UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

EAGLE CANYON OWNERS' ASSOCIATION,

Plaintiff,

vs.

WASTE MANAGEMENT, INC., USA WASTE OF CALIFORNIA, INC.,

Defendants.

CASE NO. 16cv2811-LAB (WVG)

ORDER DENYING LEAVE TO AMEND AND GRANTING MOTION TO DISMISS

"It is a general principle of corporate law deeply ingrained in our economic and legal systems that a parent corporation" "is not liable for the acts of its subsidiaries." *United States v. Bestfoods*, 524 U.S. 51, 61 (1998). Eagle Canyon, a homeowner's association for about 20 condos in San Diego, filed a breach of contract action against USA Waste of California ("California Waste") and its out-of-state parent company Waste Management ("WM"). WM moved to dismiss for lack of personal jurisdiction since it's a Texas company incorporated in Delaware with no control over the day-to-day operations of California Waste.

After a hearing and jurisdictional discovery, Eagle Canyon now asks the Court for leave to amend to allege alter ego jurisdiction. Because WM doesn't exercise pervasive control over California Waste, and isn't abusing the "corporate form" for "wrongful purposes," leave to amend is denied and WM's motion to dismiss is granted. *Id.* at 62; Fed. R. Civ. P. 12(b)(2).

I. Personal Jurisdiction

The first issue is Eagle Canyon's failure to comply with the Court's order to take jurisdictional discovery and then "file a concise brief outlining why the Court has personal jurisdiction."[1] Eagle Canyon failed to file a supplemental brief—it decided the better idea was to file a motion for leave to amend.

The Court "may dismiss an action for failure to comply with any order of the court." *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992). The Court admonishes Eagle Canyon for not complying with its order and needlessly multiplying the briefing in this case. But the Court refrains from dismissing the case based on Eagle Canyon's noncompliance because, as will be seen, the motion to amend is futile: jurisdictional discovery hasn't shown that California Waste operates as an alter ego of WM. *Atkins v. Creighton Elementary Sch. Dist.*, 584 F. App'x 432, 433 (9th Cir. 2014) (affirming order because "amendment would have been futile").

A. Alter Ego

Eagle Canyon's main argument is that the Court has jurisdiction over WM because its subsidiary California Waste is an alter ego. "The alter ego test is designed to determine whether the parent and subsidiary are not really separate entities, such that one entity's contacts with the forum state can be fairly attributed to the other." *Ranza v. Nike, Inc.*, 793 F.3d 1059, 1071 (9th Cir. 2015) (affirming dismissal for lack of jurisdiction because plaintiff failed to plausibly allege alter ego theory). Not only is there "a general presumption in favor of respecting the corporate entity," but disregarding it through use of the alter ego doctrine is "an extreme remedy" reserved for "exceptional circumstances." *Calvert v. Huckins*, 875 F. Supp. 674, 678 (E.D. Cal. 1995) (alterations omitted).[2]

/ / /

---

[1] Dkt. 23.

[2] "California's long-arm statute allows the exercise of personal jurisdiction to the full extent permissible under the U.S. Constitution." *Daimler AG v. Bauman*, 134 S. Ct. 746, 753 (2014). Here, the Court applies "the law of the forum state in determining whether a corporation is an alter ego." *S.E.C. v. Hickey*, 322 F.3d 1123, 1128 (9th Cir. 2003) (quotations omitted).

Eagle Canyon hasn't met its burden to demonstrate that the Court should deploy the extreme remedy of imputing California Waste's forum contacts to WM. The exceptional circumstances for exercising alter ego jurisdiction exist when two factors are met: (i) the two companies have such a unity of interest that the separate personalities of each company cease to exist; and (ii) failure to treat the two companies as one would result in fraud or injustice. *Nike*, 793 F.3d at 1073 (9th Cir. 2015); *Automotriz del Golfo de Cal. S. A. de C. V. v. Resnick*, 47 Cal. 2d 792, 796 (1957). Eagle Canyon hasn't established either element.[3]

