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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MICHAEL MORENO, et. al.,

Plaintiffs,

v.

ROSS ISLAND SAND & GRAVEL CO.,
et. al.,

Defendants.

No. 2:13-cv-00691-KJM-KJN

ORDER

Defendant Ross Island Sand & Gravel Co. brings this motion to quash plaintiff Jared Mitchell's writ of execution, which orders Ross Island to pay his \$1.5 million damages judgment. ECF Nos. 256–259. Ross Island also seeks to clarify the judgment and for a protective order limiting post-judgment discovery. *Id.*; Mot. Protective Order, ECF No. 270. The plaintiffs oppose all three motions. ECF Nos. 260–61, 263, 272. The motions were submitted without oral argument. ECF No. 262. The motion to quash is denied, the motion to clarify is granted, and the motion for a protective order is denied as moot.

I. BACKGROUND

Michael Moreno and his stepson Jared Mitchell were injured in a boating accident after the boat Michael Moreno was driving hit Ross Island's dredge pipeline. Deanna Moreno,

1 Michael Moreno’s wife and Jared Mitchell’s mother, suffered emotional distress. The plaintiffs’
2 negligence claim against Ross Island proceeded to trial. Contrary to the usual course in an
3 admiralty suit, the case was tried to a jury in light of the unusual procedural circumstances
4 presented. *See* Order on Summ. J. 20–30, ECF No. 136. On November 3, 2015, the jury found
5 Michael Moreno had sustained \$400,000.00 in damages; Jared Mitchell \$1.5 million; and Deanna
6 Moreno \$25,000.00. ECF No. 238. The jury assigned ninety percent of the fault for the accident
7 to Michael Moreno and ten percent to Ross Island. *Id.*

8 Following the jury’s verdict, the parties filed proposed forms of judgment and trial
9 briefs in support of their proposals. ECF Nos. 245–248. The court did not specifically address
10 the briefs and ordered “[t]hat judgment is hereby entered in accordance with the jury verdict
11 rendered 11/3/2015.” ECF No. 250. After the entry of judgment, Jared Mitchell requested and
12 was granted a writ of execution for \$1.5 million in general damages. ECF No. 255. In response,
13 Ross Island filed *ex parte* applications for an order to stay enforcement of the writ of execution
14 pending its motions to quash and for clarification, ECF No. 256; *see also* ECF Nos. 257–259.
15 The court stayed execution of the judgment and writ of execution pending resolution of Ross
16 Island’s motions. ECF No. 262. The plaintiffs filed a combined brief, as the court ordered, in
17 opposition to Ross Island’s motions. ECF No. 263. Ross Island replied. ECF No. 265.

18 Ross Island also moves for a protective order limiting post-judgment discovery.
19 ECF No. 270. It argues many of the plaintiffs’ discovery requests are irrelevant or meant not to
20 collect useful information, but to harass.

21 II. LEGAL STANDARDS

22 A. Writs of Execution

23 “A money judgment is enforced by a writ of execution unless the court directs
24 otherwise.” Fed. R. Civ. P. 69(a)(1). No federal statute governs here, so state procedural law
25 applies. *See id.*; *see also Century 21 Real Estate, LLC v. All Prof’l Realty, Inc.*, No. 11-2497,
26 2013 WL 3146805, at *2 (E.D. Cal. June 18, 2013); *Office Depot, Inc. v. Zuccarini*, 621 F. Supp.
27 2d 773, 775 (N.D. Cal. 2007). In California, a party enforces a money judgment by writ of
28 execution. Cal. Civ. Proc. Code §§ 699.010, 699.510. A court can recall and quash a writ of

