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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

10	INTERNET DIRECT RESPONSE, INC.,)	CASE NO.: SA CV 09-1335 ABC (MLG)
)	
11	Plaintiff,)	ORDER DENYING MOTION TO AMEND
)	JUDGMENT (Docket No. 121),
12	v.)	DENYING MOTION TO DETERMINE THE
)	CHARACTER OF ASSETS OF CORINNE
13	FRED BUCKLEY,)	BUCKLEY (Docket No. 119), AND
)	DENYING MOTION FOR CONSTRUCTIVE
14	Defendant.)	TRUST (Docket No. 127)
)	
15	_____)	

16 Pending before the Court are three motions filed by Plaintiff and
 17 Judgment Creditor Internet Direct Response, Inc. ("Plaintiff"): a
 18 Motion to Amend Judgment (Docket No. 121), a Motion to Determine the
 19 Character of Assets of Corinne Buckley (Docket No. 119), and a Motion
 20 for Constructive Trust (Docket No. 127). Plaintiff also filed a
 21 separate brief in support of its alter ego theory of liability.
 22 (Docket No. 122.) Defendant and Judgment Debtor Fred Buckley opposed
 23 only the Motion to Amend the Judgment on February 14, 2011. Non-party
 24 Corinne Buckley opposed the Motion to Amend Judgment and the Motion to
 25 Determine the Character of Assets of Corinne Buckley on February 14,
 26 2011 and opposed the Motion for a Constructive Trust on February 21,
 27 2011. Plaintiff filed untimely replies on March 4, 2011, but the
 28 Court has nevertheless considered them. Cf. Local Rules 7-10, 7-12.

1 The Court finds these matters appropriate for resolution without
2 oral argument and VACATES the March 14, 2011 hearing date. Fed. R.
3 Civ. P. 78; Local Rule 7-15. For the reasons below, the Court DENIES
4 all of Plaintiff's motions.¹

5 **FACTUAL BACKGROUND**

6 In February 2009, an American Arbitration Association award was
7 entered against Defendant Fred Buckley in North Carolina and on May
8 12, 2009, a judgment on the award was entered in federal district
9 court in the Western District of North Carolina. The federal judgment
10 was registered in this district in November 2009 and Plaintiff began
11 collection efforts thereafter.

12 According to the arbitration decision, Plaintiff had entered into
13 a contract with a company called Smart Health USA, its subsidiaries,
14 assigns, and related companies to develop and maintain a website and
15 manage internet advertising for a product called Herbal V. Apparently
16 Fred Buckley was the signatory to the contract for Smart Health USA.
17 For a reason not clear in the record, the parties agreed that Fred
18 Buckley would be the individual defendant in the arbitration and any
19 award would be imposed against Buckley individually for actions by
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22 ¹It appears that Plaintiff failed to satisfy its meet-and-confer
23 obligations imposed by Local Rule 7-3 with regard to non-party Corinne
24 Buckley. Similarly, it does not appear that Plaintiff served many of
25 the exhibits supporting its motion to amend the judgment until March
26 3, 2011, long after the motions were filed. (Docket Nos. 138, 139.)
27 However, this is the third time Plaintiff has filed this set of
28 motions (the first time the motions were stricken for violations of
the Local Rules (Docket No. 68) and the second time they were
withdrawn by Plaintiff (Docket Nos. 103-108)). Rather than once again
postponing adjudication of these motions, in this instance the Court
will reach the merits, but Plaintiff is admonished to comply with
Local Rule 7-3 and timely serve all future filings or risk sanctions.

1 Smart Health USA and any subsidiaries.²

2 During the course of this contractual relationship, other
3 products were apparently added to the scope of the contract, including
4 Zyrexin, which was a product sold by Superbalife International, LLC
5 ("Superbalife"). A dispute arose between the parties over whether
6 Plaintiff was owed for the work done related to Zyrexin and
7 Superbalife. The parties submitted the issue to arbitration.

