STUART PLUNKETT (SBN 187971)
Stuart.plunkett@bakerbotts.com
BAKER BOTTS LLP
101 California Street, Suite 3600
San Francisco, CA 94111
Telephone: 415.291.6200
Facsimile: 415.291.6300

YAN ZHANG (SBN 248531)
Yan.zhang@bakerbotts.com
BAKER BOTTS LLP
1001 Page Mill Road, Building One, Suite 200
Palo Alto, CA 94304
Telephone: 650.739.7500
Facsimile: 650.739.7600

CARL OBERDIER (admitted *pro hac vice*)
cwo@oberdier.com
KELLEN RESSMEYER (admitted *pro hac vice*)
kgr@oberdier.com
OBERDIER RESSMEYER LLP
655 Third Avenue, 28th Floor
New York, New York 10017
Telephone: 212.659.5141
Facsimile: 646.349.4925

Attorneys for Petitioners

CHINA FORTUNE LAND DEVELOPMENT
and GLOBAL INDUSTRIAL INVESTMENT LTD.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHINA FORTUNE LAND DEVELOPMENT and GLOBAL INDUSTRIAL INVESTMENT LTD. Plaintiffs, vs. 1955 CAPITAL FUND I GP LLC AND 1955 CAPITAL CHINA FUND GP LLC Defendants.	Case No. 3:19-cv-07043 (VC) **PLAINTIFFS' REPLY IN FURTHER SUPPORT OF PETITION TO VACATE FINAL ARBITRATION AWARD AND OPPOSITION TO DEFENDANTS' CROSS-PETITION TO CONFIRM FINAL ARBITRATION AWARD AND FOR ENTRY OF JUDGMENT** Judge: Hon. Vince Chhabria Date: December 19, 2019 Time: 10:00 a.m. Courtroom: 4, 17th Floor

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Petitioners CFLD and GIIL respectfully submit this reply in further support of their Petition to Vacate Final Arbitration Award (Dkt. 1) (the "**Petition**" or "**Pet.**") and in opposition to Defendants' Cross-Petition to Confirm Final Arbitration Award and for Entry of Judgment (Dkt. 23) (the "**Opposition**" or "**Opp.**").[1]

I. THE GPS FAIL TO CITE A SINGLE INSTANCE IN WHICH THE PARTIES SUBMITTED THE VALIDITY OF THE "26 NOVEMBER AGREEMENTS" TO THE ARBITRATOR FOR DECISION

The GPs' Opposition fails a simple, dispositive test: it lacks a single citation to the record supporting the crucial argument it must (and seeks ineffectually to) make. The Petition's fundamental premise is that the Arbitrator raised and resolved a dispositive issue—the validity of the parties' preliminary draft "26 November Agreements" (including draft, materially-incomplete, unsigned LPAs and an unfinalized Appendix)—***that the parties never asked him to decide***. That premise could be refuted by a simple citation to the parties' submissions showing that the validity of the "26 November Agreements" was in dispute and the Arbitrator was asked to resolve it. If any such passage existed, the GPs would have cited it. ***Yet the GPs' Opposition is devoid of even a single cite to the parties' arbitral submissions***. By ignoring what the parties actually said, the GPs' Opposition amounts to twenty-two pages of misdirection.[2]

Instead, the GPs cite almost exclusively to the Arbitrator's Final Award. Although with less than perfect accuracy, the GPs do capture the gist of his analysis—that the parties reached a binding agreement to the terms of the draft "26 November Agreements" and that the GPs' subsequent Unauthorized Changes in the Operative Agreements constituted ineffective attempts to amend the draft Agreements.[3] The Opposition's deception lies in its pretense—asserted, but never

[1] Capitalized terms used without definition shall have their meanings in the Petition.

[2] To be sure, the GPs repeatedly and fervently ***contend*** that CFLD/GIIL argued the invalidity of the "26 November Agreements," apparently hoping that rhetorical ardor will substitute for evidentiary support. *See, e.g.*, Opp. 3-4, 14-15. But in each case, their contention is notably devoid of any citation to CFLD/GIIL's submissions. That is because their contention is false.

