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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

WRITERS GUILD OF AMERICA,
WEST, INC.; MARK DISTEFANO;
and GUINEVERE TURNER,

 Plaintiffs,

 v.

BTG PRODUCTIONS, LLC,

 Defendant.

CV 14-05828 RSWL (AJWx)

**ORDER re: JUDGMENT
CREDITORS' MOTION TO ADD
MYRIAD PICTURES AND KIRK
D'AMICO AS JUDGMENT
DEBTORS [24]**

20 Currently before the Court is Plaintiffs' Motion to
21 Add Myriad Pictures and Kirk D'Amico as Judgment
22 Debtors [24], filed October 21, 2015. This Action
23 stems from a dispute over an arbitration award between
24 Plaintiff Writers Guild of America West, Inc. ("Guild")
25 and Defendant BTG Productions, LLC ("Defendant").
26 Currently before the Court is Plaintiffs the Guild,
27 Mark DiStefano ("Stefano"), and Guinevere Turner's
28 ("Turner") (collectively "Plaintiffs") Motion to Add

1 Myriad Pictures and Kirk D'Amico as Judgment Debtors
2 [24] ("Motion").

3 In the present Motion, the Guild seeks to add
4 judgment debtors so that it can collect on its Judgment
5 against Defendant, which was awarded as a result of
6 default in a prior arbitration proceeding. Upon
7 consideration of all relevant papers before this Court,
8 this Court should DENY Plaintiffs' Motion [24]. For
9 the reasons discussed below, this Court **DENIES**
10 Plaintiffs' Motion.

11 I. BACKGROUND

12 A. Factual Background

13 Plaintiff the Guild is a labor organization within
14 the meaning of 29 U.S.C. § 152(5), with its principal
15 place of business in Los Angeles, California. Compl. ¶
16 1. Plaintiffs Stefano and Turner are members of the
17 Guild. Id. Defendant is a California corporation and
18 an employer within the meaning of 29 U.S.C. § 152(a).
19 Id. at ¶¶ 4-6. Third Party Myriad Pictures ("Myriad")
20 is an organization of unknown entity type. Third Party
21 Kirk D'Amico ("D'Amico") is an individual and producer
22 of the motion picture at issue, titled "Breaking the
23 Girl" (the "Film").

24 At all relevant times, the Guild and Defendant have
25 been parties to the Writers Guild of America Theatrical
26 and Television Basic Agreement ("MBA"), an industry-
27 wide collective bargaining agreement between the Guild
28 and various employers in the motion picture and

1 television industry. Id. at ¶ 9. Article 10 of the
2 MBA calls for the submission of disputes to
3 arbitration, including disputes over failure to pay
4 compensation due to credited writers and to make
5 required contributions on behalf of writers to the
6 Writers Guild-Industry Health Fund and the Producer-
7 Writers Guild of America Pension Plan (collectively
8 "the Plans"). Id. at ¶ 10.

9 In 2012, a dispute arose between Plaintiffs and
10 Defendant concerning Defendant's failure to pay
11 compensation owed in connection with the Picture to
12 writers DiStefano and Turner (collectively the
13 "Writers"). Id. at ¶ 11. On June 6, 2013, the Guild
14 served Defendant with a Notice of Claim Submitted to
15 Arbitration and Claim, outlining the allegations
16 supporting the claim that Defendant failed to pay
17 certain compensation owed to the Writers and failed to
18 make the attendant contributions to the Plans. Id. at
19 ¶ 12. The arbitration hearing was held on February 12,
20 2014. Id. at ¶ 15. Defendant failed to appear at the
21 hearing and had advised counsel for the Guild by phone
22 a few days before the hearing that it did not intend to
23 appear. Id. On February 12, 2014, the arbitrator
24 entered the Award and judgment against Defendant,
25 requiring Defendant to pay Plaintiffs over \$300,000
26 relating to credit bonus provisions in writers'
27 contracts for the Picture. Id. at ¶ 16. On February
28 14, 2014, the Guild served the Award on Defendant,

1 which has refused and continues to refuse to comply
2 with the terms of the Award. Id. at ¶ 17.

3 On July 25, 2014, Plaintiffs filed a Complaint to
4 confirm an arbitration award against Defendant [1]. On
5 February 3, 2015, this Court confirmed the Award and
6 entered judgment against Defendant [23]. Defendant has
7 since failed to pay on the judgment entered against it.
8 Mot. 3:7-8. The Guild now seeks to add judgment
9 debtors Myriad and D'Amico, pursuant to alter ego and
10 piercing the corporate veil doctrines, to collect on
11 its judgment against Defendant. Id. at 3:9-12.

