**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

MARTIN KENNEY & CO.,

Plaintiff,

vs.

ROGER CORMAN, *et al.*,

Defendant.

Case No.: CV 18-07767 CBM(RAOx)

**ORDER RE: PETITION TO CONFIRM ARBITRATION AWARD [39,43,51,52,53,55,57]**

The matter before the Court is Martin Kenney & Co.'s ("Petitioner" or "MKC") Petition to confirm an arbitration award issued against Respondents Roger Corman, Brian Corman, and Bay City Productions, Inc. ("Bay City") (collectively, "Respondents"). Respondents filed an Opposition and Petitioner filed a Reply. Therefore, the motion is fully briefed.

## I. BACKGROUND

Respondents hired Petitioner, a law firm located in the British Virgin Islands (the "BVI"), to render legal services in connection with Respondents' family trusts. Petitioner and Respondent executed a Letter of Engagement (the "2010 LOE") retaining Petitioner. (Dkt. No. 1-4.) Respondents and Petitioner executed a First Amended and Restated Letter of Engagement (the "2012 LOE") on January 13, 2012. (Id.) The 2010 LOE contained an arbitration agreement which was incorporated into the 2012 LOE. In early 2013, Respondents became dissatisfied with Petitioner's legal services and terminated their representation.

Petitioner sent a notice of arbitration on April 24, 2015, to Respondents via FedEx to recover unpaid legal fees and disbursements. On November 26, 2015, Petitioner notified Jacqueline Daley, President of the BVI Bar Association, and Respondents that he had not received Respondents' preference with respect to the arbitrator. On December 4, 2015, the President of the BVI Bar Association declined to appoint an arbitrator, noting Respondents' failure to respond. Petitioner contacted the Permanent Court of Arbitration seeking the designation of a substitute appointing authority, pursuant to Article 6(4) of the UNCITRAL Arbitration rules. Mr. Murray Smith appointed Mr. John Carrington QC as the sole arbitrator on March 16, 2016. Mr. Carrington accepted his appointment as Arbitrator on March 22, 2016, and attempted to contact Respondents. Mr. Carrington did not receive a response from Respondents and Respondents did not participate in the arbitration.

The arbitrator issued the Final Award on January 11, 2017, finding Respondents jointly and severally liable to Petitioner for the principal amount of $62,479.25, $41,391.85 in arbitration costs, and prejudgment interest on the principal amount at the rate of 1.5% per month. (Id.) The arbitrator issued the Supplemental Award to Final Award on January 27, 2017 finding Respondents jointly and severally liable to Petitioner for the principal amount of $62,479.35, prejudgment interest of $42,696.16, arbitration costs of $41,391.85, and interest of 5% per year. (Id.) Petitioner now seeks to confirm the arbitration award. (Dkt. No. 1.)

## II. JURISDICTION

The Court has jurisdiction over this action under 9 U.S.C. § 203 ("An action or proceeding falling under the Convention [on the Recognition and Enforcement of Foreign Arbitral Awards] shall be deemed to arise under the laws and treaties of the United States. The district courts…shall have original jurisdiction over such an action or proceeding, regardless of the amount in controversy.") .

## III. LEGAL STANDARD

The United States implemented its obligations under the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards ("the New York Convention") in domestic law under the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 201-208. *China Nat. Metal Prod. v. Apex Digit., Inc.*, 379 F.3d 796, 799 (9th Cir. 2004). Section 207 of the FAA provides:

> Within three years after an arbitral award falling under the Convention is made, any party to the arbitration may apply to any court having jurisdiction under this chapter for an order confirming the award as against any other party to the arbitration. The court shall confirm the award unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention.

