TENTATIVE RULINGS: CIVIL LAW & MOTION

Friday, May 24, 2024 at **8:30 a.m.**
Courtroom 18 –Hon. Christopher M. Honigsberg
Civil and Family Law Courthouse
3055 Cleveland Avenue
Santa Rosa, California 95403

The Court's Official Court Reporters are "not available" within the meaning of California Rules of Court, Rule 2.956, for court reporting of civil cases.

CourtCall is not permitted for this calendar.

If the tentative ruling does not require appearances, and is accepted, no appearance is necessary.

Any party who wishes to be heard in response or opposition to the Court's tentative ruling **MUST NOTIFY** the Court's Judicial Assistant by telephone at **(707) 521-6723** and **MUST NOTIFY all other parties of their intent to appear, the issue(s) to be addressed or argued and whether the appearance will be in person or by Zoom**. Notifications must be completed no later than 4:00 p.m. on the court (business) day immediately before the day of the hearing.

TO JOIN "ZOOM" ONLINE **Department 18 :**
https://sonomacourt.org.zoomgov.com/j/1607394368?pwd=aW1JTWlIL3NBeE9LVHU2NVVpQlVRUT09

Meeting ID: **160—739—4368**
Password: **000169**

To Join Department 18 "Zoom" By Phone:
Call: +1 669 254-5252 6833 US
Enter Meeting ID: **160—739—4368**
And Password: 000169

Unless notification of an appearance has been given as provided above, the tentative ruling shall become the ruling of the Court the day of the hearing at the beginning of the calendar.

1-2. 23CV00620, Jamgotchian v. Sonoma County Fair and Exposition, Inc.

Motion to Quash Subpoenas and for Protective Order and Sanctions GRANTED, as explained herein. Sanctions of $1,480 awarded to Defendant against Plaintiff.

Motion for Protective Order Re: Discovery Requests; Request for Sanctions GRANTED in part, as explained herein. Sanctions of $1,480 awarded to Defendant against Plaintiff.

Facts

Plaintiff filed this action on September 19, 2023, alleging that he owns a racehorse, "Undisturbed," complaining that Defendant improperly charged Plaintiff a $146 per-start fee for entering Undisturbed in horse races at the Sonoma County Fair (the "Fair"). He alleges that as he is simply an owner of a racehorse and thus not legally required to maintain workers' compensation insurance for the jockey riding the horse, since only the trainer, who hires the jockey, is an employer obligated to maintain such insurance. He also alleges that Defendant has improperly charged other owners this fee as well. He

asserts that pursuant to the rules and regulations of the California Hores Racing Board ("CHRB") and the California Horse Racing Law at Business and Professions Code ("B&P Code") at section 19400, et seq., jockeys are considered "employees" only for purposes of worker's compensation and that their "employers" are the trainers, not the owners. He alleges at ¶¶18-19 that he is investigating the practice of charging this fee against owners but that,

> To the extent a per start fee is charged to an Owner, including Plaintiff, by SONOMA (or anyone else) for workers' compensation insurance for the jockey, such a fee is therefore wrongful and without any statutory basis….
>
> …
>
> To the extent Defendants charged, and continue to charge Owners, including Plaintiff, a per start fee for workers compensation insurance for the jockey, the taking of that fee from any Owner, including Plaintiff, amounts to permanent taking or conversion of that money from the Owners, including Plaintiff, without legal justification for which Defendants have been unjustly enriched.

On April 5, 4024, this Court granted Plaintiff's motion for leave to file a first amended complaint ("FAC"). In this FAC, Plaintiff adds new 4th through 7th causes of action for violation of Insurance Code section 70, et seq., negligent and intentional misrepresentation regarding the need for Plaintiff to pay the $146 in order to ensure that worker's compensation insurance covered the jockey riding his horse, Business and Professions Code section 17200, et seq., and related additions to the prayer.

Motions

Defendant brings two motions to bar or limit Plaintiff's discovery attempts in this action, a Motion for Protective Order Re: Discovery Requests; Request for Sanctions and a Motion to Quash Subpoenas and for Protective Order and Sanctions. In both motions, Defendant contends that this is a simple, straightforward action involving only Plaintiff himself, not other owners, and that the dispute is based on clear legal definitions as to the employees of jockeys, rendering the discovery at issue irrelevant and unnecessary. It also contends that due to the amount in controversy, $146, this should be a small claims case, which has no discovery, and that even if it were a limited civil action, the discovery sought exceeds that normally allowed.

In the Motion to Quash Subpoenas and for Protective Order and Sanctions, Defendant moves the Court to quash deposition subpoenas which Plaintiff has served on eight non-parties, along with a protective order and monetary sanctions against Plaintiff in the amount of $3,408. It notes that the subpoenas seek roughly 8 years' worth of documents such as invoices, agreements, insurance records, various communications, and records of third-arty horse owners, among others.

In the Motion for Protective Order Re: Discovery Requests; Request for Sanctions, Defendant moves the Court for a protective order limiting Plaintiff's discovery requests to 35 "based upon the actual controversy in this case," and that any requests beyond that be barred. It contends that the requests are excessive, overly burdensome, not relevant, and intended to annoy, threaten, and cause undue burden and expense. It seeks monetary sanctions of "no less than" $3,400.

There is no timely opposition to these motions. Petitioner filed opposition four days late, arguing that the discovery is proper in light of the FAC allegations.