12 **B. Procedural Background**

13 On July 25, 2014, Plaintiffs filed a Complaint [1]
14 against Defendant to confirm the arbitration award. On
15 September 2, 2014, this Court issued an Order to Show
16 Cause as to why the case should not be dismissed for
17 lack of prosecution [9]. On September 9, 2014,
18 Plaintiffs filed an application for Clerk to Enter
19 Default [11] against Defendant. On September 12, 2014,
20 Default [14] was entered. On October 30, 2014,
21 Plaintiffs filed a Motion for Default Judgment [17]
22 against Defendant. On February 3, 2015, this Court
23 issued a Judgment [23], granting Plaintiffs' request
24 for default judgment accordingly to the terms set forth
25 in the Award. On October 21, 2015, Plaintiffs filed
26 their Motion to Add Judgment Debtors [24]. D'Amico's
27 Opposition [27], Myriad's Opposition [29], and
28 Plaintiffs' Reply [33] were timely filed.

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II. DISCUSSION

A. Legal Standards

1. Motion to Add Judgment Debtors

Federal Rules of Civil Procedure, Rule 69(a) authorizes federal courts to enforce a money judgment by a writ of execution, unless the court directs otherwise. The procedure on execution follows the procedure of the state where the state is located, but a federal statute governs to the extent it applies. See Fed. R. Civ. Proc. 69(a); see also Agit Global, Inc. v. Wham-O, Inc., 2014 WL 1365200 (C.D. Cal. Apr. 7, 2014); Bank of Montreal v. SK Foods, LLC, 476 B.R. 588, 597 (N.D. Cal. 2012). The Ninth Circuit has held that Rule 69(a) “empowers federal courts to rely on state law to add judgment-debtors under Rule 69(a), which ‘permits judgment creditors to use any execution method consistent with the practice and procedure of the state in which the district court sits.’” In re Levander, 180 F.3d 1114, 1120-21 (9thCir. 1999) (citing Cigna Property & Cas. Ins. Co. v. Polaris Pictures Corp., 159 F.3d 412, 421 (9th Cir. 1998)).

California Code of Civil Procedure section 187 grants courts the authority to amend a judgment to add judgment debtors under the alter ego and veil piercing doctrines. Misik v. D’Arco, 197 Cal. App. 4th 1065, 1071 (2011) (citing Postal Instant Press, Inc. v. Kaswa

1 Corp., 162 Cal. App. 4th 1551, 1555 (2008)).¹ This
2 Court has jurisdiction to enforce an arbitration award
3 issued in accordance with a collective bargaining
4 agreement pursuant to Section 301(a) of the Labor
5 Management Relations Act ("LMRA"), 29 U.S.C. § 185(a).
6 Sheet Metal Workers' Int'l Ass'n Local Union No. 359 v.
7 Madison Indus., Inc., of Ariz., 84 F.3d 1186, 1190 (9th
8 Cir. 1996); Textile Worker v. Lincoln Mills, 353 U.S.
9 448, 456 (1957).

10 **B. Analysis**

11 1. Evidentiary Objections

12 Both Plaintiffs and third parties D'Amico and
13 Myriad make evidentiary objections, asserting
14 various portions of proffered declarations are
15 inadmissible evidence on the grounds of irrelevance,
16 lack of foundation, the best evidence rule, hearsay,
17 and speculation, amongst other grounds. Judgment
18 Creditors' Evid. Objections, ECF No. 34; Myriad's Evid.
19 Objections, ECF No. 30; Third Party Kirk D'Amico's
20 Evid. Objections, ECF No. 28.

21
22 ¹California Code of Civil Procedure section 187 is the
23 catch-all provision that gives the court jurisdiction to use any
24 suitable process or mode of proceeding in order to carry out its
25 jurisdiction, even if such means are not specifically provided
26 for in the Code of Civil Procedure or any statute. This section
27 is often used to amend judgments to add judgment debtors on the
28 ground that they are an alter ego of the original judgment
debtor. NEC Electronics, Inc. v. Hurt, 208 Cal. App. 3d 772,
778-779 (1989). "This is an equitable procedure based on the
theory that the court is not amending the judgment to add a new
defendant but is merely inserting the correct name of the real
defendant." Id. at 778.

