SUPERIOR COURT OF CALIFORNIA,

COUNTY OF SACRAMENTO

DEAN HIGGS, by and through his successor-in-interest, DENNIS AGUILAR,

Plaintiffs,

vs.

PLUM HEALTHCARE GROUP, LLC; OLEANDER HOLDINGS, LLC dba SACRAMENTO POST-ACUTE; BAY BRIDGE CAPITAL PARTNERS, LLC; NEW SISU HOLDCO, LLC; FLOWER FARM GROUP, LLC; OPCO HOLDINGS, LLC; CALIFORNIA OPCO, LLC,

Defendants.

Case No. 34-2015-00186569

PROPOSED STATEMENT OF DECISION

Bench Trial: October 19, 2020
Department: 40
Judge: Hon. Richard K. Sueyoshi

I. INTRODUCTION

On February 10, 2020, the Presiding Judge assigned this case for trial to Judge Richard K. Sueyoshi. Plaintiff Dean Higgs, by and through his successor-in-interest,[1] Dennis Aguilar ("Plaintiffs" or "Higgs") are represented by Edward P. Dudensing, Esq., and Jay P. Renneisen, Esq. Defendants Plum Healthcare Group, LLC ("Plum Healthcare"), Oleander Holdings, LLC dba Sacramento Post-Acute ("SPA"), Bay Bridge Capital Partners, LLC ("Bay Bridge"), New Sisu HoldCo, LLC ("New Sisu"), Flower Farm Group, LLC ("Flower Farm"), OpCo Holdings, LLC ("OpCo Hold"), and California OpCo, LLC ("Cal OpCo") (New Sisu, Flower Farm, OpCo Hold and Cal OpCo referred to at times as "Holding Company Defendants") are represented by William C. Wilson, Esq., and Mark A. Ginella, Esq.

Plaintiffs' operative complaint is their Second Amended Complaint ("SAC"), filed August 1, 2018. Plaintiffs allege two causes of action: (1) against all Defendants, elder abuse pursuant to Welfare and Institutions Code section 15600, et seq.;[2] and (2) against SPA, violation of the Patients' Bill of Rights. Plaintiffs' causes of action arise out of Defendants' alleged neglect of Higgs, who was in a quadriplegic condition while he was a resident and under the care of SPA, a skilled nursing facility in Sacramento, California, at times from January 2, 2014 to September 3, 2014. (SAC at ¶¶ 22-48.) Plaintiffs argue that Bay Bridge is comprised of the ownership group that controls all other Defendants, including SPA. Plaintiffs argue that Plum Healthcare serves as the operational arm through which Bay Bridge effectuates control over SPA and other skilled nursing facilities. Plaintiffs argue that the Holding Company Defendants exist to further the operation and control of SPA and other facilities.

Plaintiffs allege that SPA, Plum Healthcare, Bay Bridge and the Holding Company Defendants are each directly liable in this case. (SAC at ¶¶ 10-12.) Plaintiffs also allege alternative bases of liability including that the other Defendants were engaged in a joint venture with SPA, served as aiders and abettors of SPA's tortious acts, and/or acted as civil co-

[1] Higgs died on May 26, 2017, during the pendency of this action.

[2] Welfare and Institutions Code section 15610.07(a) provides that "[a]buse of an elder or a dependent adult" includes, but is not limited to, "[p]hysical abuse, neglect, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering" and "deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering."

conspirators of SPA.[3] (SAC at ¶¶ 16-18.) As an additional alternative basis of liability, Plaintiffs allege that SPA is an alter ego of Plum Healthcare, Bay Bridge and the Holding Company Defendants. Plaintiffs allege that due to the alter ego relationship between and among all Defendants, each of the other Defendants is legally responsible for acts attributable to SPA. (SAC at ¶¶13-15.)

II. FIRST PHASE OF TRIAL

Upon this case being assigned for trial, the Court set a schedule for completion of pretrial filings and oral argument on pretrial motions. On March 12, 2020, after briefing and argument on the issue, the Court ordered that this case shall be tried in phases, with the first phase constituting a bench trial on Plaintiffs' alter ego allegations. *Stark v. Coker* (1942) 20 Cal.2d 839, 846 (alter ego is an equitable doctrine); *Dow Jones Co. v. Avenel* (1984) 151 Cal.App.3d 144, 147-48 ("constitutional guaranty of the right to a jury trial does not apply to actions involving the application of equitable doctrines and the granting of relief that is obtainable only in courts of equity").

Prior to the commencement of the bench trial and due to the COVID-19 pandemic, the Presiding Judge issued the Order re: Implementation of Emergency Relief on March 17, 2020 ("March 17th Order"), which temporarily suspended this trial. In the months after the March 17th Order and in response to the pandemic, new court-wide protocols were developed and implemented based upon utilization of remote technology pursuant to Judicial Council Emergency Rule 3.[4] Therefore, after a series of pretrial conferences, this Court scheduled and held a remotely-conducted bench trial on Plaintiffs' alter ego allegations with evidence commencing on October 19, 2020.

In their case-in-chief, Plaintiffs presented witness testimony via video-recorded deposition from Mark Ballif, Howard Park, Dennis Sweeney, Alexander Fraser, Will Huish,

[3] In addition to the underlying causes of action, these alternative theories of alleged liability have distinct elements and remain for the jury to decide in a subsequent phase of this trial. *See e.g.*, CACI 3600 (Conspiracy), 3610 (Aiding and Abetting Tort), and 3712 (Joint Ventures).

[4] Emergency Rule 3(a)(1) provides: "Courts may require that judicial proceedings and court operations be conducted remotely." Emergency Rule 3(a)(3) adds: "Conducting proceedings remotely includes, but is not limited to, the use of video, audio, and telephonic means for remote appearances; the electronic exchange and authentication of documentary evidence; e-filing and e-service; the use of remote interpreting; and the use of remote reporting and electronic recording to make the official record of an action or proceeding."

Dave Kreter, Paul Hubbard, Renee Pugh, Aaron Edmonds and David Terry. Plaintiffs also presented live witness testimony from Ron Pomares, Plaintiffs' retained expert. At the close of Plaintiffs' case-in-chief, Defendants made a Motion for Judgment Pursuant to California Civil Procedure Code section 631.8. The Court declined to rule on Defendants' motion until after the close of all evidence as provided for in Civil Procedure Code section 631.8(a). In their case-in-chief, Defendants presented live testimony from Joe Alegre, Renee Pugh, David Terry, Paul Hubbard and Michael Lesnick, Defendants' retained expert. Plaintiffs objected to portions of Lesnick's testimony for which the Court deferred ruling and ordered post-trial briefing. The Court admitted into evidence documentary exhibits as delineated in the Civil Bench Trial Joint Exhibit Log. Evidence closed on October 28, 2020.

After the conclusion of evidence in the bench trial, on November 5, 2020, the Court heard oral argument on Defendants' Motion for Judgment as well as Plaintiffs' related Motion to Quash Defendants' Trial Subpoena (Duces Tecum) Served on Dennis Aguilar which the Court had also previously deferred. After taking the two motions under submission, the Court issued its rulings on December 15, 2020. Regarding Plaintiffs' objections to Lesnick's testimony, after receiving the parties' related post-trial briefing, the Court issued its ruling on February 26, 2021.

As to the merits of the bench trial on Plaintiffs' alter ego allegations, the Court ordered post-trial briefing in lieu of oral closing argument. Pursuant to its order, the Court received Plaintiffs' Brief in Support of Their Request for a Finding of Alter Ego After Bench Trial ("Plaintiffs' Opening"), filed December 2, 2020; Defendants' Alter-Ego Post-Trial Closing Argument ("Defendants' Closing"), filed December 23, 2020; and Plaintiffs' Rebuttal Brief in Support of Their Request for a Finding of Alter Ego After Bench Trial ("Plaintiffs' Rebuttal"), filed January 15, 2021. The Court took the bench trial under submission on January 15, 2021.

As addressed prior to trial, the parties stipulated and the Court indicated that the parties need not formally request a statement of decision under California Rule of Court 3.1590(d)-(e). Instead, the Court indicated and the parties agreed that the Court would prepare this Proposed Statement of Decision regarding Plaintiffs' alter ego allegations, consistent with Rule of Court

3.1590(c)(1) and subject to party objections under Rule of Court 3.1590(g).[5] The parties agreed and the Court ordered that the preparation of a written judgment shall be delayed until after the Court has ruled upon any objections under Rule 3.1590(g), the Court's Final Statement of Decision has been issued, and all subsequent phases of trial have been completed, consistent with Rule 3.1591(a) and the one-final-judgment rule. *See Leader v. Cords* (2010) 182 Cal.App.4th 1588, 1594 ("as a general rule there can be only one final judgment in a single action").

III. FACTUAL BACKGROUND[6]

A. Origin and Growth of the Plum Enterprise.

Paul Hubbard, Lee Sorenson and Mark Ballif started the Plum Enterprise[7] with the establishment of Plum Healthcare in May 1999. (RT[8] at 538:4-6) Hubbard, Sorenson and Ballif formed Plum Healthcare because they saw an opportunity to build a unique company within the nursing home industry, focusing on finding the right leaders and developing leadership for the facilities. (RT at 539:13-24.) They sought to acquire nursing homes that were underperforming — meaning facilities that had issues with healthcare and regulatory outcomes, and thus, had resulting financial troubles. (RT at 539:24-540:3.) Hubbard, Sorenson and Ballif were looking for facilities that "were fundamentally broken from a leadership perspective" that they "could acquire at a tenant friendly price because they were distressed." (RT at 540:3-6.) They sought to

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[5] California Rule of Court 3.1590(c) provides that "[t]he court in its tentative decision may . . . (1) State that it is the court's proposed statement of decision, subject to a party's objection under (g)." The Court deems this document to be its proposed statement of decision. Any party objecting under California Rule of Court 3.1590(g) should be familiar with the authorities that describe the limited purposes of objections. *See e.g., Golden Eagle Ins. Co. v. Foremost Ins. Co.* (1993) 20 Cal.App.4th 1372, 1380; *Yield Dynamics, Inc. v. TEA Sys. Corp.* (2007) 154 Cal.App.4th 547, 560; *Heaps v. Heaps* (2004) 124 Cal.App.4th 286, 292 ("[t]he main purpose of an objection to a proposed statement of decision is not to reargue the merits, but to bring to the court's attention inconsistencies between the court's ruling and the document that is supposed to embody and explain that ruling").

