

Tentative Rulings for March 6, 2025
Department 403

For any matter where an oral argument is requested and any party to the hearing desires a remote appearance, such request must be timely submitted to and approved by the hearing judge. In this department, the remote appearance will be conducted through Zoom. If approved, please provide the department's clerk a correct email address. (CRC 3.672, Fresno Sup.C. Local Rule 1.1.19)

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).) *The above rule also applies to cases listed in this "must appear" section.*

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

24CECG01261 *Shahbazyan v. Clean Harbors Environmental Services, Inc.*, is continued to March 18, 2025, at 3:30 p.m. in Department 403 (hearing on minor's compromise of Gabriel Ginosyan is continued, so it can be heard on the same date as the hearing on the minor's compromise of Artavazd Ginosyan)

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Tentative Rulings for Department 403

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(20)

Tentative Ruling

Re: ***Gahvejian Enterprises, Inc. v. Melonco, LLC***
Superior Court Case No. 21CECG03051

Hearing Date: March 6, 2025 (Dept. 403)

Motion: By Defendants for Summary Judgment, or Alternatively for Summary Adjudication

Tentative Ruling:

To grant summary judgment in favor of defendants Melon Corp., Gurdeep Billan and Ranjodh Billan ("defendants"). (Code Civ. Proc., § 437c, subd. (c).) Defendants shall submit a proposed judgment dismissing the action as to the moving defendants within five days of service of the order by the clerk.

Explanation:

Plaintiff Gahvejian Enterprises, Inc. dba Mid Valley Packaging & Supply Co. sold melon packaging supplies to defendant MelonCo, LLC ("MelonCo"), and alleges it is owed \$325,934.70 plus finance charges. The initial complaint was filed against MelonCo and Balbir Billan ("Balbir"¹), who is alleged to be the alter ego of MelonCo, in addition to having executed a personal guarantee of any amounts owed by MelonCo to plaintiff.

After filing the complaint, plaintiff learned that the USDA sanctioned MelonCo for failing to pay a \$159,143 award in favor of an Arizona seller. Those sanctions included suspending MelonCo's Perishable Agricultural Commodities Act ("PACA") license which essentially put MelonCo out of business. The sanctions also require individuals responsible for the business at the time of the order not be employed or otherwise affiliated with any PACA licensee. This acted to bar defendant Balbir from working in this industry.

Shortly after MelonCo was put out of business, a new business was formed, Melon Corp, owned and operated by Gurdeep Billan ("Gurdeep") and Ranjodh Billan ("Ranjodh"). Gurdeep and Ranjodh are husband and wife, and Gurdeep is the son of Balbir.

The First Amended Complaint ("FAC") asserts four causes of action for (1) Breach of Contract; (2) Breach of Personal Guaranty; (3) Open Book Account; (4) Account Stated; and (5) Quantum Valebant. The claims against Gurdeep, Ranjodh and Melon Corp (referred to collectively herein as "defendants" for purposes of this motion) are premised on the FAC's alter ego allegations, and the contention that Melon Corp is a sham entity carrying on the same business as MelonCo. Defendants move for summary judgment, contending that plaintiff cannot establish its alter ego allegations.

Initially the court will address the parties' evidentiary objections, bearing in mind that failure to object to evidence waives the right to challenge the court's ruling based

¹ First names are used here to distinguish between individual defendants with the same surname.

on that evidence. (*Rodriguez v. E.M.E., Inc.* (2016) 246 Cal.App.4th 1027, 1045; Code Civ. Proc., § 437c, subd. (d).) The court notes that plaintiff's responsive separate statement and opposition brief include many assertions that evidence cited by defendants is inadmissible due to lack of foundation or hearsay. The court does not rule on any objections that do not comply with Cal. Rules of Court, rule 3.1345.²

The court intends to sustain plaintiff's objection to ¶ 4³ of Gurdeep Billan Declaration; and overrule the objections to ¶¶ 6⁴, 10, 3, 19, 22.

Defendants failed to authenticate certain exhibits, or submit properly supported requests for judicial notice of certain court filings or government records. In some instances authenticating evidence is referenced in defendants' response to plaintiff's objections. That information ideally would be in the moving papers so that the admissibility of the evidence can be easily assessed from the start. Because defendants do not reference authenticating evidence, the court intends to sustain the objections to defendants' Exhibits 1 (Articles of Organization for MelonCo), 7 (Voluntary Petition for Chapter 7 Bankruptcy Filing – Balbir Billan), 8 (Certificate of Notice and Order of Discharge - Bankruptcy Court), and 16 (MelonCo, LLC Articles of Termination). The court intends to overrule the objections to Exhibits 3 (MelonCo credit application with plaintiff) and 4 (MelonCo, LLC Articles of Amendment to Articles of Organization), as these are sufficiently authenticated.