Opposition

On Friday, April 12, 2024, Plaintiff filed purported opposition to these motions. The opposition is egregiously untimely. Unless otherwise specified, papers opposing a motion must be served and filed at least 9 court days before the hearing, unless the court permits a shorter time. Code of Civil Procedure ("CCP") §1005(b); California Rule of Court ("CRC") 3.1300(a). Plaintiff filed, and served, his opposition papers only 5 court days before the hearing. The Court disregards the opposition papers on this basis. However, the Court notes that even considering the opposition, it does not substantively alter the Court's ruling, as set forth below.

Motion to Quash and for Protective Order

A party, witness, consumer, or employee may bring a motion to quash, condition, or modify a subpoena requiring attendance or production of items before a court, at trial, or a deposition. CCP section 1987.1. The court may also on such a motion make an order "as appropriate to protect the person from unreasonable or oppressive demands…." Ibid. See also CCP sections 1985.3(g), 1985.6(f). A party of course may obtain a protective order since the court "for good cause shown, may make any order that justice requires to protect any party... from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense." CCP sections 2017.020; 2019.030; 2025.420; 2030.090; 2031.060; 2033.080(b).

The Propriety of the Discovery Sought

Defendant persuasively argues that the discovery is not warranted in this case. These subpoenas seek a broad range of documents, such as all documents reflecting the amount of money the recipients charged owners for "Jockey Insurance/Per Start Fees"; copies of checks the recipients paid for such insurance; agreements with the applicable insurer; worker's compensation policies; all writings or correspondence regarding such insurance; all information sent to any horse owner regarding such insurance; and more.

On the face of this lawsuit, none of this information seems potentially relevant. This lawsuit, as currently pleaded and framed by the pleadings, consists of Plaintiff's claim that Defendant improperly charged him $146 for one instance of submitting Undisturbed for races, and his claims that this was

illegal and improper based specifically on the applicable statutes, rules, and regulations. There is no basis whatsoever for obtaining the evidence requested since it has no bearing on Plaintiff's claims. No information about the recipients' transactions, communications, or dealings with each other, with Defendant, or with other owners, who are not parties to this lawsuit, has any bearing on the claims presented in the complaint. The information is facially not likely to lead to the discovery of admissible evidence and appears solely intended to be unnecessarily and improperly harassing, overly burdensome, and oppressive. There is no substantial justification whatsoever for the discovery sought in these subpoenas. When Plaintiff served the discovery, he had not even filed the motion to leave to file the FAC, so that the issues as framed in the pleadings at the time of this discovery were unequivocally limited to the original complaint.

Even after the consideration of the additions to the FAC, there is no evident basis for the discovery sought. The FAC still names only Plaintiff himself, rendering information for any other parties other than the transaction between Plaintiff and Defendant, facially of no possible relevance. Plaintiff has not opposed this motion to argue to the contrary or provided any explanation as to why this information could potentially lead in any way to admissible evidence.

The Court does note that some categories in the subpoenas seek facially relevant documents but still finds the subpoenas improper even as to these items. Specifically, some items request production of CHRB rules or statutory authority, or the like, which may allow Defendant to charge an owner a per-start fee, and this information is facially relevant. However, there is no basis for requesting anyone to provide statutory or other authority in discovery, which is essentially an improper attempt to use discovery to make another do a party's own legal research, as opposed to searching for admissible evidence. CCP section 2017.010 sets forth the basic standards as to who is entitled to conduct discovery and what is generally discoverable. It states, in pertinent part and with emphasis added, "any party may obtain discovery regarding any matter… if the matter either is itself *admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence*." Related to this is the principle that, in general, it is improper for a party to "attempt to place the burden and cost of supplying information equally available to both solely upon" others. *Greyhound Corp. v. Sup.Ct*. (1961) 56 Cal.2d 355, 384-385. The Supreme Court in *Greyhound* applied this principle specifically to efforts to shift the burdens of research to other parties. The court in *Calcor Space Facility, Inc. v. Sup.Ct*. (1997) 53 Cal.App. 4th 216, at 225, later reiterated the principle and clarified that it also extends, even more strongly, to situations where a party seeks to "fish" from a non-party. The *Calcor* court explained, 'The concerns for avoiding undue burdens on the "adversary" in the litigation expressed in *Greyhound* apply with even more weight to a nonparty.'

Defendant is not, however, persuasive regarding the limitations on discovery applicable to small claims matters or limited jurisdiction matters. These are not applicable here. This case is an unlimited jurisdiction case, and that designation remains in effect. Moreover, despite Plaintiff's underlying claims being limited to $146, Plaintiff raises additional claims which may be outside the scope of small claims or limited jurisdiction. The Court merely notes the existence of the issue, however, and makes no determination on that point because no party has raised or briefed it or put the issue before the Court. The Court also finds the issue of such limitations to have no effect on the outcome of this motion because, as explained above, Plaintiff's discovery efforts via these subpoenas are improper in the context of the current pleadings.

Notice to Third-Party Consumers

Defendant in part argues that Plaintiff failed to provide a notice to the third-party owners that he is seeking, among others, their records, and that they have objected to the subpoenas on this basis.