1 Plaintiffs object to the Declaration of Kevin
2 Forester ("Forester Decl.") and the Declaration of Kirk
3 D'Amico ("D'Amico Decl."), submitted in support of
4 Myriad and D'Amico's Oppositions to the present Motion.
5 This Court finds that "[t]o the extent that the Court
6 relied on objected-to evidence, [the Court] relied only
7 on admissible evidence" and therefore, this Court
8 **OVERRULES** Plaintiffs' objections [34]. Caldwell v.
9 City of Selma, No. 1:13-cv-00465-SAB, 2015 WL 1897806,
10 at *2 n.2 (E.D. Cal. Apr. 16, 2015); see also Capital
11 Records, LLC v. BlueBeat, Inc., 765 F. Supp. 2d 1198,
12 1200 n.1 (C.D. Cal. 2010).

13 Myriad and D'Amico proffered almost identical
14 evidentiary objections in which the parties object to
15 the Declaration of Heather Pearson ("Pearson Decl.")
16 and the Declaration of Valerie Kordisch ("Kordisch
17 Decl."). As to Myriad and D'Amico's objections, this
18 Court finds that the statements objected to are
19 independently evidenced by the accompanying exhibits,
20 and therefore the Court need not rely on the statements
21 proffered. Because the Court need not rely on the
22 statements in the Pearson and Kordisch Declarations to
23 determine the present matter, but can instead refer to
24 the accompanying exhibits, D'Amico and Myriad's
25 objections are denied as **MOOT**. See Henson Beverage Co.
26 v. Vital Pharm., Inc., No. 08-CV-1545-IEG (POR), 2010
27 WL 1734960, at *3 (S.D. Cal. Apr. 27, 2010).

28 2. Plaintiffs' Motion is Timely

1 a. *The statutes of limitations cited by*
2 *Myriad and D'Amico are inapplicable to the*
3 *present Action.*

4 This Court finds that the six-month statute of
5 limitations period derived from the National Labor
6 Relations Act ("NLRA") section 10(b), cited by D'Amico
7 and Myriad in their respective Oppositions, is
8 inapplicable in the present case. Myriad Opp. 10:18-
9 11:3; D'Amico Opp. 2:17-3:8.

10 The Supreme Court has held that the six-month NLRA
11 § 10(b) statute of limitations applies when the claim
12 at issue "has no close analogy in state law."
13 DelCostello v. International Broth. of Teamsters, 462
14 U.S. 151, 169-170 (1983).² The Supreme Court noted,
15 however, that a state statute of limitations may
16 instead apply "if state law were the only source
17 reasonably available for borrowing, as it often is."
18 Id. at 169. The Court further noted: "We stress that
19 our holding today should not be taken as a departure
20 from propr practice in borrowing limitations periods
21 for federal causes of action, in labor law or
22 elsewhere. We do not mean to suggest that federal
23 courts should eschew use of state limitations period
24 anytime state law fails to provide a perfect analogy."

25
26 ²The question in DelCostello was what limitation period
27 should apply to a federal action against a union for breach of
28 the duty of fair representation. Id. The Court found that a
duty of fair representation claim "has no close analogy in state
law," and thus held that it was appropriate to "borrow" the six-
month limitations period under NLRA section 10(b).

1 Id. at 171.

2 In the present case, state law provides the grounds
3 for Plaintiffs' claim, and additionally provides the
4 applicable statute of limitations. Plaintiffs seek to
5 add Myriad and D'Amico as judgment debtors. Pursuant
6 to Federal Rule of Civil Procedure Rule 69(a), a
7 federal court must utilize state procedures regarding
8 the execution of judgments when available.³ Here,
9 California Code of Civil Procedure section 187 is the
10 applicable state law for executing a money judgment,
11 and it is accompanied by a statute of limitations.
12 Section 187 permits courts to amend a judgment to add
13 additional judgment debtors "within a reasonable time."
14 In re Levander, 180 F.3d 1114, n.10 (9th Cir. 1999).
15 Thus, in the present case, Plaintiffs' claim is
16 governed by the statute of limitations provided by
17 California Code of Civil Procedure section 182, not
18 NLRA section 10(b).

19 b. Plaintiffs' moved to add judgment debtors
20 within a "reasonable" time.

21 As discussed above, a motion to add a judgment
22 debtor governed by Rule 69(a) and section 187 must be
23 made "within a reasonable time." In re Levander, 180
24 F.3d 1114, n.10. The Ninth Circuit has found that a

25
26 ³See Fed. R. Civ. Proc. 69(a) (providing, in part: "A money
27 judgment is enforced by a writ of execution The procedure
28 on execution - and in proceedings supplementary to and in aid of
judgment or execution - must accord with the procedure of the
state where the court is located, but a federal statute governs
to the extent it applies.")

