

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Blue Line Foodservice Distribution, Inc. v. John Cathcart, et al.

Blue Line · No. 24-cv-1250-W-MMP · Decided December 4, 2025

SUMMARY

The United States District Court for the Southern District of California denied Defendants John Cathcart and Mercator Capital Advisors, Inc.’s motion to quash subpoenas served on Bank of America and Charles Schwab. The Court held that anticipated defenses did not justify delaying discovery and that the requested financial records were relevant and proportional to Plaintiff’s fraudulent-transfer and alter-ego claims. The Court narrowed the subpoenas to records from April 20, 2016, to the present.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Michelle M. Pettit
JURISDICTION	United States District Court for the Southern District of California
DECIDED	December 4, 2025
DOCKET	24-cv-1250-W-MMP
DISPOSITION	other
PROCEDURAL POSTURE	Defendants moved under Federal Rule of Civil Procedure 45 to quash subpoenas served on nonparties Bank of America, N.A., and Charles Schwab & Company. The court denied the motion and narrowed the subpoena requests.
STANDARD OF REVIEW	On a motion to quash, the movant bears the burden of persuasion, while the party issuing the subpoena must demonstrate relevance. Discovery must fall within Rule 26(b)(1)'s scope and must not impose an undue burden under Rule 45.
PRECEDENTIAL VALUE	unpublished
PARTIES	John Cathcart, Mercator Capital Advisors, Inc. v. Blue Line Foodservice Distribution, Inc.

TOPICS

- discovery dispute
- civil procedure
- commercial litigation
- asset protection
- corporate veil piercing

PRACTICE AREAS

civil procedure

commercial litigation

asset protection

corporate law

QUESTIONS PRESENTED

1. Whether anticipated defenses, including judicial estoppel and the asserted failure of the alter ego claim, justified staying discovery or quashing the subpoenas.
2. Whether the subpoenas sought relevant and proportional discovery under Federal Rules of Civil Procedure 26(b)(1) and 45.
3. Whether the subpoenas imposed an undue burden or improperly invaded privacy interests.
4. What temporal and substantive limitations were necessary to make the subpoenas relevant and proportional.

HOLDINGS

1. Anticipated defenses do not justify quashing or staying discovery where no dispositive motion has been filed and the defenses' merits may require additional discovery.
2. Records concerning transfers and payments among Cathcart, Mercator, Nerys Logistics, Com Nerys, and Nery's USA were relevant and proportional to Blue Line's fraudulent-transfer and alter-ego claims.
3. The subpoenas were overbroad as written from January 1, 2012 to the present and were properly narrowed to records from April 20, 2016 to the present.
4. The subpoenas could not reach Cathcart's personal transactions unrelated to Mercator, Nerys Logistics, Com Nerys, or Nery's USA.
5. The privacy and undue-burden objections did not warrant quashing the subpoenas because a protective order adequately protected privacy interests and the likely benefit of the relevant financial discovery outweighed the burden.

KEY QUOTATIONS

“the Court declines Defendants’ attempt to shoehorn a determination on the merits of their defenses through a motion to quash a third-party subpoena.” (at 9)

“Cathcart’s personal transactions unrelated to the subject business entities are not relevant or proportional.” (at 15)

“DENIES Defendants’ motion to quash, NARROWS the BofA and Schwab subpoenas to April 20, 2016 to present” (at 18)

FACTUAL BACKGROUND

Blue Line obtained a \$6,342,402.63 stipulated arbitration award against Com Nerys and Nery's USA, followed by a 2020 default judgment. Blue Line alleges that John Cathcart, who controlled Nery's USA and Mercator, diverted assets among Nery's USA, Com Nerys, Nerys Logistics, Mercator, and himself to evade collection of the judgment. The subpoenas sought financial records and transfer information from Bank of America and

Charles Schwab concerning those entities and Cathcart. The court found the requested records relevant to the fraudulent-transfer and alter-ego claims but limited the temporal and substantive scope of the requests.

PROCEDURAL HISTORY

Blue Line obtained a stipulated arbitration award and a 2020 default judgment against Com Nerys and Nery's USA in the Eastern District of Michigan. After unsuccessful collection efforts, Blue Line filed this California action alleging fraudulent transfer, common-law fraudulent conveyance, and alter ego liability against Cathcart and related entities. During discovery, defendants moved to quash revised subpoenas served on Bank of America and Charles Schwab, asserting anticipated dispositive defenses, lack of relevance and proportionality, undue burden, and privacy concerns.

DISPOSITION

other

CASES CITED

- In re Subpoena of DJO, LLC, 295 F.R.D. 494, 497 (S.D. Cal. 2014)
- Chevron Corp. v. Donziger, No. 12-mc-80237-CRB-NC, 2013 WL 4536808, at *4 (N.D. Cal. Aug. 22, 2013)
- Akkawi v. Sadr, No. 20-cv-1034-MCE-AC, 2022 WL 17722605, at *2 (E.D. Cal. Dec. 15, 2022)
- Amini Innovation Corp. v. McFerran Home Furnishings, Inc., 300 F.R.D. 406, 409 (C.D. Cal. 2014)
- Mount Hope Church v. Bash Back!, 705 F.3d 418, 427, 429 (9th Cir. 2012)
- Mattel, Inc. v. Walking Mountain Productions, 353 F.3d 792, 813-14 (9th Cir. 2003)
- Moon v. SCP Pool Corp., 232 F.R.D. 633, 637 (C.D. Cal. 2005)
- Orchid Biosciences, Inc. v. St. Louis Univ., 198 F.R.D. 670, 672 (S.D. Cal. 2001)
- Mlejnecky v. Olympus Imaging America, Inc., No. 10-cv-02630-JAM-KJN, 2011 WL 489743, at *6 (E.D. Cal. Feb. 7, 2011)
- Malibu Media, LLC v. Does 1-25, No. 12-cv-0362-LAB-DHB, 2012 WL 2367555, at *2-3 (S.D. Cal. June 21, 2012)
- Third Degree Films, Inc. v. Does 1-178, No. C 12-3858-EMC-MEJ, 2012 WL 12925674, at *3 (N.D. Cal. Dec. 6, 2012)
- Malibu Media, LLC v. Does 1-59, No. 12-cv-0888-AWI-DLB, 2012 WL 4465359, at *3 (E.D. Cal. Sept. 25, 2012)
- Dominguez v. Corporation of Gonzaga University, No. 17-cv-00286-SAB, 2018 WL 3338181, at *1 (E.D. Wash. Apr. 19, 2018)
- Marin v. San Diego State University, No. 21-cv-1445-JO-MMP, 2024 WL 2061727, at *2 (S.D. Cal. Apr. 19, 2024)
- In re Bofl Holding, Inc. Securities Litigation, No. 15-cv-2324-GPC-KSC, 2021 WL 4460751, at *3 (S.D. Cal. Sept. 29, 2021)
- Starline Windows Inc. v. Quanex Building Products Corp., No. 15-cv-1282-L-WVG, 2016 WL 4485568, at *5 (S.D. Cal. Aug. 19, 2016)

