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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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DIRECTI INTERNET SOLUTIONS PVT.
LTD.,

Plaintiff,

v.

HARRY DHILLON; CREATIVE
AVIATION, INC.,

Defendants.

CIV. NO. 2:12-1045 WBS DAD

MEMORANDUM AND ORDER RE:
MOTION TO AMEND JUDGMENT

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Plaintiff Directi Internet Solutions Pvt. Ltd. brought this action against defendants Harry Dhillon and Creative Aviation, Inc. ("Creative"), arising out of plaintiff's allegedly mistaken transfer of \$150,000 to defendants. This court entered judgment in favor of plaintiff on February 27, 2013. (Docket No. 29.) Plaintiff now moves to amend the judgment to add judgment debtors pursuant to Federal Rule of Civil Procedure 69(a)(1).

I. Factual & Procedural Background

1 Plaintiff filed its Complaint on April 20, 2012,
2 bringing claims for breach of contract, fraud, civil theft, and
3 violations of California Business & Professions Code sections
4 17200 et seq. (Docket No. 5.) On February 27, 2013, this court
5 granted in part plaintiff's motion for default judgment, (Docket
6 No. 28), and entered judgment accordingly, (Docket No. 29).

7 Plaintiff attempted to execute the judgment but was
8 unsuccessful because the bank account upon which it had intended
9 to levy was closed. (Carson Decl. Ex. A (Docket No. 42-1).) On
10 January 10, 2014, Dhillon appeared before the assigned magistrate
11 judge for a judgment debtor's examination, where he testified
12 that Creative had ceased operations and claimed that he is now
13 supported by his wife, Gurprit Kaur, who operates a new business,
14 Altamont Aviation, Inc. ("Altamont"). (Carson Decl. Ex. B
15 ("Debt. Exam") at 14:6-12, 40:16-42:10.) Plaintiff subsequently
16 filed the present motion to amend the judgment to add Kaur and
17 Altamont as judgment debtors on April 8, 2014. (Docket No. 42.)

18 II. Analysis

19 Federal Rule of Civil Procedure 69(a) "empowers federal
20 courts to rely on state law to add judgment-debtors" to money
21 judgments. In re Levander, 180 F.3d 1114, 1120-21 (9th Cir.
22 1999). Under Rule 69(a)(1), federal district courts in
23 California may apply California Code of Civil Procedure section
24 187 "to amend a judgment to add additional judgment debtors" as
25 long as two requirements are met: "(1) that the new party be the
26 alter ego of the old party and (2) that the new party had
27 controlled the litigation, thereby having had the opportunity to
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1 litigate, in order to satisfy due process concerns.'" Id. at
2 1121 (quoting Triplett v. Farmers Ins. Exch., 24 Cal. App. 4th
3 1415, 1421 (4th Dist. 1994)). In addition to the alter ego
4 theory, California courts may add a successor corporation as a
5 judgment debtor under section 187 where the successor is a "mere
6 continuation" of its predecessor corporation. McClellan v.
7 Northridge Park Townhome Owners Ass'n, 89 Cal. App. 4th 746, 753-
8 54 (2d Dist. 2001).

9 A. Control of Litigation

10 Even assuming that Altamont and Kaur are alter egos of
11 Creative, "[d]ue process requires that a party added to a
12 judgment on alter ego grounds have had 'control of the litigation
13 and occasion to conduct it with a diligence corresponding to the
14 risk of personal liability that was involved.'" Bank of Montreal
15 v. SK Foods, LLC, 476 B.R. 588, 597 (N.D. Cal. 2012) (quoting NEC
16 Elecs. Inc. v. Hurt, 208 Cal. App. 3d 772, 781 (6th Dist. 1989)).
17 These due process concerns take on an even greater importance
18 where the underlying litigation resulted in a default judgment or
19 was otherwise not contested. See, e.g., Katzir's, 394 F.3d at
20 1150 (declining to add shareholder as judgment debtor when
21 shareholder knew corporation was on verge of dissolution and did
22 not have duty to defend underlying suit); Motores de Mexicali,
23 S.A. v. Superior Court, 51 Cal. 2d 172, 176 (1958) (refusing to
24 add individuals as judgment debtors to default judgment against
25 bankrupt corporation); NEC Elecs., 208 Cal. App. 3d at 781
26 ("Clearly, some active defense of the underlying claim is
27 contemplated.").

1 Here, Creative and Dhillon failed to respond to or
2 defend against the suit at all, much less mount an "active
3 defense." Id. Plaintiff contends that Altamont and Kaur had
4 opportunity to control the litigation because they received
5 notice of the suit and chose not to contest it. (Pl.'s Mem. at 8
6 24-26 (Docket No. 42).) Plaintiff does not provide any factual
7 basis for this contention, however, but suggests the court must
8 infer it from the fact that Kaur and Dhillon are married and
9 operate Altamont out of the house where they both reside. Even
10 assuming Kaur and Altamont knew of the suit, notice of the
11 litigation does not constitute control of it. See NEC Elecs.,
12 208 Cal. App. 3d at 781 ("Moreover, it is not enough that [the
13 chief executive officer and sole shareholder] was "aware" of the
14 action") Because plaintiff obtained a default judgment
15 against Creative and Dhillon, "[t]here was no defense for
16 [Altamont or Kaur] to control." Id. Without a showing of such
17 control, due process precludes amending the judgment to add Kaur
18 and Altamont as judgment debtors.