1 similar period of delay, after which a party moved to
2 add judgment debtors, was "reasonable." In Cigna Prop.
3 & Cas. Ins. Co. v. Polaris Pictures Corp., the Ninth
4 Circuit confirmed that a seven and one-half month delay
5 between the relevant court order and the motion to add
6 judgment debtors was "reasonable." 159 F.3d 412, 421
7 (9th Cir. 1998).

8 In the present case, Plaintiffs waited eight months
9 after the arbitrator's entry of Judgment before
10 bringing this Motion. This Court entered Judgment
11 against Defendant on February 3, 2015 [23]. In October
12 2015, when it became clear the moving parties would not
13 receive payment, Plaintiffs filed the present Motion to
14 add Myriad and D'Amico as judgment debtors. Given the
15 facts presented, this Court finds that Plaintiffs'
16 eight month delay in bringing this Motion is
17 "reasonable" under the Ninth Circuit's standard, and is
18 thus timely.

19 c. Plaintiffs' Motion is timely in Accordance
20 with the MBA.

21 Article 10.A.2 of the Writers Guild of America 2011
22 Minimum Basic Agreement ("MBA") states, in part:
23 "Proceedings for grievance (or arbitration, to the
24 extent a party is required to initiate arbitration
25 without invoking a grievance proceeding) of a claim . .
26 . shall be commenced no later than eighteen (18) months
27 after the party bringing the grievance or arbitration
28 proceeding . . . has obtained knowledge of the facts

1 upon which the claim is based." Forester Decl. ¶ 10,
2 Ex. A.

3 The Court, not the arbitrator, has the ability to
4 add judgment debtors. Hall, Goodhue, Haisley & Barker,
5 Inc. v. Marconi Conf. Center Bd., 41 Cal. App. 4th
6 1551, 1555 (1996). An arbitrator is foreclosed from
7 doing so. Id. As such, Plaintiffs could not have
8 moved to add judgment debtors until the conclusion of
9 the arbitration proceeding, after learning that
10 Defendant would not fulfill the arbitrator's Judgment,
11 and upon motion to this Court. An eight month period
12 is well within the eighteen months allowed for in the
13 MBA. Accordingly, the Court finds Plaintiffs' Motion
14 is timely and properly filed in accordance with Article
15 10.A.2 of the MBA.

16 d. Plaintiffs' Motion is not barred by
17 laches.

18 "Laches is an equitable time limitation on a
19 party's right to bring suit," which is "derived from
20 the maxim that those who sleep on their rights, lose
21 them." Kling v. Hallmark Cards, Inc., 225 F.3d 1030,
22 1036 (9th Cir. 2000). "The question of laches does not
23 depend, as does the statute of limitation, upon the
24 fact that a certain definite time has elapsed since the
25 cause of action accrued, but whether, under all the
26 circumstances of the particular case, plaintiff is
27 chargeable with a want of due diligence in failing to
28 institute proceedings before he did." Townsend v.

1 Vanderwerker, 160 U.S. 171, 186 (1895). To prevail on
2 a defense of laches, a defendant must prove both: (1)
3 an unreasonable delay by plaintiff in bringing suit,
4 and (2) prejudice to himself. See Couveau v. American
5 Airlines, Inc., 218 F.3d 1078 (9th Cir. 2000). In
6 considering whether a plaintiff's delay was
7 unreasonable, courts consider: (1) the length of the
8 delay, measured from the time the plaintiff knew or
9 should have known about his or her potential cause of
10 action, and (2) whether the plaintiff's delay was
11 reasonable, including whether the plaintiff has
12 proffered a legitimate excuse for the delay. See
13 Jarrow Formulas, Inc. v. Nutrition Now, Inc., 304 F.3d
14 829, 838 (9th Cir. 2002).

15 This Court finds that Plaintiffs' Motion is not
16 barred by laches. Based on the evidence proffered by
17 D'Amico and Myriad in their respective Oppositions, it
18 is not apparent to this Court that Plaintiffs engaged
19 in any unreasonable delay in bringing this Motion. As
20 to the matter of any resulting prejudice, Myriad merely
21 contends that requiring it to pay the Judgment, with
22 its accruing interest, would be "highly prejudicial" as
23 "Plaintiffs have not offered any legitimate excuse for
24 their delay in filing suit." Myriad Opp. 11:11-21.
25 The Court finds this argument unconvincing. In fact,
26 Plaintiffs have proffered a legitimate excuse for their
27 eight month delay. As mentioned above, Plaintiffs
28 waited eight months from this Court's entry of Judgment

1 to file the present Motion because only at this time
2 did Plaintiffs learn that Defendant would be unable to
3 fulfill the Judgment against them. Plaintiffs waited
4 until the resolution of the arbitration rather than
5 after the final writing of the credit determination for
6 the Picture because Plaintiffs and Defendant were
7 parties to an arbitration agreement, and thus
8 Plaintiffs were mandated to arbitrate their claim
9 against Defendant only. Further, as discussed above,
10 only courts, not arbitrators can confirm and amend
11 judgments to add additional judgment debtors.
12 Accordingly, the Court finds that Plaintiffs' Motion is
13 not barred by laches.