1 execution if it was improperly ordered. *Evans v. Superior Court of L.A. Cty.*, 20 Cal. 2d 186, 188
2 (1942); *see also Dakota Payphone, LLC v. Alcaraz*, 192 Cal. App. 4th 493, 508 (2011) (void
3 portion of judgment can be stricken and severed from valid judgment); *Plaza Hollister Ltd. v.*
4 *Cty. of San Benito*, 72 Cal. App. 4th 1, 21 (1999) (court can declare void judgment null at any
5 time); *Jones v. World Life Research Inst.*, 60 Cal. App. 3d 836, 840 (1976) (writ of execution
6 improper when issued to enforce a void judgment; writ of execution may be recalled if
7 improvidently issued). Whether a motion to quash is granted is left to the district court's
8 discretion. *United States v. Watson*, 29 F. App'x 455, 456 (9th Cir. 2015) (citing *United States v.*
9 *Chen*, 99 F.3d 1495, 1499 (9th Cir. 1996)).

10 B. Clarifications of Judgment

11 The court may interpret and explain a judgment to guide the parties without
12 express reliance on any particular statute or rule. *See Bordallo v. Reyes*, 763 F.2d 1098, 1101–02
13 (9th Cir. 1985). This type of relief is available as long as the clarification would not work a
14 substantive change in the result. *See id.* (Governor's request to clarify whether court's judgment
15 was declaratory or mandatory was not request to alter or amend judgment).

16 In the alternative, the court can clarify the judgment here under Rule 60(a), which
17 allows for the correction of “a clerical mistake or a mistake arising from oversight or omission,”
18 including on the court's own motion.¹ The Ninth Circuit takes a broad approach to what
19 constitutes a correctable mistake under Rule 60(a). *Tattersalls*, 745 F.3d at 1297–98 (9th Cir.
20 2014) (explaining that a “clerical error” covers more than inadvertent omissions or
21 miscalculations); *see also Hasbrouck v. Texaco, Inc.*, 879 F.2d 632, 636 (9th Cir. 1989) (request
22 for court to memorialize decision it inadvertently omitted not a request for altering or amending
23 judgment and court's clarification was not substantive change). Thus, a lower court can clarify a
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25 ¹ Rule 59(e) does not apply given the circumstances here. *See Fed. R. Civ. P. 59(e)* (“A
26 motion to alter or amend a judgment must be filed no later than 28 days after the entry of the
27 judgment”). The court entered judgment in this case on December 28, 2015. ECF No. 250. The
28 writ of execution was issued February 8, 2016, and the defendants did not oppose the writ until
February 11, 2016. The same time constraints do not apply to a Rule 60(a) motion. *See*
Tattersalls, Ltd. v. DeHaven, 745 F.3d 1294, 1297 (9th Cir. 2014).

1 judgment as provided by Rule 60(a) to “reflect the necessary implications of the original order.”
2 *Id.* at 1298 (citation and quotation marks omitted). “The touchstone of Rule 60(a) . . . is fidelity
3 to the intent behind the original judgment.” *Id.* (citation and quotation marks omitted).

4 III. DISCUSSION

5 The parties’ motions raise three questions: first, whether Ross Island is responsible
6 for the entirety of Jared Mitchell’s \$1.5 million award or just a 10 percent share, the value
7 assigned by the jury; second, whether the judgment entitles Ross Island to contribution,
8 indemnity, or apportionment from Michael Moreno; and third, whether a protective order is
9 necessary.

10 A. Whether Federal or State Law Applies

11 The parties dispute whether federal or state law controls the question of Ross
12 Island’s liability to Jared Mitchell. Ross Island claims California Civil Code section 1431.2(a)
13 controls and limits recovery to its proportionate share of liability. Def.’s Resp. Br. at 2–5, ECF
14 No. 247. The plaintiffs argue federal maritime law controls and allows them to recover fully
15 from any person who caused the injury. Pls.; Resp. Br. at 2, ECF No. 248.