Anyone serving a deposition subpoena for records of a consumer or employee must serve that consumer or employee with a notice of privacy rights and copy of the subpoena "[p]rior to the date called for in the subpoena" as well as at least 5 days prior to service upon the custodian of records, and 10 days prior to the date for production. CCP sections 1985.3(b), 1985.6(b). The party serving the subpoena must also serve the custodian with proof that the party had served the consumer or employee whose records are sought. CCP sections 1985.3(c), 1985.6(c), 2020.410(d). Failure to comply with these requirements invalidates the service of the subpoena so that the witness/custodian need not comply and if the evidence is produced, gives grounds to object to its admission. CCP sections 1985.3(k), 1985.6(j); see *Sasson v. Katash* (1983) 146 Cal.App.3d 119, 125. CCP section 1985.3(b) states, in pertinent part, and with emphasis added,

> (b) Prior to the date called for in the subpoena duces tecum for the production of personal records, the subpoenaing party shall serve or cause to be served on the consumer whose records are being sought a *copy of the subpoena duces tecum*, *of the affidavit* supporting the issuance of the subpoena, if any, *and of the notice* described in subdivision (e), *and proof of service* as indicated in paragraph (1) of subdivision (c).. *This service shall be made as follows*:
>
> (1) To the consumer personally, or at his or her last known address, or in accordance with Chapter 5…, or, if he or she is a party, to his or her attorney of record.
>
> …
>
> (2) Not less than 10 days prior to the date for production specified in the subpoena duces tecum, plus the additional time provided by Section 1013 if service is by mail.

(3) *At least five days prior to service upon the custodian of the records, plus the additional time provided by Section 1013 if service is by mail*.

A "consumer whose personal records are sought" or "employee" or "[a]ny other consumer or non-party" whose records are sought may either move to quash a subpoena or serve written objections prior to the date set for production. CCP sections 1985.3(g), 1985.6(f)(2).

Defendant asserts that Plaintiff never complied with the notice requirements set forth above. The copies of the subpoenas attached as Ex. G to the King Declaration support this contention. Defendant also asserts that at least some of the third-party owners whose documents the subpoenas seek have objected, but it provides no evidence of this. The failure to comply with the notice requirements, regardless of whether the third parties objected, is a basis for granting this motion as well.

Conclusion: Motion to Quash and for Protective Order

The Court GRANTS the Motion to Quash Subpoenas and for Protective Order and Sanctions. The Court also notes that this ruling is without prejudice to Plaintiff again seeking the information should the pleadings in this case change and raise new facts, issues, or causes of action which may potentially warrant the discovery which the Court is currently barring or limiting. This Court's current determination is limited to the current claims as framed by the complaint.

Sanctions

The prevailing party on a motion regarding a subpoena may be entitled to sanctions if the losing party lacked substantial justification. CCP sections 1987.2(a); 2025.260(d). In order to obtain sanctions, the moving party must request sanctions in the notice of motion, identify against whom the party seeks the sanctions, and specify the kind of sanctions. CCP section 2023.040. The sanctions are limited to the "reasonable expenses" related to the motion. *Ghanooni v. Super Shuttle of Los Angeles* (1993) 20 Cal.App.4th 256, 262.

In its motion, Defendant only states that it seeks monetary sanctions for Plaintiff's alleged discovery abuses, without specifying if they are to be against Plaintiff, his attorney, or both.

Defendant seeks $3,408 for time spent objecting, meeting and conferring, and bringing this motion, but only states that it "will easily exceed 12 hours at 284 an hour…." King Dec. There is no evidence of the time spent and the Court may not compensate for time so far only anticipated and not actually spent. Absent further evidence, the Court finds five hours at the stated rate of $284 an hour to be reasonable, resulting in a total of $1,420. With the $60 filing fee, the total of $1,480. The Court AWARDS sanctions of $1,480 in favor of Defendant against Plaintiff personally since the motion apparently only seeks sanctions against Defendant.

Motion for Protective Order Re: Discovery Requests; Request for Sanctions

In addition to noticing and conducting the deposition of Defendant's designated person most

qualified ("PMQ") and serving the deposition subpoenas discussed above, Plaintiff initially served 18 requests for admission ("RFAs") and 19 requests for production ("RFPs"), followed by 22 additional RFAs, 16 more RFPs, and two sets of form interrogatories. King Dec., ¶¶9-13. Defendant has objected to the discovery requests in part but has agreed to respond to some. Id., ¶11. The two sets of RFAs together amount to 40 RFAs. The second set includes a declaration for additional discovery.

The Discovery Act sets forth some express limitations on written discovery demands but these are specific and do not apply to all types. There is no limit to the number of production request demands which a party may serve. See CCP section 2031.010, et seq. As for RFAs, there is also no limit on RFAs regarding genuineness of documents but otherwise each party has a right to serve up to 35 RFAs on each other party with the ability to serve more with a sufficient declaration of necessity. CCP section 2033.030. There is no limit on the number of form interrogatories which a party may serve but each party has a right to serve only 35 special interrogatories on each other party, with the ability to serve more with a sufficient declaration of necessity. CCP section 2030.030. The declaration must "substantially" contain the statements set forth in CCP sections 2030.040(a), 2030.050.

Thus, a party need not answer special interrogatories or RFAs over 35 unless the propounding party has provided a declaration of necessity but the responding party must respond to the first 35. When a party provides a declaration of necessity, the responding party may challenge it by a motion for protective order. CCP sections 2030.090, 2033.080. The implication is that therefore merely objecting to additional interrogatories or RFAs as being over 35 when they include the required declaration is insufficient. See *Catanese v. Sup.Ct.* (1996) 46 Cal.App.4th 1159, 1165. The responding party may, among other things, seek a protective order that the set, or particular requests in the set, need not be answered at all or that, contrary to the representations made in a declaration submitted under Section 2033.050, the number of admission requests is unwarranted. CCP sections 2030.090, 2033.080.