14 3. Plaintiffs' claim for "alter ego" liability
15 against Myriad fails.

16 Under California law, the amendment of a judgment
17 to add additional judgment debtors is an equitable
18 procedure that binds new individual defendants where it
19 can be demonstrated that, in their capacity as alter
20 egos of the corporation, they in fact had control of
21 the previous litigation, and thus were virtually
22 represented in the lawsuit. California Code of Civil
23 Procedure § 187 permits judgments to be amended to add
24 additional judgment debtors if two requirements are
25 met: "(1) [] the new party is the alter ego of the old
26 party *and* (2) [] the new party had controlled the
27 [earlier] litigation, thereby having had the
28 opportunity to litigate, in order to satisfy due

1 process concerns." Katzir's Floor and Home Design,
2 Inc. v. M-MLS.com, 394 F.3d 1143, 1148 (9th Cir. 2004)
3 (citing In re Levander, 180 F.3d 1114, 1121 (9th Cir.
4 1999)); see also Triplett v. Farmers Ins. Exchange, 24
5 Cal. App. 4th 1415, 1421 (1994)(noting that due process
6 considerations are in addition to, not in lieu of,
7 threshold alter ego issues). "Section 187 is premised
8 on the notion that the amendment 'is merely inserting
9 the correct name of the real defendant,' such that
10 adding a party to a judgment after the fact does not
11 present due process concerns." Id. The alter ego
12 doctrine has developed under federal labor law "to
13 prevent employers from escaping their collective
14 bargaining obligations" UA Local 343, United
15 Ass'n of Journeymen & Apprentices v. Nor-Cal Plumbing,
16 Inc., 48 F.3d 1465, 1471 (9th Cir. 1994).

17 The Ninth Circuit applies a two-step analysis to
18 establish alter ego liability under LMRA § 301. See
19 Carpenters v. Stevens, 743 F.2d 1271, 1276 (9th Cir.
20 1984). To prevail on a claim of alter ego liability
21 against Myriad, Plaintiffs must first show that there
22 is such a "unity of interest" between Myriad and
23 Defendant that the separate personalities of the
24 corporations no longer exist. Katzir's, 394 F.3d at
25 1149. Second, the Plaintiff must show that inequitable
26 results will follow if the corporate separateness is
27 respected. Id. Broadly, the court must consider
28 whether treating the acts as those of the corporation

1 alone will sanction a fraud, promote injustice, or
2 cause an inequitable result." Misik v. D'Arco, 197
3 Cal. App. 4th 1065, 1071 (2011). "Conclusory
4 allegations of 'alter ego' status are insufficient to
5 state a claim. A plaintiff must allege specifically
6 both of the elements of alter ego liability, as well as
7 facts supporting each." Neilson v. Union Bank of
8 California, N.A., 209 F. Supp. 2d 1101, 1116 (C.D. Cal.
9 2003).

10 Among the factors to be considered in determining
11 alter ego liability are: (1) commingling of funds and
12 other assets of the two entities, (2) the holding out
13 by one entity that it is liable for the debts of the
14 other, (3) identical equitable ownership in the two
15 entities, (4) use of the same offices and employees,
16 and (5) use of one as a mere shell or conduit for the
17 affairs of the other. Wady v. Provident Life and
18 Accident Ins. Co. of America, 216 F.Supp.2d 1060, 1066
19 (C.D. Cal. 2002).

20 "No one characteristic governs, but the courts must
21 look at all the circumstances to determine whether the
22 doctrine should be applied." Sonora Diamond Corp v.
23 Superior Court, 83 Cal.App.4th 523, 539 (2000).

24 However, "the mere fact of sole ownership and control
25 does not eviscerate the separate corporate identify
26 that is the foundation of corporate law." Katzir's,
27 394 F.3d at 1149. Finally, "[a]lter ego is an extreme
28 remedy, sparingly used." Sonora, 83 Cal. App. 4th at

1 539. The alter ego doctrine "focuses on whether there
2 is an attempt to avoid the obligations of a collective
3 bargaining agreement through a sham transaction or a
4 technical change in operation. . . The alter ego
5 doctrine applies in circumstances in which the
6 bargaining unit of the signatory company is effectively
7 the same as that of the non-signatory company." Id. at
8 1277.

