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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

STRATEGIC ASSET GROUP, LLC,

Plaintiff,

v.

**OLGA SHABANETS, an individual;
DOES 1 through 20, inclusive;**

Defendants.

Case No.: SACV 18-01384-CJC(JDEx)

**ORDER GRANTING PLAINTIFF'S
MOTION FOR COURT
APPOINTMENT OF REPLACEMENT
ARBITRATOR [Dkt. 16]**

I. INTRODUCTION

Plaintiff Strategic Asset Group, LLC brought this action against Defendant Olga Shabanets for breach of written agreement and money lent, after Defendant allegedly failed to make any payments on a \$120,000 loan. (Dkt. 1-1 [Complaint, hereinafter

1 “Compl.”].) The Court previously granted Defendant’s motion to compel arbitration in
2 the Moscow Court of Arbitration. (Dkt. 15.) After the Moscow Court of Arbitration
3 refused to take jurisdiction over the dispute, Plaintiff now moves for a court order
4 appointing a replacement arbitrator. (Dkt. 16 [hereinafter “Mot.”].) For the following
5 reasons, the motion is **GRANTED**.¹

6 7 **II. BACKGROUND**

8
9 As previously recited in this Court’s earlier order, this case involves a collection
10 dispute. Plaintiff alleges that Defendant Olga Shabanets entered into a written Loan
11 Agreement with Sherman Commerce, S.A. for \$120,000 on February 22, 2017. (Compl.
12 ¶ 7.) According to the Loan Agreement, the principal, plus an annual interest rate of
13 1.5%, became due and payable on February 27, 2018. (*Id.* ¶ 8–9.) Defendant allegedly
14 never made any payments. (*Id.* ¶ 10.) On April 6, 2018, Sherman Commerce, S.A.
15 assigned its interest in the Loan Agreement to Plaintiff. (*Id.* ¶ 12.)

16
17 Plaintiff filed the instant action in Orange County Superior Court on April 11,
18 2018. (Compl.) Plaintiff brings claims for breach of the Loan Agreement and money
19 lent. (*Id.*) On August 7, 2018, Defendant removed the case to federal court on the basis
20 of federal question and diversity jurisdiction. (Dkt. 1 [Notice of Removal].)

21
22 The Loan Agreement was written in both Russian and English, with side-by-side
23 translations. (Dkt. 9-1 Ex. A.) Defendant is a citizen of Russia, though Plaintiff alleges
24 she resides in Orange County, California. (Mot. at 2; Compl. ¶ 2.) In English, the Loan
25 Agreement states:

26
27
28 ¹ Having read and considered the papers presented by the parties, the Court finds this matter appropriate
for disposition without a hearing. *See* Fed. R. Civ. P. 78; Local Rule 7-15. Accordingly, the hearing set
for January 7, 2019, at 1:30 p.m. is hereby vacated and off calendar.

1 5.3 All arguments and disagreements on this Agreement are
2 solved by negotiations.

3 5.4 When settling of disagreements by negotiations is
4 impossible, argument is liable to consideration in Moscow
5 Court of Arbitration.

6 (Mot. at 4; Dkt. 9-1 Ex. A.) Both parties agreed that this clause required them to arbitrate
7 their dispute, but Plaintiff asked this Court to appoint a replacement arbitrator in
8 California since it believed that the Moscow Court of Arbitration would not hear their
9 dispute. (*See* Dkt. 9 [Def.’s Mot. to Compel Arbitration]; Dkt. 11 [Pl.’s Opp’n to Mot. to
10 Compel Arbitration].) Because the parties had not yet attempted to arbitrate their dispute
11 at the Moscow Court of Arbitration, the Court granted Defendant’s motion to compel
12 arbitration and stayed the case. (Dkt. 15.)

13
14 Since the Court’s order, Plaintiff attempted to initiate arbitration proceedings
15 before the Moscow Court of Arbitration. (Mot. at 2.) The Moscow Court of Arbitration,
16 however, declined to take the case on jurisdictional grounds. (*Id.*) The Moscow Court of
17 Arbitration issued a written ruling determining that the case did not fall under its
18 jurisdiction since the dispute is between an individual and a legal entity. (*Id.* at 4.) The
19 Moscow Court of Arbitration only handles disputes that are business versus business or
20 business versus entrepreneur-status persons. (*Id.*) Accordingly, Defendant now asks this
21 Court to appoint a replacement arbitration services provider in Orange County,
22 California.