That said, as discussed above, a party may generally seek a protective order since the court "for good cause shown, may make any order that justice requires to protect any party... from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense." CCP sections 2017.020; 2019.030; 2025.420; 2030.090; 2031.060; 2033.080(b). CCP section 2019.030 expressly states that this be used to limit the frequency or extent of discovery if unreasonably cumulative or duplicative, unduly burdensome or expensive. The burden of proof is on the party seeking the protective order to demonstrate "good cause." *Emerson Elec. Co. v. Sup.Ct.* (1997) 16 Cal.4th 1101, 1110. The burden is "undue" only if the expense and inconvenience clearly outweigh the likely benefits. CCP sections 2017.020; 2019.030; 2025.420; 2030.090; 2031.060; 2033.080(b).

By contrast, when a party seeks a protective order to challenge a declaration of necessity for extra

RFAs or special interrogatories, however, the burden is on the party propounding the discovery to justify the extra number. CCP sections 2030.040(b), 2033.040(b).

The Court again notes that when Plaintiff served the discovery, he had not yet filed the motion to leave to file the FAC, so the issues as framed in the pleadings at the time of this discovery were unequivocally limited to the original complaint. Even so, the Court is considering the additions to the FAC. To repeat, the FAC still names only Plaintiff himself, rendering information for any other parties other than the transaction between Plaintiff and Defendant facially of no possible relevance. Plaintiff has not opposed this motion to argue to the contrary or provided any explanation as to why this information could potentially lead in any way to admissible evidence. As explained below, however, the new allegations do otherwise provide some basis for a limited portion of the discovery items which, based on the original complaint, would not have been proper.

Defendant is partly persuasive on this point. RFAs 1-13, 22-29, 31-40 on their face do seek information either directly relevant to the allegations in the original complaint or seem reasonably calculated to lead to admissible evidence. Additionally, many are tied specifically to Plaintiff's assertion that under applicable statutes, rules, and regulations, he is not an "employer" and has no duty to provide worker's compensation insurance while others at least touch reasonably on the events involving Plaintiff personally. Regardless of whether these are otherwise objectionable, an issue not before this Court at this time, these are facially reasonable and narrowly tailored to the allegations. Defendant fails to demonstrate that a protective order is appropriate as to them. RFAs 14-21 and 29-30 also do relate facially to the new causes of action for misrepresentation. The Court DENIES the motion as to the RFAs.

With respect to the form interrogatories, in each set, Plaintiff only marked 17.1 as needing a response, leaving the others unmarked. These relate to the RFAs and Defendant must respond to them.

Of the 19 RFP items Plaintiff served in its RFP set, some are appropriate but others appear improper and should be subject to a protective order.

RFPs 7-8, 12, and 17, are clearly relevant because they go directly to the transaction involving Plaintiff and are limited in scope. They are proper and the Court thus DENIES the motion and the request for a protective order as to those.

RFPs 5-6, and 11 are overly broad in that they seek documents for an unlimited period of time going to all transactions, not just Plaintiff's, while any such documents other than those specific to Plaintiff's transaction are on their face overly burdensome and not reasonably calculated to led to admissible evidence. The Court GRANTS the motion as to a limited protective order regarding these and issues a protective order limiting 5-6 and 11 to those specific contracts involving Plaintiff, is horse Undisturbed, the jockey who rode his horse, and the trainer for that jockey. Defendant must respond as to those items as so limited.

The other RFPs on their face are overly burdensome and not reasonably calculated to lead to admissible evidence. The Court GRANTS the motion as to these and thus issues a protective order shielding Defendant from the need to respond to those.

The Court notes the limitations of its order regarding a protective order. Regarding the discovery for which the Court has denied or only partly granted a protective order, and to which Defendant must therefore respond, this order has no bearing on whether Defendant may assert objections in its responses, or what those objections may be. The Court also notes that this ruling is without prejudice to Plaintiff again seeking the information should the pleadings in this case change and raise new facts, issues, or causes of action which may potentially warrant the discovery which the court is currently barring or limiting. This Court's current determination is limited to the current claims as framed by the complaint.

Sanctions

As with a motion to quash subpoena, CCP sections 2017.020(b) and 2025.420(d) state that on a motion for a protective order the court "shall" impose monetary sanctions on the losing party pursuant to CCP section 2023.010, et seq., unless that party acted with substantial justification or other circumstances make sanctions unjust. In order to obtain sanctions, the moving party must request sanctions in the notice of motion, identify against whom the party seeks the sanctions, and specify the kind of sanctions. CCP section 2023.040. The sanctions are limited to the "reasonable expenses" related to the motion. *Ghanooni v. Super Shuttle of Los Angeles* (1993) 20 Cal.App.4th 256, 262.

In its motion, Defendant again only states that it seeks monetary sanctions for Plaintiff's alleged discovery abuses, without specifying if they are to be against Plaintiff, his attorney, or both.

Defendant seeks at least $3,400 for time spent objecting, meeting and conferring, and bringing this motion, but, as on the motion to quash, only states that it "will easily exceed 12 hours at 284 an hour…." King Dec. There is no evidence of the time spent and the court may not compensate for time so far only anticipated and not actually spent. Absent further evidence, the Court finds five hours at the stated rate of $284 an hour to be reasonable, resulting in a total of $1,420. With the $60 filing fee, the total of $1,480. The Court AWARDS sanctions of $1,480 in favor of Defendant against Plaintiff personally since the motion apparently only seeks sanctions against Defendant.

Conclusion: Motion for Protective Order Re: Discovery Requests;

Request for Sanctions

The Court GRANTS the motion in part, as specified above, and AWARDS sanctions of $1,480 to Defendant and against Plaintiff.

Conclusion

The court GRANTS the motions as set forth above, with the above limitations. The moving party shall prepare and serve a proposed order consistent with this tentative ruling within five days of the date

set for argument of this matter. Opposing party shall inform the preparing party of objections as to form, if any, or whether the form of order is approved, within five days of receipt of the proposed order. The preparing party shall submit the proposed order and any objections to the court in accordance with California Rules of Court, Rule 3.1312.