[6] In this section, the Court indicates factual findings pertinent to the Court's decision. The Court references additional factual findings in the Discussion section. While specific citations to the record are unnecessary, the Court has provided them in the interest of facilitating appellate review. However, the Court notes that many facts are supported by testimony from multiple witnesses and/or multiple exhibits beyond that cited here and the Court has not endeavored to cite every instance in the record where a factual finding is supported. The Court has considered the entire record of evidence received at trial as subsequently modified by the Court's February 26, 2021 Ruling on Plaintiffs' Objections to Defense Expert Michael Lesnick's Testimony at Trial. Additionally, factual issues decided in the bench trial will be binding in the jury trial phases of this action. *Orange County Water Dist. v. Alcoa Global Fasteners, Inc.* (2017) 12 Cal.App.5th 252, 359; *Amtz Contracting Co. v. St. Paul Fire & Marine Ins. Co* (1996) 47 Cal.App.4th 464, 487.

[7] The Court uses the term "Plum Enterprise" in general reference to all of the companies formed by Hubbard, Sorenson, Ballif and subsequent owners that constitute their overall business enterprise of owning and operating skilled nursing facilities, including the various holding companies and other business entities formed in furtherance of such purpose. (*See* DT (Park) at 16:1-18:3.) The Plum Enterprise would eventually grow to over one hundred separate entities. (RT at 421:4-423:1.)

then use their ability to lead and mobilize improved outcomes for the residents and employees at the facilities. (RT at 540:6-9.)

Within two-and-a-half months and with the financial assistance of an angel investor, Hubbard, Sorenson and Ballif acquired their first operating interest in a nursing home located in Redlands, California. (RT at 538:24-539:4; 543:1-12.) By September 2000, they had acquired four additional facilities in Southern California. (RT at 543:13-544:3.) Hubbard, Sorenson and Ballif accomplished these acquisitions through the formation of separate limited liability companies ("LLC") licensed by the Department of Public Health as a skilled nursing facility. (RT at 544:14-22.) Hubbard, Sorenson and Ballif personally served as the licensed administrator for three of the facilities. (RT at 544:4-11.) At the same time, Plum Healthcare was comprised of Hubbard, Sorenson and Ballif, as well as three employees who provided accounting, nursing and human resources support for the individual facilities. (RT at 545:1-546:2.)

By 2006, the Plum Enterprise had grown to a total of 11 skilled nursing facilities. (RT at 547:7-10.) For seven of them, Hubbard, Sorenson and Ballif had acquired operating interests and leased the real estate upon which they were located. (RT at 547:10-12.) For the other four, they owned both the real estate and the operations. (RT at 547:12-15.) By this time, Sorenson had left the business and Hubbard and Ballif sought to reconstitute the ownership of their business beyond their angel investor with the goal of expanding the Plum Enterprise. (RT at 547:16-548:3.) Hubbard and Ballif hired Wachovia as their investment banking firm to search for potential investors. (RT at 548:4-10.)

Wachovia's search led Hubbard and Ballif to GI Partners, a private equity firm, which agreed to purchase from Hubbard and Ballif, a majority interest of approximately 80% in the Plum Enterprise. (RT at 548:11-550:3; DT[9] (Hubbard) at 43:8-15, 45:19-20.) GI Partners'

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[8] Citation is to the Official Court Reporter's Transcript ("RT") for the bench trial phase.

[9] Plaintiffs played excerpts of video-recorded deposition testimony during trial pursuant to Civil Procedure Code sections 2025.340(m) and 2025.620. The video clips played during trial have been retained as Court Exhibit #2. Pursuant to California Rule of Court 2.1040(a)(2), Plaintiffs filed, on October 26, 2020, their "Notice of Filing of Transcripts Re: Deposition Video Testimony Offered Into Evidence at Alter Ego Trial," which attaches the corresponding hardcopy deposition transcript excerpts for each witness whose video deposition testimony was played at trial. The Court has experienced difficulty and delay in its attempt to follow and cite to Plaintiffs' filing. While Plaintiffs' filing separates deposition excerpts by witness (which is helpful), the deposition transcript excerpts for each witness are not presented in page number order. Plaintiffs appear to have supplied, for each witness, deposition pages that are clustered in groups according to their corresponding video clips even when multiple video

purchase was based upon a single valuation of the entire Plum Enterprise, including SPA and all other skilled nursing facilities together. (DT (Park) at 14:1-17.) GI Partners invested $53 million in new equity into the Plum Enterprise and took an assumption of debt, for a total contribution of somewhere between $88 million to $95 million. (RT at 589:3-27; 592:6-14.)

After GI Partners became its majority owner, the Plum Enterprise continued to acquire skilled nursing facilities, adding 2-4 facilities per year, including some in Utah and Arizona. (RT at 554:7-555:6.) By 2011, the Plum Enterprise had grown to 23 facilities and sought to make a major acquisition of the Horizon West skilled nursing facilities. (RT at 555:7-556:8.) Towards the end of 2011, Martin Harmon, the main principal among others that owned Horizon West ("Harmon Group"), agreed to sell its 27 facility operations to GI Partners, Hubbard and Ballif, but retained the real estate where the operations were located, leasing the properties back to the Plum Enterprise. (RT at 556:9-26.) By 2012, the Plum Enterprise had grown to a total of 50 skilled nursing facilities. (RT at 558:2-3.)

B. Hubbard and Ballif's Buyout of GI Partners and Creation of Bay Bridge.

In 2012, Hubbard and Ballif decided that they wanted to buy GI Partners out of the Plum Enterprise and asked the Harmon Group to join and pledge its equity in its real estate holdings (valued at $125-$130 million) to accomplish the buyout. (RT 558:17-559:8; 593:20-24.) With

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clips may rely upon testimony contained on the same page of the deposition transcript. As one example, under the tab for Mark Ballif, page 27 of his deposition transcript is presented at twice, the first time being 10 pages into his section, and the second time being 47 pages into his section. Although these are the same page of deposition transcript, Plaintiffs have redacted the two pages differently, and the Court presumes this is based upon the fact that they relate to different video clips. This method is not necessary or relevant for the intent and purpose of Rule of Court 2.1040(a)(2), which is to ensure simply that a hardcopy record of all video testimony played is preserved where the court reporter does not take down the contents of the recording as it was played (as was the case in this trial). Further, each section for each witness bears its own pagination (in addition to the deposition transcript page numbers), with each witness starting from page 1, so that Plaintiffs' filing has 10 separate "page 1s," each relating to one of the ten witnesses for which video testimony was presented. While this sectional pagination might have been used to cite to the appropriate witness/deposition transcript excerpts with a little less difficultly, Plaintiffs' brief instead provides alternative citations to an electronic PDF version of their filing. While Plaintiffs undoubtedly provided such alternative citations with the intent of assisting the Court, the Court has not utilized a PDF version for preparation of this Proposed Statement of Decision given that it is not as readily usable for the Court's purposes as the hardcopy filing. Plaintiffs, again in an attempt to be helpful, have provided an additional cite to the video clip number (e.g., "C1"), but the video clips were not separately lodged until the Court recently ordered them to be submitted as a court exhibit. In consideration of all these issues, the Court shall reference "DT" and the witness name and deposition transcript page/line citations attached to Plaintiffs' filing when citing deposition testimony presented at trial. Although Plaintiffs' filing does not supply the deposition transcript pages in order, the Court has endeavored to find and confirm these pages within each witness section cited. Lastly, at times, the Court may cite a range of pages that may include and extend over redacted lines or sections due to the sections of deposition testimony (and corresponding portions of transcript) that were not presented as evidence at trial. In such instances, the Court's citation refers to the unredacted portions that were played at trial and included in Plaintiffs' filing.

the equity and involvement of the Harmon Group, as well as other individuals involved in Plum Enterprise management, Hubbard and Ballif were able to secure the requisite loan of approximately $300 million to purchase GI Partners' majority interest in the Plum Enterprise. (RT at 559:14-560:1; 337:15-23; DT (Hubbard) at 53:2-54:10; 153:16-25.)

To accomplish the buyout, Hubbard, Ballif, and the Harmon Group created a new company, Bay Bridge, which became the bidder on GI Partners' interest against other bidders, and ultimately cast the winning bid to purchase the entirety of GI Partners' interest in the Plum Enterprise.[10] (DT (Hubbard) at 54:11-22.) Bay Bridge constituted the ownership group for the entire Plum Enterprise, including Plum Healthcare and all of its skilled nursing facilities.[11] (RT 335:10-15.) Initially, the Harmon Group owned a 72% interest in Bay Bridge, with Hubbard, Ballif and the other investing individuals from Plum Enterprise management collectively owning the remaining 28% interest, which by the beginning of 2014, changed to 60% Harmon Group and 40% shared by Hubbard, Ballif and the Plum management investors. (RT at 596:18-27; 366:12-367:3; DT (Hubbard) at 62:25-63:9.)

C. Bay Bridge — the Owner of the Plum Enterprise.

Bay Bridge became and continues to be the entity that resides alone at the top of the organizational chart depicting the Plum Enterprise and its related companies. (Ex. 5; RT at 8:14-21.) As Ballif described it, Bay Bridge is "the ultimate ownership for all of the entities" and the "ultimate parent" company of the Plum Enterprise. (DT (Ballif) at 72:11-13; 73:9-10.) Thus, by the beginning of 2014, Bay Bridge effectively owned a 100% interest in SPA.[12] (RT at 366:12-27.) As Hubbard testified, Bay Bridge receives all of the revenue of the Plum Enterprise, which

[10] In 2015, GI Partners would return and reinvest in the Plum Enterprise, paying $152 million for a 42% interest. (RT at 598:6-22.) At the time of trial, GI Partners remained a minority owner in the Plum Enterprise. (RT at 598:23-25.)