[3] The GPs' effort to downplay the egregiousness of their Unauthorized Changes (Opp. 9 n.6) is an example of their departures from the Final Award's findings. The Arbitrator did not find that the

demonstrated—that the Arbitrator's analysis was responsive to the parties' actual claims. Such responsiveness could be demonstrated only by a comparison of the Final Award to the parties' submissions—something that the GPs do not even attempt.

The GPs nowhere dispute that ***if*** the validity of the "26 November Agreements" was unsubmitted by the parties, then the Petition is correct that the Arbitrator exceeded his authority and deprived CFLD/GIIL of a fundamentally fair hearing, requiring that the Final Award be vacated. *See* Pet. 19-24.[4] The only question genuinely in dispute before the Court, therefore, is whether the parties indeed submitted the "26 November Agreements'" validity to the Arbitrator for decision. The GPs' failure to provide actual evidence of such submission—*i.e.*, any claim or dispute in the parties' arbitral papers over the "26 November Agreements'" validity—is dispositive of that question and requires that the Petition be granted.[5]

GPs' breaches of fiduciary were "technical," he found that they constituted "reckless" self-dealing in service of "their own interests, and with reckless disregard for the interests of [CFLD/GIIL]." Declaration of Kellen G. Ressmeyer, sworn to November 14, 2019 (Dkt. 3-4) ("**Ressmeyer Dec**.") Ex. 1 ¶ 302. He rejected Chung's exculpatory testimony that he had intended to disclose the Unauthorized Changes to CFLD/GIIL as "unreliable and unconvincing." *Id*. ¶ 118. The GPs' paeans to the Funds' success, (Opp. 6), also is unsupported in the Final Award.

[4] The GPs argue that the validity of the "26 November Agreements" was submitted to the Arbitrator, but nowhere argue in the alternative that even if it was not, the Petition would nonetheless fail to meet the statutory requirements for vacatur. *See* Opp. 18-22.

[5] Perhaps seeking to minimize the dispositive effect of the parties' arbitral submissions, the GPs reiterate their complaints that CFLD/GIIL "unnecessarily" filed the full set of submissions "in an attempt to pressure Mr. Chung through threat of public disclosure of confidential, proprietary information." *Compare* Opp. 2 n.2 *with* Dkt. 17-3 ¶ 23. As CFLD/GIIL explained to the GPs, their approach was not for any improper purpose but instead emulated the parties' approach in *Aspic Eng'g & Constr. Co. v. ECC Centcom Constr., LLC*, 268 F. Supp. 3d 1053, 1057 (N.D. Cal. 2017) ("*Aspic I*"), *aff'd*, 913 F.3d 1162, 1968 (9th Cir. 2019) ("*Aspic II*"), which involved similar arguments that the arbitrator issued a final award on a dispositive issue that neither party ever raised. As the court in *Aspic I* recognized, verification of that contention requires access to the parties' full arbitral submissions. *See* Reply Declaration of Kellen G. Ressmeyer, sworn to November 22, 2019 ("**Reply Dec**.") Ex. A at 33:13-24, 34:7-13, *id*. Ex. B. CFLD/GIIL requested that their letter providing this explanation be attached to the GPs' criticism of CFLD/GIILs' attachment of exhibits (*see* Reply Dec. Ex. B at 2), but the GPs refused.

II. ONLY THE FULLY-EXECUTED OPERATIVE AGREEMENTS WERE SUBMITTED FOR DECISION TO THE ARBITRATOR

The Opposition is also notable for never uttering the word "draft." That is, the GPs never acknowledge (or deny) that what they now describe as the "November 26 Investment Agreements" encompassed an unfinalized Appendix and ***preliminary, incomplete, unsigned draft*** LPAs, which the GPs' witnesses uniformly testified were ***not*** final or binding but only part of the negotiating history leading to the final, executed Operative Agreements. *See* Pet. 13-14.[6] The GPs' effort to obscure this fact is an implied acknowledgment of the implausibility that parties would devote their arguments and claims to preliminary drafts rather than final executed contracts.