Plaintiff requests judicial notice of (1) The Complaint in matter of *Greenline vs. Melon Corp*; (2) Deposition of Gahvejian's Person Most Qualified (PMQ), Kirk Poochigian; and (3) Deposition of Gurdeep Billan. Defendants only object to item (1). The objection should be sustained as there is no authentication of this federal court complaint. The party requesting judicial notice must “[f]urnishe[] the court with sufficient information to enable it to take judicial notice of the matter. (Evid. Code, § 453, subd. (b).) This includes authentication. (See *Ross v. Creel Printing & Pub. Co.* (2002) 100 Cal.App.4th 736, 743 [court records should be certified or submitted in response to a subpoena]; *Leibert v. Transworld Systems, Inc.* (1995) 32 Cal.App.4th 1693, 1700 [unauthenticated documents of government agency did not satisfy burden under section 453(b)].) Moreover, plaintiff

² The written objections must be served and filed separately from papers supporting or opposing the motion. (Cal. Rules of Court, rule 3.1354(b); *Hodjat v. State Farm Mut. Auto. Ins. Co.* (2012) 211 Cal.App.4th 1, 8-9 [court did not abuse its discretion in refusing to consider objections not filed separately as required by rule].) The separate statement filed in opposition may, in the right hand column, refer to specific evidentiary objections by objection number. However, the objection may not be restated or reargued in the separate statement. (Cal. Rules of Court, rule 3.1354(b); see *Hodjat, supra*, 211 Cal.App.4th at 8 [court can properly deny objections stated in separate statement: “a trial court is [not] obligated to give a party a second chance at properly formatting its evidentiary objections”].)

³ ¶ 4 reads: “Balbir Billan, was the principal and sole member of MelonCo and made all the important, impactful and financial decisions for MelonCo and was responsible for all financial obligations, payments, credit applications and payment approvals.” Though this objection is sustained, the same evidence comes in through Gurdeep's deposition, to which there is no objection.

⁴ Objections must be sequentially numbered and must quote or set forth the objectionable material. (Cal. Rules of Court, rule 3.1354(b).) The objections are not sequentially numbered, and the objection quotes again from ¶ 4, not ¶ 6.

seeks to use the federal complaint to establish factual matters supporting the opposition. That is an improper use of judicial notice. (*Herrera v. Deutsche Bank Nat'l Trust Co.* (2011) 196 Cal.App.4th 1366, 1375 ["While courts take judicial notice of public records, they do not take notice of the truth of matters stated therein"].)

The court also notes that plaintiff's opposition points and authorities exceed the 20-page limit. (Cal. Rules of Court, rule 3.1113(d).) The court has not considered anything past the 20th page.

" 'The alter ego test encompasses a host of factors: "[1] [c]ommingling of funds and other assets, failure to segregate funds of the separate entities, and the unauthorized diversion of corporate funds or assets to other than corporate uses ...; [2] the treatment by an individual of the assets of the corporation as his own ...; [3] the failure to obtain authority to issue stock or to subscribe to or issue the same ...; [4] the holding out by an individual that he is personally liable for the debts of the corporation ...; the failure to maintain minutes or adequate corporate records, and the confusion of the records of the separate entities ...; [5] the identical equitable ownership in the two entities; the identification of the equitable owners thereof with the domination and control of the two entities; identification of the directors and officers of the two entities in the responsible supervision and management; sole ownership of all of the stock in a corporation by one individual or the members of a family ...; [6] the use of the same office or business location; the employment of the same employees and/or attorney ...; [7] the failure to adequately capitalize a corporation; the total absence of corporate assets, and undercapitalization ...; [8] the use of a corporation as a mere shell, instrumentality or conduit for a single venture or the business of an individual or another corporation ...; [9] the concealment and misrepresentation of the identity of the responsible ownership, management and financial interest, or concealment of personal business activities ...; [10] the disregard of legal formalities and the failure to maintain arm's length relationships among related entities ...; [11] the use of the corporate entity to procure labor, services or merchandise for another person or entity ...; [12] the diversion of assets from a corporation by or to a stockholder or other person or entity, to the detriment of creditors, or the manipulation of assets and liabilities between entities so as to concentrate the assets in one and the liabilities in another ...; [13] the contracting with another with intent to avoid performance by use of a corporate entity as a shield against personal liability, or the use of a corporation as a subterfuge of illegal transactions ...; [14] and the formation and use of a corporation to transfer to it the existing liability of another person or entity." ... [¶] This long list of factors is not exhaustive. The enumerated factors may be considered "[a]mong" others "under the particular circumstances of each case." ' ... 'No single factor is determinative, and instead a court must examine all the circumstances to determine whether to apply the doctrine....' " (*Zoran Corp. v. Chen* (2010) 185 Cal.App.4th 799, 811–812, 110 Cal.Rptr.3d 597, citations omitted.)