[11] As an illustration, as of November 2012, GI Plum HoldCo, LLC, held a 100% interest in Plum Healthcare, which held a 100% interest in SPA (Oleander Holdings, LLC). (Ex. 138 at 51; Ex. 140 at 10.) GI Plum HoldCo served as the company through which GI Partners, Hubbard and Ballif held their ownership of the Plum Enterprise after GI Partners had purchased their approximate 80% interest in the Plum Enterprise in 2006. (DT (Ballif) at 137:9-17.) In 2012, Bay Bridge was formed to purchase Plum Healthcare from GI Plum HoldCo, which thereby established Bay Bridge's ownership of Plum Healthcare, Bay Bridge's effective ownership of SPA, and presumably by similar mechanism, the other facilities within the Plum Enterprise. (RT at 335:10-15.)

[12] At times, the Court uses the term "effective ownership" given that ownership in the Plum Enterprise, by Bay Bridge down to each skilled nursing facility, is technically accomplished through multiple layers of ownership through various holding companies. These layers of ownership result in Bay Bridge owning all of the skilled nursing facilities in the Plum Enterprise. (Exs. 1-5; RT at 8:14-21.) There is no distinction between who owns the Plum Enterprise and who owns the skilled nursing facilities within the Plum Enterprise. (DT (Pugh) at 147:16-22.)

is the revenue generated from all of the skilled nursing facilities including SPA. (RT at 599:13-26.) As Hubbard confirmed, none of the other companies within the Plum Enterprise (such as Bay Bridge, Plum Healthcare, the Holding Company Defendants, or any other entity) generates significant revenue for the Plum Enterprise, if any at all. (RT at 599:16-22.) Bay Bridge uses the trade name, "Plum," in reference to the entire Plum Enterprise. (RT at 37:4-19; 78:10-16.)

Additionally, as Ballif explained, a single board meeting, held at the Bay Bridge level, effectively served as the board meeting for the Plum Enterprise as a whole. (DT (Ballif) at 68:11-73:11.) Bay Bridge board meetings included financial decision-making for the entire Plum Enterprise combined including SPA. (Ex. 190.) For tax purposes, Bay Bridge files a single consolidated federal tax return that takes into account all of the operations of all of the facilities within the Plum Enterprise. (RT 433:17-25.)

As for its day-to-day operations, Bay Bridge's ownership group delegated to Hubbard and Ballif the responsibility of carrying out its wishes in the Plum Enterprise. (RT at 577:15-578:16.) Bay Bridge has no employees of its own, and if there were any tasks that Bay Bridge needed to perform, Bay Bridge would perform such tasks through the employees of Plum Healthcare. (RT at 423:2-6.)

D. Plum Healthcare's Role in the Plum Enterprise and Relationship to SPA.

Plum Healthcare, sometimes referred to as "Plum support services," functions as Bay Bridge's "administrative supporting arm" that assists all of the skilled nursing facilities within the Plum Enterprise including SPA.[13] (RT at 383:6-9; 422:26-423:6.) As of 2014, Plum Healthcare had between 50 and 60 employees. (RT at 562:7-15.) Bay Bridge utilizes Plum Healthcare to handle various specialized functions for the individual facilities. (RT at 383:9-11; 41:26-42:3.) Bay Bridge also uses Plum Healthcare as its "cash manager," such that Bay Bridge maintains the revenues generated from all of the skilled nursing facilities at the Plum Healthcare level of the Plum Enterprise. (DT (Ballif) at 227:16-229:2.)

[13] From approximately 1999 to 2006, Plum Healthcare had functioned as the parent company of the Plum Enterprise until the organizational structure of the Plum Enterprise changed, presumably in connection with GI Partners' acquisition of its ownership interest. (RT at 41:20-22.) As of the time of trial, Plum Healthcare was no longer in the chain of ownership of subsidiary entities and instead, functioned as Bay Bridge's operational arm for the Plum Enterprise. (RT at 83:12-13.)

1. Plum Healthcare's "Administrative Services Agreement" with SPA.

As of 2014, Plum Healthcare maintained a written "Administrative Services Agreement" ("ASA") with SPA[14] which set forth the "Administrative Services" that Plum Healthcare provided. (Ex. 116.) The ASA was prepared by Plum Healthcare's legal counsel. (DT (Ballif) at 89:16-90:6.) David Terry, SPA's Administrator at the time, presumed that he had the ability to negotiate or change the ASA, but did not do so because at the time, he thought it provided all the services that SPA needed. (RT at 477:2-11.) As Ballif explained, the language used in the Administrative Services Agreement is identical for all of the skilled nursing facilities in the Plum Enterprise and no facility has attempted to opt out of entering into such agreement with Plum Healthcare. (DT (Ballif) at 88:2-21.) Similarly, the Plum Branch President for SPA, Aaron Edmonds, understood that in 2014, all Plum skilled nursing facilities were required to enter into the ASA with Plum Healthcare. (DT (Edmonds) at 72:8-12.) Plum Healthcare set the price that each facility would pay to Plum pursuant to the ASA. (DT (Edmonds) at 72:13-18.)

The ASA describes enumerated services in areas of "Billing and Accounts Receivable Management," "Payroll Processing and Management," "Accounts Payable," "Vendor Management," and "Facility Booking, Reporting and Budgeting." (Ex. 116 at 8.) In exchange for receiving those services listed in the ASA, SPA paid Plum Healthcare a monthly fee of 5.25% of SPA's gross revenue from operation of the facility. (Ex 116 at 3; RT 426:6-10; DT (Ballif) at 85:12-86:5.) In practice, Plum Healthcare carried out additional functions for SPA that were not identified in the ASA, such as providing information technology support, human resources support, and "quality services," including nursing consultants that provide training to SPA staff. (RT at 384:12-22; 428:9-429:4; 477:20-24; 560:19-561:1; *compare* Ex. 116 at 8.) Terry was unconcerned that the ASA did not cover the additional services that Plum Healthcare was providing to SPA and was unconcerned of any potential additional cost for such services. (RT at 477:12-478:6.)

The ASA also includes language stating that "nothing herein is intended to, or shall it,

[14] The Administrative Services Agreement is between Plum Healthcare and Oleander Holdings, LLC, which is the operating company for SPA. (RT 383:3-4; Ex. 116.) The ASA was made "as of June 1, 2013." (Ex. 116 at 1.) There is no dispute that this was the version in effect at the time of Higgs' residency at SPA.

alter, weaken, displace, or modify the responsibility of [SPA] for direction and control of the Facility or the provision of skilled nursing services" and that "nothing in this Agreement shall be construed as the delegation of any governance or supervision function or authority of [SPA]." (Ex. 116 at 1 (brackets added).) The ASA further states that "[SPA] remains responsible for the continued, day-to-day operations of the Facility, and [Plum Healthcare] shall be responsible under this Agreement, only for the Administrative Services to be provided in support of such operations." (Ex. 116 at 2 (brackets added).) As SPA's Administrator, Terry made decisions regarding the hiring or firing of SPA employees and supervised SPA's "clinical interdisciplinary team" and other managers. (RT at 447:18-449:16.) Plum Healthcare did not direct SPA's policies and procedures for clinical care. (RT at 459:6-12.)

2. Plum Healthcare's "Treasury Function" Over SPA's Finances.

Although not specifically referenced in the ASA, Plum Healthcare performs what it refers to as a "treasury function" for SPA. (RT at 386:13-16.) This "treasury function" includes Plum Healthcare's oversight for the actual opening or closing of SPA's bank accounts – i.e., beyond managing SPA's accounts receivable/payable, payroll processing, vendor management, and bookkeeping. (RT at 387:2-4; Ex. 116 at 8-9.) SPA maintains its own provider number from Medicare and Medicaid (held by its operating company, Oleander Holdings, LLC) that allows SPA to be paid for the care it renders to its residents, such as Higgs. (RT at 387:14-22.) Plum Healthcare maintains SPA's finances, tracking on a daily basis all of SPA's revenue and expenses. (RT at 387:27-389:2.) Plum Healthcare maintains a separate general ledger and profit and loss statements for SPA. (RT at 389:3-13.)

As part of its "treasury function" for SPA, Plum Healthcare set up three separate "zero balance" accounts for SPA. (RT at 389:24-26.) This includes an account for inbound payments to SPA from payers for patient services, an account for SPA's payroll, and an operating account to cover SPA's accounts payable other than payroll. (RT at 389:27-390:6.) SPA's Administrator does not have direct access to these accounts, cannot change any transactions, or make any disbursements. (DT (Pugh) at 37:18-38:15.) Plum Healthcare set up these "zero balance" accounts so that at the end of each banking day, SPA's bank accounts carry no balance because

all money is swept out of SPA's bank accounts and to a separate "lock box" bank account that is maintained in the name of Plum Healthcare and not SPA. (DT (Pugh) at 35:9-37:3; (Ballif) at 99:10-100:14; 102:5-13.) Plum Healthcare does the same for all of the skilled nursing facilities in the Plum Enterprise, which it refers to as common "concentration banking." (DT (Pugh) at 35:9-36:15.)

From Plum Healthcare's "lock box" account, the funds go towards paying off any borrowed balance due to Capital One Bank — the lender with which the Plum Enterprise maintains a line of credit that it uses to cover its cash needs. (DT (Pugh) at 38:16-24; (Ballif) at 103:5-12.) The Plum Enterprise ownership pledged all of the accounts receivables from all of its skilled nursing facilities including SPA as collateral for the line of credit with Capital One. (RT at 393:18-26; DT (Ballif) at 112:3-7.) The administrators of the skilled nursing facilities had no say as to whether the revenues from their facility would be pledged as collateral for the line of credit. (DT (Ballif) at 112:8-11.)

Plum Healthcare uses SPA's revenues to pay down the line of credit whether or not SPA's own operations required borrowing from the line of credit and there is no mechanism whereby particular facilities actually experiencing a cash shortfall pay a different or greater amount. (DT (Pugh) at 47:8-15; (Ballif) at 120:9-121:9.) Additionally, the borrower fees and other fees that the Plum Enterprise must pay for the line of credit are allocated to its skilled nursing facilities including SPA on a pro rata basis based upon their number of beds, and not based upon an individual facility's borrowing needs. (DT (Ballif) at 113:1-114:7.)