9 U.S.C. § 207 (emphasis added). Therefore, the FAA incorporates the seven grounds for refusing to confirm an arbitration award set out in Article V of the New York Convention. *Apex Digit.*, 379 F.3d at 799. Four grounds are asserted by the Respondent in this case; 1) whether respondents received proper notice and/or were unable to present their case, 2) the validity of the terms of the arbitration agreement, 3) whether the arbitral procedure was in accordance with the agreement of the parties and 4) whether enforcement would be contrary to public policy. New York Convention, Art. V, Sec. (1)(A)-(B), (1)(D), (2)(B). The FAA affords "considerable deference" to foreign arbitral awards and a district court must confirm the award "unless the party resisting enforcement meets its 'substantial' burden of proving one of the seven narrowly interpreted defenses." *Castro v. Tri Marine Fish Co. LLC*, 921 F.3d 766, 773 (9th Cir. 2019) (citations omitted). "Confirmation under the Convention is a summary proceeding in nature, which is not intended to involve complex factual determinations, other than a determination of the limited statutory conditions for confirmation or grounds for refusal to confirm." *Id.* (quoting *Zeiler v. Deitsch*, 500 F.3d 157, 169 (2d Cir. 2007)).

The burden on Respondent to oppose confirmation of an award is substantial because "[t]he public policy in favor of international arbitration is strong." *Ministry of Def. of the Islamic Republic of Iran v. Gould, Inc.*, 969 F2d 764, 770 (9th Cir. 1992) (citation omitted). There is a general pro-enforcement bias under the New York Convention. *See id.*; *see also Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 519-20 n.15 (1974).

## IV. DISCUSSION

### A. Evidentiary Objections

#### 1. Respondents' Objection to "Improper" Reply Evidence

Respondents move to strike evidence submitted by Petitioner in support of its reply brief. (Dkt. No. 52.) *First*, Respondents object to each declaration in

support of the reply on the grounds that these declarations are not limited to the scope of Respondents' Opposition. The objects are **overruled** and the Court finds that the declarations are within the scope of the issues raised in Respondents' Opposition.

*Second*, Respondents object to a section of Paragraph 13 of Mr. Kenney's declaration, which states: "Further, it is stretching the boundaries of credulity for a Columbia Law School educated, and active (albeit non-practicing) California lawyer in B. Corman, to not read such emails demanding payment of legal fees or notifying him of arbitration proceedings." The objection is **sustained** on the grounds that this is improper opinion testimony.

*Third*, Respondents object to Paragraphs 23 and 24 of the Declaration of Martin Kenney in Support of Petitioner's Reply to Respondents' Opposition and "Exhibits 120-189" attached thereto (documents including letters and emails from Petitioner to Respondents, FedEx tracking information, the Business Entity Detail of Bay City Productions, Investigation Report of Brian Corman, pictures of the residence located at 2501 La Mesa, Santa Monica, CA 90402, the Arbitrator's Final Award, an unredacted Amended Letter of Engagement, the Arbitrator's designation letter to Mr. Carrington from Mr. Smith, four orders from the arbitration hearing via teleconference, and a schedule of costs from Martin Kenney & Co.).

In Paragraph 23, Petitioner "swear[s] that the contends of Mr. Reardon-John's Witness Statement are true and correct." In Paragraph 24, Petitioner states "at paragraph sixteen of [Mr. Reardon-John's] Witness Statement, Mr. Reardon-John confirms that throughout the arbitration proceedings MKS continued to send documents by email and FedEx to the Respondents." The statements in Paragraphs 23 and 24 contain inadmissible hearsay. Respondents' general hearsay objection to Exhibits 120-189 fail to identify to which statements they object.

Therefore, the Court **sustains** Respondents' objections to Paragraphs 23 and 24 and **overrules** Respondents' objections to Exhibits 120-189.

**3. Respondents' Objection to "Improper" Sur-Reply Evidence**

Respondents move to strike evidence submitted by Petitioner in support of its sur-reply brief. (Dkt. No. 55.) *First*, Respondents object to Petitioner's Request for Judicial Notice (Dkt. 53-2) on the grounds that the request includes documents that present new issues and new evidence and is irrelevant to this dispute. Petitioner's request for judicial notice is discussed below in Section B of this Order and Respondents' objections are overruled.