- Laub v. Horbaczewski, 331 F.R.D. 516, 521 (C.D. Cal. 2019)
- Oakes v. Halvorsen Marine Ltd., 179 F.R.D. 281, 283 (C.D. Cal. 1998)
- Goodin v. City of Glendora, No. 17-cv-3567-FMO-PLA, 2017 WL 10560490, at *5 (C.D. Cal. Dec. 13, 2017)
- Viacom International, Inc. v. YouTube, Inc., No. 08-cv-80129-SI, 2008 WL 3876142, at *3 (N.D. Cal. Aug. 19, 2008)
- Cobb v. Superior Court, 99 Cal. App. 3d 543, 552 (1979)
- In re Heritage Bond Litigation, No. 02-cv-1475-DT-RCX, 2004 WL 1970058, at *12 n.12 (C.D. Cal. July 23, 2004)
- Valley Bank of Nevada v. Superior Court, 542 P.2d 977, 980 (Cal. 1975)

OPINION

Cathcart

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 BLUE LINE FOODSERVICE Case No.: 24-cv-1250-W-MMP

DISTRIBUTION, INC.,

12

ORDER DENYING DEFENDANTS’

13 Plaintiff, MOTION TO QUASH AND

NARROWING PLAINTIFF’S

14 v.

SEPTEMBER 5, 2025 SUBPOENAS

15 JOHN CATHCART, et al., TO BANK OF AMERICA NATION

ASSOCIATION AND CHARLES

16 Defendants. SCHWAB & COMPANY 17 [ECF No. 60] 18 19 Pending before the Court is
 Defendants John Cathcart and Mercator Capital 20 Advisor’s Inc.’s (“Defendants”) Motion to
 Quash Blue Line Foodservice Distribution, 21 Inc.’s (“Plaintiff”) September 5, 2025 Subpoenas to
 Bank of America, Nation Association 22 and Charles Schwab & Company. ECF No. 60. Plaintiff
 filed an opposition, to which 23 Defendants replied. ECF Nos. 63, 65. The Court found the motion
 suitable for 24 determination on the papers and without oral argument pursuant to Civil Local Rule
 25 7.1(d)(1) and stayed compliance with the subpoenas pending the Court’s ruling on the 26
 motion to quash. ECF No. 61. For the reasons set forth below, the Court DENIES the 27 Motion to
 Quash and NARROWS the subpoena requests. 28

1 I. RELEVANT BACKGROUND

2 The Court previously set forth the relevant factual background in its April 30, 2025 3 Order,

which it incorporates herein. ECF No. 24 at 2–5. The Court includes an abbreviated 4 factual background relevant to the Motion to Quash below. 5 A. Underlying Agreement

6 In 2010, Plaintiff entered into a distribution contract with Nery’s USA. ECF No. 60-7 2 at 3. Nery’s USA was unable to renew its contract in 2012 “due to losses on the 8 distribution and under payment by [Plaintiff].” Id. Nery’s USA suggested Plaintiff replace 9 Nery’s USA with Com Nery’s. Id.

10 In 2012, Plaintiff entered a five-year distributor agreement (the “Agreement,” (ECF 11 No. 3-2)) with Com Nerys and Nery’s USA. ECF No. 1 ¶ 4. Under the Agreement, Com 12 Nerys became Plaintiff’s “preferred distributor” for Little Caesars franchise restaurants in 13 Mexico, and “Nerys [USA] was the Guarantor for Com Nery’s contractual obligations.” 14 Id. ¶ 20. 15 B. Default Judgment Entered in Michigan 16 Com Nerys and Nery’s USA allegedly breached the Agreement. Id. ¶ 22. Therefore, 17 in 2018, Plaintiff filed its first complaint in the District Court for the Eastern District of 18 Michigan for arbitration. Id. ¶ 22, 24. The parties reached a Stipulated Award in favor of 19 Plaintiff and against Com Nerys and Nery’s USA, jointly and severally, for \$6,342,402.63.

20 Id. at 15–16. The Stipulated Award contains this language:

21 [E]ach party represents and warrants, that any and all claims . . . between Blue Line and Nerys (including any of their respective parents, subsidiaries, 22 affiliates, directors, managers, officers, executives, shareholders, members, 23 partners, heirs, beneficiaries, relatives, employees, agents, representatives, insurers, predecessors, attorneys, successors or assigns) in any way arising 24 from that certain Distributor Agreement dated October 2010 and/or that 25 certain Distributor Agreement dated February 14, 2012, and/or any party’s performance thereunder . . . are subsumed within and disposed of by the 26 Award, and that neither Blue Line nor Nerys possesses any claim against the 27 other separate from or additional to those determined by the Award. 28 ECF No. 60-1 at 3–4. 1 On October 5, 2020, the district court entered the arbitration award amount as a final 2 default judgment against Com Nerys and Nery’s USA. ECF No. 1 ¶¶ 1, 5, 24. The Default 3 Judgment did not incorporate the Stipulated Award and did not contain terms of the 4 Stipulated Award beyond the award amount and liability as joint and several. ECF No. 24 5 at 2. 6 C. Com Nerys and Nery’s USA Do Not Pay Plaintiff 7 Following the Stipulated Award, Com Nerys and Nery’s USA failed to pay Plaintiff. 8 ECF No. 1 ¶¶ 5, 6. Plaintiff conducted a post-judgment debtor’s examination. Id. ¶ 7. 9 Through discovery, Plaintiff alleges it learned John Cathcart, a defendant in this case but 10 not the prior case and the majority owner, CEO, and CFO of Nery’s USA, “had under- 11 capitalized [Nery’s USA] and Com Nerys, disregarded the corporate form, and transferred 12 money through a maze of related entities, Defendants [Mercator and Nerys Logistics] to 13 enrich himself and evade” the Default Judgment. Id. ¶ 8. Plaintiff alleges “at Cathcart’s 14 direction, [Nery’s USA] and Defendants willfully and fraudulently transferred a substantial 15 amount of [Nery’s USA’s] assets for grossly low or even no consideration at all, with the 16 goal of defrauding Blue Line and thwarting its ability to enforce the [Default]

