TENTATIVE RULINGS

FOR: May 14, 2021

If you do not see a tentative ruling for a scheduled matter, then attendance at the hearing is required.

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If you have cases scheduled in both courtrooms at the same time, first log-in to the Zoom session for the department that has your quickest matter(s), and upon check-in, ask the clerk to email the clerk in the other department to advise that you will be late to the other Zoom session.

Dept. A Zoom
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Dept. B Zoom
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PROBATE CALENDAR – Hon. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.

Conservatorship of Phillip Warren **17PR000217**

SECOND ACCOUNT AND REPORT OF CONSERVATOR; PETITION FOR ALLOWANCE OF FEES TO CONSERVATOR OF ESTATE AND ATTORNEY FOR CONSERVATOR

TENTATIVE RULING: GRANT petition, including fees as prayed. The Court notes that paragraph 1 appears to be incorrect as petitioner has not been appointed the successor conservator of the person. The letters issued on March 9, 2018, indicate petitioner was appointed only as the conservator of the estate.

After a review of the matter, the Court finds the conservator is acting in the best interest of the conservatee. Thus, the matter is set for a biennial review hearing and an accounting in two years on May 17, 2023 at 8:30 a.m. in Dept. B. All accounting documents must be filed at least

30 days prior to the hearing. The court investigator shall prepare a biennial investigator report for the next hearing date. The clerk is directed to send notice to the parties.

CIVIL LAW & MOTION CALENDAR – Hon. Victoria Wood, Dept. A (Historic Courthouse) at 8:30 a.m.

Merryvale Vineyards LLC v. V2 Wine Group, LLC, *et al.* **19CV000482**

DEFENDANTS' MOTION TO QUASH OR MODIFY PLAINTIFF'S SUBPOENAS TO THIRD-PARTY WINERIES

TENTATIVE RULING: The motion is GRANTED IN PART. The Court grants the motion to quash as to Request Number 3 and grants the motion to modify Request Number 5 to read: "[a]ll COMMUNICATIONS made at any time from April 1, 2015, through May 1, 2019, between YOU and V2 or DELICATO expressing YOUR complaints about V2's sales and marketing efforts on YOUR behalf."

I. PROCEDURAL BACKGROUND

Defendants Delicato Vineyards and V2 Wine Group, LLC move, pursuant to Code of Civil Procedure sections 1987.1, 2017.010, and 2019.030, for an order quashing, or in the alternative modifying, the respective deposition subpoenas for production of business records issued by Plaintiff to Donati Family Vineyards, Inc., Dry Creek Vineyards, Inc., Mercer Wine Estates, LLC, and Toad Hollow Vineyards, Inc. Defendants motion is brought on the grounds that, "Request Nos. 3 and 5 in Merryvale's subpoenas (1) seek records not within the permissible scope of discovery because they are irrelevant and unlikely to lead to the discovery of admissible evidence, (2) seek information that can be obtained from Defendants, and (3) seek information that is already at issue with the Discovery Referee. In addition, Defendants contend that Request No. 3 seeks confidential and proprietary information and Request No. 5 is overbroad as to time, and vague and ambiguous.

The following appears to be undisputed. Plaintiff served business records subpoenas to the five third-parties to the present action identified above. (See Support Memo at 3:14-18, Opposition at 5:18-20 and fn. 1.) Each of the subpoenas calls for production of the same five categories of documents. (See Support Memo at 3:19, Opposition at 5:20-24.)

While Defendants style their motion as one to quash or modify each of the subject subpoenas, because they object to only two out of five categories of business records, they do not appear to seek an order quashing the subpoenas in their entirety.

II. LEGAL ANALYSIS

A civil litigant's right to discovery is broad. "[A]ny party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action … if the matter either is itself admissible in evidence or appears reasonably calculated to lead to the

discovery of admissible evidence." (Code Civ. Proc., § 2017.010; see *Davies v. Super. Ct.* (1984) 36 Cal.3d 291, 301 ["discovery is not limited to admissible evidence"].) "A trial court must be mindful of the Legislature's preference for discovery over trial by surprise, must construe the facts before it liberally in favor of discovery, may not use its discretion to extend the limits on discovery beyond those authorized by the Legislature, and should prefer partial to outright denials of discovery." (*Williams v. Super. Ct.* (2017) 3 Cal.5th 531, 540.) "California's pretrial discovery procedures are designed to minimize the opportunities for fabrication and forgetfulness, and to eliminate the need for guesswork about the other side's evidence, with all doubts about discoverability resolved in favor of disclosure." (*Glenfed Development Corp. v. Super. Ct.* (1997) 53 Cal.App.4th 1113, 1117 (*Glenfed*).)