*Second*, as to Respondents objection to the Declaration of Martin Kenney in Response to Petitioner's sur-reply (Dkt. 53-1) on the grounds that paragraphs 14-22 contain "improper and non-admissible opinion testimony," the objections are sustained except to paragraph 14, p. 8, ln. 22-26 ("I categorically deny . . . that I was aware of his new address," and paragraph 22 as to p. 12, ln. 17-19 (When Mr. Carrington appeared . . . he was not employed by my firm by reason of the old solicitor-barrister relation."

**4. Petitioner's Objection to Additional Supplemental Declaration of Marcio Vasconcellos**

Petitioner objects to the declaration of Mr. Marcio Vasconcellos, attorney for Respondents, to the extent it includes quotations from a treatise discussing the UNCITRAL arbitration rules. (Dkt. No. 50-2.) The objection is **sustained** on the grounds that it is irrelevant, as it does not "make *a fact* more or less probable that it would be without the evidence[.]" Fed. R. Evid. 401 (emphasis added).

**B. Request for Judicial Notice**

**1. Respondents' and Petitioner's Request for Judicial Notice (Dkt. 39, 43-4.)**

Pursuant to Fed. R. Evid. 201, "[t]he court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the

court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." *Harris v. Cnty. of Orange*, 682 F.3d 1126, 1131 (9th Cir. 2012).

Petitioner request that this Court takes judicial notice of a website of the BVI Association showing that John Carrington, QC is identified as a member of the Bar Association (Exhibit A).

Respondents request this Court take judicial notice of exhibits:

A) The UNITRAL Arbitration Rules,

B) A screenshot of a website of the BVI Bar Association showing that Mr. John Carrington QC's is not a member of the association,

C) A screenshot of a website of past presidents of the BVI Bar Association showing Mr. Murray L. Smith was never president of the association,

D) A screenshot of a website of the BVI Association showing that Mr. Murray L. Smith is not a member of the association,

E) A screenshot of a website for Smith Barristers showing Mr. Murray L. Smith identifies himself as "a barrister practising[sic] out of arbitration chambers in Vancouver, British Columbia,"

F) Mr. Murray L. Smith's CV; and

G) A screenshot of a website entitled "DocPlayer" regarding Mr. John Carrington's prior appointment as arbitrator by Martin Kenney.[1]

The Court **grants** the request to take judicial notice of Respondents' Exhibit A, the UNITRAL Arbitration Rules. *Aviles v. Quik Pick Express, LLC*, CV-15-5214-MWF, 2015 U.S. Dist. LEXIS 174960, at *6 (C.D. Cal. Dec. 3, 2015) ("Courts may take judicial notice of arbitration rules because they can be

[1] The accompanying documents, Exhibits H, I and J, are not identified in the Request for Judicial Notice, neither side request the Court to take judicial notice of Exhibits H, I, and J. Therefore the Court does not consider them.

accurately and readily determined from sources whose accuracy cannot reasonably be questioned.").

The Court **denies** Petitioner's request for judicial notice of Exhibit A because the screenshot of the webpage indicating Mr. Carrington's bar status does not provide the relevant time period (i.e. a time and date stamp reflecting the time period at issue in this case). The Court also **denies** Respondents' request for judicial notice of Exhibits B, C, D and E because the exhibits do not contain a uniform resource locator ("URL" or "web address"), nor does it include a time or date stamp that would further support its authenticity. *See Kaping v. Barrett Daffin Frappier Treder & Weiss, LLP*, No. 2:17-cv-00697-JAM2017 U.S. Dist. LEXIS 89195, at *6 (E.D. Cal. June 8, 2017) (declining to judicially notice "a purported printout from the Internet" that did not include a "designation, such as a URL web address, that would tend to self-authenticate its veracity"). Although Exhibit G provides a url, date and time stamp, the information provided in Exhibit G is from a source whose accuracy can reasonably be questioned. The screenshot is from a website entitled "DocPlayer" but there's no indication that the documents provided are actual legal documents. Thus, the request to take judicial notice of Exhibit G is **denied**. The Court will also not take judicial notice of Exhibit F because Mr. Murray Smith's CV is not relevant.