8 The arbitrator ruled in Plaintiff's favor, concluding that the
9 website and other work related to Zyrexin was compensable under the
10 contract and the contract had been breached. The arbitrator relied on
11 email correspondence that "clearly indicate[d] in writing that Buckley
12 expected [Plaintiff] to develop and manage a website for Zyrexin
13 and/or Superbalife," including an email in which Buckley said that
14 "one quick thing I want to change on the site is the Smart Health USA
15 thing. I need to get Smart Health USA out and replace it with
16 Superbalife International." (Mot. to Amend Judgment, Ex. A at 2.)
17 The arbitrator also found "no emails from Buckley to [Plaintiff]
18 stating that Zyrexin or Superbalife are separate entities apart from
19 Smart Health USA or Buckley or that Zyrexin was not a product covered
20 by the September 2005 contract." (Id.) The arbitrator awarded
21 Plaintiff over \$120,000 with interest.

22 After obtaining a federal judgment confirming the award and
23 registering it in this District, Plaintiff immediately sought to
24 conduct judgment debtor examinations on both Defendant Fred Buckley
25 and his wife, Corinne Buckley. (Docket Nos. 1, 2.) Defendant Buckley
26 and his wife resisted, and, after many additional proceedings,

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28 ²The federal judgment confirming the award likewise was entered
against only Defendant Buckley individually.

1 including unsuccessful settlement discussions, Plaintiff now asks this
2 Court to issue several different rulings that may enable it to collect
3 the judgment against two parties not named as defendants in either the
4 arbitration proceedings or the federal judgment: Corinne Buckley and
5 Superbalife.

6 In brief, Plaintiff claims that Defendant Buckley is the
7 President and Corinne Buckley is the owner of Superbalife. Plaintiff
8 argues that, because the arbitration involved Zyrexin, a product of
9 Superbalife, Corinne Buckley and Superbalife could have participated
10 in the arbitration, but chose not to because Corinne and Fred Buckley
11 falsely assumed that a post-nuptial agreement preserved Corinne
12 Buckley's assets used to create Superbalife as separate property,
13 which protects her and Superbalife from Plaintiff's collection efforts
14 here. On this basis, Plaintiff asks the Court for leave to amend the
15 federal judgment to add Corinne Buckley and Superbalife as defendants,
16 to declare Corinne Buckley's separate asserts as community assets
17 subject to collection for the judgment against Fred Buckley, and to
18 impose a constructive trust on Fred Buckley's, Corinne Buckley's, and
19 Superbalife's assets.

20 DISCUSSION

21 I. MOTION TO AMEND JUDGMENT

22 Federal Rule of Civil Procedure 69(a)(1) provides jurisdiction to
23 the Court to enforce a judgment by utilizing California state law.
24 One such law is California Code of Civil Procedure section 187, which
25 allows a federal court to "amend a judgment to add additional
26 judgment debtors." Levander v. Prober (In re Levander), 180 F.3d
27 1114, 1121 (9th Cir. 1999). To amend a judgment under section 187, a
28 plaintiff must show: "(1) that the new party [is] the alter ego of

1 the old party and (2) that the new party had controlled the
2 litigation, thereby having had the opportunity to litigate, in order
3 to satisfy due process concerns.'" Id. (emphasis in original). The
4 judgment creditor bears the burden to satisfy both requirements by a
5 preponderance of evidence. See Wollersheim v. Church of Scientology,
6 69 Cal. App. 4th 1012, 1017-18 (1999).