It is thus not CFLD/GIIL making "prodigious efforts to sow confusion." *Cf.* Opp. 10. The actual facts, described in the Petition, are simple and unremarkable. The GPs sued to enforce six integrated, fully-executed commercial agreements, which they attached to their Demand and defined as the "Investment Agreements." *See* Pet. 11-12.[7] CFLD/GIIL sought rescission of these same six agreements, which they attached to their Answering Statement and defined as the "Fund Documents." *See id.*[8] The Arbitrator confirmed that these six Operative Agreements (not the "26 November Agreements") comprised the "***relevant*** Investment Agreements" in the Arbitration (*see*

[6] GIIL was not even a named party in the draft November 13 LPAs. *See* Ressmeyer Dec. Ex. 37 at CAP0546, CAP0609. *See also id.* Ex. 3 ¶ 76 (the GPs' testimony that GIIL was "***unknown***" as late as November 15, 2015 (emphasis added)).

[7] That the GPs' defined term "Investment Agreements" referred ***solely*** to the final, fully-executed Operative Agreements is indisputable. *See* Ressmeyer Dec. Ex. 22 ¶ 24 (defining "Investment Agreements" as the SAs, LPAs, and EAs); *id.* ¶ 25 & n.3 (citing only the signed SAs and ***final version*** of the Appendix (Exs. 14, 15)); *id.* ¶ 230 & n.20 (citing only the ***final, executed versions*** of the LPAs, "effective as of December 1, 2015" (Exs. 29, 30)); *id.* ¶ 233 & n. 23 (citing the signed EAs (Exs. 31, 32)). *See* Pet. 11-14.

[8] The GPs misleadingly criticize CFLD/GIIL for "creat[ing] the 'Operative Agreements' construct" for the first time in the Petition. Opp. 3, 10. While the term is new, the "construct" is certainly not. Throughout the arbitration, CFLD/GIIL referred to the same set of Operative Agreements, which the GPs defined as the "Investment Agreements," or as the "Fund Documents." *See, e.g.*, Ressmeyer Dec. Ex. 20 ¶¶ 22-23. CFLD/GIIL chose to refer to them in the Petition as the "Operative Agreements" to distinguish them from the "26 November Agreements," a term the Arbitrator created for the first time in the Final Award. *See id.* Ex. 1 ¶ 18 n.3.

Ressmeyer Dec. Ex. 3 ¶ 16 (citing C28-32)), and that their arbitration provisions were the sole source of his jurisdiction over the parties' dispute. *See* Pet. 11-13 & n.12, n.13; Ressmeyer Dec. Ex. 5 ¶¶ 6-7; *id*. at Ex. 1 ¶ 19.

Neither side viewed the contractual force of the ***preliminary drafts*** leading to the Operative Agreements—including but not limited to the "26 November Agreements"—as part of the case.[9] Neither attached the "26 November Agreements" to its pleadings, nor referred to them as giving rise to any claim, nor proffered them as a basis for the Arbitrator's jurisdiction.[10] The GPs do not dispute that, according to the ICDR's governing rules, the parties' failure to refer to or attach the "26 November Agreements" as a basis for their claims deprived the Arbitrator of jurisdiction to determine the validity of the "26 November Agreements." *See* Pet. 11.

