper under the Constitution."); *Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1121 (9th Cir. 2002) ("We hold that neither the Convention nor its implementing legislation removed the district courts' obligation to find jurisdiction over the defendant in suits to confirm arbitration awards."); *Telecordia Tech Inc. v. Telkom SA Ltd.*, 458 F.3d 172, 178–79 (3d Cir. 2006) ("[T]he . . . Convention does not diminish the Due Process constraints in asserting jurisdiction over a nonresident alien . . . ."); *Frontera Res. Azerbaijan Corp. v. State Oil Co. of the Azerbaijan Republic*, 582 F.3d 393, 397 (2d Cir. 2009) (explaining that Article V of the Convention "limits the ways in which one can challenge a request for confirmation, but it does nothing to alter the fundamental requirement of jurisdiction over the party against whom enforcement is being sought"); *see also S &*

Davis Int'l, Inc. v. The Republic of Yemen, 218 F.3d 1292, 1303–05 (11th Cir. 2000) (conducting a personal jurisdiction analysis in an action arising in part under the Convention).

Petitioner cites to no controlling authority where a court dispensed with the consent-to-confirmation requirement in Section 9 and yet exercised personal jurisdiction under that same provision, whether in the context of a case arising under the Convention or otherwise. In fact, in two cases cited by Petitioner to demonstrate the application of Section 9 in Convention cases, the courts explicitly declined to apply Section 9, finding its consent-to-confirmation requirement conflicted with, and was preempted by, the Convention, whose own enforcement provision, Section 207, contains no such requirement. *See Phoenix Aktiengesellschaft v. Ecoplas, Inc.*, 391 F.3d 433, 437–38 (2d Cir. 2004) ("[W]e hold that § 207 preempts § 9's consent-to-confirmation requirement in cases under the Convention."); *McDermott Int'l, Inc. v. Lloyds Underwriters of London*, 120 F.3d 583, 588–89 (5th Cir. 1997) (applying Section 207 in lieu of Section 9 because "Section 9 clearly does . . . conflict" with Section 207"). In neither case did the court proceed to apply Section 9, sans its first sentence, to find personal jurisdiction.

Further, Petitioner cites to two out of circuit cases where courts applied Section 9 without explicitly stating whether the parties consented to entry of judgment upon their arbitral award, either in their agreement or by incorporation of rules memorializing such consent. *See Amazon.com, Inc. v. Glenn*, No. C18-1289-MJP, 2018 WL 5921005, at *2 (W.D. Wash. Nov. 13, 2018); *Hausman v. Earlswood*

Enters., Ltd., No. 95 Civ 9088 JSM, 1996 WL 527335 (S.D.N.Y. Sept. 16, 1996). Thus, in addition to the fact that these cases come from district courts in other circuits, the decisions are silent on the very point Petitioner seeks to make: whether a Court can apply Section 9 to find personal jurisdiction regardless of whether the parties consented to confirmation of their award. Lastly, Petitioner also cites *McGregor & Werner, Inc. v. Motion Picture Lab'y Technicians Loc. 780, I.A.T.S.E.*, 806 F.2d 1003 (11th Cir. 1986), but this case is not relevant here because it dealt with Section 9 in the context of subject matter jurisdiction, not personal jurisdiction. *See id.* at 1004–05 ("We hold, therefore, that . . . the Florida district court improperly dismissed the action for lack of subject matter jurisdiction.").

In sum, if Section 9's discussion of personal jurisdiction applies here, as Petitioner suggests, it would only apply to the extent the parties agreed, in the Panama Agreement or by incorporation of rules, to judicial confirmation of the Arbitral Award. As discussed above, they did not. This brings the Court's analysis back to where it started: Petitioner remains obligated to demonstrate that personal jurisdiction over Respondent is proper. Again, as set out herein, Petitioner has not.

E. Quasi in Rem Jurisdiction

Finally, Petitioner asserts the Court has quasi in rem jurisdiction arising from Respondent's property in Florida, which may be used to satisfy the Arbitral Award. ECF No. [51] at ¶¶ 45–50. Specifically, Petitioner alleges that Respondent has legal and equitable interests in property in this District, including a bank account and "potentially the proceeds from Respondent's wrongful sale of the assets at issue in

the Arbitral Award or assets purchased with such proceeds." *Id.* at ¶¶ 47, 49. For the reasons noted below, this jurisdictional ground is not sufficient.