Judgment 17 against [Nery's USA] and Com Nerys." Id. ¶ 9. 18 D. Procedural History 19 On April 20, 2023, Plaintiff filed a second complaint in the District Court for the 20 Eastern District of Michigan, similar to the one in this case, alleging fraudulent transfer. 21 ECF No. 24 at 4. The district court dismissed the complaint for lack of personal jurisdiction 22 over Cathcart, Nery's USA, Mercator, and later Nery's Logistics. Id. 23 Plaintiff then filed its Complaint in this case on July 19, 2024. ECF No. 1. Plaintiff 24 alleges three causes of action against Defendants: (1) fraudulent transfer under the 25 California Uniform Voidable Transactions Act, Cal. Civ. Code Section 3439.04 26 ("UVTA"), (2) common law fraudulent conveyance, and (3) alter ego liability. Id. Plaintiff 27 alleges it is a creditor of Com Nerys and Nery's USA. Id. ¶ 56. Plaintiff claims Defendants 28 "willfully and fraudulently transferred a substantial amount of Nerys's assets for grossly 1 low or even no consideration at all, with the goal of defrauding Blue Line and thwarting its 2 ability to enforce the Judgment against Nerys [USA] and Com Nerys." Id. ¶ 9. 3 The Complaint also alleges connections between the Default Judgment debtors and 4 the parties in this case. Cathcart is allegedly the majority shareholder of Nery's USA and 5 the sole shareholder of Mercator. Id. ¶ 13. 6 E. Discovery Dispute 7 The parties first raised a discovery dispute with the Defendants' previous Motion to 8 Quash Plaintiff's July 17, 2025 Subpoenas ("July Subpoenas") to Bank of America, Nation 9 Association ("BofA") and Charles Schwab & Company ("Schwab"). ECF No. 47. The 10 Court denied the Motion, ordering the parties to meet and confer to resolve or narrow the 11 issues presented and, if that did not resolve all issues, permitting Defendants to refile a 12 revised Motion to Quash. ECF No. 52. 13 The meet and confer attempts were unsuccessful in resolving the dispute. Defendants 14 allege "some progress was made regarding limiting the scope of the Subpoenas," but there 15 remained a "fundamental disagreement" regarding "the discoverability of documents going 16 as far back as 2012, and the discoverability of any financial information from Mercator and 17 Cathcart apart from transactions with Nerys USA and Com Nerys." ECF No. 60 at 9. 18 Plaintiff served the instant subpoenas on September 5, 2025 to non-parties BofA and 19 Schwab. ECF No. 63 at 11. 20 The September 5 subpoena to BofA requests the following in relevant part: 21 1. All bank records of Mercator Capital Advisors, Inc. ("Mercator") from 22 January 1, 2012 to the present, including but not limited to bank statements, 23 checking and savings account statements, and debit and credit card 24 information. 25 2. All Documents concerning payments and/or transfer of funds or other things 26 of value related to Mercator and Nerys Logistics, Inc. ("Nerys Logistics"), 27 Comercializadora Nerys De Mexico, S.A. DE C.V. ("Com Nerys"), and 28 Nery's USA Inc. ("Nerys USA"). 1 3. All documents reflecting income received by John Cathcart ("Cathcart") from 2 January 1, 2012 to the present, from the following: Mercator, Nerys Logistics, 3 Com Nerys, and Nery's USA. 4 4. All Documents concerning payments and/or transfer of funds or other things 5 of value related to Cathcart from January 1, 2012 to the present. 6 ECF No. 62-1 at 5-6. 7 The September 5 subpoena to Schwab requests the following in relevant part: 8 1. All

documents reflecting income received by John Cathcart (“Cathcart”) from 9 January 1, 2012 to the present, from the following: Capital Advisors, Inc. 10 (“Mercator”), Nerys Logistics, Inc., Comercializadora Nerys De Mexico, S.A. 11 DE C.V., and Nery’s USA Inc. 12 2. All Documents concerning the transfer of funds or other things of value 13 related to Cathcart and Mercator, Nerys Logistics, Inc., Comercializadora 14 Nerys De Mexico, SA DE C.V., and Nery’s USA Inc. from January 1, 2012 15 to the present. 16 ECF No. 62-2 at 5. 17 Defendants move to quash the September 5 Subpoenas to both BofA and Schwab 18 based on two primary arguments. ECF No. 60. First, Defendants allege they have defenses 19 that will result in dismissal of the Complaint, and no further discovery should be produced 20 until the Court can hear these defenses. Id. at 9–19. Second, Defendants argue the non- 21 party subpoenas do not meet the relevance and proportionality hurdles under Federal Rule 22 of Civil Procedure (“Rule”) 26(b)(1) and improperly intrude on parties’ and non-parties’ 23 privacy rights. Id. at 19–22. 24 Plaintiff opposes the motion. ECF No. 63. Plaintiff contends the subpoenas at issue 25 are more narrowly tailored than the July 17 Subpoenas. Id. at 11. Specifically, Plaintiff 26 claims “Cathcart’s personal banking” is carved out from the scope of information 27 requested. Id. Plaintiff contends: (1) the subpoenas seek relevant, proportional information 28 not precluded by privacy interests, and (2) Defendants’ merits-based defenses are not a bar 1 to discovery. Id. at 11–12. Plaintiff contends the subpoenaed records will confirm or refute 2 its fraudulent transfer and alter ego claims. Id. at 12. 3 In addition, the parties dispute the appropriate time period for the subpoenas. Both 4 the BofA and Schwab September subpoenas request documents from January 1, 2012 to 5 present. ECF Nos. 62-1 at 5–6; 62-2 at 5. Plaintiff argues this proposed timeframe is 6 reasonable, and should the Court find otherwise, Plaintiff suggests a timeframe of “2016 7 to the present.” ECF No. 63 at 18–19. Defendants claim no transactions before 2017— 8 when the contract between Plaintiff and Com Nerys ended—could possibly be relevant, 9 and the more appropriate year is 2023, when Plaintiff first made a claim against 10 Defendants. ECF No. 60 at 12, 18–19.