16 General federal maritime law applies in this case. Order Oct. 29, 2015, at 2, ECF
17 No. 217; *see also Pope & Talbot v. Hawn*, 346 U.S. 406, 409 (1953) (although plaintiff was
18 injured within Pennsylvania “and ordinarily his rights would be determined by Pennsylvania
19 law,” federal law governed both substantive and procedural aspects of action because basis of his
20 injury was “a maritime tort”); *Sample v. Johnson*, 771 F.2d 1335, 1345 (9th Cir. 1985) (general
21 federal maritime law applies in personal injury cases). That law provides that two parties are
22 concurrent tortfeasors or “jointly responsible wrongdoers” when they both are liable for causing
23 the same injury to the same plaintiff. *See Edmonds v. Compagnie Generale Transatlantique*,
24 443 U.S. 256, 260 (1976); *Miller v. Christopher*, 887 F.2d 902, 904 (9th Cir. 1989). A plaintiff
25 may recover her full damages from any one responsible person. *Edmonds*, 443 U.S. at 260;
26 *Miller*, 887 F.2d at 904.

27 Ross Island disagrees, and would have the court look to state law. Although
28 federal courts may look to state law in admiralty cases, such an inquiry is “constrained by a so-

1 called ‘reverse-*Erie*’ doctrine” that requires state substantive remedies to fit applicable federal
2 maritime laws. *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207, 223 (1986); *accord Pope &*
3 *Talbot*, 346 U.S. at 409–10 (“[A] state may not deprive a person of any substantial admiralty
4 rights . . .”). Here, federal law provides for joint and several liability and allows a plaintiff to
5 recover full damages from any one tortfeasor. *Edmonds*, 443 U.S. at 260. This court may not
6 adopt a California rule that would deprive the plaintiffs of this federal right.

7 Ross Island reads *Edmonds* too narrowly when it argues that decision is limited to
8 the Longshoremen’s and Harbor Workers’ Compensation Act. Reply Mot. Quash at 2–5, ECF
9 No. 265. Although *Edmonds* was decided in the context of the Longshoremen’s Act, the Court’s
10 decision called on general principles developed outside that context. *See* 443 U.S. at 263 (Court
11 “unpersuaded” that Congress wanted to change “‘long-established and familiar principl[e]’ of
12 maritime law by imposing a proportionate-fault rule” (quoting *Isbrandtsen Co. v. Johnson*, 343
13 U.S. 779, 783 (1952))); *id.* at 269 (agreeing a ship would be liable for all of plaintiff’s damages
14 even though “its negligence may have been only a minor cause of the injury”). After *Edmonds*,
15 the Court has upheld its application of joint and several liability in the broader context of
16 maritime torts. *McDermott, Inc. v. AmClyde*, 511 U.S. 202, 220–21 (1994) (distinguishing
17 *Edmonds* because it involved no settlement and reasoning “there is no tension between joint and
18 several liability and a proportionate share approach to settlements”). While the *McDermott* Court
19 did describe *Edmonds* as “primarily a statutory construction case,” 511 U.S. at 220, this statement
20 cannot be read in isolation to contradict the *McDermott* Court’s broader conclusion that joint and
21 several liability principles apply in cases of multiple wrongdoers. *Id.* The Ninth Circuit has also
22 addressed and upheld application of the same rule. In *Miller v. Christopher*, the circuit allowed a
23 plaintiff to recover a full judgment from one of two concurrent tortfeasors “regardless of the
24 comparative degree of fault” and explained that contribution was the “appropriate device” to
25 adjust damages based on fault. 887 F.2d at 904.²

26 ² In this context, contribution is “[o]ne tortfeasor’s right to collect from joint tortfeasors
27 when—and to the extent that—the tortfeasor has paid more than his or her proportionate share to
28 the injured party, the shares being determined as the percentages of causal fault.” Black’s Law
Dictionary 378 (9th ed. 2009).

1 Finally, the court cannot agree with Ross Island that *Martin By and Through*
2 *Martin v. United States*, 984 F.2d 1033 (9th Cir. 1993), applies here. *Martin* was a Federal Tort
3 Claims Act case. *See generally id.* Federal courts apply state law in Federal Tort Claims Act
4 cases, but again, state law is not controlling in admiralty cases. *See Pope & Talbot*, 346 U.S.
5 at 409–10.

