CAT N. Blow; (Bar # 123456)

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**SUPERIOR COURT OF THE STATE OF Columbia**

**COUNTY OF San Chones - CENTRAL district**

**UNLIMITED CIVIL**

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| Mr. plaintiff, et al.,  Plaintiffs,  vs.  Dirty CARWASHES INC., et al.,  Defendants. | )))))))))  ))))) | Case No. AC123456  PLAINTIFFS’ OPPOSITION TO DEFENDANTS’ MOTION TO QUASH DEPOSITION SUBPOENA FOR PRODUCTION OF BUSINESS RECORDS; SUPPORTING DECLARATION AND EXHIBITS.  Hearing: June 13, 2011, 9:00 am  Dept: 61  Complaint Filed: 9/17/10  Trial Date Not Set |

1. **INTRODUCTION AND RELEVANT FACTS**

**Defendants' motion to quash is based on entirely inapplicable law. The motion cites no legally valid grounds for blocking the discovery of financial records where, as in this case the records are substantive evidence of individual liability.** [[1]](#footnote-2)

**No such grounds exist. Indeed, Columbia courts have repeatedly held that financial information, including bank records are discoverable for the purpose of proving individual liability under an alter ego theory. See, e.g., Hecht, Solberg, Robinson, Goldberg & Bagley v. Superior Court (2006) 137 Col App. 4Th 579: Rawnsley v. Superior Court (1986) 183 Cal. App. 3d 86.**

**Instead of citing relevant law or making on point argument, Defendants cite to wholly irrelevant law (CC § 3295(c)) dealing with the discoverability of financial records for the purposes of proving punitive damages. (See D's Motion to Quash at 4.) This is not rhe reason Plaintiff seeks this evidenc, which is something that Defense cousel was well aware of prior to filing the present motion and did not address this issue at the hearing for the motion to suppress the Bank of Cash Subpoena. And is aparent form Defense Coulsels communication with Plaintiff's Counsel disscussing the use of the comporate records for the alter ego issue. (See Exhibit 1, email correspondence regurading subpoenas.)**

**Defense Counsel – who has ignored myltible discovery deadlines and failed to provide an responses to long overdue discovery requests served by Plaintiffs (Zulano Dec. ¶¶ ?-?)-- has filed a meritless motion based on inapplicable law in an attempt to stop third parties from producing discovery to which Plaintiffs are endtitled. Defendants seek only to delay and hinder Plaintiffs' abililty to prepare for trial.**

**Plaintiffs attempted to deal with this dispute informally, offering to accommodate Defendant's privacy concerns through a stipulated protective order and have sent a proposed order to Defendent's councel but have recievd no response nor have Plaintiff's councel received a draft protective order from Defendant's council or any substantive steps to put such an order into place.**

1. **STATEMENT OF FACTS**

Plaintiffs have brought and hour claims alleging various labor code violations in addition to a violation of the Unfair Competition Law (“UCL”) against the Defendants: Dirty Car Washes, Inc., National Car Washes, Inc., Scott Arditi, Shahriar Shouhed, Rafie Shouhed and Juan Lucatero. Plaintiff alleges that all Defendants acted as alter egos of each other in perpetrating the violations.

The Complaint alleges that the Defendants’ corporations were alter egos of the individual defendants, making the individual Defendants personally liable for the s owed to Plaintiff. The Complaint also alleges that Defendants personally profited by keeping those s and therefore obtained an unfair competitive advantage over law-abiding businesses by not paying Plaintiffs according to the legal minimum standards. Because Defendants personally profited, as individuals, from underpaying Plaintiffs, Plaintiffs have the right to obtain disgorgement directly from the individual defendant regardless of the existence of the corporate liability shield. [cite Toomey etc.]

Despite the fact that the documents Plaintiffs’ seeks are integral to their claims and despite the fact that those issues are raised in the pleadings, including Defendants’ Answer to the Complaint, Defendants seek to deny Plaintiff access to the relevant documents.

On [date] Plaintiffs served a subpoena on Bank of Cash seek various financial records for the purpose of showing, among other things, intermingling of personal and business funds, undercapitalization, and Defendants’ personal profits from their unfair business practices.