19 B. Successor Corporation

20 Alternatively, plaintiff argues that Altamont should be
21 added as a judgment debtor because it is a successor corporation
22 to Creative. To be a successor, or "mere continuation," of a
23 predecessor corporation, "California courts require evidence of
24 one or both of the following factual elements: (1) a lack of
25 adequate consideration for acquisition of the former
26 corporation's assets to be made available to creditors, or (2)
27 one or more persons were officers, directors, or shareholders of
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1 both corporations.” Katzir’s Floor & Home Design, Inc. v. M-
2 MLS.com, 394 F.3d 1143, 1150 (9th Cir. 2004). Although it listed
3 this standard in the disjunctive, the Ninth Circuit in Katzir’s
4 went on to hold that “[i]nadequate consideration is an ‘essential
5 ingredient’ to a finding that one entity is a mere continuation
6 of another.” Id.

7 Here, although Creative had its own office and Altamont
8 is operated from Dhillon and Kaur’s home, (Debt. Exam at 14:18-
9 15:8, 43:3-4), plaintiff presents evidence that Altamont was
10 formed to step into the shoes of Creative and is the same
11 corporation running under a different name. See McClellan, 89
12 Cal. App. 4th at 756 (finding that homeowner’s association was a
13 successor when it pertained to the same condominium complex,
14 comprised of the same unit owners, was managed by the same board
15 members, and had the same source of income as the predecessor
16 entity). Altamont and Creative are in the same line of business,
17 the sale of spare airplane parts. In addition, some sections of
18 Altamont’s web site contain the exact same language as Creative’s
19 web site. (Compare Carson Decl. Ex. D at 4 with Carson Decl. Ex.
20 H.) Altamont’s web site also contains a link to send an email
21 addressed to “parts@creativeaviation.com.” (Pl.’s Mem. at 42:9
22 n.1.) Given that Altamont began operations in April or May 2012,
23 (Debt. Exam at 47:15-17), shortly after Creative ceased
24 operations in December 2011, (id. at 15:22-24), and before
25 Dhillon closed Creative’s business account, (id. at 18:12-14),
26 this is strong circumstantial evidence that Altamont was formed
27 as a successor corporation to Creative.
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2 Moreover, there is evidence that Dhillon and Kaur are
3 involved in the management and ownership of both entities.
4 Dhillon was the sole owner of Creative, (Debt. Exam at 16:16-17),
5 but testified that Kaur is the president and sole owner and
6 employee of Altamont, (id. at 41:18-42:4). However, Dhillon
7 registered the domain name and listed himself as the contact
8 person for Altamont's web site. (Carson Decl. Ex. G.) According
9 to plaintiff, Dhillon registered for the web site using the same
10 email address that was used to communicate with plaintiff's
11 principal. (Pl.'s Mem. at 5:15-17.) A bank statement for
12 Altamont Aviation also shows payments made to Ocwen Loan
13 Servicing listing Dhillon as the beneficiary. (Carson Decl. Ex.
14 F.) In light of this evidence, Dhillon's testimony that he has
15 no involvement with Altamont is not credible. (Debt. Exam at
16 48:8-17.)

17 As for Kaur, while Dhillon testified that Kaur was not
18 involved with Creative Aviation, Federal Aviation Administration
19 records document a Dealers' Aircraft Registration Certificate in
20 the name of "Gurprit Kaur Creative Aviation." (Carson Decl. Ex.
21 E.) In order to be eligible for this Certificate, Kaur had to be
22 "substantially engaged in manufacturing or selling aircraft," 14
23 C.F.R. § 47.65, and thus it appears Kaur was significantly
24 involved in operations at Creative. This evidence that Dhillon
25 and Kaur were "officers, directors, or shareholders of both
26 corporations," Katzir's, 394 F.3d at 1150, further supports a
27 finding that Altamont is a successor corporation to Creative.


28 Nevertheless, plaintiff does not provide any evidence

1 that Altamont paid inadequate consideration for Creative's
2 assets. To the contrary, the only evidence regarding Creative's
3 assets was Dhillon's testimony that Creative's remaining assets
4 were computers and furniture that he had either disposed of or
5 retained for personal use. (Debt. Exam at 17:15-23.) Plaintiff
6 does not present any evidence of any transaction between Creative
7 and Altamont, much less that Altamont acquired Creative's assets
8 for inadequate consideration. Without a showing of inadequate
9 consideration, plaintiff's motion to add Altamont as an
10 additional judgment debtor lacks an "essential ingredient" to a
11 finding of successor liability. Katzir's, 394 F.3d at 1150.

12 Accordingly, because due process precludes a finding of
13 alter ego liability, and plaintiff presents no evidence of
14 inadequate consideration necessary for successor liability, the
15 court must deny plaintiff's motion to amend the judgment to add
16 Altamont Aviation and Gurprit Kaur as judgment debtors.

17 IT IS THEREFORE ORDERED that plaintiff's motion to
18 amend the judgment to add judgment debtors be, and the same
19 hereby is, DENIED.

20 Dated: July 7, 2014

21 
22 **WILLIAM B. SHUBB**
23 **UNITED STATES DISTRICT JUDGE**