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9 UNITED STATES DISTRICT COURT  
10 SOUTHERN DISTRICT OF CALIFORNIA  
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12 ARCTIC ZERO, INC., a Delaware  
13 Corporation,  
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15 Plaintiff,  
16 v.  
17 ASPEN HILLS, INC. an Iowa  
18 Corporation, THOMAS LUNDEEN, an  
19 individual, and NANCY LUNDEEN, an  
20 individual, et al.,  
21 Defendants.

Case No.: 17-cv-00459-AJB-JMA

**ORDER DENYING PLAINTIFF'S  
MOTION FOR PRELIMINARY  
INJUNCTION, DECLARATORY  
RELIEF, AND MOTION FOR AN  
ORDER TO SHOW CAUSE**

(Doc. No. 48)

22 Pending before the Court is Plaintiff Arctic Zero's motion for preliminary injunction  
23 and declaratory relief and motion requesting that this Court issue an Order to Show Cause  
24 ("OSC"). (Doc. No. 48.) The Court granted Plaintiff's ex parte motion to shorten time to  
25 hear this matter before May 1, 2018, thus this motion was heard on a condensed briefing  
26 schedule. (Doc. No. 49.) On April 27, 2018, the Court held a hearing on the motion and  
27 after oral argument, the Court submitted the motion. (Doc. No. 56.) As will be explained  
28 in greater detail below, Plaintiff's motion is **DENIED**.

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1 **BACKGROUND**<sup>1</sup>

2 Plaintiff is a corporation organized under the laws of the state of Delaware with its  
3 principal place of business in San Diego, California. (Doc. No. 3 ¶ 4.) Defendant Aspen  
4 Hills is a former cookie dough manufacturer, organized under the laws of the state of Iowa  
5 with its principal place of business in Garner, Iowa. (*Id.* ¶ 5; Doc. No. 6 at 8.) Defendants  
6 the Lundeens are individuals who reside in the state of Iowa and are co-owners of Aspen  
7 Hills. (Doc. No. 3 ¶¶ 6, 7.)

8 The events leading up to this dispute arose in 2016, when Aspen Hills recalled 287  
9 cases of allegedly negligently manufactured brownie dough. (Doc. No. 6 at 8; Doc. No. 24  
10 at 9.) Currently, there are over \$11 million in claims being asserted against Aspen Hills.  
11 (Doc. No. 6 at 8.) As a result of these substantial claims and the limited assets available for  
12 distribution, receivership proceedings involving Aspen Hills commenced in Iowa District  
13 Court for Hancock County—*A.H. Properties v. Aspen Hills, Inc.*, Hancock County Case  
14 No.: EQCV019535. (*Id.*)

15 Plaintiff and Aspen Hills were in an arrangement that centers on an October 1, 2015  
16 Ingredient Supply Agreement. (Doc. No. 3 ¶ 19.) Under this agreement, Aspen Hills,  
17 among other things, agreed to indemnify Plaintiff against any and all claims, warranted  
18 that each ingredient conformed strictly to all domestic and foreign regulatory requirements,  
19 and merited that each ingredient would be fit and sufficient for the purpose intended. (*Id.*  
20 ¶¶ 20–22.) After the recall, Plaintiff allegedly incurred costs and expenses amounting to at  
21 least \$572,375.33. (*Id.* ¶ 33.) On December 23, 2016, Plaintiff tendered this documentation  
22 of its costs and expenses to Mr. Lundeen by email. (*Id.* ¶ 34.)

23 Mr. and Mrs. Lundeen are purportedly the corporate alter egos of Aspen Hills acting  
24 as the President, Secretary, and Treasurer to the company. (*Id.* ¶¶ 5, 6, 7.) Plaintiff argues  
25 that in 2016, as “insiders,” the Lundeens transferred \$2,300,000 to themselves, leaving  
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27 <sup>1</sup> The Court pulls the following allegations from Plaintiff’s complaint and from  
28 Defendants’ motions to dismiss. (Doc. Nos. 3, 6, 24.)

1 Aspen Hills insolvent. (*Id.* ¶ 36.) Thus, after the supposed fraudulent transfers, Aspen Hills  
2 was only left with approximately \$250,000 or less in cash with an excess of approximately  
3 \$9,000,000 in liabilities. (*Id.* ¶ 47.)

4 On or about December 28, 2016, the Honorable Rustin Davenport, District Court  
5 Judge for the Second Judicial District of Iowa signed the “Order Granting the Joint Motion  
6 for the Appointment of a Receiver” (the “Receivership Order”). (Doc. No. 6 at 9.) Thus,  
7 the business wind-down process has been underway with the Iowa Court exercising  
8 jurisdiction over all receivership property. (*Id.* at 10.)