On [date] Plaintiffs’ counsel, CAT Blow and Kevin Zulano, spoke by telephone with Defense counsel, Mr. Kim, regarding various issues in this case, including the outstanding subpoena for bank records. At this time, Mr. Kim indicated that he was considering filing a motion to quash the subpoena. Plaintiffs’ Counsel explained the relevance of these records—pointing out that such records are relevant, discoverable evidence regarding the alter ego and unfair competition law allegations in the complaint. Plaintiffs’ counsel further stated that, in deference to privacy concerns, Plaintiffs would be willing to stipulate to a protective order regarding limiting the disclosure of these records. Defense counsel conceded the relevance of the records during this phone call and indicated that defendants would be willing to produce the records subject to such a protective order.

1. **ARGUMENT**
2. **Defendants’ Bank Records Are Relevant And Discoverable Substantive Evidence Of Individual Liability Under Alter Ego And Unfair Competition Law Theories**
3. **The Bank Records Are Relevant and Defendants’ Relevancy Objection Lacks Merit**

Columbia’s discovery laws reflect a commitment to a liberal approach to discovery. Under Columbia Code of Civil Procedure section 2017.010, discovery is authorized on any matter, not privileged, that is relevant to the subject matter of an action if it appears reasonably calculated to lead to the discovery of admissible evidence. Plaintiff has a broad right to discovery, the test being whether the information sought is "reasonably calculated to lead to the discovery of admissible evidence." C.C.P. § 2017.010. Discovery statutes are liberally construed to uphold the right to discovery whenever possible. See, e.g., Emerson Electric Co. v. Sup. Ct. (1997) 16 Cal.4th 1124, 1107.

The right to discovery is quite broad, as our Supreme Court has repeatedly confirmed. Emerson Electric Co. v. Superior Court (1997) 16 Cal.4th 1101, 1107. Discovery statutes are construed broadly so as to uphold the right to discovery whenever it is possible to do so. *Davies v. Superior Court* (1984) 36 Cal.3d 291. Information is relevant if it might reasonably assist a party in evaluating a case, preparing for trial, or facilitating settlement. Stewart v. Colonial Western Agency, Inc. (2001) 87 Cal.App.4th 1006, 1013.

The subpoena at issue in this case is for bank records which are relevant and discoverable evidence bearing on whether Dirty Car Washes acted as an alter ego of the individual defendants and whether the individual defendants may be liable under UCL.

Defendants have objected on relevancy grounds to all discovery requests regarding the factors for alter ego liability—*e.g*., failure to follow corporate formalities, commingling of funds, overlapping of employees, *see Associated Vendors, Inc. v. Oakland Meat Co.* (1962) 210 Cal. App. 2d 825, 836-37. Plaintiff’s interrogatories are relevant to the claims Plaintiff state in his complaint. Defendants take this position despite the fact that these issues are raised in the pleadings—including their own answers—and is a primary basis for the individual defendants’ liability. Effectively, Defendants have made a unilateral determination, without court authorization, that these are no longer issues in the case, irrespective of the pleadings.

1. **Defendants’ Privacy Objection Is Without Merit**

Defendants’ objection based on privacy rights is entirely without merit, since financial records are critical, primary evidence of the liability of the individual defendants under both alter ego and UCL theories. Whenever a privacy right is asserted, the court must balance the right of privacy with the need for discovery. Harris v. Sup. Ct. (1992) 3 Cal.App.4th 661, 665. Plaintiff’s discovery needs outweigh the privacy concerns raised by Defendants. Moreover, Plaintiffs’ offered to stipulate to a protective order to accommodate whatever privacy concerns exist..

The information sought in the discovery at issue pertains to Plaintiffs’ UCL claim and to allegations that Defendants operated the corporations as alter egos. This information is essential to Plaintiffs’ case and presents a relatively small intrusion into the privacy of Defendants.

In *Hecht, Solberg, Robinson, Goldberg & Bagley v. Superior Court* (2006) 137 Cal.App.4th 579, 593, the Court upheld a Plaintiff’s right to discover the financial documents of a limited liability company. The Court held that Plaintiff has a right to financial documents when the information sought “is relevant to the essential issues in the case.” *Hecht* at 595; *see also Rawnsley v. Superior Court* (1986) 183 Cal.App.3d 86.

*Rawnsley v. Superior Court* (1986) 183 Cal.App.3d 86, 91 permitted discovery of sensitive financial information due to alter ego issues. This case is very much on point. The court overturned a denial to compel discovery of corporate financial information, reasoning that when the financial information goes to the heart of the cause of action itself, access [to discovery] should not be denied so easily.