7 **A. Alter Ego**

8 Two general conditions must be satisfied to apply to find alter
9 ego status: (1) whether there is a unity of interest and ownership
10 such that the corporation and individual no longer exist separately;
11 and (2) whether the corporate form must be disregarded to avoid
12 inequity. Greenspan v. LADT, LLC, 191 Cal. App. 4th 486, ___, 2010 WL
13 5395685, at *13 (Dec. 30, 2010). These requirements are somewhat
14 relaxed in the context of adding new defendants to a judgment pursuant
15 to section 187; so long as the "equitable principles regarding alter
16 ego" are satisfied, a court may add the new defendant to avoid
17 "injustice." Levander, 180 F.3d at 1122. Nevertheless, "the
18 corporate form will be disregarded only in narrowly defined
19 circumstances and only when the ends of justice so require,'" Greenspan,
20 191 Cal. App. 4th at ___, 2010 WL 5395687, at *13, and the
21 "mere fact of sole ownership and control" will not suffice, Katzir's
22 Floor & Home Design, Inc. v. M-MLS.com, 394 F.3d 1143, 1149 (9th Cir.
23 2004) (rejecting alter ego finding based on the "mere fact of sole
24 ownership and control").

25 As a threshold matter, Plaintiff's premise that either
26 Superbalife or Corinne Buckley could be an alter ego of Fred Buckley
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1 is legally flawed. As a limited liability company,³ Superbalife
2 cannot be the alter ego of alleged President Fred Buckley because
3 California law does not permit a plaintiff to impose an individual
4 defendant's debt on a corporation on the theory that the corporation
5 is the alter ego of the individual debtor. See Postal Instant Press,
6 Inc. v. Kaswa Corp., 162 Cal. App. 4th 1510, 1522-23 (2008) (rejecting
7 this theory of alter ego liability, called "outside reverse" piercing
8 of the corporate veil); see also Schwarzkopf v. Briones (In re
9 Schwarzkopf), 626 F.3d 1032, 1038 (9th Cir. 2010) (recognizing Postal
10 Instant Press as controlling California law); Greenspan, 191 Cal. App.
11 4th at ___, 2010 WL 5395685, at *15. Likewise, Corinne Buckley cannot
12 be considered the alter ego of Fred Buckley simply because the two are
13 married and Corinne Buckley allegedly owns Superbalife. See Oyakawa
14 v. Gillett, 8 Cal. App. 4th 628, 631 (1992) (rejecting attempt to add
15 debtor's spouse to judgment pursuant to section 187 because the court
16 was "not aware of any case authorizing the addition of a spouse qua
17 spouse").

18 Even assuming Plaintiff's arguments were not legally foreclosed,
19 Plaintiff's evidence comes nowhere close to showing by a preponderance
20 that Fred Buckley was the alter ego of either Corinne Buckley or
21 Superbalife. Plaintiff has submitted reams of pages of checks written
22 by Corinne Buckley from Superbalife's bank accounts and two tax
23 returns reporting income she earned from Superbalife. But that does
24 not answer the question here, namely, whether Fred Buckley, as
25 Defendant and Judgment Debtor, is the alter ego of either Corinne

27 ³Plaintiff does not dispute that Superbalife, a limited liability
28 corporation, is subject to the same rules for alter ego status as a
corporation in this case. See Cal. Corp. Code § 17101(b).

1 Buckley or Superbalife. And on that point, Plaintiff offers only
2 speculation: it alleges without evidence that Fred Buckley had "equal
3 access" to Superbalife funds and was withdrawing cash from Superbalife
4 accounts and using Superbalife funds for purchases while Corinne
5 Buckley was overseas. While it is true that these withdrawals and
6 purchases were made, there is nothing to suggest that Fred Buckley was
7 making them. And even if he was, Plaintiff has offered no evidence
8 that these withdrawals and purchases were for personal, rather than
9 business, purposes. Even under the more relaxed alter ego standard
10 that allows the Court to add new defendants to a judgment to avoid
11 "injustice," the Court finds no factual basis to treat Corinne Buckley
12 and Superbalife as alter egos of Fred Buckley here.