The GPs nowhere deny these facts. Yet, with no cited basis in the record, they concoct a bewildering rhetorical stew in which their defined term "Investment Agreements" no longer means the Operative Agreements but rather the draft "26 November Agreements." Opp. *passim*. In the GPs' retelling, the actual executed Operative Agreements no longer even exist (Opp. 10), or, if they do exist, they have no "separate" existence apart from the draft "26 November Agreements." *Id*. Any distinction between the "26 November Agreements" and the "Operative Agreements," we are told, is now "***bogus***" (Opp. 3 (emphasis added))—despite the GPs' own witnesses having insisted on that distinction, *see* Pet. 13-14, and despite the Arbitrator himself having found that the two sets of

[9] The GPs' Demand does not mention the unsigned draft November 13 LPAs or pre-altered November 13 Appendix included in the "26 November Agreements." The GPs mentioned them for the first time—as "drafts"— in reciting the negotiating history of the Operative Agreements in their First Statement of Case. *See* Ressmeyer Dec. Ex. 22 ¶ 97 & n.114 (citing *id.* at Ex. 37). In their Answering Statement, CFLD/GIIL also mentioned the drafts in discussing the negotiating history, but did not attach them. *See id*. Ex. 20 ¶ 54. *See* Pet. 13-17.

[10] *See id*. It would have been atypical for a dispute arising out of fully executed contracts to involve disputes over the contractual validity of prior drafts as well. Among other things, the contractual force of the "26 November Agreements" was moot in light of the "entire agreement" clauses of the Operative LPAs, which provided that the Operative Agreements "constitute the full, complete, and final agreement of the Partners and ***supersede all prior agreements between the Partners with respect to the Partnership***." Ressmeyer Dec. Ex. 16 ¶ 14.12; *id.* Ex. 17 ¶ 15.12 (emphasis added).

documents were materially different.[11] Worse, CFLD/GIIL's "attempt to construct two separate and independent sets of contracts—the November 26 Agreements and the "Operative Agreements"—[is a] ***prevarication***." Opp. 18 (emphasis added). CFLD/GIIL hardly know how to respond, other than to redirect the Court to Ressmeyer Dec. Exs. 14-19—the fully-executed Operative Agreements attached to the parties' pleadings—and *id*. Ex. 37—the incomplete, unsigned drafts comprising the "26 November Agreements," which the Arbitrator found were materially different and the parties agreed were not binding. *See* Pet. 13-14. Under common, accepted usage of the mother tongue, these are "two separate and independent sets of contracts."

From out of this confused brew arises the crux of the GPs' argument: that "[CFLD/GIIL] had a complete and unfettered opportunity to present evidence and argument directed at every jot and dash of the ***Investment Agreements reached November 26, 2015***." Opp. 3 (emphasis added). Do the GPs really expect anyone to be misled by this rhetorical legerdemain? Why would CFLD/GIIL argue the contractual force of preliminary drafts on which the GPs based no claim and insisted were not final or binding (Pet. 13-14), and which were never even defined as a set (the "26 November Agreements") until the Arbitrator did so for the first time in his Final Award? *See* Ressmeyer Dec. Ex. 1 ¶ 18 n.3. No, CFLD/GIIL "had a complete and unfettered opportunity" to argue the invalidity of the Investment Agreements ***as they were defined by the GPs in the Arbitration***; *i.e*., the fully-executed Operative Agreements. They had no opportunity to present evidence and argument directed to the validity and enforceability of drafts in the negotiating history that the GPs never claimed were binding and, indeed, adamantly insisted were not.[12]

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[11] The Arbitrator found that the GPs' Unauthorized Changes, which were contained in the Operative Agreements but not the "26 November Agreements," were "***material***" and "***fundamentally changed the risks [of GIIL's] investment***." Ressmeyer Dec. Ex. 1 ¶ 289 (emphasis added). *See also id.* ¶ 349.

[12] The GPs' unsupported insistence that CFLD/GIIL not only had the "opportunity," but actually ***argued*** "that the November 26 Agreements were voidable and should be rescinded ***because of*** the [Unauthorized Changes]," (Opp. 3 (emphasis in original)), is even less coherent. Why would CFLD/GIIL argue that preliminary drafts ***untainted*** by the Unauthorized Changes were nonetheless void because of them? CFLD/GIIL argued that the ***Operative Agreements*** —not the "26 November Agreements"—were void because they had been procured by the GPs' breach of