If there is any excess cash after payment is made to Capital One on the line of credit, such excess cash stays in Plum Healthcare's main operating account. (DT (Pugh) at 39:18-40:2; (Ballif) at 103:13-20.) There is no mechanism by which cash generated by SPA's operation, after payment of all of SPA's expenses, is maintained in a bank account controlled by SPA. (DT (Pugh) at 44:8-45:6.) Nor has SPA's Administrator ever asked that profits generated from SPA's own operations be left in SPA's direct control (without Plum Healthcare's involvement) so that it can make its own decisions regarding using its own cash. (DT (Ballif) at 110:9-111:2.) Instead, if SPA desired to use the cash generated *from* its own operations *for* its own operations, SPA's

Administrator would have to make a request to Plum Healthcare and, for instance, "ask for capital improvements, for capital to build a new business model." (DT (Ballif) at 110:9-21.) There is no mechanism to ensure that profits secured from SPA's operations are used for SPA as opposed to being used for other entities within the Plum Enterprise. (DT (Ballif) at 110:22-111:2.)

Plum Healthcare characterizes the revenue generated by SPA that is swept out of SPA's bank account daily and that resides in Plum Healthcare's main operating account as SPA's money and "not Plum's money." (DT (Pugh) at 149:18-24; Ex. 116 at ¶ 3.) At the same time, Plum Healthcare characterizes all funds in its main operating account, including SPA's revenue, as "cash that's available for the organization's use across the board," including for payroll and expenses, and including expenses for facilities other than SPA that "are not cash flow positive at a particular point in time, either through operations, or because of a large capital project going on, or whatever." (DT (Pugh) at 149:25-150:17; 45:9-23.) In this regard, when Plum Healthcare sweeps all cash out of SPA's bank accounts daily, Plum Healthcare records in its own accounting, amounts "due from Plum" and "due to" SPA. (DT (Pugh) at 47:16-48:10.) This cash differential between Plum Healthcare and SPA has not been paid off at any designated interval or ever at all. As determined by Plum Healthcare, "they've just been running balances" of amounts "due from Plum" to SPA. (DT (Pugh) at 49:5-10.) Neither Plum Healthcare nor SPA has any expectation or future plan to "zero out" any running balance that is "due from Plum" to SPA. (DT (Pugh) at 49:11-19.) SPA always exceeded (i.e., outperformed) its budget during the 2014-16 timeframe. (DT (Edmonds) at 42:15-21.)

As to day-to-day expenses, SPA relies upon Plum Healthcare to accomplish the payment of SPA's expenses whether they are for payroll, supplies, physicians, pharmacy, repairs, capital improvements or otherwise. (DT (Pugh) at 44:13-21.) For instance, when SPA incurs a bill, once its Administrator approves it, Plum Healthcare's accounting consultant reviews it and ultimately executes the payment for SPA out of its operating account. (RT at 392:17-393:12.) Only the money necessary to pay SPA's approved bills is pulled from Plum Healthcare's main operating account so that SPA's operating account is always left with a zero balance. (DT

(Pugh) at 40:22-41:20.) As of the time of trial, SPA had not failed to pay any "properly-submitted" bill or invoice through this process or failed to pay any financial liability. (RT at 403:7-9; 460:19-24; 461:1-6.)

E. The Plum Enterprise's Oversight and Influence Over SPA.

As one of the skilled nursing facilities within the Plum Enterprise, SPA, through its employees, provides day-to-day care to its residents. (DT (Pugh) at 382:28-383:6.) As a skilled nursing facility within the Plum Enterprise, SPA operates as part of the Plum Enterprise's "distinctive operating model," which includes the goal of "grow[ing] market share of high acuity referrals," meaning "taking on patients that . . . have a higher acuity, who are increasingly sicker." (DT (Ballif) at 191:22-192:15.) As Ballif explained, the Plum Enterprise's intent in having SPA and its other skilled nursing facilities take on higher acuity patients was in part due to the fact that "those higher acuity referrals . . . also have a corresponding higher rate of . . . reimbursement associated with them because . . . you're providing more services." (DT (Ballif) at 192:16-19.) As Ballif stated, "those referrals . . . are very attractive for a business. . . . And so that's . . . the rationale for us." (DT (Ballif) at 192:20-22.)

In 2014, David Terry was SPA's Administrator and its highest ranking employee. (DT (Terry) at 10:25-11:9.) In 2014, Terry answered to Aaron Edmonds, who held the position of Plum Branch President for SPA and as such, had the authority to terminate Terry's employment with the input of Plum CEO, Toby Tilford. (DT (Edmonds) at 23:23-24:11; (Ballif) at 41:4-43:12.) At that time, Edmonds and Tilford were the officers within the Plum Enterprise that had authority to hire and fire administrators at the Plum Enterprise skilled nursing facilities that were within their assigned region which included SPA. (DT (Ballif) at 43:13-20.) One of Edmond's duties as Plum Branch President was to monitor SPA's performance through an intranet "dashboard" that contained SPA's census and other financial information. (DT (Edmonds) at 38:19-39:20; (Hubbard) at 114:7-116:8.)

As part of their duties, Edmonds and Tilford were also responsible for reviewing and approving the budgets for each skilled nursing facility within their region including SPA's

budget. (DT (Edmonds) at 53:6-54:6.)[15] Ultimately, the budget of SPA and all other skilled nursing facilities within the Plum Enterprise were "rolled up" and consolidated for review by Bay Bridge at its board meeting. (DT (Kreter) at 32:10-22.) Prior to presenting the budgets for the Bay Bridge board's review, Hubbard's normal practice was to change the consolidated budgets from the skilled nursing facilities (including SPA's budget) by increasing the labor in the budgets and decreasing the revenue in the budgets. (RT at 610:20-611:6.) Hubbard made these adjustments because he believed "that the actual performance, the budgets – they ended up performing less than what they had planned across the whole enterprise." (RT at 611:10-13.) Hubbard would routinely and downwardly adjust the skilled nursing facility budgets (including SPA's budget) between 10% and 15%. (RT at 612:7-12.) Hubbard did not inform the administrators at the facilities (such as Terry) that he had made this adjustment to their budgets. (RT at 612:13-22.)

Once SPA's budget was approved, in his position as Plum Branch President for SPA, Edmonds made it clear that "meeting budget was a job expectation for the administrator."[16] (DT (Edmonds) at 44:8-12; 58:9-11.) In 2014 (and up to 2016), whether SPA met its annual budget was reflected in the financial compensation to SPA's Administrator in that Terry received a bonus calculated as 15% of SPA's annual distributable income. (DT (Terry) at 46:18-22.) As SPA's Administrator, 30% to 60% of Terry's annual income came from his bonus. (DT (Terry) at 48:17-49:2.) Terry assumed that someone at Plum Healthcare set his bonus but did not know who determined his actual bonus on a year-to-year basis. (RT at 494:1-16.)

Terry was SPA's Administrator from November 2011 to November 2019. (RT at

[15] At trial, Terry contradicted Edmonds' deposition testimony and modified his own earlier acknowledgement during his deposition that it "makes sense" that Edmonds and Tilford (as Branch President and CEO, respectively) approved SPA's budget. (RT at 478:7-480:22.) At trial, Terry testified that no one had ever approved his budget for SPA. (RT at 457:6-17; 478:9.) Terry explained that he "consulted" and "collaborated" with Plum Healthcare and the Branch President in deciding what SPA's budget should be. (RT at 491:12-492:22.) When asked why his answer evolved from his deposition to trial, Terry stated: "I think the best way to state that is that after I spent time working on this case and having sent in, you know, a number of discoveries and things, I think educated myself a little more clearly on things and my testimony today is a clearer representation of the facts of my day-to-day management of the facility." (RT at 479:17-480:2.)

[16] At trial, Hubbard testified differently than Edmonds, stating that in his opinion, meeting budget was not a job expectation of the administrator of the Plum Enterprise's skilled nursing facilities. (RT at 612:23-27.) Nonetheless, it is undisputed that in 2014, Terry directly answered to Edmonds, the Plum Branch President for SPA, and not to Hubbard. (DT (Edmonds) at 23:23-24:11; (Ballif) at 41:4-43:12.) Nor is there any evidence that Hubbard informed Terry that Edmond's expectation was wrong.

444:24-445:2; 474:16-21.) Although he was SPA's Administrator and its highest-level employee for this eight-year period, Terry had limited or no knowledge or involvement regarding many aspects of SPA's day-to-day financial operation and status. For instance, Terry was ignorant regarding SPA's revenue intake such that if SPA received a payment from Medicare for patient care, Terry did not know where that money would actually go. (DT (Terry) at 32:1-8.) Terry believed that SPA had a bank account at Wells Fargo, but he did not have access to withdraw money from that bank account. (DT (Terry) at 32:15-25.) Terry did not know the balance of SPA's own bank account nor could he recall ever seeing a bank statement for SPA's account. (DT (Terry) at 33:25-34:14.) Terry did not know that SPA's revenues went into a "zero balance" account from which all funds were swept out on a daily basis. (DT (Terry) at 35:3-10.)

Terry did not know that after it is swept out of SPA's bank account each day, SPA's revenue is then moved into a "lock box" account maintained by Plum Healthcare for payment of the Plum Enterprise's line of credit, or that the Plum Enterprise had a line of credit for its operations at all. (DT (Terry) at 36:5-19.) Terry was never involved in any decision and had no say regarding whether SPA wanted to participate in the line of credit. (DT (Terry) at 36:21-25; (Ballif) at 112:8-17.) Terry was not aware that all SPA's receivables had been pledged as collateral for Plum Enterprise's line of credit. (DT (Terry) at 37:1-6.) Terry was not aware that SPA pays fees and costs related to the Plum Enterprise's maintenance of the line of credit. (DT (Terry) at 38:18-25.) To Terry's knowledge, SPA has never used any part of the line of credit for its own operations. (DT (Terry) at 39:16-18.)