13 **B. Due Process**

14 Even if new defendants could be considered alter egos of the
15 existing defendants, a plaintiff must also show that the new
16 defendants' due process rights would not be violated by adding them to
17 the judgment. Katzir's Floor, 394 F.3d at 1149. To satisfy due
18 process, the new defendants must have "'had control of the litigation
19 and occasion to conduct it with a diligence corresponding to the risk
20 of personal liability that was involved.'" Id. at 1150 (quoting NEC
21 Elecs., Inc. v. Hurt, 208 Cal. App. 3d 772, 779 (1989)).

22 Here, Plaintiff has failed to demonstrate that either Corinne
23 Buckley or Superbalife actually controlled the arbitration in a way
24 that provided them an opportunity to protect themselves during that
25 proceeding. Plaintiff claims that Fred Buckley was the
26 "decisionmaker" for Corinne Buckley and Superbalife and proceeded in
27 the arbitration representing their interests, but it cites no evidence
28 for this proposition. Plaintiff also cites no evidence to suggest

1 that either Corinne Buckley or Superbalife personally controlled Fred
2 Buckley's participation in the arbitration in a way that would have
3 defended their own interests. At most, Plaintiff points to the
4 arbitrator's finding that "[t]here are no emails from Buckley to
5 [Plaintiff] stating that Zyrexin or Superbalife are separate entities
6 apart from Smart Health USA or Buckley or that Zyrexin was not a
7 product covered by the September 2005 contract." But the absence of
8 evidence cannot satisfy Plaintiff's burden here, especially when the
9 lack of evidence is relied on for a different reason, namely, to
10 demonstrate at the arbitration that the parties did not affirmatively
11 exclude Zyrexin from their website development agreement. On this
12 record, adding Corinne Buckley and Superbalife to the judgment would
13 offend due process and Plaintiff's motion must be denied for this
14 independent reason.

15 **C. Conclusion**

16 Because neither requirement under section 187 is met, the Court
17 DENIES Plaintiff's motion to amend the judgment to add Corinne Buckley
18 and Superbalife as defendants and judgment debtors.⁴

19
20 ⁴Although the Court has ruled for non-party Corinne Buckley, the
21 Court feels compelled to point out that her other grounds for denial
22 lack merit (and frankly border on frivolous). First, Section 11 of
23 the Arbitration Act does not preclude this Court from deciding this
24 motion because a party may seek to modify an arbitration award in any
25 district where proper venue lies. See Cortez Byrd Chips, Inc. v. Bill
26 Harbert Const. Co., 529 U.S. 193, 200-01 (2000). Second, the rules of
27 the American Arbitration Association do not preclude the Court from
28 amending the federal judgment, as opposed to the arbitration award
itself, because a federal judgment on an arbitration award must be
treated like any other judgment pursuant to section 187. See
Greenspan, 191 Cal. App. 4th at ___, 2010 WL 5395685, at *11 (reasoning
that treating a judgment confirming an arbitration award differently
than any other judgment under section 187 would improperly favor
judgments on court decisions over judgments on arbitration decisions

(continued...)

1 **II. MOTION TO DETERMINE THE ASSETS OF CORINNE BUCKLEY**

2 The Buckleys were married on March 22, 1988 and entered into the
3 post-nuptial agreement in 1996. Superbalife was incorporated as a
4 limited liability company nine years later on September 21, 2005.
5 Plaintiff contends that the assets of Corinne, particularly the funds
6 she used to start and maintain Superbalife, are community property and
7 therefore reachable for the debt incurred by Fred.⁵ The Court
8 disagrees.