**2. Petitioner's Supplemental Request for Judicial Notice (Dkt. 53.)**

Petitioner asks the Court to take judicial notice of Exhibit A, a screen shot of the California Secretary of State website showing a business search of the New Horizons Picture Corporation, *Daniels-Hall v. Nat'l Educ. Ass'n*, 629 F.3d 992, 998-99 (9th Cir. 2010) (Courts may take judicial notice of official information posted on a government website if its accuracy is undisputed), and the Corporation's Statement of Information filed with the California Secretary of State.

The filing by New Horizons Picture Corporation which includes its statement of information is a public document in which Respondent Roger Corman is listed as the Chief Financial Officer of New Horizons Picture Corporation showing an address listed as 11600 San Vicente Blvd., Los Angeles, CA 90049. Petitioner attempted to serve Respondent with notice at the location provided. Accordingly, the Court **grants** Petitioner's request for judicial notice.

**3. Respondents' Second Request for Judicial Notice (Dkt. 57.)**

Respondents ask this Court to take judicial notice of three exhibits:

A) 4 pages from *UNCITRAL Arbitration* by Jan Paulsson and Georgios Petrochilos

B) Jan Paulsson's profile on the University of Miami School of Law website, and;

C) Georgios Petrochilos' profile on the Fribourg University website.

The Court **grants** Respondents' request for judicial note of Exhibit A because the portions from *UNCITRAL Arbitration* "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." The Court **denies** Respondents' request to take judicial notice of Exhibits B and C because the profiles are not relevant to the issues in this case. *Warwick v. Bank of N.Y. Mellon*, No. CV 15-3343, 2016 U.S. Dist. LEXIS 68167, at *32-33 (C.D. Cal. May 23, 2016) ("Even if a document may properly be subject to judicial notice, 'the court may deny a request for judicial notice of facts that are not relevant to the question at issue.'").

**C. Petition to Confirm Arbitration Award**

A Court must confirm the arbitration award unless Respondent demonstrates a defense under Article V of the New York Convention applies. Respondents argue four defenses apply here.

**1. Article V(1)(B) and Article V(2)(B)**

Respondents contend that the arbitration was invalid because Provision U in the 2010 LOE would have precluded them from presenting their case at the arbitration had they participated and failed to pay their half of the arbitration costs and fees, and such provision is against public policy.

Under the New York Convention, the Court may refuse to confirm a foreign arbitration award if Respondents prove they were "unable to present [their] case" at the arbitration proceeding, or if "[t]he recognition or enforcement of the award would be contrary to the public policy of [the country where recognition and enforcement of the award is sought]." New York Convention, Art. V, Sec. (1)(B), (2)(B).

Provision U of the 2010 LOE provides: "If any party fails to fund their one-half share of the arbitration costs and the arbitrator's fees on a timely basis, the other party may proceed to a hearing with full evidence and the defaulting party shall be debarred from filing any evidence at the hearing." (Dkt. No. 1-4, Exh. B (2010 LOE) at p. 17.) Here, Respondents were not prevented from presenting their case under Provision U. Rather, Respondents chose not to participate in the arbitration – there is no evidence in the record that Respondents sought an opportunity to present their evidence during the arbitration but were denied the opportunity by the arbitrator. Nor is there evidence that Respondents ever paid their part of the arbitration fee or that they were unable to pay.

None of the cases cited by Respondents compel a different result. In *Coty Inc. v. Anchor Const. Inc.*, No. 601499-02, 2003 WL 139661 (N.Y. Sup. Ct. Jan. 8, 2003), aff'd, 776 N.Y.S.2d 795 (2004), an arbitration award was vacated when a party who had participated in the arbitration proceedings was barred from presenting further evidence after it was unable to pay arbitration costs. Unlike that case, Respondents were never denied their ability to present evidence and made no showing they were unable to pay the costs of the arbitration. In *Hooters of Am.,*

*Inc. v. Phillips*, 173 F.3d 933, 938 (4th Cir. 1999), the Fourth Circuit held the arbitration procedures unilaterally set by an employer were so "egregiously unfair" that the employer in effect defaulted on "its contractual obligation to draft arbitration rules and to do so in good faith." Examples of the unfair arbitration procedures included permitting the employer to select the entire arbitration panel and to avoid notifying employees of its claims and defenses, barring the employee from seeking summary judgment, and giving the employer the unilateral ability to cancel the agreement to arbitrate. *Id.* at 938-40. In contrast, Petitioner and Respondents mutually agreed to the cost-sharing provision of the arbitration agreement, and the cost-sharing provision does not amount to the kind of unilateral control over an arbitration proceeding at issue in *Hooters*.