11 II. LEGAL STANDARD

12 Federal Rule of Civil Procedure¹ 45 governs discovery of non-parties by subpoena. 13 See Fed. R. Civ. P. 45. “A non-party witness is subject to the same scope of discovery 14 under Rule 45 as a party is under Rule 34.” In re Subpoena of DJO, LLC, 295 F.R.D. 494, 15 497 (S.D. Cal. 2014) (citing Fed. R. Civ. P. 45 Advisory Comm.’s Note (1970)). Under 16 Rule 34, the rule governing document requests between parties, the proper scope of 17 discovery is set forth in Rule 26(b). Id.; see also *Chevron Corp. v. Donziger*, No. 12-mc- 18 80237-CRB-NC, 2013 WL 4536808, at *4 (N.D. Cal. Aug. 22, 2013) (“The scope of the 19 discovery that can be requested through a subpoena under Rule 45 is the same as the scope 20 under Rule 34, which in turn is the same as under Rule 26(b).”).

21 Rule 26(b), in turn, sets forth the scope of discovery as follows:

22 Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s

claim or defense and proportional to the needs of the 23 case, considering the importance of the issues at stake in the action, the 24 amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and 25 whether the burden or expense of the proposed discovery outweighs its likely 26 27 1 All further references to "Rule" are to the Federal Rules of Civil Procedure unless 28 1 benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable. 2 3 Fed. R. Civ. P. 26(b)(1). 4 In addition to the discovery standards under Rule 26 which are incorporated by Rule 5 45, Rule 45 provides "[o]n timely motion, the court for the district where compliance is 6 required must quash or modify a subpoena that . . . (iii) requires disclosure of privileged or 7 other protected matter, if no exception or waiver applies; or (iv) subjects a person to undue 8 burden." Fed. R. Civ. P. 45(d)(3)(A)(iii)-(iv); see *In re Subpoena of DJO*, 295 F.R.D. at 9 497. 10 "The Federal Rules specifically require parties to avoid creating undue burdens on 11 third parties via subpoenas." *Akkawi v. Sadr*, No. 20-cv-1034-MCE-AC, 2022 WL 12 17722605, at *2 (E.D. Cal. Dec. 15, 2022). Rule 45(d)(1) provides "[a] party or attorney 13 responsible for issuing and serving a subpoena must take reasonable steps to avoid 14 imposing undue burden or expense on a person subject to the subpoena." Fed. R. Civ. P. 15 45(d)(1). Further, "[c]oncern for the unwanted burden thrust upon non-parties is a factor 16 entitled to special weight in evaluating the balance of competing needs in a Rule 45 17 inquiry." *Amini Innovation Corp. v. McFerran Home Furnishings, Inc.*, 300 F.R.D. 406, 18 409 (C.D. Cal. 2014) (citation modified). The Ninth Circuit has "interpret[ed] 'undue 19 burden' as the burden associated with compliance." *Mount Hope Ch. v. Bash Back!*, 705 20 F.3d 418, 427 (9th Cir. 2012) (citing *Mattel, Inc. v. Walking Mountain Prods.*, 353 F.3d 21 792, 813–14 (9th Cir. 2003)). While courts are "sensitive to the imposition of large 22 discovery costs on non-parties" and identify the "special need to protect them," the Ninth 23 Circuit has declined to read "undue burden" differently just because a non-party was 24 subpoenaed. *Id.* at 429. 25 On a motion to quash a subpoena, the movant has the burden of persuasion "but the 26 party issuing the subpoena must demonstrate the discovery sought is relevant." *Chevron 27 Corp.*, 2013 WL 4536808, at *4; see also *Moon v. SCP Pool Corp.*, 232 F.R.D. 633, 637 28 (C.D. Cal. 2005).

1 III. ANALYSIS

2 Defendants assert two grounds for quashing the non-party subpoenas: (1) their likely 3 success on pretrial motions, and (2) objections related to relevance, proportionality, and 4 privacy. The Court addresses each in turn. 5 A. Defenses 6 As a preliminary matter, Defendants assert two defenses relating to the merits of 7 their claims: judicial estoppel and failure of Plaintiff's alter ego claim. Defendants seek to 8 quash the subpoenas because their defenses "will result in the dismissal or drastic 9 restriction" of Plaintiff's claims. ECF No. 60 at 14. Therefore, Defendants argue, at 10 minimum, "discovery into [Defendants'] financial transactions should be stayed until the 11 appropriate motions are heard" to determine if Plaintiff can continue with the action. *Id.* 12 The Court finds neither anticipated defense warrants delaying discovery in this action. 13 1.