9 **A. The Post-Nuptial Agreement**

10 The Buckleys entered the post-nuptial agreement on July 29, 1996
11 because "Corinne has an idea for an herbal company (the 'Company')
12 that she would like to create a develop" and her "father is willing to
13 make a gift to Corinne alone of funds needed to create and develop the
14 Company, provided that Fred agrees that the Company and all results
15 and proceeds therefrom will be for all purposes Corinne's separate
16 property." (Sanders Decl., Ex. 1 at 20.) As a result, the Buckleys
17 agreed that "the Company that Corinne causes to be established
18 (whether such business is conducted through one or more separate
19 entities or proprietorships) to exploit dietary supplements and/or any
20 other herbal supplements or health products, and all income, results,
21 and proceeds therefrom, shall for all purposes be and remain Corinne's
22 separate property and Fred shall never acquire any interest for any

23 _____
24 ⁴(...continued)
25 in violation of Federal Arbitration Act). Finally, Corinne Buckley
26 cites no authority to compel the Court to treat the motion to amend
the judgment as a summary judgment motion with the same procedural
requirements.

27 ⁵In this portion of the Court's opinion, the Court refers to
28 Corinne and Fred Buckley by their first names to avoid confusion; no
disrespect to either is intended.

1 reason whatsoever." (Id. at 21.) The parties further agreed that all
2 income from any herbal company would remain Corinne's separate
3 property; that any income from the company used to pay living expenses
4 would be a gift to the community; that any property acquired by
5 separate income from the company would remain Corinne's separate
6 property; that a change in the form of this separate property would
7 not change its character; and that the commingling of this separate
8 property with community property would not change the character of the
9 property as separate. (Id. at 21-23.)

10 During the time the post-nuptial agreement was signed, Fred was
11 experiencing legal difficulties.⁶ On March 5, 1996, he received an
12 "asset freeze order" in FTC v. Innovative Telemedia, Inc. and
13 Frederick O. Buckley, individually and as an officer and director of
14 Innovative Telemedia, Inc., Case No. 96-cv-8140-WDF (S.D. Fla. filed
15 on Mar. 4, 1996). On March 16, 2001, a criminal information was filed
16 against him for violating the asset freeze order and for tax evasion;
17 he pled guilty to the charges five days later. United States v.
18 Buckley, No. 01-cr-6051 WJZ-1 (S.D. Fla. filed on March 16, 2001). In
19 his plea colloquy, Fred stated that he was aware of the asset freeze
20 order but he disobeyed it "by transferring money to my in-laws in
21 France. I did this to save their business and their home which I knew
22 was wrong but I still did it." (Mot. to Determine Character of
23 Assets, Ex. A at 10.) He also "transferred money into other accounts
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25
26 ⁶Indeed, on February 23, 1998, the parties entered an unrelated
27 First Amendment to their post-nuptial agreement, in which they agreed
28 that Fred would transfer his community interest in their house to
Corinne as her separate property, in exchange for Corinne paying
"significant legal bills" incurred by Fred. (Sanders Decl., Ex. 1 at
45-52.)

1 to enable my wife and I to purchase a home in Los Angeles, which again
2 I knew was in violation of the court order by doing those transfers."
3 (Id.) He also "wrote checks to myself for cash. Some of these were
4 for business expenses, but much of the cash was for personal expenses
5 that should have been reported as income to me." (Id. at 11.) When
6 the judge asked Fred why he did these things, Fred said he was a
7 "young man at the time" and "wasn't thinking," and that his in-laws
8 were in "dire situations." (Id.)

9 Thus, it appears that four months after Fred had transferred
10 money to his in-laws (presumably Corinne's parents) in violation of
11 the asset freeze order, he entered the post-nuptial agreement with
12 Corinne that the funds Corinne would obtain from her father to start a
13 herbal supplement business would remain her separate property.

14 **B. California Community Property Law**

15 In California, there is a general presumption that property
16 acquired during marriage by either spouse is community property unless
17 traceable to a separate property source. Rossin v. Rossin (In re
18 Marriage of Rossin), 172 Cal. App. 4th 725, 731 (2009) (citing Cal.
19 Fam. Code § 760). Separate property is all property acquired before
20 marriage and all property acquired during marriage by gift, bequest,
21 devise, or descent. Id. at 731–32 (citing Cal. Fam. Code § 771).
22 However, "[b]oth before and during marriage, spouses may agree to
23 change the status of any or all of their property through a property
24 transmutation" which is an "interspousal transaction or agreement
25 that works a change in the character of the property.'" Id. at 733–34
26 (Cal. Fam. Code § 850). To do so, any agreement must be in writing
27 and must be accepted by the spouse adversely affected by the
28 agreement. Id. at 734 (citing Cal. Fam. Code § 852).