Terry knew that SPA generated profits while he was Administrator, but did not know where the profits went after SPA generated them or whether there was any requirement within the Plum Enterprise that such profits be used for SPA's operations. (DT (Terry) at 40:6-22; 41:11-24) Terry had never seen a general ledger that documented financial transactions between SPA and Plum Healthcare. (DT (Terry) at 43:2-.14.) Nor was Terry aware of the existence of any intercompany general ledger that documents the financial transactions between his company and Plum Healthcare. (DT (Terry) at 43:16-20.)

As to the ASA between SPA and Plum Healthcare, Terry did not know whether SPA had

the option to hire a different company, other than Plum Healthcare, to provide the administrative management services delineated therein. (DT (Terry) at 72:18-23.) Terry did not conduct any market comparisons to see if there was another competing management company that could provide the same services to SPA but at a more affordable rate. (DT (Terry) at 72:24-73:2.) Terry never negotiated any terms of the ASA or inquired of Plum Healthcare whether he had the opportunity to do so. (DT (Terry) at 73:3-23.)

Terry was told that SPA actually owned the building in which it operated. (DT (Terry) at 68:21-69:2.) However, Terry did not know why SPA paid rent to use its building. (DT (Terry) at 70:9-14.) Terry believed there was a lease agreement to which SPA was a party, but he had never read the lease, did not negotiate the lease, and did know who negotiated the lease on SPA's behalf. (DT (Terry) at 70:16-71:2.) Terry did not know the identity of the other party (landlord) to SPA's lease. (DT (Terry) at 71:3-5.) Terry also did not know or recall who owned SPA (i.e., members of Oleander Holdings, LLC) or who its limited liability company managers were. (12:19-14:15; 17:8-18.)

F. The Holding Company Defendants.

Flower Farm was formed in October 2012 and serves as a holding company for other Plum Enterprise entities. (DT (Ballif) at 140:11-17; Ex. 136) Flower Farm was entirely owned by Sisu Holdings, LLC, which by 2014, had its name changed to New Sisu Holdco, LLC, to facilitate credit agreements and financing. (Ex. 136 at 30; DT (Ballif) at 137:23-138:3; 148:18-149:3.) The Plum Enterprise formed Flower Farm and New Sisu as holding companies with a single member (another Plum Enterprise entity) for the purpose of accommodating collateral requirements for loans from the Plum Enterprise's lenders. (DT (Ballif) at 27:21-28:7; 227:16-228:17; *see* Ex. 2.) The Plum Enterprise organizes its skilled nursing facilities so that each functions under its own operating company and that all such operating companies were grouped under geographically-designated holding companies, such as California OpCo, LLC, which in turn, were owned by Plum OpCo Holdings, LLC, which later changed its name to OpCo Holdings, LLC. (DT (Ballif) at 144:2-5; RT at 37:20-38:26; 309:13-23; *see* Ex. 4.) As of the time of trial, New Sisu owned Flower Farm, which owned OpCo Hold, which owned Cal OpCo,

which owned SPA. (RT at 41:5-12; 148:18-149:3; Ex. 136 at 30.)

Bay Bridge effectively owns of all of the Holding Company Defendants, i.e., Flower Farm, New Sisu, OpCo Hold, and Cal OpCo. (DT (Ballif) at 228:19-23; RT at 37:22-45:10; Ex. 5.) Bay Bridge utilizes each of the Holding Company Defendants for accounting purposes to facilitate the operations of the overall Plum Enterprise such that the Holding Company Defendants have no independent operations or employees. (RT at 38:5-10; 39:4-15; 40:8-10; 41:5-12; 42:4-13; 43:12-24.) If they have any tasks to be performed at all, the Holding Company Defendants accomplish them through their managers and officers which are employees of Plum Healthcare. (RT at 44:28-45:2.) For federal tax purposes, none of the Holding Company Defendants file tax returns and each of them is treated as a "disregarded entity" — meaning that it is indistinct from Bay Bridge. (RT at 45:6-16.) Bay Bridge files a single federal tax return that encompasses all of them. (RT at 44:25-45:7.)

IV. DISCUSSION

A. Applicable Law for Alter Ego Doctrine.

As stated by the California Supreme Court, "[t]he alter ego doctrine arises when a plaintiff comes into court claiming that an opposing party is using the corporate form unjustly and in derogation of the plaintiff's interests. In certain circumstances the court will disregard the corporate entity and will hold the individual shareholders liable for the actions of the corporation: 'As the separate personality of the corporation is a statutory privilege, it must be used for legitimate business purposes and must not be perverted. When it is abused it will be disregarded and the corporation looked at as a collection or association of individuals, so that the corporation will be liable for the stockholders or the stockholders liable for acts done in the name of the corporation.'" *Mesler v. Bragg Management Co.* (1985) 39 Cal.3d 290, 300 (internal citations omitted) (quoting Comment, *Corporations: Disregarding the Corporate Entity: One Man Company* (1925) 13 Cal.L.Rev. 235, 237).

The alter ego analysis applies the same when instead of individual stockholders, it is one corporation that owns another and the issue is whether the parent corporation is the alter ego of its subsidiary corporation. *McLoughlin v. L. Bloom Sons Co., Inc.* (1962) 206 Cal.App.2d 848,

851 ("only a difference in wording is used in stating the same concept where the entity sought to be held liable is another corporation instead of an individual"); *see also, e.g. Mesler, supra,* 39 Cal.3d at 294. Likewise, the alter ego analysis applies the same, subject to narrow exception, in the context of limited liability companies and their member-owners: "A member of a limited liability company shall be subject to liability *under the common law governing alter ego liability*, and shall also be personally liable under a judgment of a court or for any debt, obligation, or liability of the limited liability company, whether that liability or obligation arises in contract, tort, or otherwise, under the same or similar circumstances and to the same extent as a shareholder of a corporation may be personally liable for any debt, obligation, or liability of the corporation . . . ." Cal. Corp. Code § 17703.04(b) (emphasis added).[17]

As for the legal test for determining alter ego, the California Supreme Court explained: "There is no litmus test to determine when the corporate veil will be pierced; rather the result will depend on the circumstances of each particular case. There are, nevertheless, two general requirements: '(1) that there be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist and (2) that, if the acts are treated as those of the corporation alone, an inequitable result will follow.'" *Mesler, supra,* 39 Cal.3d at 300 (quoting *Automotriz del Golfo de California S.A. de C. v. Resnick* (1957) 47 Cal.2d 792, 796). "The essence of the alter ego doctrine is that justice be done. 'What the formula comes down to once shorn of verbiage about control, instrumentality, agency, and corporate entity, is that liability is imposed to reach an equitable result.'" *Mesler, supra,* 39 Cal.3d at 301 (quoting Latty, *Subsidiaries and Affiliated Corporations* (1936) at 191).

To establish alter ego, "it is not necessary that actual fraud be shown. It is sufficient if a refusal to recognize the fact of the identity of the corporate existence with that of the individual would bring about inequitable results." *Wenban Estate, Inc. v. Hewlett* (1924) 193 Cal. 675, 698 (emphasis added); *see also Misik v. D'Arco* (2011) 197 Cal.App.4th 1065, 1074 ("[a]pplication

[17] The exception is stated in the following language which completes the preceding quotation : "except that the failure to hold meetings of members or managers or the failure to observe formalities pertaining to the calling or conduct of meetings shall not be considered a factor tending to establish that a member or the members have alter ego or personal liability for any debt, obligation, or liability of the limited liability company where the articles of organization or operating agreement do not expressly require the holding of meetings of members or managers." Cal. Corp. Code § 17703.04(b).

of the alter ego doctrine does not depend upon pleading or proof of fraud"). Similarly, the requirements of alter ego do not include proof of wrongful intent or "conduct amounting to bad faith."[18] *Relentless Air Racing, LLC v. Airborne Turbine Ltd. Partnership* (2013) 222 Cal.App.4th 811, 816 (alter ego analysis does not require proof of wrongful intent); *Triyar Hospitality Management, LLC v. WSI (II)-HWP, LLC* (2020) 57 Cal.App.5th 636, 642 (alter ego analysis does not require proof of "some conduct amounting to bad faith" to show inequity). Additionally, "'[t]he issue is *not* so much whether, for *all* purposes, the corporation is the 'alter ego' of its stockholders or officers, *nor whether the very purpose of the organization* of the corporation *was to defraud* the individual who is now in court complaining, as it is an issue of whether in the particular case presented and for the purposes of such case justice and equity can best be accomplished and fraud and unfairness defeated by a disregard of the distinct entity of the corporate form.'" *Mesler, supra,* 39 Cal.3d at 300-01 (emphasis added) (quoting *Kohn v. Kohn* (1950) 95 Cal.App.2d 708, 718).

Notably, in those instances "when a court disregards the corporate entity, it does not dissolve the corporation . . . the doctrine merely limits the exercise of the corporate privilege to prevent its abuse." *Mesler, supra,* 39 Cal.3d at 300. "It is *not* that a corporation will be held liable for the acts of another corporation because there is *really* one corporation. Rather, it is that under certain circumstances a hole will be drilled in the wall of limited liability erected by the

[18] Defendants assert that "cases *require* the plaintiff to present some evidence of 'wrongdoing' or 'misconduct' or 'some conduct amounting to bad faith,' evidence of some corporate structure created 'with an fraudulent or deceptive intent' to establish alter ego liability." (Defendants' Closing at 5:5-7 (emphasis added).) This is not an accurate statement of the requirements for alter ego and this misconception appears to permeate Defendants' arguments. Defendants' assertion appears to stem principally from *Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523. (Defendants' Closing at 4:17-5:5.) In *Sonora,* after referencing the *two* general requirements of alter ego stated by the California Supreme Court in *Automotriz delGolfo de California S.A. de C. v. Resnick* (1957) 47 Cal.2d 792, the Court of Appeal focused on "*one* of the two essential elements of the alter ego doctrine." *Sonora,* 83 Cal.App.4th at 539. The Court of Appeal then discussed the absence of "wrongdoing" and "misconduct" under the facts of the case and made clear that the failure to establish alter ego was due to the lack of evidence of "wrongdoing . . . *or any evidence of injustice* flowing from the recognition of Sonora Mining's separate corporate identity." *Id.* (emphasis added). The Court of Appeal repeatedly referred to "misconduct *or injustice*" in the disjunctive. *Id.* (emphasis added). Thus, the Court of Appeal's own discussion confirms that evidence of injustice is sufficient to satisfy the second requirement for alter ego. The Court of Appeal's discussion is thereby consistent with the cases which explain that alter ego does not *require* proof of wrongful intent, conduct amounting to bad faith, actual fraud, or intent to defraud. *Sonora* did not create a new requirement of "wrongdoing" or "misconduct" for alter ego analysis and thus, *Sonora* does not support Defendants' assertion or arguments. As evident from *Sonora,* while the presence of such evidence can contribute to a finding of alter ego, it is not a requirement. In general, while an appellate court may observe that evidence of wrongdoing, misconduct, bad faith or fraudulent intent is absent or present under the particular facts of the case such observation cannot be construed to mean that this evidence is *required* by the alter ego analysis in every case.