"Although the scope of civil discovery is broad, it is not limitless." (*Calcor Space Facility v. Super. Ct.* (1997) 53 Cal.App.4th 216, 223 (*Calcor)* "In the…context of a request to produce documents, a party who seeks to compel production must show 'good cause' for the request (§ 2031, subd. (l)) – but where…there is no privilege issue or claim of attorney work product, that burden is met simply by a fact-specific showing of relevance." (*Glenfed, supra*, 53 Cal.App.4th 1117.) "In the context of discovery, evidence is 'relevant' if it might reasonably assist a party in evaluating its case, preparing for trial, or facilitating a settlement." (*Glenfed Development Corp. v. Super. Ct.* (1997) 53 Cal.App.4th 1113, 1117 (*Glenfed*).) A finding of relevance may be supported simply by the claims or defenses asserted through the pleadings. ((*Kirkland v. Super. Ct.* (2002) 95 Cal.App.4th 92, 98.) Where such showing cannot be established by reference to the pleadings, the burden on the party seeking discovery is to "produce *evidence* from which the court may determine" that "the matter either is itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." (*Calcor, supra,* at 223, emphasis in original.)

Once good cause is shown, the burden shifts to the party opposing the motion to justify its objection(s). (See *Kirkland v. Super. Ct*., *supra*, at 98.)

A. Request No. 3

Request No. 3 calls for production, from each of the subject third-parties of "[t]he Table of Contents page from any monthly Reporting Pack provided to YOU by V2 or DELICATO for the time period between August 1, 2018 and April 30, 2019. In responding to this Request, **only produce the Table of Contents page,** and **do not** produce any data or other content ctained in the monthly Reporting Pack itself." (See Declaration of Noel Cohen at Exh. A (Cohen Decl.), emphasis in original.)

Plaintiff fails to show good cause for production of the information identified in Request No. 3.

Plaintiff argues that this request is relevant because "[t]he information sought by Request No. 3 goes directly to the issue of Defendant's malicious and bad faith conduct toward Merryvale." (See Opposition at 8:9-10.) The connection is not clear simply from a review of the operative pleadings. Rather, it requires a fairly detailed multi-step analysis provided by Plaintiff through its opposition. (See Opposition at 8:10-9:25.) That analysis is heavily dependent on a

series of factual assertions.[1] (See *Ibid*.) With one exception, none of these facts appear as allegations in any of the operative pleadings. The allegations of paragraph 30 of the Second Amended Complaint (SAC) support Plaintiff's assertion here that "pursuant to the Sales & Marketing Agreement between the parties, Defendants were obligated to provide certain shipment, depletion and account-level data to Merryvale…." (Opposition at 8:10-12.) The Court is unable to find support for the remaining assertions through the allegations of the pleadings. (See *Id.* at 8:13-9:25.)

In addition, Plaintiff fails to support its analysis with evidence of the asserted facts on which it is based. "In law and motion practice, factual evidence is supplied to the court by way of declarations. [Requesting party] provided argument but no evidence at all to permit the court to conclude the material sought was 'admissible in evidence or appear[ed] reasonably calculated to lead to the discovery of admissible evidence.'" (*Calcor, supra*, 53 Cal.App.4th at 224.)

Based on the foregoing, the Court finds that Plaintiff failed to carry its burden of showing good cause for the discovery request. (*Glenfed, supra*, 53 Cal.App.4th at 1117.) As a result, Defendants' motion for an ordering quashing the deposition subpoenas is GRANTED as to Request No. 3.

B. Request No. 5

1. *Plaintiff Makes a Showing of Good Cause for Production of the Information Identified in Request No. 5*

Request No. 5 seeks "[a]ll COMMUNICATIONS between YOU and V2 or DELICATO expressing YOUR complaints about V2's sales and marketing efforts on YOUR behalf." (Cohen Decl. at Exh. A.) Plaintiff contends that "the information sought bears directly on" the allegation that, "'V2's poor performance harmed Merryvale's brands.'" (Opposition at 12:16-17, quoting SAC at ¶ 4.) The Court disagrees. Any connection between complaints from third-parties regarding V2's respective performance on those third-parties' behalves and the allegation that V2's performance harmed Plaintiff's brands is not immediately apparent to the Court. Put another way, the Court is unable, based on the allegation cited, to conclude that the request seeks information that is "either itself admissible in evidence or appears reasonably calculated to lead to the discovery of admissible evidence." (Code Civ. Proc., § 2017.010.)