The GPs' word games so tie themselves in knots that the GPs start to argue against themselves. The GPs decry as "false" CFLD/GIIL's "claim that the Arbitrator found the Investment Agreements 'invalid,'" accusing CFLD/GIIL of "conflating the arbitrator's determination that the ***post-closing changes*** were invalid with a fabricated ruling that the ***Investment Agreements*** were invalid." Opp. 4 (emphasis in original). CFLD/GIIL did not argue that the Arbitrator found invalid the "Investment Agreements" (as the GPs now define them), but they do assert that the Arbitrator found the Operative Agreements invalid. *See* Pet. 15-16. If ***that*** claim is false, it only demonstrates how egregiously the Arbitrator exceeded his authority. The GPs indisputably ***claimed*** that the Operative Agreements were valid and sought to enforce them. CFLD/GIIL indisputably ***counterclaimed*** that the Operative Agreements were void and sought to rescind them. There is no dispute that the Operative Agreements were ***not*** enforced, but that draft, materially-different "26 November Agreements" were enforced in their stead. If the Arbitrator indeed made no finding that the Operative Agreements were valid (as he indisputably did not) or invalid (as the GPs contend he did not), ***it is because he ignored the parties' claims and counterclaims altogether***. That is hardly an arbitrator constrained by the authority conferred by the parties' submissions.

III. THE GPS DO NOT DENY THAT THE FINAL AWARD CONTRADICTS BOTH PARTIES' POSITIONS

The GPs do not deny that the Arbitrator's determination of the "26 November Agreements'" validity was contrary to the adamant, unequivocal positions of both sides throughout the Arbitration. *See* Pet. 13-17. The GPs' position that the "26 November Agreements" were preliminary, non-binding "drafts" was a considered strategic choice based on their recognition, expressly testified to by their counsel, that if the "26 November Agreements" had been binding agreements, the GPs' subsequent Unauthorized Changes would have breached their Anti-Amendment Clauses. *See* Pet. 14. In turn, this breach would have provided CFLD/GIIL the argument that the "26 November

fiduciary duty in making the Unauthorized Changes. *See, e.g.*, Ressmeyer Dec. Ex. 32 ¶¶ 321-29, Ex. 33 ¶¶ 217-22.

Agreements"—even if valid—were terminable by CFLD/GIIL for the GPs' material breach. *See* Pet. 23-24. The Final Award acknowledged the GPs' position that "***the 13 November LPAs did not reflect what had been agreed***, but rather were ***known and agreed to be drafts*** that the GPs alone could finalize, within agreed parameters." Ressmeyer Dec. Ex. 1 ¶ 114 (emphasis added).

The GPs deny none of this. They impliedly dismiss their position that the "26 November Agreements" were nonbinding drafts in a footnote arguing that only the parties' "objective" intent matters and their "subjective beliefs regarding when and if contracts are formed are irrelevant." Opp. 12 n.9 (citing *William Lloyd, Inc. v. Hrab*, No. CIV.A. 98A-07-001HLA, 1999 WL 1611315, at *3 (Del. Super. Ct. Apr. 7, 1999)). But the GPs' attempt to brush aside their position as mere "subjective belief" fails for three reasons. ***First***, the "objective inquiry" into the parties' intent to be bound requires that one of them ***claim*** the intent to be bound. That was the case in *William Lloyd*, in which one party sought to enforce the agreement in question, and the other claimed it was nonbinding. 1999 WL 1611315, at *3. Otherwise, where neither party makes that claim and both agree they had no intent to be bound, the opposing party has no notice that it needs to submit further evidence or argument regarding intent—exactly as happened in this case.