9 On March 6, 2017, Plaintiff filed its complaint against all Defendants. (Doc. No. 1.)  
10 On April 26, 2017, Plaintiff filed its amended complaint alleging causes of action for (1)  
11 negligence; (2) express indemnity; (3) breach of contract; (4) declaratory relief only as to  
12 Aspen Hills; and (5) fraudulent transfers. (*See generally* Doc. No. 3.) On May 19, and June  
13 6, 2017, respectively, Aspen Hills and the Lundeens filed their motions to dismiss or stay  
14 the action. (Doc. Nos. 6, 16.) On November 20, 2017, the Court denied Defendants’ motion  
15 to stay the action pending resolution of the Iowa State Court Receivership Proceedings and  
16 denied their motions to dismiss. (Doc. No. 32.)

## 17 DISCUSSION

### 18 A. Both Parties’ Request for Judicial Notice

19 As an initial matter, Plaintiff requests judicial notice of (1) the Lundeens’ application  
20 for rule to show cause; (2) the brief to support their application for rule to show cause; and  
21 (3) the Iowa District Court’s order to show cause entered on March 20, 2018. (Doc. No.  
22 48-10.) The Lundeens similarly request judicial notice of all of the records filed in the  
23 *Aspen Hills* case in Iowa District Court. (Doc. No. 50-4.) As the documents both parties  
24 request judicial notice of can be accurately and readily determined from other sources and  
25 as a whole are undisputed, judicial notice is appropriate. *See Reyn’s Pasta Bella, LLC v.*  
26 *Visa USA, Inc.*, 442 F.3d 741, 746 n.6 (9th Cir. 2006); *see also Tan v. Grubhub, Inc.*, 171  
27 F. Supp. 3d 998, 1003 n.2 (N.D. Cal. Mar. 22, 2016) (taking judicial notice of two  
28 documents filed on the public docket in Los Angeles Superior Court).

1 B. A Preliminary Injunction Pursuant to the All Writs Act is Unwarranted

2 Now turning towards the instant motion, Plaintiff argues that a preliminary  
3 injunction is justified because Defendants Thomas and Nancy Lundeen are attacking this  
4 Court's jurisdiction by asking the Iowa Court to restrain it from maintaining this action.  
5 (Doc. No. 48-1 at 5.) Thus, pursuant to the All Writs Act, this Court should issue a  
6 preliminary injunction. (*Id.*) Explicitly, Plaintiff asserts that the Lundeens are asking the  
7 Iowa Court to countermand this Court's November 20, 2017 Order denying the Lundeens'  
8 motion to stay and motion to dismiss. (*Id.*) The Court notes that pursuant to the OSC, the  
9 Iowa Court has ordered Plaintiff and its top executive officers to personally appear in Iowa  
10 on May 1, 2018, to face contempt allegations. (*Id.*; Doc. No. 48-14 at 2.) Thus, Plaintiff  
11 requests a preliminary injunction compelling the Lundeens to withdraw the contempt  
12 application, as well as a preliminary declaration that Plaintiff has a right to proceed with  
13 this action in this Court not subject to contempt sanctions in the state court. (*Id.* at 6.)  
14 Additionally, Plaintiff asks the Court to issue an OSC why the Lundeens and their counsel  
15 should not be sanctioned for their abuse of process. (*Id.*)

16 The Lundeens filed an opposition to the motion on April 17, 2018. (Doc. No. 50.)  
17 The Lundeens mount that the cases cited to by Plaintiff are distinguishable from the present  
18 matter and that none of the well-known exceptions to the Anti-Injunction Act apply. (*Id.* at  
19 6.) Moreover, the Lundeens contend that the Court's November 20 Order denying their  
20 motion to stay and motion to dismiss did not forbid them from continuing to exercise their  
21 rights in the Iowa Receivership. (*Id.* at 4.)

22 The All Writs Act allows federal courts to "issue all writs necessary or appropriate  
23 in aid of their respective jurisdictions and agreeable to the usages and principles of law."  
24 28 U.S.C. § 1651(a). However, the All Writs Act is limited by the Anti-Injunction Act,  
25 which prevents a federal court from enjoining the "proceedings in a State court except as  
26 expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to  
27 protect or effectuate its judgments." 28 U.S.C. § 2283. These three exceptions are to be  
28 construed narrowly, "resolv[ing] doubts in favor of letting the state action proceed."

1 *Quackenbush v. Allstate Ins. Co.*, 121 F.3d 1372, 1378 (9th Cir. 1997); *see also Alton Box*  
2 *Bd. Co. v. Esprit de Corp.*, 682 F.2d 1267, 1271 (9th Cir. 1982) (holding that the Act is  
3 designed to prevent friction between federal and state courts by barring federal intervention  
4 in all but the narrowest of circumstances).