corporate form; for all purposes other than that for which the hole was drilled, the wall still stands." *Id.* at 301 (emphasis added). Where the alter ego doctrine is found to apply, "the parent is liable through the acts of the subsidiary, but as a separate entity. A judgment obtained against a corporation and its alter ego is enforceable against both separately." *Id.*

"Alter ego is an extreme remedy, sparingly used." *Sonora Diamond Corp. v. Superior Court* (2000) 83 Cal.App.4th 523, 539. Accordingly, "[i]t is the plaintiff's burden to overcome the presumption of the separate existence of the corporate entity." *Mid-Century Insurance Co. v. Gardner* (1992) 9 Cal.App.4th 1205, 1212. The plaintiff has the burden of proving each fact essential to its claims by a preponderance of the evidence. *See* Cal. Evid. Code §§ 115, 500; *Sonic Manufacturing Technologies, Inc. v. AAE Systems, Inc.* (2011) 196 Cal.App.4th 456, 464; *Weiner v. Fleischman* (1991) 54 Cal.3d 476, 483. In determining alter ego, "'the matter is particularly within the province of the trial court. This is because the determination of whether a corporation is an alter ego of an individual is ordinarily a question of fact.'" *Misik,* 197 Cal.App.4th at 1071-72 (quoting *Alexander v. Abbey of the Chimes* (1980) 104 Cal.App.3d 39, 46.

As applied to the parent-subsidiary relationship, "[t]o justify piercing the corporate veil on an alter ego theory in order to hold a parent corporation liable for the acts or omissions of its subsidiary, a plaintiff must show that there is such a unity of interest and ownership between the two corporations that their separate personalities no longer exist, and that an inequitable result would follow if the parent were not held liable." *Laird v. Capital Cities/ABC* (1998) 68 Cal. App. 4th 727, 742. Similarly, "under the *single-enterprise rule*, liability can be found between sister companies. The theory has been described as follows: "'In effect what happens is that the court, for sufficient reason, has determined that though there are two or more personalities, there is but *one enterprise*; and that this enterprise has been so handled that it should respond, as a whole, for the debts of certain component elements of it. ...[']" *Hasso v. Hapke* (2014) 227 Cal.App.4th 107, 155 (emphasis added) (quoting *Greenspan v. LADT LLC* (2010) 191 Cal.App.4th 486, 512 (internal citations omitted)).

In addition to the general requirements for alter ego liability explained by the California

Supreme Court in *Mesler*, the Court of Appeal in *Associated Vendors, Inc. v. Oakland Meat Co.* (1962) 210 Cal.App.2d 825, 838, discussed "a variety of factors which were pertinent to the trial court's determination under the particular circumstances of each case." Providing a substantial list of cases, the Court of Appeal identified these factors as follows:

> 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; the treatment by an individual of the assets of the corporation as his own; the failure to obtain authority to issue stock or to subscribe to or issue the same; the holding out by an individual that he is personally liable for the debts of the corporation; the failure to maintain minutes or adequate corporate records, and the confusion of the records of the separate entities; the identical equitable ownership in the two entities; the identification of the equitable owners thereof with the domination and control of the two entities; identification of the directors and officers of the two entities in the responsible supervision and management; sole ownership of all of the stock in a corporation by one individual ...; the use of the same office or business location; the employment of the same employees and/or attorney; the failure to adequately capitalize a corporation; the total absence of corporate assets and undercapitalization; 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; the concealment and misrepresentation of the identity of the responsible ownership, management and financial interest, or concealment of personal business activities; the disregard of legal formalities and the failure to maintain arm's length relationships among related entities; the use of the corporate entity to procure labor, services or merchandise for another person or entity; the 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; the contracting with another with intent to avoid performance by use of a corporate entity as a shield against personal liability, or the use of a corporation as a subterfuge of illegal transactions; and the formation and use of a corporation to transfer to it the existing liability of another person or entity.

Id. at 838-840 (internal citations omitted). The Court of Appeal observed that "[a] perusal of these cases reveals that in all instances *several of the factors* mentioned were present." *Id.* at 840 (emphasis added). The court further noted that "while it was held, in each instance, that the trial court was warranted in disregarding the corporate entity, the factors considered by it were not deemed to be conclusive upon the trier of fact but were found to be supported by substantial evidence." *Id.*

B. Alter Ego Analysis of Defendants Through the *Associated Vendors* Factors.

In their respective post-trial briefing, Plaintiffs and Defendants argue, among other things, whether the evidence supports a finding of alter ego pursuant to each factor set forth in *Associated Vendors, Inc. v. Oakland Meat Co.* (1962) 210 Cal.App.2d 825. The Court observes

that the general requirements for alter ego liability remain those explained by the California Supreme Court in *Mesler v. Bragg Management Co.* (1985) 39 Cal.3d 290, and earlier stated in *Automotriz del Golfo de California S.A. de C. v. Resnick* (1957) 47 Cal.2d 792. The Court of Appeal in *Associated Vendors* did not set forth a different legal standard for alter ego analysis. Nor did the Court of Appeal in *Associated Vendors* suggest that evidence supporting any particular factor, any set number of factors, or any particular combination of factors, is determinative in the alter ego analysis. Rather, the Court of Appeal's helpful survey of cases provides relevant factors under which evidence was present in each case in support of finding alter ego under the general requirements. In this regard, this Court discusses the *Associated Vendors* factors and whether the evidence relevant to each factor tends to support finding that Bay Bridge, Plum Healthcare, and the Holding Company Defendants (collectively, "Plum Corporate Defendants") are alter egos of SPA.[19] Thereafter, the Court summarizes its findings as framed by the two general alter ego requirements referenced in *Mesler*.

1. Commingling of Funds & Treatment of Assets.

Plaintiffs argue that the Plum Corporate Defendants have commingled SPA's funds and treated SPA's assets as their own. In *Associated Vendors*, the Court of Appeal indicated that among the factors pertinent to the alter ego determination is the "[c]ommingling 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." *Associated Vendors, supra,* 210 Cal.App.2d at 838 (citations omitted). As to the "commingling" of funds specifically, the California Supreme Court has found it relevant where one company has "intermingled" its assets with a second company "to suit the convenience of" the individuals that were found to be alter

[19] The Court's discussion of the *Associated Vendors* factors primarily focusses on whether the Plum Corporate Defendants are alter egos of SPA. The Court determines this to be the main inquiry based upon Plaintiffs' allegations in the Second Amended Complaint. (*See* SAC at ¶¶ 13-15) Plaintiffs' allegations seek a determination that "each of the acts attributable to Sacramento Post-Acute also is legally attributable to the Plum Healthcare Group [i.e., all named Defendants other than SPA]." (SAC at ¶ 15 (brackets added).) A finding that the Plum Corporate Defendants are alter egos of SPA would have the legal effect of making the Plum Corporate Defendants, and each of them, liable for the acts and/or omissions of SPA if such liability is found,. *See Mesler, supra,* 39 Cal.3d at 300-01. Where companies are found to be alter egos, "[a] judgment obtained against a corporation and its alter ego is enforceable against both separately." *Id.* at 301. As indicated by Plaintiffs, the relationship among the Plum Corporate Defendants (i.e., Bay Bridge, Plum Healthcare, New Sisu, Flower Farm, OpCo Hold, and Cal OpCo) is also relevant to the alter ego analysis. As set forth in Section IV, B, 11a, *infra*, the Court discusses and finds that the Plum Corporate Defendants operate as part of a *single enterprise* and constitute alter egos of each other.

egos of the companies. *See Riddle v. Leuschner* (1959) 51 Cal.2d 574, 581.

The Court of Appeal in *Associated Vendors* also referenced a related factor — "the treatment by an individual of the assets of the corporation *as his own*." *Associated Vendors, supra,* 210 Cal.App.2d at 838 (citations omitted; emphasis added). In this regard, in *Platt v. Billingsley* (1965) 234 Cal.App.2d 577, 583, the Court of Appeal affirmed the trial court's finding of alter ego where, among other facts, the alter egos of the shell company retained personal *control over the shell company's funds*, avoiding depositing the funds into the corporation account and thereby avoiding the funds becoming subject to claims of the corporation's creditors. In *Zoran Corp. v. Chen* (2010) 185 Cal.App.4th 799, 815, in reversing the trial court's grant of summary judgment, the Court of Appeal found relevant to the alter ego analysis evidence that the alleged alter ego individual allegedly *diverted money from one shell company that he controlled to another such company.* Similarly, in *Riddle v. Leuschner* (1959) 51 Cal.2d 574, 581, the California Supreme Court found facts sufficient to support a finding of alter ego where, among other factors, the alter ego defendants *transferred most of the assets of one shell corporation to another shell corporation* both of which they controlled.

The Court finds by a preponderance of the evidence that the Plum Corporate Defendants have "commingled" or "intermingled" SPA's funds with that of other companies within the meaning of the alter ego analysis. The very design of Plum Healthcare's establishment of three "zero balance" bank accounts in the name of SPA was to ensure that at end of every banking day, all of SPA's revenue from whatever source it is received (e.g., payments from Medicare for services SPA provided to its residents) is removed from SPA's account and transferred to a "lock box" account that is not owned or controlled by SPA, but rather, is maintained by Plum Healthcare. (DT (Pugh) at 35:9-37:3; (Ballif) at 99:10-100:14; 102:5-13.) Plum Healthcare admittedly does the same for *all* of the skilled nursing facilities in the Plum Enterprise, which it refers to as common "concentration banking." (DT (Pugh) at 35:9-36:15.) Regardless of the commonality of such practice or the efficiencies gained by it, transferring SPA's money from its own bank account to Plum Healthcare's "lock box" account and thereby *combining SPA's money with the money of other companies* that Plum Healthcare oversees constitutes "commingling" or

"intermingling" of funds in its most basic sense.