1. Unity of Interest

To demonstrate unity of interest, Eagle Canyon must show that WM exerts "pervasive control" over California Waste; that is, WM "dictates every facet of [California Waste's] business—from broad policy decisions to routine matters of day-to-day operation." *Nike*, 793 F.3d at 1073. Eagle Canyon hasn't alleged type of control. Nor has it shown that California Waste is essentially the same company as WM. On the contrary, California Waste is a twenty-year-old company doing $300 million annually with day-to-day operations run by two presidents that manage the company's 1,500 employees [4]

Eagle Canyon's theory fails because the characteristics of control it identifies as indicia of an alter ego are characteristic of the typical corporate structure of many companies. For example: Eagle Canyon argues that WM owns all of California Waste's stock. But a parent company is "so-called because of control through ownership of another corporation's stock." *Bestfoods*, 524 U.S. at 61; *Harris Rutsky & Co. Ins. Servs. v. Bell & Clements Ltd.*, 328 F.3d 1122, 1135 (9th Cir. 2003). Eagle Canyon also points out that key personnel like Courtney Tippy sit on both company's boards. But "ownership and shared management personnel are alone insufficient to establish the requisite level of control." *Nike*, 793 F.3d at 1073 (9th Cir. 2015); *Kramer Motors, Inc. v. British Leyland, Ltd.*, 628 F.2d 1175, 1177 (9th Cir. 1980). Eagle Canyon additionally maintains that the two companies use the

---

[3] While some courts weigh various factors to guide this case-by-case analysis (*see, e.g.*, *Leek v. Cooper*, 194 Cal. App. 4th 399, 417 (2011)), others like the Ninth Circuit in *Ranza v. Nike* look to pervasive control as the polestar; the Court charts the same course.

[4] *See* Dkt. 30-1, 30-2.

same website and email addresses. But "separate corporate entities presenting themselves as one online does not rise to the level of unity of interest required to show companies are alter egos." *Corcoran v. CVS Health Corp.*, 169 F. Supp. 3d 970, 984 (N.D. Cal. 2016). As a final example, Eagle Canyon argues a service agreement between WM and California Waste results in other subsidiaries providing "administrative services in support of their sister Operating Subsidiaries, under the guidance and control of WM." But it's "not at all remarkable for a parent organization to supervise" a subsidiary, and a parent company's provision of "administrative and other support for its operations" is "completely characteristic of a parent-subsidiary operation." *California v. NRG Energy Inc.*, 391 F.3d 1011, 1025 (9th Cir. 2004) (vacated in part on other grounds). As the Supreme Court has recognized, it's routine for a parent company to engage in "monitoring of the subsidiary's performance, supervision of the subsidiary's finance and capital budget decisions, and articulation of general policies and procedures." *Bestfoods*, 524 U.S. at 72.

2. Injustice

Eagle Canyon has not demonstrated that treating the companies as separate entities would create an inequitable result. This second element of the alter ego test is met where a parent company undercapitalizes a subsidiary or uses a subsidiary as a "sham corporate entity formed for the purpose of committing fraud or other misdeeds." *Sonora Diamond Corp. v. Superior Court*, 83 Cal. App. 4th 523, 538 (2000); *United States v. Standard Beauty Supply Stores*, Inc., 561 F.2d 774, 777 (9th Cir. 1977). The proposed amended complaint says the Court would "sanction fraud and promote a grave and manifest injustice." But Eagle Canyon only offers two main arguments in support of the hyperbole: (i) it "believes" WM "directed" California Waste "to systematically increase the monthly rates" so it's unfair to let them off the hook; and (ii) dismissing WM from the suit will "unduly" prejudice class members outside of California who may have had similar issues.[5]

Those reasons aren't good enough. First, alleging on information and belief that WM played some role in hiking rates is another way of saying, "We think after some discovery

[5] Dkt. 26-2 at 62–63.

we'll figure this out." But the Court granted jurisdictional discovery for the express purpose of figuring that out up front.[6] Second, Eagle Canyon—a group of 20 California condos—can have their day in state court against California Waste, or, sue WM in another federal or state court with jurisdiction. Asking this Court to approve the extreme remedy of alter ego jurisdiction—by speculating that potential customers in other states *might* have similar stories, but wouldn't have recourse through this particular nationwide suit—is a bridge too far. *See Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco Cty.*, 137 S. Ct. 1773, 1783 (2017) (finding California lacked jurisdiction over nonresident company but noting plaintiffs could sue in "the States that have general jurisdiction" or that non-Californians could "sue together in their home States").