5 Plaintiff's arguments fall under the "where necessary in aid of [the Court's]  
6 jurisdiction" exclusion delineated above. To support its motion, Plaintiff points solely to  
7 the OSC filed by the Iowa Court to argue that this Court's jurisdiction may be threatened  
8 or interfered with. However, the actions the Iowa Court may take are too theoretical and  
9 speculative in nature to warrant the Court take action under the All Writs Act. The Court  
10 notes that if the Iowa Court had issued an order prohibiting Plaintiff from filing suit or a  
11 Temporary Restraining Order, these actions may have been found to so impede this Court's  
12 jurisdiction that injunctive relief under the Act would have been justified. However, no  
13 such actions have been taken. Thus, the instant matter does not fall into one of the narrow  
14 exceptions that demand relief under the Anti-Injunction Act.

15 Accordingly, the Court finds that an order from this Court asking the Lundeens to  
16 withdraw their contempt application and a preliminary declaration that states that Plaintiff  
17 can proceed with this action is premature and an improper application of the All Writs Act.  
18 *See Doe v. I.N.S.*, 120 F.3d 200, 204 (9th Cir. 1997) (holding that the All Writs Act "is not  
19 a grant of plenary power to the federal courts. Rather, it is designed to aid the courts in the  
20 exercise of their jurisdiction.") (citation omitted); *see also Atl. Coast Line R.R. Co. v. Bhd.*  
21 *of Locomotive Eng'rs*, 398 U.S. 281, 295 (1970) (explaining that the All Writs Act is  
22 necessary only if "some federal injunctive relief may be necessary to prevent a state court  
23 from so interfering with a federal court's consideration or disposition of a case as to  
24 seriously impair the federal court's flexibility and authority to decide that case.").

25 Moreover, the cases cited to by Plaintiff are inapposite to the present matter and  
26 further support the Court's conclusion. In *In re Jamster Mktg. Litig.*, MDL No. 1751, 2008  
27 WL 4482307 (S.D. Cal. Sept. 29, 2008), the court found it proper to employ the All Writs  
28 Act to enjoin AT&T from pursuing settlement in the action as it was necessary to aid the

1 court's jurisdiction. *Id.* at \*6–7. Specifically, the court stated “implementation of a stay  
2 will foster the proper administration of justice and permit Plaintiffs to obtain complete  
3 relief on the core MDL claims to which they may be entitled.” *Id.* at \*7. Moreover, the  
4 court found the All Writs Act applicable as *In re Jamster* was an MDL and “where  
5 jurisdiction over federal MDL class action litigation is threatened by a potential settlement  
6 of the same claims in a state court, the federal court can act pursuant to the All Writs Act  
7 even when the federal court has not already entered an order that requires preservation.”  
8 *Id.* at \*6 (citation omitted). The instant matter is not an MDL, nor is there a settlement that  
9 will threaten this Court's litigation. Consequently, as a whole, this case is unpersuasive.

10 Plaintiff also cites to *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Doe*, 868 F.  
11 Supp. 532, 536 (S.D.N.Y. 1994), to argue that its request for declaratory judgment is proper  
12 in light of the Lundeens' OSC with the state court, which if granted might bar Plaintiff  
13 from proceeding with its federal suit. (Doc. No. 48-1 at 9.) However, the factual  
14 background of *Merrill Lynch* is distinguishable from the present matter. Most notably, in  
15 *Merrill Lynch*, the court found that the pendency of the state court action, the temporary  
16 restraining order enjoining the commencement of all other proceedings, and the possibility  
17 that that order would be amended to preclude Merrill Lynch from prosecuting the action,  
18 were circumstances that justified relief under the All Writs Act. *Id.* at 536. Presently, the  
19 only action from the state court that purportedly interferes with this Court's jurisdiction is  
20 the issuance of an OSC. Thus, the circumstances justifying the application of the All Writs  
21 Act in *Merrill Lynch* are not present here.

22 Finally, in *United States v. Alpine Land & Reservoir Co.*, 174 F.3d 1007, 1015 (9th  
23 Cir. 1999), the Ninth Circuit affirmed the district court's order under the All Writs Act.  
24 However, similar to *Merrill Lynch*, *Alpine Land* is also inapplicable. In *Alpine Land*, the  
25 Ninth Circuit found that the “where necessary in aid of its jurisdiction” exception applied  
26 because the district court had retained jurisdiction over the action through enforcement of  
27 a settlement agreement. *Id.* Moreover, in this case “Nevada ha[d] expressly provided that  
28 where a court decree governs water rights, a review of the State Engineer's decisions ‘shall

1 be initiated in the court that entered the decree.” *Id.* In the current matter, there is no decree  
2 nor any settlement. Thus, it is clear that *Alpine* is inconsequential to deciding the issue at  
3 hand.