Nonetheless, Plum Healthcare's movement of SPA's funds from SPA's account to Plum Healthcare's account would not by itself support a finding of alter ego. Equally important is the Plum Corporate Defendants' purposes for doing so. As discussed above, the "intermingling" of the assets of one company with those of another company "to suit the convenience of" the individuals engaging in such action supports a finding of that the individuals are alter egos of the companies. *See Riddle v. Leuschner, supra,* 51 Cal.2d at 581. Here, from Plum Healthcare's "lock box" account, the funds are used to pay off any borrowed balance due to Capital One Bank — the lender with which the Plum Corporate Defendants maintain a line of credit to cover its cash needs for the *entire* Plum Enterprise. (DT (Pugh) at 38:16-24; (Ballif) at 103:5-12.) Bay Bridge effectively pledged all of the accounts receivables from *all* of the Plum Enterprise skilled nursing facilities, including SPA, as collateral for the line of credit. (RT at 393:18-26; DT (Ballif) at 112:3-7.) The evidence establishes that Plum Healthcare uses SPA's revenues to help pay down the line of credit regardless of whether SPA's own operations required borrowing from the line of credit. (DT (Pugh) at 47:8-15.) However, the Plum Corporate Defendants' financing of the *entire* Plum Enterprise, including several dozens of skilled nursing facilities *other than* SPA, is *not* SPA's concern or responsibility.[20] Therefore, it is clear that Plum Healthcare sweeps SPA's funds out of its accounts to "suit the convenience" of the Plum Corporate Defendants in *their* greater purpose of financing the operations of the Plum Enterprise *as a whole.*

Further, not only does Plum Healthcare's sweeping of SPA's funds out of its accounts to pay the line of credit "suit the convenience" of the Plum Corporate Defendants, but the Court also finds that the Plum Corporate Defendants *treated SPA's funds as their own.* As discussed in *Associated Vendors,* evidence supporting alter ego may include "the treatment by an individual of the assets of the corporation as his own." *Associated Vendors, supra,* 210 Cal.App.2d at 838 (citations omitted); *see also Platt, supra,* 234 Cal.App.2d at 583. All of the evidence discussed

[20] Indeed, the only "benefit" that SPA might receive by contributing to the payment of the Plum Enterprise's line of credit was that *if* SPA someday became the facility that needed financing, the Plum Corporate Defendants would then, and only then, potentially steer the cash available from the line of credit towards SPA's operation. (RT at 298:9-15.) As discussed in more detail herein, this expectation is not reflective of an arm's-length transaction between two independent companies.

above also shows that the Plum Corporate Defendants treat SPA's funds as their own. Additionally, the evidence demonstrated that if there is any excess cash after payment is made to Capital One on the line of credit, such excess cash would stay in Plum Healthcare's main operating account. (DT (Pugh) at 39:18-40:2; (Ballif) at 103:13-20.) There is no mechanism by which cash generated by SPA's operation, after payment of all of SPA's expenses, is maintained in a bank account owned and controlled by SPA. (DT (Pugh) at 44:8-45:6.) There is also no mechanism to ensure that profits secured from SPA's operations are used for SPA as opposed to being used for other entities within the Plum Enterprise. (DT (Ballif) at 110:22-111:2.) In fact, Plum Healthcare characterizes all funds in its main operating account, including SPA's revenue, as *"cash that's available for the organization's use across the board,"* including for payroll and expenses, and including expenses for facilities *other than SPA* that "are not cash flow positive at a particular point in time, either through operations, or because of a large capital project going on, or whatever." (DT (Pugh) at 149:25-150:17; 45:9-23 (emphasis added).)

While this evidence is more than enough to demonstrate that the Plum Corporate Defendants use SPA's revenue as their own, Plum Healthcare's accounting practices only bolster such conclusion. That is, when Plum Healthcare sweeps all cash out of SPA's bank accounts daily, Plum Healthcare records in its own accounting, amounts "due from Plum" and "due to" SPA. (DT (Pugh) at 47:16-48:10.) However, this cash differential between Plum Healthcare and SPA has not been paid off at any designated interval or ever at all. As determined by Plum Healthcare, "they've just been running balances" of amounts "due from Plum" to SPA. (DT (Pugh) at 49:5-10.) Neither Plum Healthcare nor SPA has any expectation or future plan to "zero out" any running balance that is "due from Plum" to SPA. (DT (Pugh) at 49:11-19.) Nor is there any evidence that SPA ever operated in a cash deficit and in fact, SPA always exceeded its budget during the 2014-16 timeframe. (DT (Edmonds) at 42:15-21.)

The Court also finds that Plum Healthcare's sweeping of SPA's money from its accounts to Plum Healthcare's account for purposes of paying for costs and expenses not attributed to SPA constitutes a *diversion* of funds between companies *controlled* by the Plum Corporate Defendants. As referenced earlier, a finding of alter ego is supported where the alter ego has

diverted or transferred most of the assets from one company it controls to another company that it controls. *See Zoran, supra,* 185 Cal.App.4th at 815; *Riddle, supra,* 51 Cal.2d at 581. Plum Healthcare does not simply transfer *most* of SPA's funds to Plum Healthcare's account, but rather, it transfers *all* of SPA's money out of its accounts and does so every banking day. (DT (Pugh) at 35:9-37:3; (Ballif) at 99:10-100:14; 102:5-13.) Further, the Plum Corporate Defendants' control over SPA is evinced by the fact that SPA's Administrator from 2011 to 2019 did not even know that SPA's revenue is moved to a "lock box" account maintained by Plum Healthcare for payment of the Plum Enterprise's line of credit or that there was a line of credit at all. (DT (Terry) at 36:5-19.) The administrators of Plum Enterprise's skilled nursing facilities, including SPA's Administrator, had no say whether to pledge all of their company's revenue as collateral for the line of credit. (DT (Ballif) at 112:8-11.) That the Plum Corporate Defendants may think it is inconceivable that an administrator would object (because the line of credit may someday benefit their facility and is provided at lower cost than if they sought credit by themselves) is entirely irrelevant to the fact that they had no power to so object. (*See* DT (Ballif) at 112:8-17.) It is clear that the Plum Corporate Defendants divert funds *between two companies that they control* – SPA and Plum Healthcare.

Defendants' opposing argument regarding commingling focuses on the facts that "every dollar from the facility was tracked and kept in separate accounts"; that "money was tracked on a ledger for each facility"; that "[m]oney was kept in separate accounts to pay expenses for payroll for SPA"; and that the ledgers "were presented to the state agency in cost reports for annual audits." (Defendant's Closing at 16:9-18:18.) The Court is not persuaded by Defendants' arguments. The fact that the Plum Corporate Defendants know, to every last dollar, the amount of money that Plum Healthcare removes from SPA's account every banking day is inapposite to the question of whether the Plum Corporate Defendants "commingled" or "intermingled" SPA's funds with the funds from other companies and the purposes for which they did so, as the Court discussed above. "Commingling" inherently rests upon how the alleged alter ego party actually uses the money in question and for what purposes and not simply whether the party maintains ledgers that may provide an accounting of funds that were actually spent for non-corporation

purposes. Keeping ledgers does not alter what actually occurs.[21] Similarly, the fact that Plum Healthcare kept separate accounts for SPA to pay payroll and expenses – SPA accounts from which Plum Healthcare ensured all funds would be removed every banking day — does not answer the question of "commingling." Nor is it dispositive for alter ego purposes whether state or federal agencies – which have no occasion or reason to analyze the equitable doctrine of alter ego – review cost reports and conduct audits for their own circumscribed regulatory purposes.

As to the treatment of assets, Defendants argue that the Plum Corporate Defendants' use of SPA's revenue to pay down the Plum Enterprise's line of credit is of no significance because "this system made cash available to SPA and to all facilities under the service obligation owed by Plum to ensure they had access to reliable funding to pay all costs, all payroll, and even to pay for capital improvement projects, where needed." (Defendants' Closing at 19:4-7.) As the Court has already described, the "system" is much more than this. The "system" is one in which on a an every-banking-day basis, SPA has surrendered possession of every dollar of its revenue so that the Plum Corporate Defendants may use that revenue, first and foremost, to pay down the debt that they have incurred due to the financing of *other* skilled nursing facilities that are experiencing negative cash flow and/or are unprofitable. As to the "service obligation owed by Plum to ensure that [all facilities] had access to reliable funding," nothing in the ASA states that SPA's revenue, in any way, shall be directed to help pay the expenses and losses of *other* skilled nursing facilities that are supposed to be completely independent companies.[22] (*See* Ex. 116 at 8-9.) Indeed, the "system" appears to be designed to facilitate the Plum Corporate Defendants'

[21] An example are Plum Healthcare's ledgers that indicate money "due from Plum" and "due to SPA" which account for the fact that Plum Healthcare maintains possession of SPA's funds even after all of SPA's expenses are paid. Although these ledgers may meticulously account for every single dollar of SPA's funds that remains in Plum Healthcare's main operating account (along with revenues from other facilities), there is no expectation that such balance will ever be "zeroed out" so that SPA will regain possession of its money. (DT (Pugh) at 47:16-48:10; 49:5-19.) The maintaining of these ledgers does nothing to change the fact that SPA does not possess any of its funds and that its funds are used for the benefit of other facilities.