Accordingly, Respondent has not satisfied the exception under Article V(1)(B) and Article V(2)(B).

**2. Article V(1)(A) and Article V(2)(B)**

Respondents argue the Court should not confirm the arbitration award because the arbitration agreement was unconscionable. The New York Convention provides that the Court may refuse to confirm an international arbitration award if "said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made." New York Convention, Art. V, Sec. (1)(A). Additionally, the Court may refuse to confirm the arbitration award if it is against public policy "in the country where recognition and enforcement is sought." New York Convention, Art. V, Sec. (2)(B).

Here, the parties agreed in the 2010 LOE that the law of the BVI would govern the dispute. (*See* Dkt. No. 1-4, Exh. B (2010 LOE) at p. 16 ("These Terms of Business shall be governed by and construed in accordance with the laws of the British Virgin Islands, as augmented by the applicable rules of professional conduct."). In their briefs, neither Petitioner nor Respondents address whether the

arbitration agreement is unconscionable under the laws of BVI. The Court applies California law to determine whether the contract is unconscionable and against public policy because California is where "enforcement [of the arbitration award] is sought." New York Convention, Art. V, Sec. (2)(B).

Under California law, "[a] claim of contractual unconscionability has both a procedural and a substantive element, the former focusing on oppression or surprise due to unequal bargaining power, the latter on overly harsh or one-sided results." *Moran v. Prime Healthcare Mgmt., Inc.*, 3 Cal. App. 5th 1131, 1148 (2016) (internal citation and punctuation omitted). A contract is procedurally unconscionable if it is "a contract of adhesion, which, imposed and drafted by the party of superior bargaining strength, relegates to the subscribing party only the opportunity to adhere to the contract or reject it." *Id.* (internal punctuation omitted).

Here, Respondents have not presented evidence ~~or argument~~ that the arbitration agreement was drafted only by Petitioner or that Respondents were required to adhere to that term or reject the entire contract. Thus, Respondents have not met their burden to prove that the arbitration agreement was contrary to public policy under Article V(2)(B). *See Castro*, 921 F.3d at 773 (ruling the party opposing confirmation of a foreign arbitration award has the burden to prove a defense applies). Accordingly, the Court finds that the agreement to arbitrate was neither a contract of adhesion or otherwise unconscionable.

**3. Article V(1)(D)**

Respondents argue the Court should not confirm the arbitration award because the selection and appointment of the arbitrator did not adhere to the procedure enunciated in the 2012 LOE. Article V(1)(D) of the New York Convention provides that the Court may refuse to confirm the arbitration award if Respondents prove that "[t]he composition of the arbitral authority or the arbitral

procedure was not in accordance with the agreement of the parties[.]" New York Convention, Art. V, Sec. (1)(D).

**a. The Arbitrator Was and Is a Member of the BVI Bar Association**

Provision U of the 2012 LOE provides in part that "[a]ny dispute, controversy, claim or question to be resolved between [Petitioner] and [Respondents] … shall be resolved by arbitration before a sole arbitrator (*who shall be a member of the BVI Bar Association*)[.]" (Dkt. No. 1-4, Exh. C (2012 LOE) at p. 18 (emphasis added).) Respondents argue this provision was violated because the arbitrator, Mr. John Carrington QC, was not a member of the BVI Bar Association. Petitioner submits a letter from BVI Bar Association confirming that "John Carrington QC was a member of the BVI Bar Association in 2016, 2017, and 2018." (Dkt. No. 43-1 (Decl. of Martin Kenney), Exh. MSK-1, at p. 106.)