9 a. *Plaintiffs failed to establish a*
10 *sufficient "unity of interest" between*
11 *Myriad and Defendant.*

12 i. *Commingling of funds*

13 This Court finds that Plaintiffs have not shown
14 such a "unity of interest" between Myriad and Defendant
15 so as to find that the separate personalities of the
16 corporations no longer exist. Katzir's, 394 F.3d at
17 1149. First, upon review of the record, Plaintiff has
18 not proffered any evidence to show that there was a
19 commingling of Myriad and Defendant's funds. In fact,
20 Myriad's Chief Financial Officer ("CFO") Kevin Forester
21 ("Forester") contends in his declaration, "Myriad and
22 [Defendant] maintain separate corporate funds, records,
23 and assets. There has never been any commingling of
24 funds or assets between Myriad and [Defendant]."
25 Forester Decl. ¶ 4.

26 ii. *Shared liability*

27 This Court finds Plaintiffs have failed to put
28 forth any evidence showing that Myriad ever held itself

1 out as liable for the obligations of Defendant.⁴ On the
2 contrary, Forester declares: "Myriad has never
3 personally guaranteed any of [Defendant's]
4 obligations." Id. This Court finds that although
5 Myriad was heavily involved in producing the Film,
6 "Myriad was not the employer for [the Film].
7 [Defendant] was responsible for all employment matters,
8 costs, and revenues related to the Picture. Myriad
9 also did not contribute any costs in connection with
10 [the Film]." Id. at ¶ 5. Myriad's involvement in the
11 Film stems from an agreement with Defendant to provide
12 various services relating to the Film, including post
13 production accounting, legal services, and "to act as a
14 sales representative for the Picture in the worldwide
15 marketplace." Id. at ¶ 6. It is clear from the
16 proffered declarations that such services were
17 specifically agreed to as part of a bidding process.
18 This Court should find that it does not necessarily
19 follow that, in providing these previously agreed to
20 services, Myriad held itself out as liable for
21 Defendant's obligations generally. In fact, Plaintiffs
22 concede that D'Amico "chose not to sign Myriad as a
23 Guild company . . . and he refused to provide a

24
25 ⁴Rather, Plaintiffs make the following general allegations:
26 "The operations of [Defendant] and Myriad are related, as they
27 use the same street address, phone numbers, and email addresses .
28 . . . The companies also operated in concert to produce [the
Film], with [Defendant] taking responsibility for employment of
writers, and Myriad receiving production credit and holding
ownership of the property." Mot. 9:17-21.

1 standard guarantee that would obligate him to take
2 responsibility for [Defendant's] obligations." Mot.
3 10:7-10.

4 iii. *Identical Equitable Ownership,*
5 *Shared Offices and Employees, Use*
6 *as a Shell Corporation*

7 It is apparent from the record that Myriad and
8 Defendant do not have identical equitable ownership.
9 The record shows that D'Amico is the sole shareholder
10 of Defendant. Kordisch Decl. ¶ 4, Exs. 6, 7.

11 However, there is no indication that D'Amico is the
12 sole shareholder of Myriad. D'Amico is however
13 President of Myriad. Further, although Myriad and
14 Defendant share the same mailing address, and some
15 email addresses and phone numbers, Kordisch Decl. Ex.
16 6, Plaintiffs do not show that Defendant and Myriad
17 share the same employees, besides sharing counsel on
18 certain matters. Finally, Plaintiffs have not
19 adequately shown this Court that Defendant is a shell
20 corporation of Myriad. Plaintiffs merely allege,
21 "Myriad is using [Defendant] to unjustly shield Myriad
22 from having to pay labor costs," without providing
23 convincing factual support for this contention. Mot.
24 9:27-28. Plaintiffs allege: "Myriad employees
25 negotiated the first three disputes that the Guild
26 brought regarding this movie, and coordinated payment
27 to the Guild on those disputes. However, when they
28 realized that paying the credit bonuses were going to

1 add a significant expense to the project, and D'Amico
2 nor counsel could convince the Guild to withdraw these
3 claims, Myriad abandon[ed] [Defendant]. . . . Myriad's
4 only chance to escape liability was to make the Guild
5 try to collect from the empty shell of [Defendant]."
6 Id. at 9:26-10:10. This Court finds that such
7 conclusory allegations, without factual support, are
8 not persuasive and do not sufficiently show Defendant
9 was a shell for Myriad corporation.