The Arbitrator thus exceeded his authority and deprived CFLD/GIIL of a fair hearing by examining the parties' intent *sua sponte* and concluding that ***both*** sides' positions were wrong. As the Supreme Court held in *Stolt-Nielsen*, the arbitrator "has no occasion to ascertain the parties' intention [when] the parties [a]re in complete agreement regarding their intent." *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 676 (2010)*; see also Hotel And Restaurant Employees And Bartenders International Union, AFL-CIO v. Michelson's Food Services, Inc.*, 545 F.2d 1248, 1254 (9th Cir. 1976) (arbitrator could not consider claim that was not presented; arbitral respondent was "entitled to rely on the grievance presented as limiting the extent of the question that it was required to arbitrate."); *Nanakuli Paving & Rock Co. v. Shell Oil Co.*, 664 F.2d 772, 795 (9th Cir. 1981) ("The parties themselves know best what they have meant by their words of agreement and their action under that agreement is the best indication of what that meaning was."); Pet. 22-23.

Second, the "objective inquiry" of *William Lloyd* and its ilk applies to "***executed***" agreements, not preliminary, unsigned drafts such as the November 13 LPAs. *William Lloyd*, 1999

WL 1611315, at *3 (emphasis added). "Contract formation commonly involves the use of unsigned documents that are not operative offers but merely steps in the preliminary negotiation of agreements." *RDP Techn., Inc. v. Cambi AS*, 800 F. Supp. 2d 127, 141 (D.C. Cir. 2011) (citing, *e.g.*, RESTATEMENT (SECOND) OF CONTRACTS § 26 (1981)); *accord Leeds v. First Allied Connecticut Corp.*, 521 A.2d 1095, 1097 (Del. Ch. 1986) ("Agreements made along the way to a completed negotiation, even when reduced to writing, must necessarily be treated as provisional and tentative. Negotiation of complex, multi-faceted commercial transactions could hardly proceed in any other way."); *Patel v. Patel*, No. CIV.A.07C-07-020RRC, 2009 WL 427977, at *4 (Del. Super. Ct. Feb. 20, 2009) (invalidating settlement agreement based on undisputed witness testimony corroborating the parties' belief that the disputed agreement would be submitted to legal counsel for finalization). Whereas a written, signed contract is presumed valid, a preliminary unsigned draft is presumed ***invalid*** absent "evidence . . . clearly indicat[ing] that [the parties] intended to be bound at that point." *RDP Technologies*, 800 F. Supp. 2d at 141 (citing, *e.g.*, RESTATEMENT (SECOND) OF CONTRACTS § 26 (1981)). The GPs' position that the "26 November Agreements" were preliminary, non-binding drafts subject to material change precluded the requisite "clear indication" of any intent to be bound.

Third, the GPs do not address the Final Award's internal inconsistency in finding the parties manifested their "objective intent" to be bound to the "26 November Agreements." *See* Pet. 15-18. By the Arbitrator's own reckoning, the GPs' signatures on the 13 November LPAs (on behalf of both parties) was a condition precedent to the requisite objective manifestation of intent to be bound to the "26 November Agreements." *See id*. (quoting Ressmeyer Dec. Ex. 1 ¶¶ 97, 113, 119). But as the Arbitrator found, the 13 November LPAs were never signed, *See* Pet. 17 (quoting Ressmeyer Dec. Ex. 1 ¶ 119). Without any notice that the Arbitrator was considering the validity of the "26 November Agreements," CFLD/GIIL never had the opportunity to argue this flaw in the Arbitrator's analysis.

IV. THE GPS CANNOT REFUTE THE FINAL AWARD'S VIOLATION OF THE BOUNDARIES SET BY THE PARTIES' SUBMISSIONS MERELY BY CITING THE FINAL AWARD

Rather than cite the parties' submissions even once, the GPs rely throughout their opposition solely upon the Final Award in an effort to demonstrate that the Final Award was confined to matters

that the parties expressly raised. *See*, *e.g.*, Opp. 14-17. The GPs argue that the "***Final Award*** itself conclusively . . . shows Petitioners made every argument they could think of regarding the validity of the Investment Agreements." Opp. 14 (emphasis added). But, of course, the Final Award is incapable of doing any such thing; as the Court recognized in *Aspic I*, only the parties' submissions can demonstrate what the parties, in fact, argued. *See* Reply Dec. Ex. A at 33:13-24, 34:7-13. The GPs claim to indisputably demonstrate that the "26 November Agreements" were "the center of the bullseye" (Opp. 3)—***in the Final Award***. Yet they do nothing to demonstrate that the "26 November Agreements" were anywhere in the target zone of the parties' submissions.