6 The judgment was valid under maritime law. Jared Mitchell can recover the full
7 amount of his damages from Ross Island. The same law applies to Deanna Moreno.

8 B. Contribution, Indemnity, or Apportionment

9 Having found no reason to quash the writ of execution, the court now addresses
10 whether Ross Island’s request is appropriate in the context of a motion to clarify the judgment;
11 whether the law supports Ross Island’s request; and whether the court may look to the jury’s
12 verdict to reach a decision.

13 1. Clarifying the Judgment

14 As noted, the court can clarify a judgment as long as its clarification is clerical and
15 not substantive. *Tattersalls*, 745 F.3d at 1297–98; *Bordallo*, 763 F.2d at 1101–02. A clerical
16 change corrects a “blunder[] in execution,” *Tattersalls*, 745 F.3d at 1297 (quoting *Blanton v.*
17 *Anzalone*, 813 F.2d 1574, 1577, n.2 (9th Cir. 1987)), whereas a substantive change reflects a
18 change of mind, *id.* As an example of a clerical change, in *Miller v. Transamerican Press, Inc.*,
19 709 F.2d 524 (9th Cir. 1983), the trial court had denied the plaintiff’s motion to compel a
20 deposition witness’s answers. *Id.* at 526. Once judgment was entered, the defendant requested an
21 amendment to include a ruling on its request for an award of deposition expenses as sanctions.
22 *Id.* The trial court amended the judgment to include its denial of defendant’s motion for
23 sanctions. *Id.* This was a “clerical” change. *Id.* at 527. By contrast, in *Munden v. Ultra-Alaska*
24 *Associations*, 849 F.2d 383 (9th Cir. 1988), the Ninth Circuit found a request to change the actual
25 costs awarded in a trial court’s judgment was substantive, not clerical. *Id.* at 387.

26 Here, Ross Island requests a clarification of its liability with respect to Jared
27 Mitchell’s money judgment. ECF No. 259. As in *Transamerican*, the court here can clarify its
28 ruling on Ross Island’s pre-judgment counterclaim. The order Ross Island seeks would not

1 represent a substantive change, because it would not represent a change in the amount of total
2 damages or alter the jury’s assignment of fault. In other words, Ross Island does not ask the court
3 to “change its mind,” or more precisely that of the jury. Instead, it is asking for a clarification of
4 the law that applies.

5 2. Whether Ross Island Can Seek Contribution, Indemnity, or Apportionment

6 Ross Island seeks contribution, indemnity, or apportionment from Michael
7 Moreno.³ Mot. Clarification at 6–9, ECF No. 259; Def.’s Reply at 6–7, ECF No. 265. The
8 plaintiffs claim Ross Island waived its right to apportionment because it did not object to the
9 verdict form, which did not distinguish between economic and non-economic damages. Pls.’
10 Opp’n at 7–8, ECF No. 260. Ross Island argues it preserved its right to apportionment by
11 asserting its affirmative defenses and cross-claim, Mot. Clarification at 6–9, and because the jury
12 was instructed on comparative fault, Def.’s Reply at 7.

13 In federal maritime law, a tortfeasor who pays more than his apportioned share of
14 damages can seek contribution from another person who is at fault but who has not paid his share.
15 *Miller*, 887 F.2d at 904. The Supreme Court’s decision in *Cooper Stevedoring Co. v. Fritz*
16 *Kopke, Inc.*, 417 U.S. 106 (1974), addressed the circumstances under which one joint tortfeasor
17 can seek contribution. There the Court upheld the “well-established maritime rule allowing
18 contribution between joint tortfeasors.” *Id.* at 113. The Court wrote, “Contribution rests on a
19 finding of concurrent fault.” *Id.* at 115. Here, the jury found Ross Island and Michael Moreno
20 were both negligent, and it found Michael Moreno’s negligence was a “contributory factor” in
21 causing the accident that injured Jared Mitchell. Verdict at 2, ECF No. 238. Ross Island may
22 therefore seek contribution from Michael Moreno.