10 b. *Plaintiffs failed to show inequity would*
11 *result if corporate separateness was*
12 *respected.*

13 This Court finds Plaintiffs put forth insufficient
14 evidence to show inequity would result if the corporate
15 separateness of Defendant and Myriad were respected.
16 Plaintiffs simply argue they would be unable to collect
17 their Judgment against Defendant. "The Guild should be
18 able to collect its judgment from Myriad, because the
19 facts above show it is the alter ego of [Defendant].
20 Mot. 10:11-12.

21 "California courts generally require some evidence
22 of bad faith conduct on the part of defendants before
23 concluding that an inequitable result justifies an
24 alter ego finding." Neilson v. Union Bank of
25 California, N.A., 290 F.Supp.2d 1101, 1117 (C.D. Cal.
26 2003)(citing Mid-Century Ins. Co. v. Gardner, 9 Cal.
27 App. 4th 1205, 1213 (1992) ("The purpose of the doctrine
28 is not to protect every unsatisfied creditor, but

1 rather to afford him protection, where some conduct
2 amounting to bad faith makes it inequitable, under the
3 applicable rule above cited, for the equitable owner of
4 a corporation to hide behind its corporate veil.")).
5 As discussed above, Plaintiffs have made broad
6 allegations of bad faith, but have not supported these
7 allegations with fact. As noted above, "[c]onclusory
8 allegations of 'alter ego' status are insufficient to
9 state a claim. A plaintiff must allege specifically
10 both of the elements of alter ego liability as well as
11 facts supporting each." Neilson, 209 F. Supp. 2d at
12 1116. As Plaintiffs provide no further support for
13 their contention that inequity would result, this Court
14 finds Plaintiffs have not met their burden.

15 4. Myriad's due process rights would be violated
16 by assigning "alter ego" status to it because
17 it had no control over the proceeding
18 litigation and arbitration.

19 Pursuant to California Code of Civil Procedure
20 section 187, this Court must evaluate whether Myriad
21 had sufficient control over the underlying arbitration,
22 with the opportunity to contest the underlying
23 judgment, before it is found to be the alter-ego of
24 Defendant. See Triplett v. Farmers Ins. Exchange, 24
25 Cal. App. 4th 1415, 1421 (1994). Here, Myriad was not a
26 party to the arbitration involving Defendant, nor did
27 Myriad even receive notice of the arbitration.
28 Forester Decl. ¶ 8. Myriad did not have any of its

1 representatives at any hearings. Id. Although Myriad
2 appears to have been aware of the arbitration,
3 awareness is not sufficient to satisfy due process
4 concerns, especially when Plaintiffs have not met their
5 initial burden to show that the two corporations are
6 identical. See NEC Electronics, Inc. v. Hurt, 208 Cal.
7 App. 3d 772, 781 (1989). Finally, the record shows the
8 arbitration award and judgment were reached by default.
9 Thus, there was by definition no active defense of the
10 underlying claim. As such, the due process concerns
11 are even greater in the present case. Motores de
12 Mexicali, S.A. v. Superior Court, 51 Cal.2d 172, 176
13 (1958)(declining to add individuals as judgment debtors
14 to default judgment against bankrupt corporations
15 because the "litigation was [not] carried through and
16 subsidized by the dominant corporation.").

17 As the Judgment against Defendant was entered by
18 default, and as this Court has determined that Myriad
19 does not effectively share the same corporate identity
20 as Defendant, it cannot be argued that Myriad had the
21 opportunity to be heard, to present its defenses to
22 Plaintiffs' claims, or to represent its interests in
23 the underlying arbitration. In fact, considering the
24 different involvement Defendant and Myriad had in
25 producing the Film, it appears that Defendant and
26 Myriad would likely have different interests in the
27 arbitration. Accordingly, it would violate Myriad's
28 due process rights to be added as a judgment debtor at

1 this juncture. Katzir's, 394 F.3d at 1149-50.
2 Plaintiffs have failed to meet their burdens in (1)
3 showing alter ego liability, and (2) showing that
4 Myriad had control over the proceeding arbitration. As
5 such, this Court **DENIES** Plaintiffs' Motion as to
6 Myriad.

7 5. This Court will not pierce the corporate veil
8 to reach D'Amico.