(*Greenspan v. LADT, LLC* (2010) 191 Cal.App.4th 486, 512–513.)

Defendants have submitted sufficient evidence (to which there is no objection or that is otherwise admissible) to shift the burden to plaintiff to raise triable issues of material fact. (Code Civ. Proc., § 437c, subd. (p)(2).) The opposition submits little relevant evidence going to the alter ego factors.

The undisputed facts show that Ranjodh worked as a part-time clerical assistant for MelonCo during the summers of 2019 through 2021. She was not involved with handling any of MelonCo's finances, was never a manager or member of MelonCo, never provided any form of contribution or funding to MelonCo. Ranjodh is a director of Melon Corp., and a trustee of the Raipur Dabba Trust which holds the entirety of Melon Corp's stock.

Gurdeep worked as the part-time General Manager of MelonCo. Gurdeep states that he was not involved in the organization or formation of MelonCo. Balbir, on the other hand, "was the principal and sole member of MelonCo and made all the important, impactful and financial decisions for MelonCo and was responsible for all financial obligations, payments, credit applications and payment approvals."

Defendants present sufficient evidence to show that Balbir was the sole owner/member of MelonCo. The opposition relies heavily on the fact that Mr. Poochigian of Gahvejian Enterprises only dealt with Gurdeep, and never had any dealings or interactions with Balbir. That is not necessarily surprising, given that Gurdeep was serving as the general manager of MelonCo.

The credit application with plaintiff lists Bilbar as the principal, the "sole member" of MelonCo. She is also the personal guarantor. Plaintiff attempts to dispute that Bilbar signed the credit application because the signature appears in all block letters. But Mr. Poochigian's perception of what a signature should look like is irrelevant.

The evidence shows that Bilbar made 100% of the capital contribution to MelonCo, about \$800,000. She "was responsible for all the financial obligations, payments, credit applications, approving payments. Basically, anything necessary for the business." (Gurdeep Depo. pp. 27-28.) Gurdeep was the general manager, but he did not authorize vendors, payments, or things of that nature. That was all done by Bilbar. (*Id.* p. 28.) Randojh, Gurdeep's wife, helped during the summer months doing clerical work. (*Id.* p. 30.) While Gurdeep received a salary, Bilbar did not take a salary but received distributions from the LLC. (*Id.* p. 31.)

The evidence establishes that Bilbar was the sole owner/member of MelonCo; Bilbar was the sole guarantor of the debt to plaintiff; Gurdeep functioned only as the part-time general manager and was paid a salary; Ranjodh's only role was as part-time clerical help. Defendants have produced evidence that neither Gurdeep nor Randojh had any ownership interest in MelonCo, did not control its finances, and were not directors of MelonCo.

In order to establish alter ego liability, both elements (unity of interest and inequitable result) must be satisfied. (*Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 539.) "Alter ego is utilized to prevent two parties with the same interest

from inequitably using the corporate form to thwart a third party's rights ..." (*Communist Party v. 522 Valencia, Inc.* (1995) 35 Cal.App.4th 980, 995.)

The evidence submitted with the motion is sufficient to show that alter ego liability does not attach to Gurdeep and Ranjodh. They did not hold an ownership interest in MelonCo. It was clearly disclosed in the credit application with plaintiff that only Balbir was responsible for the funding and finances of MelonCo. Plaintiff produces no evidence to the contrary, other than Mr. Poochigian's assumption that Gurdeep was the owner since that is who he dealt with. But an assumption is not evidence. "Among the factors to be considered [is]. . . identical equitable ownership in the two entities . . ." (*Sonora Diamond Corp., supra*, 83 Cal.App.4th at p. 538.) There is no evidence of identical ownership between the two entities – MelonCo and Melon Corp. Nor has plaintiff produced evidence of commingling of funds, diversion or use of corporate assets for non-corporate purposes or concentrating assets in one entity and liabilities in another by either Gurdeep or Ranjodh. Plaintiff points to no evidence that either individual defendant held themselves out for MelonCo's debts. The personal guarantee on the credit application expressly provides otherwise.