Judicial Estoppel 14 Defendants claim the language of the Stipulated Award prohibits Plaintiff's lawsuit 15 against Defendants, yet Plaintiff affirmed the agreement to obtain the Judgment at the 16 center of this lawsuit. ECF No. 60 at 14–15. According to Defendants, Plaintiff agreed not 17 to sue anyone related to Nerys USA, including Cathcart and Mercator, and therefore is 18 judicially estopped from suing Mercator and Cathcart in this action. Id. at 15. In essence, 19 Defendants contend Plaintiff ignores a material element of the Stipulated Award while 20 using the award as a sword. Id. Defendants argue the doctrine of judicial estoppel prevents 21 Plaintiff from “affirming the contract before one court” and “claiming it is not enforceable 22 before a later court.” ECF No. 65 at 6. The Court provides a brief history of the proceedings 23 underlying this argument. 24 At the motion to dismiss stage, Defendants claimed the terms of the Stipulated 25 Award barred Plaintiff's claims as a matter of law. ECF No. 24 at 22. Defendants argued 26 the plain language of the Stipulated Award bars “any kind of claim for ‘any amounts 27 allegedly owed’ against” a long list of entities related to Com Nerys and Nery's USA. ECF

28 No. 24 at 22–23. The Court determined it could not “conclude on the face of the Complaint 1 and reasonable inferences therefrom that Plaintiff's fraudulent transfer claims against 2 Cathcart, Mercator, or Nerys Logistics are barred as a matter of law by the Stipulated 3 Award” and declined “to address the terms or impact of the Stipulated Award on the 4 sufficiency of Plaintiff's Complaint.” ECF No. 24 at 23. The Court acknowledged the 5 defense may succeed at summary judgment. Id. 6 Defendants now argue the subpoenas at issue should be quashed because Plaintiff is 7 “judicially estopped, as a matter of law, from disavowing its promise not to sue, and suing 8 Mercator and Cathcart in this action.” ECF No. 60 at 11. 9 In response, Plaintiff contends Defendants attempt to relitigate issues from the 10 Motion to Dismiss and Defendants' beliefs about the merits of its case are “immaterial to 11 the discoverability” of the subpoena requests. ECF No. 63 at 19–20. 12 This Court agrees with Plaintiff; attempts to re-litigate arguments regarding the 13 Stipulated Award language and “judicial estoppel” at this juncture are not persuasive. ECF

14 Nos. 60, 63, 65. Defendants also fail to establish good cause to stay discovery until the 15 Court rules on their anticipated pretrial motions. ECF No. 60 at 14. Though district courts 16 have “broad discretion to stay discovery in a case while a dispositive motion is pending,” 17 *Orchid Biosciences, Inc. v. St. Louis Univ.*, 198 F.R.D. 670, 672 (S.D. Cal. 2001) (internal 18 citation omitted), courts generally consider whether (1) the pending motion is “potentially 19 dispositive of the entire case, or at least dispositive on the issue at which discovery is 20 aimed” and (2) “the pending, potentially dispositive motion can be decided absent 21 additional discovery.” *Mlejnecky v. Olympus Imaging America, Inc.*, No. 10-cv-02630- 22 JAM-KJN, 2011 WL 489743, at *6 (E.D. Cal. Feb. 7, 2011). Here, no dispositive motion 23 has been filed, and more discovery may be necessary to litigate a motion for summary 24 judgment. Therefore, a request to stay discovery would be premature. 25 Defendants' arguments related to the likely success of a dispositive motion at the 26 discovery stage of the proceedings are also not

persuasive. Indeed, the relevant Federal 27 Rules regarding third-party subpoenas—Rule 26(b), 34, and 45—do not support denying 28 discovery based on a party’s beliefs about the merits of their arguments. To the extent 1 Defendants assert judicial estoppel is a threshold legal issue in this action, nothing prevents 2 them from raising the substance of their defenses with the Court through an early 3 dispositive motion. However, the Court declines Defendants’ attempt to shoehorn a 4 determination on the merits of their defenses through a motion to quash a third-party 5 subpoena. 6 2. Alter Ego 7 Similarly, Defendants’ argument “alter ego liability cannot attach if to do so would 8 be inequitable and unjust in light of [Plaintiff’s] promise not to sue,” rises and falls on the 9 interpretation of the parties’ Stipulated Award and its bearing on the causes of action. ECF 10 No. 60 at 16. This Court is not persuaded to summarily quash the subpoenas because 11 Defendants unilaterally declare “when [Defendants] have the opportunity to present [alter 12 ego liability] defense to the court, [Plaintiff’s] spurious litigation will come to a halt.” Id. 13 at 17. Whether or not Defendants’ alter ego defense ultimately prevails on the merits is not 14 dispositive of the discovery analysis. See Fed. R. Civ. P. 26(b)(1). See e.g., *Malibu Media, LLC v. Does 1-25*, No. 12-cv-0362-LAB-DHB, 2012 WL 2367555 at *2-3 (S.D. Cal. June 16 21, 2012)(declining to quash subpoena based on lack of personal jurisdiction and 17 misjoinder); *Third Degree Films, Inc. v. Does 1-178*, No. C 12-3858-EMC-MEJ, 2012 WL 18 12925674 at *3 (N.D. Cal. Dec. 6, 2012)(declining to quash subpoena based on defendants’ 19 presentation of evidence to “corroborate their denial of liability”). As the alter ego cause 20 of action was not dismissed at the motion to dismiss stage, and no pretrial motions have 21 been filed, Defendants’ arguments regarding the strength of its defenses on this claim are 22 insufficient to quash the non-party subpoenas. *Malibu Media, LLC v. Does 1-59*, No. 12- 23 cv-0888-AWI-DLB, 2012 WL 4465359 at *3 (E.D. Cal. Sept. 25, 2012)(refusing to quash 24 subpoena based on defendants’ fact-based defenses). 25 Furthermore, the Court finds unpersuasive Defendants’ specific argument that 26 financial transactions between Mercator and Cathcart unrelated to Nerys USA provide no 27 support for the alter ego claim. ECF No. 60 at 10. The Complaint includes allegations 28 Cathcart received money transfers from Mercator for his personal expenses ECF No. 1 ¶ 1 45. Additionally, the Complaint alleges more than \$25,000 a month were transferred from 2 Nery’s USA and Nerys Logistics to Mercator and then to Cathcart. Id. ¶ 43. Therefore, the 3 Court finds the subpoena requests for transactions between Mercator, Cathcart, Nerys 4 Logistics, Com Nerys, and Nery’s USA are well within the permissible scope of obtainable 5 discovery. Fed. R. Civ. P. 26(b)(1). The requests directly relate to “the transfer of funds or 6 other things of value related to Cathcart and Mercator, Nerys Logistics, Inc., [Com Nerys] 7 and Nery’s USA Inc.” and are highly relevant to Plaintiff’s claims as specifically alleged 8 in the Complaint. ECF Nos. 62-1 at 5; 62-2 at 5. 9 B. Merits of the Motion to Quash 10 1. Analysis – Relevance and Proportionality 11 A subpoena issued under Rule 45 must be relevant to the party’s claim. *Dominguez 12 v. Corp. of Gonzaga Univ. (Gonzaga Univ.)*, No. 17-cv-00286-SAB, 2018 WL 3338181, 13 at *1 (E.D. Wash. Apr. 19, 2018); Fed. R. Civ. P. 45 Advisory Comm.’s Note (1970); Fed. 14 R. Civ. P. 26(b)(1). The party