23
24 **III. DISCUSSION**

25
26 Under the Federal Arbitration Act (“FAA”), a court “shall designate and appoint an
27 arbitrator” when parties have agreed to arbitrate their dispute but there is a lapse or
28 vacancy in the appointment of an arbitrator. 9 U.S.C. § 5. Here, as the Court previously

1 held, the parties agreed to arbitrate their dispute. (*See* Dkt. 15.) There has been a lapse in
2 the appointment of an arbitrator, since the parties’ chosen arbitrator—the Moscow Court
3 of Arbitration—has declined to handle the instant dispute. Accordingly, this Court must
4 designate and appoint a replacement arbitrator. *See* 9 U.S.C. § 5.
5

6 Defendant does not challenge Plaintiff’s motion on the merits. Instead, she makes
7 several evidentiary objections to the Moscow Court of Arbitration’s written decision,
8 which Defendant attached to its motion as Exhibit 1. (*See generally* Dkt. 18 [Opposition,
9 hereinafter “Opp’n”].) Defendant argues that Plaintiff failed to properly authenticate
10 Exhibit 1, so the Court cannot take judicial notice of the written decision. (*Id.* at 3–4.)
11 She also argues that Plaintiff offers various “improper” extrinsic evidence, such as
12 hearsay statements in the written decision. (*Id.* at 5.)
13

14 Under Federal Rule of Evidence 201, a court “must take judicial notice if a party
15 requests it and the court is supplied with the necessary information.” Fed. R. Evid.
16 201(c)(2). A fact is properly the subject of judicial notice if it is “not subject to
17 reasonable dispute because it . . . can be accurately and readily determined from sources
18 whose accuracy cannot reasonably be questioned.” *Id.* 201(b). Federal Rule of Civil
19 Procedure 44 provides requirements for proving the existence of an official record. An
20 otherwise admissible foreign official record may be evidenced by “the record—or a
21 copy—that is attested by an authorized person and is accompanied either by a final
22 certification of genuineness or by a certification under a treaty or convention to which the
23 United States and the country where the record is located are parties.” Fed. R. Civ. P.
24 44(2)(A)(ii). Federal Rule of Evidence 902(3), concerning self-authentication for foreign
25 public documents, largely mirrors these requirements. If all parties have been given a
26 reasonable opportunity to investigate the document’s authenticity and accuracy, the court
27 may, for good cause, either order that (A) it be treated as presumptively authentic without
28

1 final certification or (B) allow it to be evidenced by an attested summary with or without
2 final certification. Fed. R. Evid. 902(3).

3
4 One means of certification is an apostille, “a standard certification provided under
5 the Hague Convention for authenticating documents used in foreign countries.” Black’s
6 Law Dictionary 112 (9th ed. 2009). The United States and the Russian Federation are
7 both parties to the Hague Apostille Convention.² Documents with apostilles are properly
8 authenticated. *See United States v. Pintado-Isiordia*, 448 F.3d 1155, 1157 (9th Cir.
9 2006); *Moersch v. Zahedi*, 228 F. Supp. 3d 1079, 1083 (C.D. Cal. 2017).

10
11 The Court finds that the Moscow Court of Arbitration’s written decision is
12 admissible. The document has been properly authenticated. Plaintiff attaches a copy of
13 apostille and the original document, which is stamped and sealed. (Dkt. 16-3 Ex. 2
14 [Original]; Dkt. 16-6 Ex. 1 [Translation].) The written decision is attested by an
15 authorized person, since it is notarized by Kuznetsov Nikolay Ivanovich, the notary of the
16 City of Moscow, and the ruling was executed by the presiding judge, the Honorable
17 Skvortsova, E.A. (*Id.*) The document bears the official round seal of the Ministry of
18 Justice of the Russian Federation and the official square seal of the Constitutional Court
19 of Moscow. (*Id.*) With respect to Defendant’s hearsay objection, the document is not
20 offered for the truth of the matter asserted, but to show that there has been a lapse in the
21 appointment of an arbitrator.

22
23 Plaintiff also asks this Court to appoint an arbitrator located in Orange County,
24 California. Defendant offers no opposition. Although the contractual agreement
25 specified the Moscow Court of Arbitration, located in Moscow, there is no express venue
26 provision. The Court concludes that a replacement arbitrator should be located in Orange
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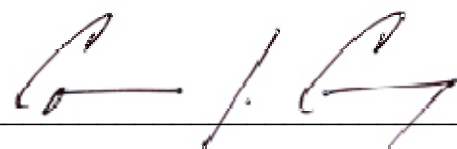
28 ² Russian Federation, U.S. Dep’t of State, <https://travel.state.gov/content/travel/en/legal/Judicial-Assistance-Country-Information/RussianFederation.html> (last accessed Dec. 31, 2018).

1 County, California. Defendant is a resident of Orange County, California, and she has
2 several pending actions in California state court, suggesting she is familiar with the
3 American litigation system and has access to local counsel. Plaintiff is a Florida entity
4 with no business in the Russian Federation. Defendant has also failed to suggest any
5 replacement arbitrators in the Russian Federation.

6
7 **IV. CONCLUSION**

8
9 For the foregoing reasons, Plaintiff’s motion to appoint a replacement arbitrator is
10 **GRANTED**. The Court hereby **ORDERS** that the American Arbitration Association is
11 immediately designated and appointed as the substituted arbitration provider. The Court
12 further **ORDERS** arbitration to proceed in Orange County, California.

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16 DATED: January 2, 2019

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19 CORMAC J. CARNEY
20 UNITED STATES DISTRICT JUDGE
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