Based on the evidence, the Court finds John Carrington QC was a member of the BVI Bar Association in 2017, the year in which the arbitration was held. Therefore, Respondent did not meet its burden to prove that the arbitration award should not be confirmed on the grounds that the selection of the arbitrator violated Provision U of the 2012 LOE.

**b. The Method of Appointing the Arbitrator Did Not Violate the Arbitration Agreement**

Provision U of the 2012 LOE provides: "To the extent that the parties are unable to agree on the appointment of a sole arbitrator, either party may request that such appointment be made by the then President of the BVI Bar Association. The parties shall be bound by any appointment thus made." (Dkt. No. 1-4, Exh. C (2012 LOE) at p. 18.) Respondents contend that Provision U was violated because Respondents did not participate in the selection of the arbitrator, so the parties were not "unable to agree;" and the arbitrator was not selected by the President of the BVI Bar Association.

Petitioner contacted Ms. Jacqueline A.R. Daley, the President of the BVI Bar Association, and the Respondents, requesting the appointment of an arbitrator. Ms. Daley responded with three potential arbitrators, including Arbitrator Carrington. (Dkt. No. 45-1 (Decl. of Kenney) at ¶ 14(a).) Respondents did not respond, so Ms. Daley declined to appoint an arbitrator. (Id. at ¶ 14(d).) Because the arbitration agreement provides that the UNCITRAL rules governed the arbitration proceeding (*see* Dkt. No. 1-4 at p. 46), Petitioner relied on Article 6(4), which provides: "[I]f the appointing authority refuses to act … any party may request the Secretary-General of the [Permanent Court of Arbitration at the Hague] to designate a substitute appointing authority." (Dkt. No. 38-7, Exh. A at p. 7.) After receiving Petitioner's request for the appointment of an arbitrator, Mr. Murray L. Smith was designated by the Secretary General of the Permanent Court of Arbitration and Mr. Smith appointed Arbitrator Carrington as arbitrator. (Dkt. No. 1-4 (Final Award) at ¶ 5.)

Therefore, the appointment of Arbitrator Carrington complied with the parties' arbitration agreement.

**4. Article V(1)(B)**

Respondents argue they did not receive notice of the appointment of the arbitrator or the arbitration. Article V(1)(B) of the New York Convention provides: "Recognition and enforcement of the award may be refused … [if] [t]he party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case." New York Convention, Art. V(1)(B), T.I.A.S. No. 6997. Courts have interpreted the notice provision of the New York Convention to mean that the arbitration must comply with the U.S. standards for procedural due process. *See Generica Ltd. v. Pharm. Basics, Inc.*, 125 F.3d 1123, 1129-1130 (7th Cir. 1997); *Parsons & Whittemore Overseas Co., Inc. v. Societe Generale de L'Industrie du Papier*, 508 F.2d 969, 975 (2d Cir. 1974); *Linley Invs. v.*

*Jamgotchian*, No. LA CV11-00724, 2012 WL 12953824, at *4 (C.D. Cal. 2012). "To meet the constitutional guarantee of procedural due process, notice must be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Roes, 1-2 v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1046 (9th Cir. 2019) (internal quotations omitted).

Arbitrator Carrington found that Petitioner served its "Notice of Arbitration" on Respondents B. Corman and Bay City "by courier" on April 24, 2015 and served the notice on all Respondents by email. (Dkt. No. 1-4 at p. 61.) Once appointed, Arbitrator Carrington "made attempts to communicate with [Respondents] by email and by post at addresses provided to him by the [Petitioner,]" but received no response. (Id.) Petitioner declares he sent e-mails and letters to Respondents Brian Corman and Roger Corman regarding Petitioner's intent to commence arbitration, the notice of arbitration, and a proposal to appoint Arbitrator Carrington. (Dkt. No. 43-1 (Decl. of Martin Kenney ISO Reply) at ¶ 10.) Mr. Kenney declares the above-referenced letters were sent by Federal Express to several addresses associated with Respondents.[2] (Id. at ¶ 13.) The thrust of Respondents' argument in opposition is that they both moved from the addresses Petitioner served, so they never received the letters.