3. 23CV01493, Constellation Brands U.S. Operations, Inc. v. Bacchus Vineyards, LLC

This case springs from a contract dispute between grape grower Bacchus Vineyards, LLC ("Bacchus") and wine manufacturer and distributor Constellation Brands ("Constellation" or "CBUSO"). An arbitration award, confirmed by this Court, awarded attorney's fees and costs to Constellation, and against Bacchus. Bacchus has been dissolved, but before its dissolution its sole member was Brigitte Graefin von Schlienk Seebass ("Seebass"). This matter comes on calendar for Constellation's motion to amend the judgment to add Seebass, personally, as a judgment debtor.

The motion is **DENIED**. Counsel for Bacchus shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

I. Background

In 2017, Constellation and Bacchus entered into two five-year contracts for the purchase of grapes, one for merlot grapes and the other for cabernet. On September 20, 2020, Constellation refused to accept Bacchus's entire harvest due to smoke damage to the grapes. Bacchus then sold its only asset, a vineyard near Ukiah, for $3,530,000, with escrow closing on March 22, 2021. Bacchus's mortgagee, American AgCredit, was paid $928,906.11 out of the escrow; the remining funds were deposited in Bacchus's bank account.

A mediation terminated unsuccessfully in February of 2022. On March 2, 2022, Bacchus initiated an arbitration before Kenneth Gack of JAMS ("Arbitrator"). Four weeks later, on March 30, 2022, Seebass dissolved Bacchus and transferred the funds in its bank account to herself personally.

On September 5, 2023, Arbitrator issued a Final Award. He found no breach of contract by Constellation, and awarded Constellation $98,417.56 in attorney's fees and costs. Arbitrator explicitly declined Constellation's request to name Seebass personally as "a person against whom the award of attorney's fees and costs is levied." The final sentence of the arbitration award is "The Arbitrator awards CBUSO attorney's fees and costs against Bacchus, LLC, *only,* in the total amount of $98,417.56." (Emphasis supplied.) The Court confirmed this award on March 4, 2024.

II. Analysis

A. Alter ego

Constellation characterizes the instant motion as a "'*Greenspan*' motion." This refers to the leading case on alter ego liability, *Greenspan v. LADT, LLC* (2010) 191 Cal.App.4th 486, which provides that "[j]udgments may be amended to add additional judgment debtors on the ground that a person or entity is the alter ego of the original judgment debtor." (*Id.* at p. 508.) Constellation argues that *Greenspan* controls here because Seebass "is the alter ego of Bacchus and controlled the litigation." The Court acknowledges that she may have controlled the litigation in the sense of being involved in it and interacting with Bacchus's counsel, but nothing in Constellation's argument suggests that she did that in her personal capacity rather than in the capacity of the sole member of the LLC. It is difficult to imagine how an LLC could be involved in a litigation – or, as here, an arbitration – without its directing member being involved to that extent.

Constellation's other bases for averring that Seebass "acted as the alter ego of Bacchus" are that she was "the *only* member of the LLC" and that, after dissolving the LLC, she "distributed its assets to *herself*." (Original emphasis in both cases.) To begin with, there is nothing wrong with an LLC having a single member. (See, e.g., *CSHV 1999 Harrison, LLC v. County of Alameda* (2023) 92 Cal.App.5th 117, 126 [single-member LLC may elect to be taxed as association or sole proprietorship], *Sam v. Kwan* (2024) 101 Cal.App.5th 556, 370 [sole member of LLC cannot sue the LLC].)

That leaves Constellation with the fact that under a month after initiating the arbitration but well over a year before its conclusion, Seebass dissolved the LLC and transferred the bulk of its assets to herself. The question before this Court, then, is whether by rendering the LLC incapable of paying an attorney's-fee award that might or might not be ordered at some point in the future, Seebass revealed herself to be the LLC's alter ego.

Greenspan lists 14 factors a court may consider in determining whether an individual is the alter ego of an LLC, and adds that "[t]his long list of factors is not exhaustive" and that "a court must examine all the circumstances to determine whether to apply the doctrine." (*Greenspan, supra,* 191 Cal.App.4th at p. 512.) Seebass declares that she did not engage in any of the conduct described on *Greenspan*'s "long list." The only one about which there appears to be any controversy is item number 12, "the diversion of assets from a corporation by or to a stockholder . . . to the detriment of creditors." But Seebass's diversion of Bacchus's assets, if transferring the assets of a solely-held LLC to herself after lawfully dissolving it can be so characterized, was not "to the detriment of creditors." At that time, Bacchus had no creditors. Bacchus did not become Constellation's creditor until, at the very earliest, September 25, 2023, when Arbitrator issued his Final Award. As a technical matter, it was more likely on March 4,

2024, when this Court confirmed the award. In any event, the debtor/creditor relationship did not exist on March 30, 2022, when Seebass dissolved the LLC.

To be sure, Seebass had reason to suspect at that time that such a relationship might come into existence in the future. In his Final Award, Arbitrator noted that "[t]he claim for attorney's fees runs from October of 2020, and includes the efforts associated with the mandatory mediation provision in the contract between the parties." Arbitrator did not award those fees, but the fact that Constellation requested them suggests that they had prevailed in the mediation. Given that, it could well have occurred to Seebass that they might also prevail in the arbitration, and that, therefore, Bacchus might be ordered to pay their attorney's fees and costs. But *Greenspan* neither holds nor suggests that diversion of assets to the detriment of someone who might conceivably be a creditor in the future indicates alter-ego status.