In the case at hand Plaintiffs are pursuing a cause of action under the Unfair Competition Law, Business and Professions Code §§ 17200-172008. The UCL allows for the restitution of all of Plaintiff’s unpaid s. *See, e.g., Cortez v. Purolator* (2000) 23 Cal. 4th 163. The UCL also allows individuals, such as corporate officers, to be held personally liable for restitution where these individual have obtained personal benefits from their unfair business practices. *See, e.g., People v. Toomey* (1984) 157 Cal.App.3d 1, 14-16.

Information regarding corporate profits, the comingling of corporate and personal funds, the individual defendants’ compensation arrangement and frequency and form of compensation from the corporation is necessary to determine whether money that has been unlawfully withheld from the Plaintiff that can be restored to Plaintiff by the individual defendants. Thus, this evidence is essential to Plaintiff’s cause of action under the UCL.

Similarly information regarding corporate profits, capitalization, the comingling of corporate and personal funds, the individual defendants’ compensation arrangement and the defendants’ banking relationships are critiCol for establishing liability under an alter ego theory. The bank records at issue are evidence of Defendants’ failure to observe corporate formalities and the comingling of funds.

To establish alter ego liability, Plaintiff must show there is a unity of interest and ownership such that the separate personalities of the corporation and the individual no longer exist and, that if the acts are treated as those of the corporation alone, an inequitable result will follow. See, e.g., *Associated Vendors, Inc. v. Oakland Meat Co*. (1962) 210 Cal. App. 2d 825, 836-37. Similar to the UCL, the alter ego is an equitable doctrine relying heavily on the facts. Those facts include such things as:

Commingling of funds and other assets, failure to segregate funds of the separate entities, and the unauthorized diversion of corporate funds or assets to other than corporate uses … ;

[T]he treatment by an individual of the assets of the corporation as his own ...;

[T]he failure to adequately capitalize a corporation; the total absence of corporate assets, and undercapitalization … ;

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

[T]he concealment and misrepresentation of the identity of the responsible ownership, management and financial interest, or concealment of personal business activities … ;

[T]he disregard of legal formalities and the failure to maintain arm's length relationships among related entities … ;

[T]he use of the corporate entity to procure labor, services or merchandise for another person or entity … ;

[T]he diversion of assets from a corporation by or to a stockholder or 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 … ;

*Zoran Corp v. Chen* (2010) 185 Cal. App. 4th 799 (the Court goes on to describe several other relevant factors); *see also Associated Vendors, Inc. v. Oakland Meat Co*., 210 Cal. App. 2d 825 (1962).

To prove the unity of ownership and interest, Plaintiff will need to have access to the business’s financial records, which will show, for example, whether Defendants commingled funds personal and corporate funds or commingled funds belonging to their various corporate alter egos. Additionally, information such as the distribution of profits to the individual defendants without a formal declaration demonstrates corporate formalities were not heeded. Because it is essential for establishing alter ego liability, corporate financial information is discoverable and cannot be quash based on a privacy objection.

Thus, any privacy concerns are outweighed by Plaintiffs’ need for the financial records at issue.

1. **Defendants’ Objections Based On Scope Are Unfounded Since The Relevant Set Of Records And Time Period Are Those Concerning The Entire Time The Alter Ego Corporations Have Been In Operation**

There is sufficient case law that shows that Defendants have failed to meet their burden of showing that the interrogatories are overbroad. Conclusory statements that a discovery request is over burdensome are insufficient. In order for a court to uphold such an objection there must be sufficient explanation by the Defendants as to why they are overbroad.

1. **The Only Support Defendants Provide For Their Motion To Quash Is Irrelevant Law Regarding The Discoverability Of Bank Records For The Purposes Of Calculating Damages**

Defendants provide no relevant legal authority to support their motion. The only authority cited in their brief is law dealing with the discoverability of financial records for the purposes of assessing ability to pay damages: is CC § 3295(c) and a case interpreting this statute. (D’s Motion to Quash at 3-4.) But, as Defense Counsel is well aware (see Decl at ---), Plaintiffs’ purpose for seeking these records is as evidence that the business acted as an alter ego.

Failure to provide legal support for a motion is an admission that the motion is without merit. [Cite.]. For this reason alone, Defendants’ motion should be denied.