1 **C. Corinne Buckley's Assets as Community Property**

2 Plaintiff advances four arguments as to why the Court should deem
3 all of Corinne Buckley's income and assets from Superbalife as
4 community property subject to Fred Buckley's debt in this case: (1)
5 Superbalife is not covered by the post-nuptial agreement; (2) if it
6 is, the money used to fund Superbalife was community property, not
7 separate property from Corinne's father; (3) if funds are properly
8 considered separate property by way of the post-nuptial agreement, the
9 agreement itself is void as a fraudulent transfer; and (4) the
10 commingling of community assets and Superbalife separate assets has
11 transmuted the separate assets to community property. None of these
12 arguments is persuasive.

13 1. Superbalife Is Covered by the Post-Nuptial
14 Agreement.

15 Plaintiff claims that Superbalife was not the "herbal company"
16 contemplated in the post-nuptial agreement because in a 2003
17 declaration in another proceeding, Corinne stated that the company
18 discussed in the post-nuptial agreement was "Smart Health," which was
19 changed to Smart Health USA in 1997 or 1998 and Smart Health LLC in
20 2001. (Sanders Decl., Ex. 1 at 10-11, ¶¶ 10, 13, 14.) But the post-
21 nuptial agreement was not limited to one company; it specifically
22 contemplated that any company Corinne set up could be comprised of
23 "one or more separate entities or proprietorships." And when Corinne
24 filed her 2003 declaration, Superbalife had not yet been created, so
25 her declaration at that time could not have contemplated its
26 existence. Thus, there is nothing to suggest that Superbalife did not
27 fall within the broad terms of the post-nuptial agreement.

1 2. There Is No Evidence that the Funds Used to Create
2 Corinne's Company Derived from Community Property.

3 Plaintiff speculates that the funds Corinne was to receive from
4 her father as noted in the post-nuptial agreement were actually Fred's
5 funds he transferred to her father while he was subject to the asset
6 freeze order in the FTC case. There is considerable facial appeal to
7 this claim: it seems suspect that, only four months after Fred
8 transferred funds to Corinne's parents because they were in apparent
9 "dire" circumstances, her father would transfer money to her to use as
10 separate property to start an herbal supplement company. But
11 Corinne's father declared under penalty of perjury in another federal
12 judgment debtor proceeding that this was, in fact, not true. He
13 explained that he had experienced financial hardship after investing
14 in and loaning money to Corinne's prior husband's business, which
15 resulted in over \$400,000 in debt to him. (Sanders Decl., Ex. 1 at
16 73-74, ¶ 4.) Quite rationally, he "insisted on the 1996 Post-Nuptial
17 Agreement before [he] would give Corinne any money to start her own
18 business." (Id.) He intended that any money he gave to Corinne would
19 remain her separate property and, "[i]f Fred would not have agreed to
20 sign the agreement I would not have given my daughter the money she
21 needed to start the business." (Id. at 75, ¶ 8.) In fact, the post-
22 nuptial agreement was his idea and he was, in his own words, the
23 "driving force behind it." (Id. at 75-76, ¶ 10.)

24 Plaintiff offers nothing but speculation to rebut this evidence.
25 Without actual evidence to support its theory, the Court cannot say
26 that the money Corinne's father sent her to start her herbal
27 supplement business was Fred's community property and should be
28 treated as community property now.

1 3. The Statute of Repose Precludes a Finding that the
2 Post-Nuptial Agreement Was a Fraudulent Transfer.