While it is true that the Final Award recharacterizes the parties' arguments over the validity and enforceability of the Operative Agreements as pertaining to the "26 November Agreements," the record is clear that no party ever made such an argument. These recharacterizations may reflect the Arbitrator's effort to inoculate the Final Award against a petition to vacate, but in any event, each is notably bereft of any citation to the parties' submissions (even though the Final Award scrupulously cites those submissions for other propositions). Again, had the parties actually made the arguments regarding the "26 November Agreements" attributed to them in the Final Award, the GPs would certainly have cited the submissions making them. Merely citing the Final Award to demonstrate its confinement to the issues raised in the parties' submissions is a bootstrapping, circular exercise.[13]

In the rare exceptions where the Final Award provides a citation to the parties' asserted arguments, the citation proves they were discussing only the Operative Agreements. For example, the Final Award states that "[the GPs] contend that [CFLD/GIIL's] material breach . . . result[ed] in the loss of the entire benefit of the 26 November Agreements." Ressmeyer Dec. Ex. 1 ¶ 363 (citing *id*. Ex. 34 at Appendix A ("**Appendix A**")). But Appendix A is addressed exclusively to the "Investment Agreements"—defined by the GPs as the final, executed Operative Agreements.

[13] The Final Award states, for example, that "[the GPs] contend (and Respondents deny) that Respondents committed an anticipatory repudiation of the 26 November Agreements in October 2016." Ressmeyer Dec. Ex. 1 ¶ 351 (without citation). The GPs obviously argued no such thing—not when their position was that the "26 November Agreements" were only non-binding drafts—and the Final Award cites nothing supporting its recharacterization of the GPs' argument.

Nowhere is there any reference to the "13 November LPAs," the "13 November Appendix," or the "26 November Agreements." *See id.* Ex. 34 ¶ 53 & n.64 (citing ***only*** the Operative Agreements, *id*. Exs. 14-17).

Unable to support the Final Award's assertions that the parties argued the validity and enforceability of the "26 November Agreements," and with the evidence uniformly to the contrary, the GPs' repeated invocations of the Arbitrator's experience and thoroughness are of no help to them. *See, e.g.*, Opp. 1, 7-8, 16. As the Ninth Circuit has noted, an experienced arbitrator who strays outside the parties' submissions is presumed to have done so intentionally. *See Garvey v. Roberts*, 203 F.3d 580, 590-91 (9th Cir. 2000) ("Given the arbitrator's professional experience, the decision can be explained only by his desire to dispense his own brand of industrial justice. No other plausible explanation exists."). The Final Award's recharacterizations of arguments the parties never made only demonstrates that, as in *Garvey*, this Arbitrator knew what he was doing.

V. CONCLUSION

For the foregoing reasons, the Final Award should be vacated, and the GPs' cross-motion to confirm the Final Award should be denied.

Dated: November 22, 2019

Respectfully submitted,

OBERDIER RESSMEYMER LLP
Carl W. Oberdier
(admitted *pro hac vice*)
Kellen G. Ressmeyer
(admitted *pro hac vice*)
655 Third Avenue; 28th Floor
New York, New York 10017
Telephone: (212) 659-5141

BAKER BOTTS L.L.P.

/s/ Stuart C. Plunkett
STUART PLUNKETT (SBN 187971)
Stuart.plunkett@bakerbotts.com
BAKER BOTTS LLP
101 California Street, Suite 3600
San Francisco, CA 94111
Telephone: (415) 291-6200

YAN ZHANG (SBN 248531)
Yan.zhang@bakerbotts.com
BAKER BOTTS LLP
1001 Page Mill Road
Building One, Suite 200
Palo Alto, CA 94304
Telephone: 650.739.7500

Attorneys for Petitioners China Fortune Land Development and Global Industrial Investment Ltd.