Quasi in rem jurisdiction is "based on the court's power over property within its territory" and thus "affects the interests of particular persons in designated property." *Shaffer*, 433 U.S. at 199 & 199 n.17. "The effect of a judgment in such a case is limited to the property that supports jurisdiction and does not impose a personal liability on the property owner, since he is not before the court." *Id.* at 199. Within the quasi in rem umbrella, there are two categories: cases in which "the plaintiff is seeking to secure a pre-existing claim in the subject property and to extinguish or establish the nonexistence of similar interests of particular persons," and cases in which "the plaintiff seeks to apply what he concedes to be the property of the defendant to the satisfaction of a claim against him." *Id.* at 199 n.17. Petitioner here proceeds under the second category.

In *Shaffer v. Heitner*, the Supreme Court affirmed that when property unrelated to the plaintiff's cause of action serves as the sole basis for jurisdiction, as may be the case with quasi in rem jurisdiction, the minimum contacts case set forth in *International Shoe* and its progeny must be satisfied. 433 U.S. 186, 210–13 (1977). For this reason, Respondent urges this Court to evaluate any assertion of quasi in rem jurisdiction with the minimum contacts test, which requires Respondent to have sufficient minimum contacts with Florida such that the exercise of jurisdiction will not offend due process. ECF No. [58] at 21. As this Court has already determined, that standard is unfulfilled here.

Petitioner also relies on *Shaffer*, albeit a footnote within the opinion. Specifically, he cites to the following language:

> [o]nce it has been determined by a court of competent jurisdiction that the defendant is a debtor of the plaintiff, there would seem to be no unfairness in allowing an action to realize on that debt in a State where the defendant has property, whether or not that State would have jurisdiction to determine the existence of the debt as an original matter.

(the "*Shaffer* exception"). *Shaffer*, 433 U.S. at 210 & 210 n.36. The footnote was part of the Court's discussion of concerns that debtors would avoid paying obligations owed to creditors by removing their property to a state in which there was no in personam jurisdiction over them. *Id.* at 210. These concerns were alleviated, the Court explained, by the fact that "[t]he Full Faith and Credit Clause . . . makes the valid in personam judgment of one State enforceable in all other States," and if a court of competent jurisdiction already rendered a judgment, "there would seem to be no unfairness in allowing an action to realize on that debt in a State where the defendant has property." *Id.* at 210 & 210 n.36.

In Petitioner's view, the *Shaffer* exception applies in this case to obviate the minimum contacts analysis. Indeed, Petitioner argues due process concerns are satisfied, and minimum contacts between Respondent and Florida are not required, "when, as here, a court of competent jurisdiction already has adjudicated the respondent's liability to the petitioner." ECF No. [63] at 20.

Based on the parties' written submissions in connection with the Motion, the Court entered an order requiring supplemental briefing on the following issues:

> (1) whether the *Shaffer* exception applies to proceedings to confirm an arbitration award such as this one; (2) what constitutes a "court of

> competent jurisdiction" for purposes of the *Shaffer* exception; (3) what standard courts utilize in making this determination at this procedural posture (*i.e.*, on a motion to dismiss a petition to enforce an arbitral award for lack of personal jurisdiction), particularly where there is a challenge to the arbitration panel's jurisdiction over the arbitration proceedings; and (4) what is the level of specificity required to identify property that can serve as a basis for quasi in rem jurisdiction.

ECF No. [78] at 2–3.

In Petitioner's Supplemental Briefing, ECF No. [83], he argued that the *Shaffer* exception *does* apply to proceedings to confirm an arbitral award, that the Rabbinical Panel from Beis Din of Miami qualifies as a court of "competent jurisdiction" for purposes of the exception, that the panel's finding of jurisdiction is not subject to judicial review, and lastly, that a petitioner need only identify some asset owned by a respondent within the forum to satisfy the quasi in rem standard. *Id.* at 2–12. As to the final point, Petitioner specifically identified the following assets owned by Respondent within this jurisdiction: (1) a bank account in Florida, used to pay credit cards and other expenses; (2) a vehicle that Respondent owns and operates in Florida, which is listed in his name in Florida Department of Motor Vehicles records; (3) an original stock certificate in NMB, issued by Mr. Reinhard in Respondent's name which represents Respondent's beneficial ownership interest in NMB and which is being maintained in Miami, Florida at Mr. Reinhard's office; (4) a Northern Trust Bank Account over which Respondent maintains financial control and beneficial ownership and which is being managed by Mr. Reinhard; and (5) Respondent's equitable and beneficial interest in the Miami Home, through his ownership of NMB. *Id.* at 9–12.