9 LMRA § 301 allows liability to be assessed against
10 a non-signatory under the doctrine of piercing the
11 corporate veil. Under this doctrine, if there has been
12 an abuse of corporate form, shareholders may be held
13 individually liable for the corporate debts. Nor-Cal,
14 48 F.3e at 1475. In determining whether to pierce the
15 corporate veil, the court examines three factors: (1)
16 "the amount of respect given to the separate identity
17 of the corporation by its shareholders," (2) "the
18 fraudulent intent of the incorporators," and (3) "the
19 degree of injustice visited on litigants by recognition
20 of the corporate entity." Laborers Clean-Up Contract
21 Admin. Trust Fund v. Uriarte Clean-Up Service, Inc.,
22 736 F.2d 516, 524 (9th Cir. 1984).

23 a. *Separate identity of Defendant.*

24 This Court finds that D'Amico gave sufficient
25 respect to the separate identity of Defendant so as to
26 deny Plaintiffs' request to pierce the corporate veil
27 and reach D'Amico's assets. The record shows that
28 although Defendant was 100% owned by D'Amico, Defendant

1 was not under his complete control. In fact, D'Amico
2 was not the sole officer of Defendant. "Rather, the
3 company had three different individuals acting as
4 officers on its own behalf, in addition to a designated
5 registered agent as indicated above as well as an
6 organizer." D'Amico Decl. ¶ 14. Further, at all
7 relevant times, the record shows that D'Amico
8 personally maintained a separate bank account from
9 Defendant and did not ever personally advance money or
10 fund production expenditures to or on behalf of
11 Defendant. Id. at ¶ 17. Additionally, D'Amico
12 declares "there was never any co-mingling of [his]
13 personal assets or liabilities with those of
14 [Defendant]" Id. at ¶ 19.

15 Plaintiffs argue that D'Amico has not respected the
16 separate corporate identity of Defendant because
17 D'Amico is Defendant's 100% shareholder, D'Amico signed
18 all documents submitted to the Guild relating to the
19 Film, and D'Amico personally tried to talk the Guild
20 into abandoning their case against Defendant. While
21 these allegations are evidenced by Plaintiffs'
22 supporting declarations, they are insufficient to
23 warrant the extreme measure of piercing the corporate
24 veil. These allegations do not support a finding that
25 D'Amico disrespected the separateness of Defendant as a
26 corporate entity.

27 b. *Fraudulent intent of D'Amico.*

28 Plaintiffs have proffered no evidence that suggests

1 D'Amico had fraudulent intent in its dealings with
2 Defendant. Plaintiffs merely argue that D'Amico was
3 the publicly credited producer of the Film, yet he
4 never signed papers agreeing to be bound to the Guild's
5 collective bargaining agreement. Mot. 11:4-10.
6 Plaintiffs maintain, "he created other companies, like
7 Dryad and [Defendant], to be bound by MBA, even when
8 Myriad had control of the literary material. D'Amico
9 himself refused to provide a personal guarantee to the
10 Guild, likely anticipating the company might later seek
11 to evade them." Mot. 11:4-10. While the above facts
12 are evidenced in the record, D'Amico's alleged
13 fraudulent intent is not. Plaintiffs infer from
14 D'Amico's decision to not sign the collective
15 bargaining agreement that he intended to defraud
16 Plaintiffs, if a dispute were to arise with the Guild,
17 by hiding behind the shield of Defendant corporation.
18 Plaintiffs do not support these inferences with fact or
19 evidence. Accordingly, this Court finds the record
20 provides no indication of fraudulent intent on behalf
21 of D'Amico.

22 *c. Degree of injustice to Plaintiffs*

23 While the Court recognizes that Plaintiffs have
24 faced difficulty in collecting on their Judgment
25 against Defendant, it does not follow that this
26 difficulty constitutes an injustice if the Court does
27 not pierce Defendant's corporate veil to reach the
28 assets of D'Amico. As discussed above, the record

1 neither shows that D'Amico disrespected the separate
2 corporate identity of Defendant, nor that D'Amico had
3 fraudulent intent, such as to warrant this extreme
4 measure. Plaintiffs have provided no further examples
5 of injustice they would encounter if this Court were to
6 decline to pierce Defendant's corporate veil.

7 Upon consideration of the appropriate factors,
8 specifically the amount of respect given to the
9 separate identity of Defendant, D'Amico's fraudulent
10 intent, and injustices Plaintiffs may face, this Court
11 **DENIES** Plaintiffs' Motion as to third party D'Amico.

12 **III. CONCLUSION**

13 For the reasons stated above, this Court **DENIES**
14 Plaintiffs' Motion to Add Myriad Pictures and Kirk
15 D'Amico as Judgment Debtors [24] in its entirety.

16 **IT IS SO ORDERED.**

17
18 DATED: February 9, 2016 /s/ RONALD S.W. LEW
19 **HONORABLE RONALD S.W. LEW**
20 Senior U.S. District Judge
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