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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CALVIN BRIAN INTERNATIONAL)
COMPANY, a Hong Kong)
Corporation)
)
Plaintiff,)
v.)
GUSTTO, INC., a California)
Corporation)
)
Defendant.)

Case No. 3:13-cv-0218-GPC-BLM
**ORDER GRANTING
PLAINTIFF’S MOTION TO
AMEND DEFAULT JUDGMENT**
(ECF NO. 28)

INTRODUCTION

Calvin Brian International Company (“Plaintiff”) moves the Court, pursuant to Federal Rule of Civil Procedure 69(a), to amend the Default Judgment against defendant Gustto, Inc. (“Gustto”) to add, under an alter-ego theory, Agathe Planchon (“Planchon”) as a judgment debtor. Having considered Plaintiff’s arguments and evidence, and for the reasons that follow, the Court will **GRANT** Plaintiff’s Motion.

BACKGROUND

I. Factual Background

Plaintiff is a Hong Kong corporation. Gustto is a California corporation, of which Planchon is the president, CEO, and 100% shareholder. Planchon is a citizen of France and a resident of California.

1 From January through October 2011, Plaintiff manufactured and shipped
2 handbags to Gustto pursuant to a manufacturing agreement entered into by Plaintiff and
3 Gustto on February 19, 2011. The handbags were to bear the “Gustto” and “Miss
4 Gustto” trademarks. Gustto failed to pay for most, if not all, of these handbags,
5 incurring over \$300,000 in unpaid invoices. In September 2011, Planchon sent an
6 email to one of Plaintiff’s representatives, Calvin Wong (“Wong”), stating that
7 Planchon was arranging for a third party to send Wong a draft letter of credit for his
8 review.

9 Planchon created the “Gustto” trademark and registered it with herself as the
10 owner in November 2007. Sometime thereafter, Planchon licensed the trademark to
11 Gustto. In 2009, Planchon created the “Miss Gustto” trademark but did not formally
12 register that trademark until around February 2011.

13 On February 1, 2011, Planchon formed Brand Buzz Management, LLC (“Brand
14 Buzz”) (a Delaware limited liability company) to own and license the “Gustto” and
15 “Miss Gustto” trademarks. After forming Brand Buzz, Planchon assigned the “Gustto”
16 trademark to Brand Buzz, which assignment Planchon recorded in the U.S. Patent &
17 Trademark Office. As mentioned above, Planchon also formally registered the “Miss
18 Gustto” trademark around this time, listing Brand Buzz as the owner.

19 **II. Procedural Background**

20 Plaintiff initially sued Gustto, Planchon, and Brand Buzz in the District Court
21 for the Southern District of New York but later voluntarily dismissed that suit in favor
22 of this suit. On January 28, 2013, Plaintiff filed a complaint against Gustto only for
23 breach of contract and common-count claims for goods sold and delivered at agreed
24 price, open book account, and account stated. On April 11, 2013, Gustto filed an
25 answer and a counterclaim, alleging the handbags Plaintiff shipped to Gustto were
26 defective. On May 22, 2013, Magistrate Judge Major held an early neutral evaluation
27 conference, at which Planchon disclosed she was considering filing for bankruptcy
28 protection on behalf of Gustto.

1 In August 2013, counsel for Gustto moved for, and was granted leave to,
2 withdraw as counsel because of Gustto’s inability to pay attorney fees. In granting
3 counsel’s motion to withdraw, the Court granted Gustto a period of time to retain
4 counsel in light of the Civil Local Rule precluding business entities from appearing pro
5 se. When Gustto failed to retain counsel, Plaintiff moved for default judgment. On
6 April 3, 2014, the Court entered default judgment against Gustto in the total amount
7 of \$377,712.45, including \$75,542.49 in prejudgment interest. On April 30, 2014,
8 Plaintiff filed the instant request to add Planchon to the Default Judgment as a
9 judgment debtor.

10 DISCUSSION

11 **I. Legal Standard**

12 Federal Rule of Civil Procedure 69(a) provides, in relevant part, that “[t]he
13 procedure on execution [of judgments]—and in proceedings supplementary to and in aid
14 of judgment or execution—must accord with the procedure of the state where the court
15 is located.” Thus, where a state law such as California’s allows a judgment creditor to
16 add a judgment debtor to a judgment on an alter ego theory, it is appropriate to do so
17 under Rule 69(a). Cigna Property & Cas. Ins. Co. v. Polaris Pictures Corp., 159 F.3d
18 412, 421 (9th Cir.1998).