3 In a related argument, Plaintiff claims that the 1996 post-
4 nuptial agreement effected a fraudulent transfer of assets designed to
5 shield community property from Fred's creditors and must be set aside
6 pursuant to California's Uniform Fraudulent Transfer Act ("UFTA"),
7 Cal. Civ. Code §§ 3439–3439.12. However, Plaintiff's claim is time-
8 barred by the UFTA's statute of repose, which provides that,
9 "[n]otwithstanding any other provision of law, a cause of action with
10 respect to a fraudulent transfer or obligation is extinguished if no
11 action is brought or levy made within seven years after the transfer
12 was made or the obligation was incurred." Id. § 3439.09(c). This
13 seven-year period is absolute, so it cannot be tolled or otherwise
14 extended. See See In re JMC Telecom LLC, 416 B.R. 738, 742–44 (C.D.
15 Cal. 2009); Roach v. Lee, 369 F. Supp. 2d 1194, 1197–1200 (C.D. Cal.
16 2005); see also In re Universal Trading & Inv. Co., No. C 06-80086
17 MJJ, 2008 WL 823539, at *3 (N.D. Cal. Mar. 27, 2008), aff'd Universal
18 Trading & Inv. Co. v. Lazarenko, 352 F. App'x 210, 211 (9th Cir. 2009)
19 (unpublished disposition); Roos v. Kimmel (In re Kimmel), 367 B.R.
20 166, 169 (N.D. Cal. 2007) (applying seven-year statute of repose to
21 reject request to set aside post-nuptial agreement as a fraudulent
22 transfer), aff'd 378 B.R. 630, 639 (B.A.P. 9th Cir. 2007), aff'd 302
23 F. App'x 518 (9th Cir. 2008) (unpublished disposition).

24 The post-nuptial agreement's seven-year statute of repose expired
25 in 2003, before both the original action was filed in North Carolina
26 in 2008 and this action was filed here in 2009. Thus, the Court
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1 cannot set aside the post-nuptial agreement as a fraudulent transfer.⁷

2 4. Commingling Did Not Transmute Corinne's Separate
3 Property into Community Property.

4 Finally, Plaintiff claims that Corinne commingled her separate
5 income and other assets related to Superbalife with community assets
6 and that transmuted her separate property into community property
7 subject to Fred's debt. However, Plaintiff has offered no evidence
8 that community funds and separate funds have been commingled; indeed,
9 Plaintiff identifies no community assets at all, other than those it
10 alleges were improperly classified as Corinne's separate property
11 derived from Superbalife. Contrary to Plaintiff's position, the post-
12 nuptial agreement designated all funds derived from Corinne's herbal
13 business as separate property, regardless of whether they are
14 commingled with community funds. That is consistent with the general
15 rule that commingling separate and community funds does not transform
16 the separate funds if they are traceable to their source. See Rossin,
17 172 Cal. App. 4th at 734. Plaintiff has offered no evidence to compel
18 the Court to recharacterize Corinne's separate property as community
19 property that would be reachable to satisfy Fred's debt.

20 **D. Conclusion**

21 The Court declines to set aside the 1996 post-nuptial agreement
22 and rejects Plaintiff's other arguments to recharacterize Corinne's
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24 ⁷Without authority or cogent reasoning, Plaintiff argues that
25 "[e]very dollar earned by [Corinne] and Superbalife, in 2008, in 2009,
26 in 2010 and 2011" represents a continuing fraudulent transfer. (Reply
27 to Mot. to Determine Character of Assets 7.) But these transfers were
28 wrongful only to the extent the funds involved could be characterized
as community rather than separate property. Because all of
Plaintiff's arguments fail in that regard, Plaintiff's attempt to
extend the statute of repose is unpersuasive.

1 separate property in Superbalife as community property subject to
2 collection for Fred's debt. Plaintiff's motion is therefore DENIED.