seeking to compel discovery has the burden of establishing 15 it meets the relevance requirement of Rule 26. *Marin v. San Diego State Univ.*, No. 21-cv- 16 1445-JO-MMP, 2024 WL 2061727 at *2 (S.D. Cal. April 19, 2024). Relevance is an 17 “exceedingly low bar.” *In re Bofl Holding, Inc. Sec. Litig.*, No. 15-cv-2324-GPC-KSC, 18 2021 WL 4460751 at *3 (S.D. Cal. Sept. 29, 2021). 19 A subpoena issued pursuant to Rule 26(b)(1) must also be proportionate to the needs 20 of the case. *Starline Windows Inc. v. Quanex Bldg. Prod. Corp.*, No. 15-cv-1282-L-WVG, 21 2016 WL 4485568 at *5 (S.D. Cal. Aug. 19, 2016); Fed. R. Civ. P. 26(b)(1); Adv. Comm. 22 Notes to 2015 Amendment to Rule 26(b)(1). Rule 26(b)(1) identifies the following factors 23 for consideration when determining if the proportionality requirement is satisfied: “the 24 importance of the issues at stake in the action; the amount in controversy; the parties’ 25 relative access to the relevant information; the parties’ resources; the importance of the 26 discovery in resolving the issues; and whether the burden or expense of the proposed 27 discovery outweighs its likely benefit.” *Laub v. Horbaczewski*, 331 F.R.D. 516, 521 (C.D.

28 Cal. 2019). The party resisting discovery “has the burden to show that discovery should 1 not be allowed, and has the burden of clarifying, explaining, and supporting its objections.” 2 *Oakes v. Halvorsen Marine Ltd.*, 179 F.R.D. 281, 283 (C.D. Cal. 1998). 3 Defendants make various arguments regarding the timeframe and scope of the 4 subpoenas to assert they are not relevant or proportional to the needs of the case, which the 5 Court addresses in turn. ECF No. 60 at 19–21. 6 i. Timeframe of the Requests 7 First, Defendants argue the subpoenas seek documents from a timeframe that is 8 irrelevant and thus not proportional to the needs of the case. ECF No. 60 at 19–20. “[T]he 9 gravamen of Plaintiff’s case is the allegation that [Defendants] fraudulently transferred 10 assets from the judgment debtor . . . in order to place those assets beyond [Plaintiff’s] ability 11 to collect its judgment.” *Id.* at 20. Defendants state since they were unaware of any dispute 12 between Plaintiff and Com Nerys until July 2017 and were unaware of any claims of 13 “wrongfully transferred asset[s]” until 2023, they lacked the required intent to place assets 14 “beyond the reach of creditors” earlier than 2017. *Id.* 15 Defendants further assert the subpoenas seek irrelevant information “based on 16 applicable statute of limitations and statute of repose” and are overbroad “where the period 17 is from 2012 to present, a thirteen (13) year span.” *Id.* Defendant relies on *Goodin v. City 18 of Glendora* where the court narrowed a broad interrogatory request for ten years of 19 warrantless home entries in Glendora to “citizen complaint files regarding any alleged 20 improper search and seizures by” defendants for five years prior to the incident. No. 17-cv- 21 3567-FMO-PLA, 2017 WL 10560490 at *5 (C.D. Cal. Dec. 13, 2017). This Court finds 22 the warrantless home entry by law enforcement in *Goodin* is a far cry from the claims 23 involving fraud, alter ego, and banking records requested here and is not persuasive in this 24 case. 25 In its opposition, Plaintiff asserts the 2012 to present timeframe “reflects that of the 26 alleged transfers and consulting arrangements among Cathcart, Mercator, Nery Logistics, 27 and the Judgment Debtors.” ECF No. 63 at 17–18. Both parties acknowledge California 28 Civil Code Section 3439.09 is at play, and Plaintiff suggests a narrowing of the

request 1 timeframe to 2016 to present. ECF No. 60 at 20-21; ECF No. 63 at 18–19. Section 2 3439.09(c) details “[a] cause of action under this chapter with respect to a transfer or 3 obligation is extinguished if no action is brought or levy made within seven years after the 4 transfer was made or the obligation was incurred.” Plaintiff asserts equitable tolling extends 5 the seven-year ceiling because “(1) Nerys Logistics had timely notice of the underlying 6 allegations in the nearly identical complaint filed in the Eastern District of Michigan in 7 2023; (2) Nerys Logistics has not been prejudiced in gathering evidence to defend against 8 this Complaint; and (3) Blue Line timely filed the Complaint just more than two weeks 9 after the voluntary dismissal in the Eastern District of Michigan.” ECF No. 63 at 18–19. 10 The Court need not make a specific finding as to the statute of limitations or 11 equitable tolling to conclude the subpoenas’ timeframe seeks discovery relevant and 12 proportional to Plaintiff’s claims if narrowed. Based on the facts in this case, the Court 13 does not accept Defendants’ representation they “had no inkling [a debt] was on the horizon 14 until as late as 2023.” ECF No. 60 at 19. On the other hand, there has not been a showing 15 of an event to trigger Nerys USA’s guarantee during the five-year contract period to 16 incentivize Defendants to proactively avoid potential creditors. *Id.* at 18. There can be no 17 question that by the commencement of the arbitration in 2018, Defendants would have 18 been aware of a possible future debt. After the resolution of the arbitration in 2020, Plaintiff 19 pursued judgment collection against Com Nerys and Nerys USA, and in 2023, Plaintiff 20 raised allegations against Defendants from its debtor exam findings. *Id.* These allegations 21 include Defendants diverting money “from the Judgment Debtors for Cathcart’s personal 22 gain and to evade the Judgment.” ECF No. 63 at 16. The incentive to divert money would 23 not reasonably have existed as early as 2012 but likely existed sometime before the 24 commencement of arbitration in 2018. 25 As Plaintiff’s first lawsuit to collect the judgment was in 2023, the Court finds 26 records back to 2016 (seven years from the first lawsuit) align with both parties’ 27 interpretation of Cal. Civ. Code Section 3439.09(c). *Id.* at 19. Additionally, records from 28 2016 to present are proportional to the needs of the case. The subpoenaed records are 1 important in resolving Plaintiff’s claims and correlating with the allegations in the 2 Complaint. The seven years of records is also proportionate to the amount in controversy— 3 over six million dollars— and over three years of litigation across two states. Therefore, the 4 Court narrows all subpoena requests to April 20, 2016 to present. 5 ii. Scope of the Requests 6 Additionally, Defendants claim Plaintiff demands “‘all’ banking and brokerage 7 account records of anyone and ‘any entity’ related to Cathcart or Mercator” for the past 8 thirteen years, and Plaintiff “made no meaningful effort to restrict the scope of its 9 subpoenas as required.” ECF No. 60 at 19–21. These representations are inaccurate. As an 10 initial matter, a side-by-side review of the July Subpoenas and September Subpoenas 11 demonstrate a narrowing of the scope of the subpoenas. Those revisions include changing 12 “bank records” to “documents reflecting income received,” specifying the business entities 13 in some of the requests, and eliminating Request No. 3 from the September Schwab 14 Subpoena. ECF Nos. 63-2 at 26, 27, 34; 62-2 at 5; 62-1 at 5, 6. 15 Plaintiff