19 California Code of Civil Procedure section 187 allows the amendment of a
20 judgment to add a non-party alter ego as a judgment debtor. Toho-Towa Co., Ltd. v.
21 Morgan Creek Prods., Inc., 217 Cal. App. 4th 1096 (2013). The judgment creditor
22 must show that (1) “the party to be added satisfies the alter ego criteria,” and (2) “the
23 new party had control of the litigation and occasion to conduct it with a diligence
24 corresponding to the risk of personal liability involved.” Bank of Montreal v. SK
25 Foods, LLC, 476 B.R. 588, 597 (N.D. Cal. 2012) (citing NEC Elecs. Inc. v. Hurt, 208
26 Cal. App. 3d 772, 778-79 (1989); Katzir’s Floor & Home Design, Inc. v. M-MLS.com,
27 394 F.3d 1143, 1148-49 (9th Cir. 2004)).

28 The alter-ego doctrine applies where “(1) such a unity of interest and ownership

1 exists that the personalities of [a] corporation and [an] individual are no longer
2 separate, and (2) an inequitable result will follow if the acts are treated as those of the
3 corporation alone.” RRX Indus., Inc. v. Lab-Con, Inc., 772 F.2d 543, 545-46 (9th Cir.
4 1985) (citing Automotriz del Golfo de California S.A. de C.V. v. Resnick, 47 Cal. 2d
5 792, 796 (1957); U.S. Fire Ins. Co. v. Nat’l Union Fire Ins. Co., 107 Cal. App. 3d 456,
6 460 (1980)).

7 To determine whether an individual and a corporation share such a unity of
8 interest and ownership that the personalities of the two are no longer separate, courts
9 have considered the following, non-exhaustive list of factors:

10 [1] Commingling of funds and other assets, failure to segregate funds of
11 the separate entities, and the unauthorized diversion of corporate funds or
assets to other than corporate uses;

12 [2] the treatment by an individual of the assets of the corporation as his
13 own;

14 [3] the failure to obtain authority to issue stock or to subscribe to or issue
the same;

15 [4] the holding out by an individual that he is personally liable for the
16 debts of the corporation;

17 [5] the failure to maintain minutes or adequate corporate records, and the
confusion of the records of the separate entities;

18 [6] the identical equitable ownership in the two entities;

19 [7] the identification of the equitable owners thereof with the domination
20 and control of the two entities;

21 [8] identification of the directors and officers of the two entities in the
responsible supervision and management;

22 [9] sole ownership of all of the stock in a corporation by one individual
23 or the members of a family;

24 [10] the use of the same office or business location;

25 [11] the employment of the same employees and/or attorney;

26 [12] the failure to adequately capitalize a corporation;

27 [13] the total absence of corporate assets, and undercapitalization;

28 [14] the use of a corporation as a mere shell, instrumentality or conduit for
a single venture or the business of an individual or another corporation;

1 [15] the concealment and misrepresentation of the identity of the
2 responsible ownership, management and financial interest, or concealment
of personal business activities;

3 [16] the disregard of legal formalities and the failure to maintain arm's
4 length relationships among related entities;

5 [17] the use of the corporate entity to procure labor, services or
6 merchandise for another person or entity;

7 [18] the diversion of assets from a corporation by or to a stockholder or
8 other person or entity, to the detriment of creditors, or the manipulation
of assets and liabilities between entities so as to concentrate the assets in
one and the liabilities in another;

9 [19] the contracting with another with intent to avoid performance by use
10 of a corporate entity as a shield against personal liability, or the use of a
corporation as a subterfuge of illegal transactions;

11 [20] and the formation and use of a corporation to transfer to it the
existing liability of another person or entity.

12 Bank of Montreal v. SK Foods, LLC, 476 B.R. 588, 597-98 (N.D. Cal. 2012) (citing
13 Zoran Corp. v. Chen, 185 Cal. App. 4th 799, 811-12 (2010)).

14 With regard to an inequitable result, the alter-ego doctrine “does not guard every
15 unsatisfied creditor of a corporation but instead affords protection where some conduct
16 amounting to bad faith makes it inequitable for the corporate owner to hide behind the
17 corporate form.” Sonora Diamond Corp. v. Super. Ct., 83 Cal. App. 4th 523, 539
18 (2000).

19 **II. Analysis**

20 Under the foregoing legal framework, the Court will first address whether
21 Plaintiff has satisfied the alter-ego criteria. The Court will thus assess whether
22 Planchon and Gustto share such a unity of interest and ownership that their two
23 personalities are no longer separate, after which the Court will assess whether failure
24 to apply the alter-ego doctrine would produce an inequitable result. If Plaintiff has
25 satisfied the alter-ego criteria, then—to determine if Planchon may be added to the
26 Default Judgment as a judgment debtor—the Court will determine whether Planchon
27 had sufficient control of this litigation and occasion to conduct it with a diligence
28 corresponding to the risk of personal liability involved.