4 Based on the foregoing, the Court finds that there is doubt as to the propriety of a  
5 federal injunction against a state court proceeding and such doubts “should be resolved in  
6 favor of permitting the state courts to proceed in an orderly fashion to finally determine the  
7 controversy.” *Atlantic Coast Line R.R.*, 398 U.S. at 297. Thus, preliminary relief pursuant  
8 to the All Writs Act is not warranted and is **DENIED**.

9 C. A Preliminary Injunction Under the More Traditional Test is Not Merited

10 A preliminary injunction is a provisional remedy, the purpose of which is to preserve  
11 the status quo and to prevent irreparable loss of rights prior to final disposition of the  
12 litigation. *See Sierra On-Line, Inc. v. Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir.  
13 1984). Thus, in general, courts clearly hold that “a preliminary injunction is an  
14 extraordinary and drastic remedy, one that should not be granted unless the movant, *by a*  
15 *clear showing*, carries the burden of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972  
16 (1997) (citations omitted) (emphasis in original). “A plaintiff seeking a preliminary  
17 injunction must establish that he is likely to succeed on the merits, that he is likely to suffer  
18 irreparable harm in the absence of preliminary relief, that the balance of equities tips in his  
19 favor, and that an injunction is in the public interest.” *Am. Trucking Assocs., Inc. v. City of*  
20 *Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009).

21 Plaintiff asserts that it will suffer irreparable harm, that the balance of equities tips  
22 in his favor, and that an injunction is in the public interest. (Doc. No. 48-1 at 12–20.) The  
23 Lundeens’ opposition brief fails to analyze the foregoing four factors. (*See generally* Doc.  
24 No. 50.)

25 As to the first element, Plaintiff does not provide any analysis on its likelihood “to  
26 succeed on the merits.” However, at the motion hearing, Plaintiff re-argued the allegations  
27 supporting its complaint. The Court ultimately finds that as this case is still disputed and at  
28 the pleading stage, the paucity of evidence to demonstrate Plaintiff’s likelihood of success

1 weighs heavily against the issuance of a preliminary injunction.<sup>2</sup>

2 Moving on to the next element—whether it will suffer irreparable injury if the relief  
3 is denied—Plaintiff claims that imprisonment of its staff and attorneys is a possible  
4 outcome of the OSC hearing and by forcing Plaintiff’s senior leadership to fly to Iowa, it  
5 has suffered a significant disruption. (Doc. No. 48-1 at 14–15.) Unfortunately, to justify a  
6 preliminary injunction, Plaintiff “must establish that irreparable harm is likely, not just  
7 possible, in order to obtain a preliminary injunction.” *Alliance for the Wild Rockies v.*  
8 *Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (citation omitted). Moreover, “mere injuries,  
9 however substantial, in terms of money, time and energy necessarily expended” are not  
10 enough to constitute irreparable injury. *Qualcomm Inc. v. Compal Elec., Inc.*, 283 F. Supp.  
11 3d 905, 914 (S.D. Cal. 2017). The Court explicates that simply being asked to appear in  
12 Iowa isn’t irreparable harm. Accordingly, Plaintiff’s assertions under this element are  
13 unpersuasive and this factor weighs against a finding for preliminary relief.

14 As Plaintiff has not demonstrated that it is likely to succeed on the merits or that it  
15 would suffer irreparable harm if the injunction is not issued, its motion for preliminary  
16 injunction is **DENIED**.

### 17 CONCLUSION

18 Presently, Plaintiff has produced evidence that it is being asked to appear in Iowa to  
19 face contempt charges for violating a Receivership Order. The Iowa Court’s decision to  
20 hold a hearing does not threaten this Court’s jurisdiction. Thus, a preliminary injunction or  
21 declaratory relief under the All Writs Act is premature. Moreover, under the more  
22 traditional preliminary injunction four factor test, Plaintiff’s failure to demonstrate its  
23 likelihood of success on the merits and the likelihood of irreparable injury does not validate  
24 to the Court that the drastic remedy of a preliminary injunction is warranted. Accordingly,  
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26 <sup>2</sup> Plaintiff’s moving papers argue that the Lundeens’ Iowa Application is objectively  
27 meritless. (Doc. No. 48-1 at 12–14.) Plaintiff also re-argued these contentions at the motion  
28 hearing. The Court will not reach these assertions as it is not a factor the Court needs to  
address to determine whether a preliminary injunction should be issued.

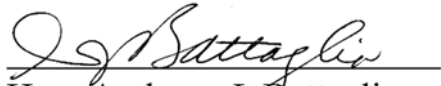


1 Plaintiff's motion for a preliminary injunction, declaratory relief, and request that this  
2 Court issue an OSC is **DENIED WITHOUT PREJUDICE**.

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**IT IS SO ORDERED.**

Dated: April 30, 2018

  
Hon. Anthony J. Battaglia  
United States District Judge