1. **Plaintiffs Offered To Stipulate To A Protective Order To Guard Whatever Privacy Concerns Are Raised By These Records But Defendant Failed To Meet And Confer Regarding This Offer, And Thus, Their Request For A Court Imposed Protective Order Should Be Denied**

Plaintiffs offered to stipulate to a protective order when Defense counsel raised potential privacy concerns regarding the Defendants’ financial records. Although Plaintiffs are entitled to this information as primary evidence of the individual defendants’ liability, Plaintiffs sought to resolve this minor discovery dispute without unnecessary litigation that would waste the resources of the court and parities. Plaintiffs sought to meet and confer in good faith and accommodate Defendants concerns while still accessing the information they are entitled too. Defendants chose another course: They have unnecessarily burdened the court and parties with discovery litigation, bring a motion to quash without a good faith effort to meet and confer.

Because defendants failed to meet and confer their motion should be denied [cite law re requirement to meet and confer], and defendants should be ordered to engage in good faith negotiation regarding a protective order that will not unreasonably restrict the parties ability to use these documents in litigation.

Plaintiff does not oppose and has never opposed a protective order that stipulates that the records will only be used for the purposes of this litigation and will only be disclosed to people involved in the litigation. However, Plaintiff does oppose Defendants’ request that a protective order be imposed that limits these documents to “attorney’s eyes only.” (D’s Motion to Quash at 4:19.)

These records will need to be used at depositions and at trial and will need to be reviewed by Plaintiffs’ Dirty, as well as other staff and investigators working under the direction of Plaintiffs’ counsel. Limiting the disclosure of these records to Plaintiffs’ attorneys would create an unreasonable practiCol restraint on Plaintiffs’ ability to use the records for their evidentiary value and to analyze the records in preparation for trial.

1. **Defendants Motion Should Be Denied In Its Entirety And Sanctions Should Be Imposed Because Defendants Failed To Meet And Confer In Good Faith Prior To Filing The Motion As Required By Statute**

As detailed above, Defendants do not have substantial justification for seeking to quash Plaintiffs’ subpoena for financial information. This evidence is relevant evidence for the liability of the individual defendants under alter ego and UCL theories. These are issues plead in the Complaint and denied in Defendants’ own Answer (Affirmative Defense 28).

Moreover, Plaintiffs offered to stipulate to a protect order for the purpose of accommodating defendants’ privacy concerns and to negotiate regarding the scope of the subpoena, but Defense Counsel cut short this negotiation by filing a motion to quash.

This issue could have been worked out between the parties without litigation had defendants negotiated and met and conferred in good faith. Instead, Defendants filed this unnecessary motion, wasting both the court’s and the Plaintiffs’ resources on the litigation of a discovery issue where defendants’ position has no merit.

Plaintiffs have incurred reasonable attorneys’ fees and expenses in bringing this motion and requests that the Court order sanctions in favor of Plaintiffs to compensate them for bringing this motion.

1. **CONCLUSION**

Alter ego evidence is relevant and admissible to show the liability of the National Car Washes, Inc. and the individual defendants in this action. All of these Defendants remain part of this case. Defendants have taken no steps to remove them by demurrer or to strike the allegations in the Complaint allowing them to be held liable. Instead, Defendants have improperly attempted to use the discovery process remove these issues from the case without authorization from the Court.

For these reasons the Plaintiffs respectfully request that this Court deny defendants motion in its entirety. Further Plaintiffs request that the court order Defendants to meet and confer in good faith regarding a stipulated protective order for the records at issue and that Plaintiff be award the costs of opposing this unnecessary motion that was brought by Defendants without a good faith effort to meet and confer.

Date: April \_\_\_, 2011

THE JUSTICE CENTER

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

CAT Blow,

Attorney for Plaintiff

1. Plaintiffs-- Laborers who worked at Defendants car washes-- have brought and hour claims against both the shell corporations and the individual Defendants that owned and operated the carwashes where they were employed. (First Amended Complaint.) because Defendants' corporations were alter egos of the individual defendants, Defendants are personally liable for he s owed to Plaintiffs, see, e.g., Associate Vendors, Inc. v. Oakland Meat Co. (1962) 210 Cal. App. 2D 825, 836-837, and have been sued in their individual capacities. Likewise, because the individual Defendants personally profited from these violation of the Labor Code, they are individually liable for restitution under the Unfair Competition Law (UCL) regardless of the existence of the corporate liability shield. See e.g., People v. Toomey (1984) 157 Col App. 3d. 1, 14-16. [↑](#footnote-ref-2)