To prevail on a motion to amend a judgment to add an alter ego, "the judgment creditor must show, by a preponderance of the evidence, that: (1) the parties to be added as judgment debtors had control of the underlying litigation and were virtually represented in that proceeding, (2) there is such a unity of interest and ownership that the separate personalities of the entity and the owners no longer exist, and (3) an inequitable result will follow if the acts are treated as those of the entity alone." (*Highland Springs Conference & Training Center v. City of Banning* (2016) 244 Cal.App.4th 267.) The evidence that Seebass dissolved the LLC and transferred its assets to herself over a year before the imposition of a fee award against it does not rise to that level.

The decision to grant an amendment to add additional alter ego judgment debtors to a judgment lies in the sound discretion of the trial court. (*Greenspan, supra,* 191 Cal.App.4th at p. 508.) Alter ego "is an extreme remedy, sparingly used." (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 539.) The Court will not use it here.

B. Due process and jurisdiction

Bacchus notes that Seebass has not been served in the instant action. That is true; the proof of service of process filed on February 5, 2024 indicates that the summons and complaint were served only on Bacchus, through its counsel. Notably, the proof of service of the instant motion filed on April 2, 2024 indicates service on "Attorneys for Respondent Bacchus Vineyards, LLC," again with no mention of Seebass.

It is near-axiomatic that personal jurisdiction is conferred on a court by service in compliance with statute. "The fundamental requisite of due process of law is the opportunity to be heard." (*Grannis v. Ordean* (1914) 234 U.S. 385, 394.) "This right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest." (*Mullane v. Central Hanover Bank & Trust* (1950) 339 U.S. 306, 314.) Under California law, "the court in which an action is pending has jurisdiction over a party from the time summons is served on

him." (CCP § 410.50.) It is true that in an action against a dissolved corporation, a court acquires jurisdiction over the trustees and members of the corporation "from the time summons is served on one of the trustees" (CCP § 410.60), but the Court is unaware of any corresponding statutory basis for exercising personal jurisdiction over a former member of a dissolved LLC on the basis of service of process on the LLC.

It has long been established that amending a judgment against a corporation by adding the names of purported alter egos may violate those individuals' Due Process rights: "To summarily add [three individuals] to the judgment heretofore running only against [a corporation], without allowing them to litigate any questions beyond their relation to the allegedly alter ego corporation would patently violate this constitutional safeguard." (*Motores De Mexicali v. Superior Court* (1958) 51 Cal.2d 172, 176.) Constellation's point, presumably, is that it is not asking the Court to *add* Seebass as a judgment debtor, only to *substitute* her for her alter ego Bacchus, which is already a party, a procedure that *Greenspan* authorizes. However, as discussed above, the Court finds that *Greenspan* does not apply here.

The Court agrees that it cannot make Seebass a party to this action because it lacks personal jurisdiction over her.

C. Corporations Code § 17707.07

Corp. Code § 17707.07(a)(1) provides, in pertinent part, that:

> "Causes of action against a dissolved limited liability company, whether arising before or after the dissolution of the limited liability company, may be enforced against . . .
>
> * * *
>
> (B) If any of the assets of the dissolved limited liability company have been distributed to members, against members of the dissolved limited liability company to the extent of the limited liability company assets distributed to them upon dissolution of the limited liability company."

Constellation argues that under Corp. Code § 17707.07, Seebass, as a former member of a dissolved LLC, is liable for the LLC's debts up to the amount of LLC assets that were distributed to her upon dissolution.

Constellation made substantially the same argument in the arbitration. (See Bradley Jameson declaration ("Jameson Dec"), Exh. I, pp. 7-8 [MPA in support of motion for attorney's fees; section headed "The Award Should include Brigitte Seebass as the Real Party in Interest"].) Arbitrator disagreed on the basis that *CB Richard Ellis, Inc. v. Terra Nostra Consultants* (2014) 230 Cal.App.4th 405 holds that Corp. Code § 17707.07 does not apply to fees and costs associated with an arbitration. (Jameson Dec, Exh. A, pp. 2-4.) In his Final Award, he quoted the following passage from the opinion:

> "We disagree, however, with CBRE's contention that it should be allowed to recover the attorney fees it incurred when it arbitrated its breach of contract claim with Jefferson. *Defendants are simply not liable for any aspect of the arbitral judgment, whether for damages, attorney fees, costs, or interest.* [Section 17707.07 does] not hold members liable for judgments entered against a dissolved limited liability company. Instead, it authorize[s] third parties to enforce against members of a dissolved limited liability company the causes of action that ordinarily would be brought against the limited liability company."

(*CB Richard Ellis, supra,* 230 Cal.App.4th at p. 417, emphasis supplied.) Although Arbitrator found that paragraph "lacking in optimal clarity," he interpreted it to mean that while the former members of the dissolved LLC involved in that case were subject to an attorney's fee claim in a court lawsuit against them, they were "not subject to the attorney's fee award incurred in the Arbitration proceeding and subsequent confirmation of that Award in a judgment." Accordingly, he found that he "lack[ed] the authority to add individual member Brigitte Seebass as a party and debtor in this proceeding."

The Court agrees with Arbitrator's analysis, and finds that Corp. Code § 17707.07 does not make Seebass liable for attorney's fees and costs incurred in the arbitration.

D. Res judicata

Bacchus argues that Arbitrator's interpretation of *CB Richard Ellis* is not merely persuasive, it is also res judicata, and therefore bars the Court from reconsidering it. The Court agrees.