The overarching purpose of the alter ego doctrine is to protect litigants where "some conduct amounting to bad faith makes it inequitable" to allow a parent company to avoid liability. *Standard Beauty*, 561 F.2d at 777 (9th Cir. 1977). There's no basis to say that WM is acting in bad faith by operating under the aegis of its corporate structure.

3. Fact-bound question

Alternatively, Eagle Canyon argues that determining alter ego jurisdiction is a fact-bound question that the Court should defer answering until after discovery. It relies primarily on an unpublished, decade-old case for support: *Monaco v. Liberty Life Assur. Co.*, 2007 WL 1140460 (N.D. Cal. 2007). But whatever *Monaco's* merits, it's distinguishable from this case in an important way: the *Monaco* court specifically found that it should wait until discovery before making a call on alter ego jurisdiction. Here, the Court's already provided that discovery to Eagle Canyon.

Instead, the Court agrees with WM that *Corcoran v. CVS Health Corp.*, 169 F. Supp. 3d 970 (N.D. Cal. 2016) is the better guide. In *Corcoran*, the court dismissed a similar alter ego argument to impute the contacts of CVS's California subsidiary to its out-of-state holding

[6] Eagle Canyon says it "has no way to know if an[] inequitable result will follow" because the Court didn't allow enough discovery. The Court specifically allowed for "two depositions" and "reasonable written requests for discovery" "to determine if the Court has personal jurisdiction over Waste Management." Dkt. 23. There's no excuse for failing to use that order to obtain the answers and evidence needed.

company. *Corcoran* found no alter ego jurisdiction despite evidence of CVS's total ownership of the subsidiary, "overlapping officers and directors," the presentation "as one integrated company on its website and in government filings," and even that the parent company was "involved in discrete business decisions" of the subsidiary. *Id.* at 983–84. Eagle Canyon's alleged similar facts here. These facts don't warrant the extreme remedy requested because they don't show that WM "dictates every facet" of California Waste's business. What's more, other courts have already examined this same issue and decided that WM's corporate structure fails the alter ego test. *See, e.g.*, *Grant v. Waste Mgmt., Inc.*, 2009 WL 252374, at *7 (Cal. Ct. App. 2009) (finding California Waste wasn't an alter ego of WM, even where the former's employee thought she worked for WM); *Price v. Waste Mgmt., Inc.*, 2014 WL 1764722, at *12 (D. Md. 2014) (WM's Maryland subsidiary not alter ego).

* * *

"Issues of alter ego do not lend themselves to strict rules and prima facie cases," but instead "depend on the innumerable individual equities of each case." *Standard Beauty*, 561 F.2d at 777 (9th Cir. 1977). Reviewing the individual equities of this case, the Court cannot say there's any basis that WM dictated every facet of California Waste's operations, used it as a shell corporation in bad faith, or that Eagle Canyon should get to subject WM to more discovery.

B. Minimum Contacts[7]

As a Texas company incorporated in Delaware, the Court only has personal jurisdiction over WM if it has sufficient minimum contacts with California. *Int'l Shoe Co. v. State of Wash.*, 326 U.S. 310, 316 (1945). Minimum contacts come in two flavors: general and specific. General is out—Eagle Canyon hasn't argued for it and WM isn't "essentially at home" in California. *Daimler*, 134 S. Ct. at 761 (2014). That leaves specific jurisdiction.