Addressing the same questions posed by the Court, Respondent argues that an arbitral tribunal is not a court and thus not a "court of competent jurisdiction," that the Rabbinical Panel lacked competent jurisdiction over Respondent and this dispute, and that only this Court can decide whether the parties contractually agreed to give the Rabbinical Panel jurisdiction over Respondent and the dispute. ECF No. [85] at 3. Further, although Respondent concedes that Petitioner adequately identified Respondent's vehicle and stock certificate in Florida as property that could ground the exercise of quasi in rem jurisdiction, he "reserve[d] his rights to oppose the enforceability of any judgment against those assets." *Id.* at 14 & 14 n.5. Finally, Respondent asserts that any judgment based on quasi in rem jurisdiction "would have to be limited to specific Florida assets and would be unenforceable in any other jurisdiction." *Id.* at 4.

This case is unique and distinct from much of the caselaw cited by the parties in connection with the Motion. Indeed, many of the cases provided by Petitioner assume, without analysis, that the "court of competent jurisdiction" requirement was met, or that an arbitral panel can fulfill this condition, although under circumstances different than those here. *See generally Glencore Grain*, 284 F.3d at 1118 (declining to exercise quasi in rem jurisdiction because no specific assets within the state were identified); *CME Media Enters. B.V. v. Zelezny*, No. 01 Civ. 1733 (DC), 2001 U.S. Dist. LEXIS 13888, at *8–9 (S.D.N.Y. Sept. 10, 2001) (exercising quasi in rem jurisdiction over parties to an enforcement and confirmation proceeding without engaging in analysis of whether the arbitral panel constituted a court of competent jurisdiction);

Equipav S.A. Pavimentação, Engenharia e Comercio Ltda. v. Bertin, No. 22 Civ. 4594 (PGG), 2024 U.S. Dist. LEXIS 9222, at *18–19 (S.D.N.Y. Jan. 18, 2024) (exercising quasi in rem jurisdiction without discussing the "court of competent jurisdiction" requirement); *La Dolce Vita Fine Dining Co. v. Zhang Lan*, No. 21-cv-3071 (LAK), 2023 U.S. Dist. LEXIS 23196, at *4–5 (S.D.N.Y. Feb. 10, 2023), *vacated as moot*, 2023 U.S. App. LEXIS 23695 (2d Cir. 2023) (finding, without discussion, that the court could exercise quasi in rem jurisdiction because "an arbitration panel with personal jurisdiction . . . already adjudicated [the] [p]etitioners' claims and concluded that" the respondents owed petitioners $142,000,000.00); *Gov't of the Lao People's Democratic Republic v. Baldwin*, No. 2:20-cv-00195-CRK, 2021 U.S. Dist. LEXIS 224212, at *24–26 (D. Idaho Nov. 19, 2021) (finding that because the petitioner only had arbitral awards against the alleged alter egos of the respondents but not respondents themselves, "no court of competent jurisdiction ha[d] determined that [the respondents] . . . are debtors of [the petitioner]); *Bunge S.A. v. Pac. Gulf Shipping (Singapore) Pte Ltd.*, No. 3:19-cv-00491-SB, 2020 U.S. Dist. LEXIS 56169, at *4–5 (D. Or. Mar. 31, 2020) (deeming a tribunal to be a court of competent jurisdiction because the respondent consented to its jurisdiction); *Office Depot, Inc. v. Zuccarini*, 596 F.3d 696, 700 (9th Cir. 2010) (reciting, without analysis, the language of the *Shaffer* exception); *Inzajat Tech. Fund, B.S.C. v. Najafi*, No. C11-04133, 2012 U.S. Dist. LEXIS 32068, at *5 (N.D. Cal. Mar. 9, 2012) (containing no discussion of the "court of competent jurisdiction" prong); *Crescendo Mar. v. Bank of Communs. Co.*, No. 15 Civ. 4481 (JFK), 2016 U.S. Dist. LEXIS 21824, at *13–14 (S.D.N.Y. Feb. 22, 2016) (finding,

without analysis, that an arbitral panel fulfilled the "court of competent jurisdiction" requirement).