[2] The three letters stating Petitioner's intent to arbitrate were sent to Brian Corman and Bay City at 1943 Westridge Terrance, Los Angeles, California 90049 (the "Westridge Address"), and to Roger Corman at 3007 N. Beverly Glen Circle, Los Angeles, California 90077 (the "Beverly Glen Address"). (Id. at ¶¶ 13(a)-(b).) The Notice of Arbitration was mailed to Brian Corman at the Westridge Address and to Bay City and Roger Corman at the Beverly Glen address. (Id. at ¶ 13(d).) Petitioner also served Bay City's agent for service of process, Mr. Jerome Leonard Hess II, at 1527 Michael Lane, Pacific Palisades, California 90272 (the "Agent's Address"). (Id.) The letter proposing the appointment of the arbitrator was mailed to Roger Corman and Brian Corman at 2501 La Mesa Drive, Santa Monica, California 90402 (the "La Mesa Address"); B. Corman at the Westridge Address and 11600 San Vicente Blvd., Los Angeles, California 90049 which is on Petitioner's information and belief an office building owned by the family of Roger Corman and Brian Corman; Roger Corman and Bay City at the Beverly Glen Address; and to Bay City's agent's address. (Id. at ¶ 13(e).)

Regarding the e-mails, Respondents contend electronic service was insufficient to comply with the arbitration agreement and due process.

Here, service complied with the terms of the arbitration agreement and due process. The arbitration agreement provides that the UNCITRAL rules governed the arbitration proceeding. (Dkt. No. 1-4 at p. 46.) Article 2(4) of the UNCITRAL Rules provides: "If, after reasonable efforts, delivery cannot be effected in accordance with paragraphs 2 or 3, a notice is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means that provides a record of delivery or of attempted delivery." (Dkt. No. 38-7 (Vasconcellos Decl.), Exh. A, at 4.) The addresses and emails used by the Petitioner and Arbitrator to contact Brian Corman and Roger Corman were the same addresses Respondents' listed in the Letter of Engagement with Petitioner. Although Respondents submit evidence that they changed addresses between the time the relationship between Petitioner and Respondents terminated and the letters were sent, it is undisputed that the Westridge Address was the last-known mailing address of Brian Corman and Bay City, and the Beverly Glen Address was the last-known mailing address of Roger Corman. (*See* Dkt. No. 1-4 (2010 LOE) at p. 9; Dkt. No. 38-2 (Opp.) at p. 1:18-1:21 ("Before living in his current address, B. Corman resided at [the Westridge Address]."), p. 1:23-25 ("Until August of 2012, R. Corman resided at [the Beverly Glen Address]…").) Respondents admit they never provided updated mailing information to Petitioner. (*See* Dkt. No. 38-2 (Opp.) at p. 21:3-5 ("Respondents had no duty or obligation to keep Martin Kenney apprised of their current address because the Respondents terminated Martin Kenney's representation in early 2013.").) Therefore, Petitioner complied with the parties' agreed-upon procedure for service of process.

Additionally, Petitioner met the constitutional standards for due process. Petitioner and Arbitrator Carrington sent multiple e-mails and letters notifying

Respondents that arbitration would commence and seeking their participation. Respondent Brian Corman admits he received e-mails from Petitioner, but simply chose not to read them. (Dkt. No. 38-2 (Decl. of B. Corman) at ¶ 10 ("I stopped reading any e-mails sent by Martin Kenney after I terminated his engagement.").) Considering the efforts made by Petitioner to notify Respondents of the arbitration and countervailing effort by Respondent to avoid service, notice in this action was reasonably calculated "to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *SFBSC Mgmt.*, 944 F.3d at 1046 (noting standard for the constitutional guarantee of procedural due process).

## V. CONCLUSION

The petition to confirm the arbitration award is **GRANTED**.

**IT IS SO ORDERED.**

DATED: April 15, 2021

CC:FISCAL

CONSUELO B. MARSHALL
UNITED STATES DISTRICT JUDGE