Plaintiff elaborates by arguing that the information sought is relevant to rebut arguments and assertions that Defendants have made that any harm suffered by Plaintiff was the result, not of their own poor performance, but of Plaintiff's own failings. (See Opposition at 12:19-13:22.) Critically, Plaintiff provides evidence in support of this argument. (See, *e.g.*, Opposition at 12:24-13:7.) Based on this evidentiary showing, the Court finds that Plaintiff has met its burden of showing good cause for the discovery of the information identified in Request No. 5.

[1] *E.g.*: "Commencing in September 2018, Defendants began distributing a "Monthly Reporting Pack ("MRPs") to all of its agency brands purportedly containing data required by the Agreement"; "Each MRP contains a "Table of Contents" page that literally delineates only the section headings of the report with corresponding page numbers for those sections."

2. *Defendants Fail to Justify Their Relevance-Based Objection*

Defendants fail to justify their relevance-based objection. (See Support Memo at 8:1-17.) Defendants argue that "Request No. 5 does not seek information about Defendants' performance – it only seeks complaints from Third-Party Wineries." (Reply at 5:16-17.) This argument ignores the fact that the request is limited to complaints "about V2's sales and marketing efforts on YOUR behalf." (Cohen Decl. at Exh. A.) The Court finds that the request does, therefore, seek information about Defendants' performance.

The Court further finds that the issues raised in Defendants' Motion to Compel were distinct from those raised here, and that as a result the Court's order in November 22, 2019 does not compel a particular result in this matter. (See Support Memo at 8:18-9:3.)

3. *The Request as Propounded is Overly Broad and the Court Orders the Request Limited as Proposed by Plaintiff*

The Court agrees with Defendants' argument that the request as originally propounded is overly broad because it fails to contain any temporal limitation. Through its opposition, Plaintiff proposes limiting the scope of the request to communications made between April 1, 2015 through May 1, 2019. (Opposition at 14:21-22.) Plaintiff explains that the former date is "one year prior to the parties' Agreement" and the latter is "the effective termination date." (*Ibid*.)

Defendants appear to concede that the proposed limitations are reasonable. They fail to address the proposal directly through their Reply. Moreover, the examples they give, through the Reply, of irrelevant communications that would be included in the original request ("a marketing meeting in 2013" and "a sales event in 2020") would be excluded from the request under the proposed limitation.

Based on the foregoing, the Court finds that, limited in time to April 1, 2015, through May 1, 2019, the request is not overly broad. The Court therefore GRANTS Defendants' request to modify the Subpoenas as to Request No. 5.

Defendants next argue that "the phrase 'complaint about sales and marketing efforts' is vague and ambiguous in the context of the request." (Support Memo at 9:21-22.) First, the Court disagrees. The request is subject to reasonably specific interpretation. Second, Defendants provide no authority by which the Court may quash the request based on ambiguity. Nor do Defendants suggest any modification that would resolve the asserted ambiguity. Finally, there is no suggestion in the record that any of the five deponents have objected that the request is so vague and/or ambiguous as to frustrate their ability to respond.

4. *The Request Does Not Unnecessarily Burden Third-Parties*

Defendants next argue that the information "could have been sought from Defendants." (Support Memo at 10:12.) The argument appears premised on the assumption that Defendants remain in possession of any and all such complaints. Plaintiff appears to concede the possibility by admitting that it "asked Defendants whether they would agree to provide the information

sought in Request No. 5, in lieu of obtaining such information from the subpoenaed parties." (Opposition at 15:19-21.) Plaintiff provides evidence that, in response to this query, "Mr. Cohen indicated clearly that Defendants would not voluntarily produce the materials because they deemed them to be irrelevant to the issues in the case." (Declaration of David C. Lee at ¶ 5 (Lee Decl.).) On Reply, Defendants concede Mr. Cohen's statement by failing to deny it. Rather, Defendants argue that the communication by Mr. Cohen is not germane to the current analysis because "Merryvale never issued formal discovery requests to Defendants for the information sought by Request [No.] 5." (Reply at 8:23-24.)