[7] Eagle Canyon's motion to amend essentially abandons any argument for specific jurisdiction, opting instead for a single footnote: "Plaintiff continues to assert that the Court may properly exercise specific jurisdiction over WM[] under the 'minimum contacts test.'" It also says the previous jurisdictional arguments are "moot" and the Court shouldn't spend time on those motions. Eagle Canyon's failure to comply with the Court order is yet another reason to deem the argument abandoned. But for the sake of completeness, the Court disposes of this justification for jurisdiction as well. Dkt. 26-1 at 4; Dkt. 29 at 2.

Eagle Canyon must show: (i) the action "arises out of" WM's California activities; (ii) WM "purposefully avails" itself of conducting activities in California; and (iii) "the exercise of jurisdiction" is "reasonable." *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (9th Cir. 2004).

But specific jurisdiction doesn't work here. "What is needed—and what is missing here—is a connection between the forum and the specific claims at issue." *Bristol-Myers Squibb Co.*, 137 S. Ct. at 1781 (2017). Because the underlying dispute here turns on Eagle Canyon's claims that it was charged too much for having its garbage picked up. That dispute arises out of the relationship between Eagle Canyon and its contracting party, California Waste—not WM's contacts with California. WM is a holding company. It doesn't transact business in California, nor was it a party to the California contract. California Waste, however, admits that it contracted, serviced, and invoiced Eagle Canyon in return for picking up trash. Courtney Tippy, WM and California Waste's Corporate Secretary, confirmed in declarations and deposition testimony that WM wasn't a party to the contract.[8]

Eagle Canyon disagrees. It claims the contract itself establishes that WM "was a direct party" to the contract. But Eagle Canyon offers no support for that assertion. It points to references on the contract that use the WM trade name—like the WM logo and website (www.wm.com). And it offers a declaration from a Board member who says she saw green WM trucks picking up trash, and that when she canceled the contract, the people she contacted used WM email addresses and "didn't den[y] that Waste Management was a party to the [contract]."[9] These observations don't say anything about whether WM was actually a party to the contract. Use of a licensed logo on contracts, trucks, or online doesn't make a parent company party to a contract or subject to personal jurisdiction. *Von Grabe v. Sprint PCS*, 312 F. Supp. 2d 1285, 1301 (S.D. Cal. 2003); *Negron-Torres v. Verizon Commc'ns,*

---

[8] Dkt. 7-2; Dkt. 30, 30-1, 30-2; Dkt. 12 at 13. Eagle Canyon's objection to Tippy's original declaration for lack of personal knowledge is overruled. Tippy clearly has the requisite knowledge as evidenced in her 30(b)(6) deposition, and the Court didn't need to rely on it in reaching its decision; the burden to prove personal jurisdiction was on Eagle Canyon. *See* Dkt. 28-1.

[9] Dkt. 12-1.

Inc., 478 F.3d 19, 26 (1st Cir. 2007) ("the mere use of a trademark or logo does not suffice to demonstrate the existence of the requisite minimum contacts"). And besides, directly below the WM logo at the top of the two-page contract is California Waste's information. The Court need not assume the truth of Eagle Canyon's alleged facts where the supporting evidence co-exists with, but doesn't contradict, WM's clear evidence going the other way. *Data Disc, Inc. v. Sys. Tech. Assocs., Inc.*, 557 F.2d 1280, 1284 (9th Cir. 1977).

Even if WM was a contracting party, "an individual's contract with an out-of-state party *alone*" "clearly" cannot "establish sufficient minimum contacts in the other party's home forum." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 478 (1985). Eagle Canyon needed to allege "prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing" to determine if WM had "minimum contacts within the forum." *Id.* Eagle Canyon intones this same language from *Burger King*, but that's all. It hasn't offered any evidence or argument of negotiations or course of dealing, let alone evidence that WM had a hand in overbilling Eagle Canyon. And conspicuously absent from Eagle Canyon's briefing is any reference to the actual disputed invoices.[10]

* * *

The Court refuses to exert jurisdiction in a way that would prevent "out-of-state defendants [from] structur[ing] their primary conduct with some minimum assurance as to where that conduct will and will not render them liable to suit." *Daimler*, 134 S. Ct. at 761–62 (quotations omitted). Eagle Canyon had the burden to establish jurisdiction; they didn't meet it. *Boschetto v. Hansing*, 539 F.3d 1011, 1015 (9th Cir. 2008).