"Res judicata prohibits the relitigation of claims and issues which have already been adjudicated in an earlier proceeding. The doctrine has two components. In its primary aspect the doctrine of res judicata [or 'claim preclusion'] operates as a bar to the maintenance of a second suit between the same parties on the same cause of action. . . . The secondary aspect is 'collateral estoppel' or 'issue preclusion,' which does not bar a second action but precludes a party to an action from relitigating in a second proceeding matters litigated and determined in a prior proceeding." (*Kelly v. Vons Companies, Inc.* (1998) 67 Cal.App.4th 1329, 1335 (internal quotation marks omitted).) "For purposes of res judicata, even an unconfirmed arbitral award is the equivalent of a final judgment." (*Bucur. v. Ahmad* (2016) 244 Cal.App.4th 175, 186.)

Here, there is not merely an unconfirmed arbitral award; there is a confirmed one. On November 9, 2023, Constellation filed its Petition to Confirm Contractual Arbitration Award. Arbitrator's Final Award was attached to the petition as an exhibit, of course including the section denying Constellation's request to add Seebass as a judgment debtor. When the Court confirmed the arbitration award on March 4, 2024 in response to that petition, it confirmed all of it, including that section. That is why it entered judgment against Bacchus, but not Seebass, for the attorney's fees at issue here. Under the rule stated by

Bucur, supra, the arbitration award's explicit refusal to add Seebass as a judgment debtor would have had preclusive effect on any court, including this one, even without such confirmation. (See also *Cal Sierra Development v. George Reed* (2017) 14 Cal.App.4th 663, 679 [all requirements of claim preclusion based on arbitration award were met].) But here, the Court has already confirmed the award against Bacchus, and has therefore ratified Arbitrator's denial of it against Seebass.

The Court finds that even if it were inclined to revisit that decision, it would be precluded from doing so by res judicata principles.

III. Conclusion

The motion is **DENIED.**

4. SCV-258938, Pochari v. Bodega Harbour Homeowners

On December 12, 2023, Defendants filed an ex parte application to secure an order for sale of a dwelling and an order to show cause pursuant to CCP § 704.740- § 704.850. In response, Plaintiffs filed their own ex parte application on January 29, 2024, to vacate a void judgment, or in the alternative modify the judgment. The Court set both matters for hearing on March 13, 2024. The Court on its own motion continued the hearing to March 19, 2024.

At that hearing, Plaintiffs' counsel pointed out that prior to taking the bench, the judicial officer, Judge Pardo, had worked at a law firm that represented Defendants. Judge Pardo recused himself and the matter was assigned to Department 18 for all purposes. The hearing on the OSC was continued to May 24, 2024. The hearing on the motion to vacate or modify the judgment was continued to July 3, 2024.

The matter now comes on calendar for hearing on the OSC. In an opposition memorandum filed on May 13, 2024, Plaintiffs ask that the hearing be continued to July 3, 2024 so it can be heard concurrently with Plaintiffs' motion to vacate, as originally scheduled for March 13. Plaintiffs argue that they "would suffer irreparable harm if the motion to sell were granted . . . and the motion to vacate was then granted."

The Court agrees. The hearing is CONTINUED to July 3, 2024 at 3:00 PM in Department 18.

5. SCV-267521, The Design Build Company, LLC v. De Arkos

This case springs from a construction contract dispute between homeowner Eduardo De Arkos ("De Arkos") and contractor The Design Build Company, LLC ("DBC"). One of DBC's bond sureties, American Contractor Indemnity Company ("ACIC") has interpleaded the full amount of its bond,

$15,000, and has deposited that amount with the Court. This matter comes on calendar for De Arkos's motion to release that amount to him.

The motion is **DENIED**. Counsel for DBC shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).

IV. Background

In March, 2020, De Arkos and DBC entered into a contract for the construction of a single-family residence on De Arkos's property. The project did not go well. DBC alleges that De Arkos "elected to terminate the Agreement for his convenience" in October, 2020; De Arkos, for his part, alleges that DBC committed a series of statutory violations regarding (inter alia) billing, payment of subcontractors, and payment for materials.

DBC filed the complaint in this matter on December 9, 2020, alleging causes of action for breach of contract, foreclosure of a mechanic's lien, quantum meruit, and violation of prompt payment statutes. De Arkos filed a cross-complaint on February 17, 2021. The cross-complaint alleged seven cause of action against DBC, as well as one, the sixth, against four of DBC's insurers, one of whom was ACIC. As relevant here, that cause of action alleged that ACIC had issued a $15,000 bond with DBC as the bonded principal, and that DBC had committed violations which mandated payment of the bond amount to De Arkos. The cross-complaint has been amended twice, once on November 18, 2021, and a second time on August 1, 2022. The cause of action against ACIC regarding the $15,000 bond, and the associated prayer for full payment of the face amount, appear in substantially identical form in each version. (FACC Sixth Cause of Action; SACC Fifth Cause of Action.)

DBC filed for Chapter 7 bankruptcy on August 25, 2021. On November 17, 2021, the bankruptcy court granted De Arkos's request for relief from the automatic stay, but prohibited him from attempting to enforce any judgment other than against insurance proceeds.

On May 15, 2023, ACIC filed an interpleader cross-complaint against De Arkos and DBC, and deposited the $15,000 face value of its surety bond with the Court. By the instant motion, De Arkos asks the Court to release the full $15,000 to him. De Arkos also asks the Court to order DBC to produce an accounting of all funds he has paid to them.