To summarize, Defendants argue that the Court should quash Request No. 5 on the grounds that the information "could have been sought from Defendants," but don't deny that when asked, they refused to agree to provide the information sought. The Court finds on the evidence submitted that Plaintiff was unsuccessful in seeking to obtain the documents from Defendants. Nothing in the authority provided by Defendants appears to mandate more formal efforts by a requesting party. Moreover, the Court finds that the request is narrowly tailored, and therefore unlikely to create a significant burden on the third-party deponents. In this context, the Court declines to quash or modify the subpoena on the grounds that Plaintiff failed to seek the information from Defendants by means of a formal discovery request.

5. *Defendants Fail to Establish that the Request Should be Quashed Based on Issues Before the Discovery Referee*

Finally, Defendants argue that the request should be quashed based on issues currently pending before the Discovery Referee. Defendants' argument is vague. The Court is unable to interpret the argument in any manner that would constitute grounds for an order quashing the subpoena as to Request No. 5. Moreover, Defendants chose this forum for their motion to quash, which includes Defendants' arguments that the documents sought through the third-party subpoenas are irrelevant. It would seem that this election (to seek the Court's intervention in this matter) is inconsistent with Defendants' apparent argument that issues regarding the relevance of information relating to third-party wineries should be resolved by the Discovery Referee.

Thomas James Farnan, Jr. et al. v. Adventist Health St. Helena, et al. 20CV000193

MOTION TO TRANSFER VENUE

TENTATIVE RULING: Defendants Rafael Lupercio, M.D., Sriram Sambasivan, M.D., Bruce Bartlow, M.D., and Shasta Critical Care Specialists Medical Clinic, Inc.'s motion to transfer venue to the Shasta County Superior Court on the grounds that plaintiff's alleged injuries arose in Shasta County and all remaining defendants are located in Shasta County is DENIED. The motion is untimely. The ground for change of venue may be waived unless presented by a timely motion for transfer. A motion for transfer on the ground the action was filed in an improper court must be made within the time permitted to plead; i.e., 30 days after service. (Code Civ. Proc. § 396b.) On October 18, 2020, Dr. Lupercio, Dr. Sambasivan, and Shasta Critical filed their answer to the second amended complaint. On December 16, 2020, Dr. Bartlow filed his answer to the second amended complaint. As defendants filed the instant

motion on April 20, 2021, well after they filed their answers, they did not bring their motion within the time permitted to plead. Defendants maintain their motion is timely as the notice of entry of dismissal for another defendant was not served on them until February 2, 2021, and circumstances now have changed as that defendant has been dismissed. Defendants, however, raise no authority to support their position. In the absence of such authority, the time period stated in Code of Civil Procedure section 396b controls.

Even if the motion was timely, the motion is not well-taken. Venue is determined at the outset of the action from the original complaint. (Code Civ. Proc., § 395, subd. (a).) Thus, venue based on the residence of a defendant remains proper even though that defendant is later dismissed from the action. (*Ferguson v. Koerber* (1924) 69 Cal.App. 47, 49.) Defendant Adventist Health St. Helena, since dismissed, provided the requisite residence for venue in Napa County at the outset of this litigation.

To the extent defendants seek relief under Code of Civil Procedure section 397, subdivision (c) [allowing a court to change the place of trial when the convenience of witnesses and the ends of justice would be promoted by the change], which only requires it be filed within a reasonable time after all defendants have answered, the motion fails. "The burden rests upon one who seeks a change of venue under [Code of Civil Procedure section 397, subdivision (c)] to prove that both the convenience of witnesses and ends of justice will be promoted thereby, and this he must do through affidavits that contain more than generalities and conclusions." (*Hamilton v. Super. Ct.* (1974) 37 Cal.App.3d 418, 424.) Defendants did not submit any declarations or evidence to show transferring the venue will be more convenient to witnesses or promote "the ends of justice." (See *Buran Equip. Co. v. Super. Ct.* (1987) 190 Cal.App.3d 1662, 1667 ["The record is wholly inadequate to sustain a ruling of change of venue based on witness convenience, since not one declaration has been lodged directed at that subject."].)

Defendants' request for judicial notice is GRANTED as to the second amended complaint, but not for the truth of the matters asserted therein.

Defendant Northern California Rehabilitation Hospital LLC's (dba Vibra Hospital of Northern California) joinder to the motion is GRANTED.

Karyn Bell, et al. v. Alisyn Marie Slinsen, et al. **20CV000665**

MOTION TO BE RELIEVED AS COUNSEL

TENTATIVE RULING: The motion is GRANTED.