C. Leave to Amend

Although leave to amend should be liberally granted, the Court may exercise its discretion to deny the request where amendment is futile. *Foman v. Davis*, 371 U.S. 178, 182 (1962). And any amendment is futile "where the amended complaint would also be subject to dismissal." *Steckman v. Hart Brewing, Inc.*, 143 F.3d 1293, 1298 (9th Cir. 1998). Eagle Canyon's "primary purpose" of filing a proposed amendment was "to add new alter

[10] Dkt 1 at 2; Dkt. 12 at 12.

ego allegations." Since jurisdictional discovery hasn't demonstrated an alter ego relationship, the Court denies the motion to amend as futile. *Missouri ex rel. Koster v. Harris*, 847 F.3d 646, 656 (9th Cir. 2017); *JJCO, Inc. v. Isuzu Motors Am., Inc.*, 2009 WL 3818247, at *1 (D. Haw. 2009) (denying leave to amend as futile where no alter ego jurisdiction).[11]

The Court observes that the underlying claims here are tenuous and unlikely to survive the pending motions to dismiss. Eagle Canyon complains that its bills increased over the course of five years and auto-renewal provisions were "buried" in a two-page contract. But the contract explained that California Waste could increase prices for various reasons, including for its "profit margin," and that Eagle Canyon could terminate the contract if it thought those charges were improper. Instead, Eagle Canyon paid the bills without complaint for five years.[12]

Eagle Canyon thinks these "grossly excessive rate hikes" must have been an attempt to "pass on hidden" charges. But anyone who's rented an apartment and experienced annual $100 rent increases for the same space wouldn't raise an eyebrow at California Waste's five year increase for the same services. The argument for amendment is particularly unpersuasive after Eagle Canyon disobeyed the Court's order to file supplemental briefing on the pending motions—it created three streams of briefing and delayed resolution of the case. WM's motion to dismiss for lack of personal jurisdiction is granted with prejudice.[13]

II. Order to Show Cause

Before the Court decides California Waste's motion to dismiss for failure to state a claim, the Court must ensure that subject matter jurisdiction exists. Eagle Canyon's operative complaint alleges that the Court has jurisdiction under CAFA. 28 U.S.C. § 1332. But since WM is no longer a defendant, Eagle Canyon is only alleging violations of California law, against a California defendant, on behalf of California residents. The complaint doesn't

---

[11] Although not precedent, the Court notes that the Ninth Circuit has affirmed dismissals without leave to amend where amendment would be futile because of lack of personal jurisdiction. *Evans v. Peterson*, 141 F. App'x 540, 542 (9th Cir. 2005).

[12] Dkt. 12 at 9; Dkt. 1 at 24.

[13] *Id.*

state plausible claims of minimal diversity, a class of more than 100 members, or an aggregate sum of damages over $5 million. *Ashcroft v. Iqbal*, 556 U.S. 662, 681 (2009). In Eagle Canyon's own words, this case is "a straightforward claim for breach of contract." Unless Eagle Canyon has a federal cause of action against California Waste, or can demonstrate diversity jurisdiction, this case belongs in a California state court.[14]

Eagle Canyon has two options: (1) file a motion for leave to amend addressing the lack of subject matter jurisdiction; or (2) file a joint motion to dismiss without prejudice to refiling in state court. Eagle Canyon must file one of these motions on or before July 26, 2017. If necessary, California Waste may file an opposition on August, 2, 2017. The Court will decide the motion on the papers. If Eagle Canyon fails to comply, the action will be dismissed.

IT IS SO ORDERED.

Dated: 7.13.17

Larry A. Burns

HONORABLE LARRY ALAN BURNS
United States District Judge

[14] Dkt. 12 at 6.