counters it has a “right to test the legitimacy of Defendants’ representations 16 about their financial transactions.” ECF No. 63 at 16. Defendant agrees with this assertion, 17 but argues Plaintiff is limited to “those transactions that are relevant.” ECF No. 65 at 2. 18 Furthermore, Plaintiff claims the records are proportional in scope as they are 19 “critical to establishing the scope, timing, and intent of Defendants’ transfers.” ECF No. 20 63 at 5. Plaintiff explains it initiated post-judgment discovery to enforce the \$6.3 million 21 Judgment, where Com Nerys and Nerys USA claimed to have “virtually no assets.” Id. at 22 6. Plaintiff alleges it discovered Com Nerys and Nerys USA had improper funds transfers 23 to evade Judgment and were rendered “uncollectable shells.” Id. at 7. Plaintiff argues post- 24 judgment discovery determined: (a) Cathcart “personally loaned Nerys USA money to pay 25 its attorneys’ fees in the Arbitration because Nerys USA did not have enough funds to 26 cover the costs itself,” (b) Cathcart used Com Nerys and Nerys USA to “pay his personal 27 expenses,” (c) Cathcart transferred money from Nerys USA to Mercator for his personal 28 1 benefit, and (d) there are transfers from Mercator to Cathcart for personal expenses, 2 including a \$6,800 purchase from a New York jeweler. Id. at 7–8. 3 In reply, Defendants allege “whether Mercator is Cathcart’s alter ego is not at issue,” 4 so Plaintiff’s relevance arguments fail. ECF No. 65 at 4. Defendants spend three pages of 5 their nine-page reply brief laying out Plaintiff’s “misleading or incorrect statements” rather 6 than directly rebutting Plaintiff’s proportionality arguments. Id. at 6–9. At best, those 7 alleged “misleading or incorrect statements” apply only to “over broad and irrelevant” 8 arguments regarding discovery requests but not proportionality. Id. at 6. 9 The Court finds Defendants’ response unavailing. Indeed, one of Plaintiff’s base 10 allegations is Mercator “was formed, owned, operated, controlled, and dominated by 11 Cathcart, and that it is the alter ego of Cathcart, is united in interest with Cathcart and is 12 subject to Cathcart’s effective direction and control, operating by Cathcart as his alter ego.” 13 ECF Nos. 1 ¶ 12; 24 at 15. Plaintiff’s Complaint also alleges “Mercator’s bank statements 14 show numerous transfers from Mercator to Cathcart for Cathcart’s personal expenses” all 15 funded by Nery’s USA. ECF Nos. 1 ¶¶ 45–47; 24 at 15. Plaintiff’s subpoena requests for 16 documentation regarding transfers between the judgment debtors and Defendants are 17 proportionate given the specific alter ego allegations in the Complaint. 18 Looking to Rule 26(b)(1) proportionality factors generally, the financial relationship 19 between Defendants, Com Nerys, and Nerys USA is highly important to Plaintiff’s alter 20 ego allegations, a key issue in the case. The amount in controversy is significant—over six 21 (6) million dollars. ECF No. 1 ¶ 5. The records requested are proportionate to the amount 22 in controversy. Discovery will be crucial in resolving the parties’ disputes, including alter 23 ego allegations involving the judgment debtors and Defendants. Plaintiff does not have 24 access to Defendants’ bank records. Defendant admits Plaintiff sought production of 25 Defendants’ “banking and brokerage records from 2012 to present” through a Request for 26 Production, to which Defendants’ objected on the same basis as their subpoena objections. 27 ECF No. 60 at 19. Plaintiff seeking the same information from Defendants as the subpoena 28 requests does not