1 **A. Alter Ego**

2 **1. Unity of Interest & Ownership**

3 Plaintiff relies on the following facts, as supported by Planchon’s declarations
4 filed in this and the New York action, to demonstrate that Planchon and Gustto share
5 such a unity of interest and ownership that their personalities are no longer separate:
6 (1) Planchon is the 100% shareholder of Gustto and the majority member of Brand
7 Buzz; (2) Planchon transferred ownership of the “Gustto” and “Miss Gustto”
8 trademarks to Brand Buzz immediately before entering into the manufacturing
9 agreement with Gustto in February 2011; (3) Planchon represented to Plaintiff’s
10 representative, Wong, in an email that a third party would be sending Wong a draft
11 letter of credit; (4) a private investigator reports seeing Planchon in a New York City
12 office after entry of the Default Judgment, where the person identified as Planchon
13 reportedly said, “This is Gustto”; (5) correspondence and judgment discovery requests
14 mailed to and served on Gustto and Planchon at this New York City office have been
15 rejected; (6) there is no indication as to what happened to the handbags Plaintiff
16 manufactured and delivered to Gustto; (7) Planchon reported at the ENE in this case
17 that Gustto had no assets and that Planchon was considering filing for bankruptcy on
18 behalf of Gustto; and (8) after transferring the “Gustto” and “Miss Gustto” trademarks
19 to Brand Buzz, Gustto was left as an empty shell.

20 Applying the unity-of-interest factors to these facts, the Court finds Plaintiff has
21 established that Planchon and Gustto share such a unity of interest and ownership as
22 to be indistinguishable. Planchon formed Gustto and owns 100% of Gustto’s shares.
23 Planchon caused Gustto to enter into a manufacturing agreement with Plaintiff after
24 Planchon had transferred ownership of the “Gustto” and “Miss Gustto” trademarks to
25 Brand Buzz—another company controlled solely by Planchon. Planchon accepted
26 handbags from Plaintiff for nearly a year without payment and without returning the
27 handbags to Plaintiff. Because Planchon represented at the ENE in this case that
28 Gustto is assetless, the Court infers that Planchon diverted the handbags (or proceeds

1 from the handbags) to herself or third parties. In short, while it appears Planchon
2 continues to operate Gustto, the evidence before the Court indicates Planchon has left
3 Gustto an empty shell.

4 **2. Inequitable Result**

5 The Court finds that an inequitable result would follow if Planchon is not treated
6 as the alter ego of Gustto. The Court finds it would be inequitable to allow Planchon
7 to, not only transfer ownership of the “Gustto” and “Miss Gustto” trademarks to Brand
8 Buzz before entering into the manufacturing agreement with Plaintiff, but to then leave
9 Gustto assetless while apparently continuing to operate Gustto. The Court finds such
10 evidence indicates that Planchon is attempting to avoid execution of the Default
11 Judgment by hiding behind Gustto’s corporate form. Further evidence of Planchon’s
12 attempt to avoid execution is the fact that, even though it appears Planchon is operating
13 Gustto out of the New York City office, both she and Gustto have rejected Plaintiff’s
14 correspondence and requests for judgment discovery.

15 **B. Control of Litigation**

16 The Court finds Planchon had sufficient control of this litigation and occasion
17 to conduct it with a diligence corresponding to the risk of personal liability involved.
18 Planchon caused Gustto to retain counsel at the inception of this case, appeared at the
19 ENE, and submitted a declaration in support of defense counsel’s motion to withdraw.
20 Given that Planchon is the 100% shareholder, CEO, and president of Gustto, Planchon
21 had complete control of this litigation. That Planchon decided to allow a default
22 judgment to be entered against Gustto is of no moment. The Court finds Planchon has
23 been provided sufficient notice of these proceedings, from the entry of default to the
24 present, to participate thoroughly or, at a minimum, to oppose Plaintiff’s instant request
25 to add Planchon as a judgment debtor.

26 **CONCLUSION & ORDER**

27 Based on the foregoing, **IT IS HEREBY ORDERED** that:

- 28 1. Plaintiff’s Motion to Alter Judgment, (ECF No. 28), is **GRANTED**;

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2. On or before July 25, 2014, Plaintiff shall lodge, via the Court's e-file email address (efile_curiel@casd.uscourts.gov), a proposed amended default judgment in either Word or WordPerfect format;
3. The hearing on Plaintiff's Motion, currently set for July 18, 2014, is **VACATED.**

DATED: July 17, 2014


HON. GONZALO P. CURIEL
United States District Judge