"The alter ego doctrine does not guard every unsatisfied creditor of a corporation but instead affords protection where some conduct amounting to bad faith makes it inequitable for the corporate owner to hide behind the corporate form. Difficulty in enforcing a judgment or collecting a debt does not satisfy this standard." (*Sonora Diamond, supra*, at p. 539.) While plaintiff apparently cannot recover its debt from MelonCo or Balbir due to the bankruptcy, that does not mean it should be able to recover the debt from the employees of MelonCo.

As to liability of Melon Corp, the doctrine of alter ego applies to attach liability both to a shareholder or another corporation, as part of a single enterprise. *Toho-Towa Co., Ltd. v. Morgan Creek Productions, Inc.* (2013) 217 Cal.App.4th 1096, 1108.) For the application of alter ego in its "single enterprise" function, courts should consider "the commingling of funds and assets of the two entities, identical equitable ownership in the two entities, use of the same offices and employees, disregard of corporate formalities, identical directors and officers, and use of one as a mere shell or conduit for the affairs of the other. (*Id.* at p. 1109, citing *Talbot v. Fresno-Pacific Corp.* (1960) 181 Cal.App.2d 425, 432.)

The evidence shows that there is no common ownership between MelonCo and Melon Corp. As discussed above, the undisputed facts show that MelonCo was owned solely by Bilbar in the sense that she was the sole member. Melon Corp is owned by Gurdeep and Ranjodh, who formed the corporation. (See UMF 61, 62.) That the two businesses were owned by members of the same family does not mean there is common ownership. Ranjodh was not an officer of MelonCo, only performing part-time clerical work. (UMF 269.) While there is dispute as to whether the MelonCo and Melon Corp perform the same business (see UMF 477, 485), plaintiff has submitted no authority providing that where employees of a family business that goes under and subsequently start up their own business in the same field should be liable for the defunct business's debts.

There is no evidence that MelonCo was inadequately capitalized. Defendants' evidence shows that Bilbar funded MelonCo with \$800,000. (UMF 21.) Plaintiff presents no evidence that this was inadequate. Nor does plaintiff show that Melon Corp's initial investment of just \$1 is inadequate for the business it performs. (See UMF 498-506.) The two businesses do not operate out of the same offices or even in the same state (UMF 478, 479, 488), which is another factor of the single-enterprise inquiry (see *Butler America, LLC v. Aviation Assurance Company, LLC* (2020) 55 Cal.App.5th 136, 141).

The court finds that defendants have submitted sufficient evidence to negate alter ego liability, and plaintiff has not submitted evidence sufficient to raise a triable issue of fact. Accordingly, the court intends to grant the motion.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By:  **on** 3-5-25 .
(Judge's initials) (Date)

(34)

Tentative Ruling

Re: ***In re: Brianna Maria Herrera Sanchez***
Superior Court Case No. 25CECG00710

Hearing Date: March 6, 2025 (Dept. 403)

Motion: Petition to Compromise Minor's Claim

Tentative Ruling:

To deny without prejudice. Petitioner must file an amended petition, with appropriate supporting papers and proposed orders.

Explanation:

The minor claimant is one of three heirs of decedent Juvenal Herrera Escutia who are sharing half of the \$15,000 policy limit offered by Farmers Insurance Exchange on behalf of its insured Bob Padilla. (Petn., Att. 11b(6).) Department of Health Care Services has asserted a lien for medical treatment provided to decedent in the amount of \$7,500. The settlement amount offered to the minor is \$2,500.

The petition does not accurately set forth the settlement to the minor claimant that the court is to approve. At Item 10, the petition represents that the settlement amount to the claimant is \$15,000, however the amount of settlement to claimant is \$2,500. What the petition sets forth as the settlement to be approved is the context in which the minor is receiving \$2,500 from the \$15,000 global settlement. No medical expenses are being paid from the minor's settlement and the share of the settlement offer to be paid to the other heirs, petitioner and Julissa Herrera Sanchez, is not an expense charged to the minor. (Petn., Item 16d.)

Additional information and evidence is needed to determine if the settlement is in the best interest of the minor. The petition at Item 9 is not checked, whereby petitioner would represent she has made a careful and diligent inquiry and investigation into the facts, circumstances, and responsibility for the accident. The petition does not set forth Bob Padilla's relationship to driver, Reyes V. Padilla, or state whether the driver was insured under this policy or whether there is potentially a policy insuring the driver in existence. Under the circumstances, the court will require declarations from both Reyes V. Padilla and Bob Padilla attesting to whether each has additional assets with which to satisfy a judgment against him.

Proposed orders granting the petition and to deposit the funds into the proposed blocked account have not been filed. These should be filed concurrently with the petition in any subsequent submission.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order