Notably, in *Equipav*, *La Dolce Vita*, *AlbaniaBEG Ambient Sh.p.k*, and *Cerner Middle East Limited*, the arbitral award in question had already been reduced to a judgment. *See Equipav S.A.*, 2024 U.S. Dist. LEXIS 9222, at *4–5 (noting that a Brazilian court had already enforced the arbitral award at issue, and the petitioner had previously obtained an order of attachment concerning respondent's assets in the district); *La Dolce Vita*, 2023 U.S. Dist. LEXIS 23196, at *2–3 (noting that the petitioner had already obtained an order of attachment to the respondents' property in the forum, and the arbitral awards were affirmed by the Second China International Commercial Court); *AlbaniaBEG*, 73 N.Y.S. 3d at 3–4 (noting that the arbitral award at issue had been affirmed by the Supreme Court of Italy); *Cerner Middle East Ltd. v. iCapital, LLC*, 939 F.3d 1016, 1025, 1028–29 (9th Cir. 2019) (noting that a Paris Court has confirmed the arbitral award).

In such circumstances, where an arbitral award has already been converted into a judgment, applying the *Shaffer* exception in lieu of the minimum contacts analysis aligns with the reasoning articulated in *Shaffer* itself, which dealt with judgments by sister states. *See Shaffer*, 433 U.S. at 210. Presumably, this is predicated on the view that when a court with jurisdiction over parties and their dispute renders a judgment, Due Process concerns have already been satisfied. However, the same may not be true with an arbitral tribunal.

Lastly, Petitioner cites to *Office Depot, Inc. v. Zuccarini*, 596 F.3d 696 (9th Cir. 2010), which did not involve an arbitration, and *Societe Nationale D'Operations Petrolieres de la Cote D'Ivoire v. MRS Holdings Ltd.*, where a court in this district recently found it could exercise quasi in rem jurisdiction to enforce a foreign arbitral award, even though it had no in personam jurisdiction over the respondent, based on the *Shaffer* exception. *See* Order on Respondent's Motion to Dismiss, *Societe Nationale D'Operations Petrolieres de la Cote D'Ivoire v. MRS Holdings Ltd.*, No. 24-cv-80363-MIDDLEBROOKS, (S.D. Fla. Dec. 18, 2024), ECF No. [36].

As to the latter, *Societe Nationale* is distinguishable because, unlike here, there was no challenge to the arbitral panel's jurisdiction, and, more importantly, the arbitral award examined by the court had already been confirmed by a court in the primary jurisdiction, as well as one in a secondary jurisdiction. *Id.* at 2–3. In fact, the court observed that "it [was] undisputed that [the] [p]etitioner has an enforceable judgment against [the] [r]espondent via the [arbitral panel's] decision which has been affirmed on appeal." *Id.* at 21. Thus, while the court found the *Shaffer* exception applicable, "providing an avenue to enforcing foreign arbitral awards quasi-in-rem, where the sole jurisdiction [it had] over the respondent is jurisdiction over his property," it did not face the query to be settled here. *Id.* at 20.

Absent controlling legal authority, the Court must now decide whether, simply because Respondent owns property in this state, the Court can dispense with the minimum contacts analysis and exercise quasi in rem jurisdiction to confirm the arbitral award, in whole or in part, even though no court has previously confirmed

the award, and despite the Court's determination that it has no in personam jurisdiction over Respondent. This question is narrow, and the Court's resolution of it equally so.

Applying the relevant legal principles to the unusual circumstances posed by this case, this Court finds that the *Shaffer* exception does not apply here, and that the minimum contacts test is an indispensable part of the quasi in rem inquiry. Indeed, the Court is not persuaded by Petitioner's argument that the *Shaffer* exception applies to make such a showing redundant or otherwise unnecessary, not least because of the Due Process concerns at play. "While it is true that there is a general public policy interest in encouraging and enforcing arbitration agreements, that interest is not paramount to the interests protected by the Due Process Clause." *Base Metal Trading*, 283 F.3d at 215. Because the minimum contacts standard has not been fulfilled, this Court cannot exercise quasi in rem jurisdiction over Respondent's property in this state.

V. CONCLUSION

Accordingly, the Motion, ECF No. [58], is **GRANTED**, and the Petition, ECF No. [51], is hereby **DISMISSED** for lack of personal jurisdiction. The Clerk is directed to **CLOSE** this case, and all pending motions are **DENIED** as moot.

DONE AND ORDERED in Miami, Florida, this 21st day of March, 2025.

JACQUELINE BECERRA
UNITED STATES DISTRICT JUDGE