23 The cases the plaintiffs cite to reach the contrary conclusion are not controlling
24 because they were decided in the context of California law, which the plaintiffs have otherwise

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26 ³ Ross Island has suggested plaintiffs’ counsel faces a conflict of interest. It points out
27 that Jared Mitchell may advocate for payment of his attorney’s fees by his co-plaintiffs if Ross
28 Island can hold Michael Moreno accountable for his proportionate share of fault. Mot.
Clarification at 7. The plaintiffs have not responded to this suggestion. The court does not
address this issue at this time.

1 argued correctly, is not applicable here. *See, e.g., C.B. v. City of Sonora*, 769 F.3d 1005, 1031–32
2 (9th Cir. 2014); Opp’n at 7–8. Ross Island may seek contribution from Michael Moreno.

3 3. Counterclaim Against Michael Moreno

4 Ross Island filed a counterclaim against Michael Moreno before the trial began.
5 ECF No. 32. Ross Island claimed it would be entitled to indemnity, apportionment, or
6 contribution from Michael Moreno if he were found responsible for the judgment. *Id.* at 5. Ross
7 Island also requested a set-off for damages proximately caused by Michael Moreno’s negligence.
8 *Id.* It specifically requested an order (1) declaring its rights to indemnity, apportionment, or
9 contribution from Michael Moreno; (2) requiring Michael Moreno to pay the amount of the
10 judgment; and, (3) awarding any other equitable and just relief. *Id.* at 5–6. The plaintiffs denied
11 Ross Island’s claims. ECF No. 43.

12 If a counterclaim is presented to a jury, including by assertion of an affirmative
13 defense, the court may defer to the jury’s factual findings when ruling on that counterclaim. *See*
14 *Yamashita-Shinnihon Kisen, K.K. Tokyo v. W. J. Jones & Son, Inc.*, 474 F.2d 847, 853
15 (9th Cir. 1973). Here, Ross Island counterclaimed that Michael Moreno’s negligence caused the
16 accident and that he should be held responsible for his part of any judgment. ECF No. 32. The
17 jury was asked to determine whether Michael Moreno was negligent, whether his negligence was
18 a “contributory factor in causing the accident” and, if so, what percentage of responsibility it
19 would assign to him. ECF No. 238. The jury found Michael Moreno negligent and that his
20 negligence was a contributory factor, and assigned him 90 percent of the responsibility for the
21 harm suffered. *Id.* Thus, in response to Ross Island’s request for an order, and deferring to the
22 jury’s determination, *Yamashita*, 474 F.2d at 853, the court agrees that Ross Island is entitled to
23 contribution from Michael Moreno.

24 IV. PROTECTIVE ORDER

25 Ross Island’s motion for a protective order was filed without the benefit of the
26 court’s decision here, as was the remainder of the parties’ briefing and the associated post-
27 judgment discovery requests. In these circumstances, the prudent course is to deny Ross Island’s
28 motion as moot. Any further post-judgment discovery disputes shall be adjudicated according to

1 the Local Rules of this district as they would normally apply if judgment had not yet been
2 entered.


3 V. CONCLUSION

4 The motion to quash Jared Mitchell's writ of execution is DENIED. The judgment
5 is CLARIFIED to read that Jared Mitchell and Deanna Moreno may recover the full amount of
6 their damages from Ross Island. However, Ross Island's request for an order declaring its rights
7 is also GRANTED: Ross Island is entitled to contribution from Michael Moreno for his ninety
8 percent proportionate share of liability. Ross Island's motion for a protective order is DENIED
9 AS MOOT. Any further post-judgment discovery disputes shall be adjudicated according to the
10 Local Rules of this district that would apply if judgment had not yet been entered.

11 This order resolves ECF Nos. 258, 259, and 270.

12 IT IS SO ORDERED.

13 DATED: June 29, 2016.

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16 UNITED STATES DISTRICT JUDGE
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