3 **III. MOTION FOR CONSTRUCTIVE TRUST**

4 Plaintiff moves to impose a constructive trust on "sales proceeds
5 and profits derived from the website designed for Smart Health," which
6 would operate against Fred Buckley, Corinne Buckley, Superbalife, and
7 "any person or entity acting on their behalf or for their benefit."
8 (Mot. for Constr. Trust 2.)

9 Generally, "[a] constructive trust is an involuntary equitable
10 trust created by operation of law as a remedy to compel the transfer
11 of property from the person wrongfully holding it to the rightful
12 owner." Communist Party of the U.S. v. 522 Valencia, Inc., 35 Cal.
13 App. 4th 980, 990 (1995); see also Mattel, Inc. v. MGA Entm't, Inc.,
14 616 F.3d 904, 908-09 (9th Cir. 2010) (citing 522 Valencia). "The
15 principal circumstances where constructive trusts are imposed are set
16 forth in Civil Code sections 2223 and 2224." 522 Valencia, 35 Cal.
17 App. 4th at 990. Section 2223 states, "[o]ne who wrongfully detains a
18 thing is an involuntary trustee thereof, for the benefit of the
19 owner." Similarly, section 2224 states, "[o]ne who gains a thing by
20 fraud, accident, mistake, undue influence, the violation of a trust,
21 or other wrongful act, is, unless he or she has some other and better
22 right thereto, an involuntary trustee of the thing gained, for the
23 benefit of the person who would otherwise have had it."

24 A court may impose a constructive trust on three conditions: "(1)
25 the existence of a res (property or some interest in property); (2)
26 the right of a complaining party to that res; and (3) some wrongful
27 acquisition or detention of the res by another party who is not
28 entitled to it." 522 Valencia, 35 Cal. App. 4th at 990 (emphasis in

1 original). A breach of contract can form the basis for a constructive
2 trust. GHK Assocs. v. Mayer Group, Inc., 224 Cal. App. 3d 856, 878
3 (1991). However, property cannot be subject to a constructive trust
4 for the benefit of another unless there is "some basis for determining
5 that [the party seeking the constructive trust] actually owned or was
6 rightfully entitled to possession of" the property. 522 Valencia, 35
7 Cal. App. 4th at 991 (refusing to impose constructive trust on
8 companies' assets in the absence of evidence that the party seeking
9 the trust actually possessed an ownership interest in those assets).

10 Plaintiff's request for a constructive trust fails for the
11 fundamental reason that it has not shown that it is the rightful owner
12 of either the Superbalife website or any profits derived from Fred
13 Buckley's use of the website.⁸ The underlying arbitration and
14 judgment established only that Fred Buckley breached a contract with
15 Plaintiff to develop the website and as a result, was liable for money
16 damages. The arbitrator did not also conclude that Plaintiff had an
17 ownership interest in the website and profits derived from it and that
18 Fred Buckley was wrongfully withholding that property. Instead,
19 Plaintiff has the same claim here as any other judgment creditor with
20 a money judgment and the California Enforcement of Judgments Law
21 provides a comprehensive means for Plaintiff to enforce that judgment.
22 See, e.g., Cal. Code Civ. P. § 699.510. Thus, the motion is DENIED.

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26 ⁸Plaintiff is correct that in some circumstances profits derived
27 from wrongfully retained property can be subject to a constructive
28 trust. See Mattel, 616 F.3d at 910. That does not mean that
Plaintiff is excused from showing that it has an ownership interest in
the property generating the profit. See 522 Valencia, 35 Cal. App.
4th at 991.

1 **CONCLUSION**

2 Plaintiff's Motion to Amend Judgment is DENIED (Docket No. 121);
3 Motion to Determine the Character of Assets of Corinne Buckley is
4 DENIED (Docket No. 119); and Motion for Constructive Trust is DENIED
5 (Docket No. 127).

6 **IT IS SO ORDERED.**

7 **DATED: 3/7/2011**

Audrey B. Collins

8 **AUDREY B. COLLINS**
9 **CHIEF UNITED STATES DISTRICT JUDGE**

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