V. Analysis

E. Release of the bond

At the outset, the Court notes DBC's comment that "De Arkos filed the present First Amended Cross-Complaint ("FACC") on November 18, 2021 . . . ." The FACC was indeed filed on that date, but the FACC is not "the present" cross-complaint. The presently operative cross-complaint is the Second Amended Cross-Complaint ("SACC") filed on August 1, 2022. In the SACC, the cause of action seeking payment of ACIC's $15,000 bond is the fifth, not the sixth.

As relevant here, that cause of action alleges that ACIC issued a $15,000 bond with DBC as the principal; that DBC violated "one or more" provisions of the Contractor's License Law; and that because these violations are grounds for discipline, ACIC is obligated to pay the bond amount to De Arkos pursuant to Bus. & Prof. Code § 7000 et seq. The pleading goes on to allege in detail the statutes De Arkos asserts that DBC has violated.

The operative word is "allege." At the moment, these are all allegations, not proven facts. (Notably, several of them are on information and belief; see SACC ¶¶ 157.1, 157.3, 160.2, 165.) If this matter goes to trial, or if the fourth cause of action is adjudicated in a motion for summary judgment or summary adjudication, a trier of fact will have the opportunity to examine the supporting evidence and assess whether these allegations are true. For example, the trier of fact will decide whether DBC violated *any* provision of the Contractor's License Law, and if so which one or ones, whereupon the Court can determine if the violation or violations so determined mandate a release of the bond as a matter of law, and if so how much of the bond. A noticed motion is not an appropriate substitute for that process, even a motion accompanied by counsel's declaration that "there is no doubt that [the cross-complainant] suffered damages . . . exceeding $300,000." (Nellessen Declaration, ¶2.)

In its interpleader cross-complaint filed on May 15, 2023, ACIC asked that De Arkos and DBC "be ordered to interplead and to litigate their respective rights against all other Cross-Defendants" (that is to say, against each other) "to the sums of money which ACIC may deposit into Court to satisfy its obligation under the bond." That is how interpleaders work, broadly speaking: a party who controls an item in dispute, called a "res," turns the res over to the court and steps away from the litigation, permitting the other parties to argue about how to divide it up. ACIC has done the first part of that by depositing the $15,000 face value of the bond with the Court. The Court declines De Arkos's request to skip the "other parties argue" step and just turn the funds over to him. The Court will decide whether to release the bond, and if so how much of it and to whom, after it has considered all the relevant evidence supporting the SACC's fifth cause of action at a bench trial or on a motion for summary judgment or adjudication, or a jury has considered it at a jury trial.

F. Accounting

The bankruptcy court's November 17, 2021 Final Ruling on De Arkos's motion to lift the automatic stay did so in these terms:

> "IT IS ORDERED that the motion is granted to the extent specified in this order. The automatic stay is vacated to allow the movant to *pursue through judgment the pending state court litigation* described in the motion. The movant may also file post-judgment motions and appeals. But the movant shall not take any action to collect or enforce any judgment, or pursue costs or attorney's fees against the debtor, except (1) from applicable insurance proceeds; or (2) by filing a proof of claim in this case." (Emphasis supplied.)

DBC interprets this as "the order of the bankruptcy court was to lift the stay to permit the litigation to proceed against available insurance policies." That is not quite accurate. The order was to lift the stay to permit the litigation to proceed "through judgment" against all parties – and indeed beyond judgment, as De Arkos is permitted to file an appeal. The restriction is that De Arkos may not seek to *enforce* the judgment against anyone other than an insurer. DBC argues that "The accounting requested by De Arkos has no relationship to available insurance, which only covers consequential property damage. As such the prayer for an accounting violates the terms of the relief from stay." That is not as self-evident as DBC appears to believe. Again, the crucial phrase is "through judgment." Since the SACC requests an accounting in its prayer for relief (SACC p. 84, ¶ 4), a judgment in this matter would of necessity either grant or deny De Arkos that relief. The bankruptcy court's order allows De Arkos to get that far.

However, if the accounting were granted after trial or summary adjudication, and if DBC did not then voluntarily produce it, De Arkos would have to seek a court order compelling it to do so. That, at least arguably, would constitute "enforc[ing] the judgment." That is almost certainly not what the bankruptcy court had in mind; bankruptcy courts are primarily interested in the movement of money, not spreadsheets. But the wording of the order would appear to preclude De Arkos from seeking, following judgment, a court order compelling DBC to produce the accounting. Therefore, it makes a certain amount of sense to suppose that he is equally precluded now. To that extent, the Court agrees with DBC's argument about the bankruptcy stay.

The more important point, however, is that an accounting is one of the types of relief sought in the SACC as a remedy for the torts alleged in the fourth cause of action, which is headed "FRAUD AND CONVERSION AND DEMAND FOR AN ACCOUNTING." Just as with the bond payment, De Arkos is attempting to accomplish through a simple noticed motion what would otherwise be accomplished by a trial or summary adjudication. If one of those proceedings occurs and results in a conclusion by the trier of fact that the elements of the SACC's fourth cause of action are met, then the Court can award De Arkos the accounting he has requested in the prayer for relief associated with that cause of action. Doing so now would be premature.

VI. Conclusion

The motion is **DENIED.**

6. SCV-271787, Muelrath v. Sonoma-Marin Area Rail Transit District

This matter is on calendar for Plaintiff's **unopposed** application for an order permitting Steven M. Wald to appear as counsel *pro hac vice* on behalf of Plaintiffs. The application is accompanied by Mr.

Wald's declaration showing that he is an attorney in good standing in Missouri. The $50 pro hac vice fee has been paid to the California State Bar, and the State Bar and all parties have been duly served with the application. The motion is GRANTED. Plaintiff's counsel shall submit a written order to the Court consistent with this tentative ruling and in compliance with Rule of Court 3.1312(a) and (b).