weigh against Plaintiff. As Plaintiff notes, “there is no general rule that 1 plaintiffs cannot seek nonparty discovery of documents likely to be in defendants’ 2 possession.” ECF No. 63 at 14, *Viacom Int’l, Inc. v. YouTube, Inc.*, No. 08-cv-80129-SI, 3 2008 WL 3876142, *3 (N.D. Cal. 2008). Finally, the burden and expense of responding to 4 the subpoenas are outweighed by the likely benefit of the discovery in this action. 5 Ultimately, Plaintiff is entitled to subpoena records relevant to transfers between 6 Defendants and the Nerys business entities which may reveal comingling transactions or 7 refute Plaintiff’s allegations. For example, where Cathcart declares it was a “mistake[]” to 8 purchase jewelry for his wife on a Mercator business debit card, which he “promptly” had 9 fixed, Plaintiff is entitled to test the legitimacy of the declaration and seek records to prove 10 or disprove it. ECF Nos. 1 ¶¶ 45–48; 60-2 ¶¶ 39, 40. Similarly, where Cathcart declares 11 “Nerys USA was a viable business, not a shell” and “generated millions of dollars in sales, 12 paid its debts and maintained its finances separate for any other’s,” Plaintiff can subpoena 13 documents to prove or disprove Defendants’ statement where the facts are relevant to 14 Plaintiff’s Complaint. ECF Nos. 60-2 ¶¶ 43, 44; 1, ¶¶ 29–33. 15 However, Cathcart’s personal transactions unrelated to the subject business entities 16 are not relevant or proportional. What Cathcart chooses to do with his funds, outside of 17 Mercator, Nerys Logistics, Com Nerys, and Nery’s USA, is irrelevant to Plaintiff’s claim 18 under Rule 45.2 19 Looking specifically at the requests, the September 5 subpoena to Schwab and 20 Request Nos. 1, 2, and 3 of the September 5 subpoena to BofA currently specify payments 21 or transfer of funds related to Cathcart, Mercator, Nerys Logistics, Com Nerys, and Nerys 22 USA. ECF No. 60 at 11–12. These transfer requests are specific to the defendants in this 23 lawsuit and the debtor entities Plaintiff alleges are Cathcart’s alter ego. ECF No. 1 ¶¶ 49– 24 25 26 27 2 If Plaintiff finds evidence from the review of the subpoena responses that warrant additional requests, relevant to Cathcart’s payments and/or transfer of funds, Plaintiff may 28 1 52. The Court finds these requests focus on the payments or transfer of funds to Cathcart 2 and Mercator and are therefore relevant and proportional for the purposes of discovery. 3 Request No. 4 of the September 5 BofA Subpeona could be interpreted more 4 broadly. It requests, “[a]ll Documents concerning payments and/or transfer of funds or 5 other things of value related to Cathcart . . .” ECF No. 60 at 12. Plaintiff represents it 6 explicitly carved out Cathcart’s personal banking transactions in the revised subpoena. 7 ECF No. 63 at 11. Based on that representation, the Court interprets the “related to 8 Cathcart” language narrowly to mean only payments and/or transfer of funds between 9 Cathcart, Mercator, Nerys Logistics, Com Nerys, and Nery’s USA. Personal bank account 10 transactions outside of these entities are not relevant or proportional to the needs of this 11 case. This interpretation aligns Request No. 4 with the other requests and captures 12 transactions related to the relevant parties and business entities only. 13 Accordingly, the Court narrows Request No. 4 by replacing “related to Cathcart” 14 with “between Cathcart, Mercator, Nerys Logistics, Com Nerys, and Nery’s USA.” With 15 that clarification, the Court finds Plaintiff has met its burden of establishing the relevance 16 and proportionality requirement of Rule 26 related to Defendants’ business transactions in 17 all the

Requests. 18 2. Analysis – Privacy 19 Lastly, Defendants assert the subpoenas improperly invade both parties and non- 20 parties privacy rights without substantial justification. ECF No. 60 at 21. Defendants argue 21 Plaintiffs’ subpoenas “ignore the privacy interests of Cathcart and third parties, including 22 clients, employees and others with whom Cathcart and/or Mercator had financial 23 transactions during the past thirteen (13) years” and stresses parties to litigation have a 24 fundamental right of privacy under the California Constitution. Art. I, § 1. Id. 25 The Court understands Defendants’ privacy concerns but finds the protective order 26 protects party and non-party privacy interests effectively. ECF No. 54. Plaintiff’s need for 27 Defendants’ financial documents outweighs Defendants’ privacy objection. 28 1 Defendants’ reliance on Cobb v. Superior Court and Valley Bank of Nevada v. 2 Superior Court is misplaced. In Cobb, the Court recognized an individual’s right to privacy 3 in his financial information. 99 Cal. App. 3d 543, 552 (1979). However, privacy concerns 4 can be protected by a protective order. In re Heritage Bond Litigation, Case No. 02-cv- 5 1475-DT-RCX, 2004 WL 1970058 at n.12 (C.D. Cal. July 23, 2004) (finding any privacy 6 concerns in bank records and related financial statements are “adequately protected by the 7 protective order, and are not sufficient to prevent production”). In Valley Bank, the court 8 held “before confidential customer information may be disclosed . . . the bank must take 9 reasonable steps to notify its customer . . . of the proceedings and to afford the customer a 10 fair opportunity to assert his interests . . . by seeking an appropriate protective order.” 542 11 P.2d 977, 980 (Cal. 1975). In contrast, here Defendants do not argue the protective order 12 is insufficient to protect third-party privacy interests, making Valley Bank inapplicable. As 13 there is a Protective Order in this case, Defendants’ arguments are not persuasive. 14 On balance, Defendants’ privacy argument fails where the impact of disclosure of 15 the information is protected by a protective order and the information requested is 16 necessary for Plaintiff’s claims. 17 In sum, although the Court is ordering enforcement of the September Subpoenas, it 18 narrows the requests to a timeframe April 20, 2016 to the present, and BofA Request No. 19 4 is limited to payments and transfer between the relevant entities in this action—Cathcart, 20 Mercator, Nerys Logistics, Com Nerys, and Nery’s USA. 21 // 22 // 23 // 24 // 25 // 26 // 27 // 28 //

1 }IV. CONCLUSION

2 For the reasons above, the Court DENIES Defendants’ motion to quash, 3 NARROWS the BofA and Schwab subpoenas to April 20, 2016 to present, and 4 ||NARROWS the BofA Request No. 4 to “All Documents concerning payments and/or 5 ||transfer of funds or other things of value between Cathcart, Mercator, Nerys Logistics, 6 ||Com Nerys, and Nery’s USA from April 20, 2016 to the present.” ECF No. 60. The Court 7 ||} ORDERS compliance with the subpoenas within thirty (30) days. 8 IT IS SO ORDERED. 9 Dated: December 4, 2025 Wy bale Loti

10 HON. MICHELLE M. PETTIT

United States Magistrate Judge 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 19

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