[22] The closest the ASA comes to touching on the issue of SPA's own potential borrowing needs is in Schedule 1, Section 3, "Accounts Payable," where it states, in part, that "[Plum Healthcare] shall be responsible for . . . [m]anaging and paying . . . debt service payments . . . before delinquency or penalty." (Ex. 116 at 8.) Nowhere in the ASA does SPA agree that in exchange for allowing Plum Healthcare to use SPA's revenue to pay down the line of credit used to benefit *other* facilities, Plum Healthcare, in turn, will borrow on behalf of SPA if SPA should ever fall in a cash flow negative or unprofitable status. Such an unwritten arrangement can hardly be characterized as a mere "administrative service" or one agreed to by independent companies.

financing of its skilled nursing facilities *on an enterprise-wide* basis.[23] Tellingly, under the "system," SPA had no say in whether to participate in the line of credit or to pledge all of its receivables as collateral, and no administrator in the Plum Enterprise has attempted negotiate their involvement in the line of credit. (DT (Terry) at 36:21-25; (Ballif) at 112:8-22.)

The Court's conclusion remains that the Plum Corporate Defendants have "commingled" SPA's funds with that of other companies and have treated SPA's funds as their own within the meaning of the alter ego analysis. The Court finds that these two factors strongly support finding that the Plum Corporate Defendants are alter egos of SPA.

2. Failure to Obtain Authority to Issue Stock.

Plaintiffs argue that the Plum Corporate Defendants have "failed to issue ownership interests" thereby supporting a finding of alter ego. (Plaintiffs' Opening at 13:14-15:2.) In *Associated Vendors*, the Court of Appeal indicated that among the factors pertinent to the alter ego determination is "the failure to obtain authority to issue stock or to subscribe to or issue the same." *Associated Vendors, supra,* 210 Cal.App.2d at 838 (citations omitted). Plaintiffs argue that there are "no separate, individualized, or autonomous membership interests" in SPA or any of the other Defendants; that all of the Defendants are limited liability companies with just a single member in their chain of ownership; and that they had no ability to independently raise capital by issuing membership interests — all of which constitute facts that Plaintiffs contend fall under this factor and support a finding of alter ego. (Plaintiffs' Opening at 14:7-25.)

The Court finds that this factor, as articulated by the Court of Appeal in *Associated Vendors*, does not directly apply to this case in that all Defendants are limited liability companies which by their nature, do not issue stock or engage in a reasonably analogous activity. *See* Cal. Corp. Code §17100 (person may acquire membership interest "directly from the limited liability company" or as "assignee" of a membership interest). Without question, the ownership structure of and organizational relationship among all Defendants is of significant relevance to the alter

[23] From the sole standpoint of efficiency, the Plum Corporate Defendants' "system," including the extent and particular manner in which they have employed certain "concentration banking" methods, may very well be an effective way for them to maintain financial management and control of all the skilled nursing facilities in the Plum Enterprise. But efficiency and economies of scale to do not negate or otherwise determine whether the indicia of alter ego are also present.

ego analysis. Also relevant is the Plum Enterprise's use of single-member limited liability companies in a chain of ownership leading from SPA up to Bay Bridge, so that Bay Bridge effectively owns the entire Plum Enterprise. (RT at 8:14-21; 37:17-45:10; DT (Ballif) at 72:11-13; 73:9-10; Ex. 5.) However, while such evidence is relevant to the alter ego analysis, the Court finds that this specific factor listed in *Associated Vendors* does not speak to that evidence.[24] As such, the Court finds that the failure to issue stock, per se, is not at issue supporting alter ego in this case.

3. Representation of Liability for Debts of Corporation.

Plaintiffs argue that the Plum Corporate Defendants hold themselves out to SPA, other Plum Enterprise skilled nursing facilities, and the community at large as entities that will cover the debts of the Plum Enterprise facilities, and that this supports a finding of alter ego. (Plaintiffs' Opening at 16:1-3.) The Court of Appeal in *Associated Vendors* indicated that among the factors relevant to the alter ego determination is "the holding out by an individual that he is personally liable for the debts of the corporation." *Associated Vendors, supra,* 210 Cal.App.2d at 838 (citations omitted).

As applied to this case, this factor focusses on whether the Plum Corporate Defendants hold themselves out as liable for the debts of SPA. The general principle is that "it would be unjust to permit those who control companies to treat them as a single or unitary enterprise and then assert their corporate separateness to commit frauds and other misdeeds with impunity." *Las Palmas Associates v. Las Palmas Center Associates* (1991) 235 Cal.App.3d 1220. As discussed earlier, it is *not* necessary to demonstrate actual fraud, wrongful intent, conduct amounting to bad faith, or that the purpose of organizing the corporations was to defraud. *Misik, supra,* 197 Cal.App.4th at 1074 (no requirement of fraud); *Relentless Air Racing, supra,* 222 Cal.App.4th at 816 (no requirement of wrongful intent); *Triyar Hospitality Management, supra,* 57 Cal.App.5th at 642 (no requirement of bad faith); *Kohn, supra,* 95 Cal.App.2d at 718 (no

[24] In *Associated Vendors*, the Court of Appeal did not exclude consideration of other evidence beyond its listed factors. For instance, limited liability companies (like each of Defendants in this case) were not yet recognized in California in 1962, when *Associated Vendors* was decided. Depending on its nature, evidence that may be unique to the structure and use of limited liability companies may be equally relevant to the alter ego analysis as evidence directly related to the *Associated Vendors* factors.

requirement of purpose to defraud). Importantly, for this factor, the question is whether one company *holds itself out,* or in other words, *represents* that it will stand liable for the debts of another where it suits its interests to do so.

Interestingly, the evidence relevant to this factor not only suggests that the Plum Corporate Defendants represent to others that they will ensure that all liabilities and debts of SPA are paid, but indicates that some Plum Enterprise employees believe that the Plum Corporate Defendants are actually obligated to do so. For instance, Renee Pugh, Plum Healthcare's Controller, testified that the Plum Corporate Defendants would "be *contractually obligated* to cover a judgment that SPA incurred." (RT at 380:19-24; 405:2-5 (emphasis added).) When asked directly whether "Plum is contractually obligated" to "pay *any liability* of Sacramento Post-Acute," Pugh responded: "That's my understanding. I can't quote an agreement, but that's the way it has always worked in principal." (RT at 405:19-27 (emphasis added).) Further, Pugh believed that the Plum Corporate Defendants' responsibility to ensure SPA's payments of its liabilities and debts did not depend on what resources SPA had on its own, but exists even where "there could be obligations that a facility has that's greater than what it's bringing in in service receipts in any period of time." (RT at 407:7-17.) As whether the Plum Corporate Defendants may decide what to pay, Pugh stated: "It's not whatever Plum deems appropriate, but it's, you know – it's honoring the obligations of all of the facilities, and it's a treasury mechanism for that to happen seamlessly." (RT at 407:18-408:1.)

However, when explored further, Pugh did not know whether there is any contract that requires the Plum Corporate Defendants to pay any liability or debt of SPA. (RT at 406:12-408:6.) And notwithstanding Pugh's understanding, the Plum Corporate Defendants clearly do not concede that they are required to "pay *any liability* of Sacramento Post-Acute," including for instance, potential adverse creditor's claims or judgments. At minimum, the evidence certainly suggests that the Plum Corporate Defendants have represented that they would do so even to the extent that their own employees have gained such understanding. Therefore, the Court finds that this factor lends support for finding that the Plum Corporate Defendants are alter egos of SPA.

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4. Failure to Maintain Minutes or Corporate Records.

Plaintiffs argue that SPA's failure to maintain meeting minutes supports the finding of alter ego in this case. (Plaintiffs' Opening at 16:20-17:23.) In *Associated Vendors*, the Court of Appeal indicated that among the factors relevant to the alter ego determination is "the failure to maintain minutes or adequate corporate records." *Associated Vendors, supra,* 210 Cal.App.2d at 838 (citations omitted). Defendants point out that under California Corporations Code section 17703.04(b), "the failure to hold meetings of members or managers or the failure to observe formalities pertaining to the calling or conduct of meetings shall not be considered a factor tending to establish that a member or the members have alter ego or personal liability for any debt, obligation, or liability of the limited liability company where the articles of organization or operating agreement do not expressly require the holding of meetings of members or managers." Defendants argue that neither SPA's articles of organization or its operating agreement require meetings or minutes. (Defendants' Closing at 21:26-28.) Plaintiffs reply that it was SPA's "policies and procedures" (not its articles of organization or operating agreement) that required SPA to hold meetings and maintain minutes and that skilled nursing facilities are required to carry out their policies and procedures as written. (Plaintiffs' Rebuttal at 9:8-16 (citing 22. C.C.R. § 72521).)

The Court is not persuaded by Plaintiffs' argument as to this factor. As noted earlier, limited liability companies were not recognized in California at the time *Associated Vendors* was decided. After California law began recognizing limited liability companies, Corporations Code section 17703.04(b) restricted those circumstances where failure to hold meetings may be used to support alter ego liability to those in which the articles of organization or operating agreement requires them. Here, the Court finds no evidence that SPA's articles of organization or operating agreement expressly required the holding of meetings of members or managers. While SPA's compliance with its own policies and procedures may have general relevance to the alter ego analysis, such evidence does not fit within this factor. Therefore, the Court finds that this factor, in itself, does not support a finding of alter ego in this case. The Court's overall alter ego analysis does not rely upon evidence precluded by Corporations Code section 17703.04(b)

5. Identical Equitable Ownership in Entities.

Plaintiffs argue that the ownership in each of Defendants was identical and that it remained identical regardless of the various purchase and sale transactions involving Plum thereby supporting a finding of alter ego. The Court of Appeal in *Associated Vendors* indicated that among the factors relevant to the alter ego determination is "the identical equitable ownership in the two entities." *Associated Vendors, supra,* 210 Cal.App.2d at 839 (citations omitted). In opposition, Defendants point to how, for instance, Ballif and Hubbard's ownership percentage in Bay Bridge changed from 2014 to 2016 to 2017 according to Plaintiffs' documentation. (Defendants' Closing at 23:20-28.)

The Court finds that the evidence in this case supports a finding of alter ego under this factor. Importantly, this factor focusses on "identical equitable ownership in the [multiple] *entities*" at issue. *Associated Vendors, supra,* 210 Cal.App.2d at 839 (emphasis and brackets added). Here, the entities at issue are Bay Bridge, Plum Healthcare, the Holding Company Defendants, and SPA. As explained in detail earlier, Bay Bridge is "the ultimate ownership for all of the entities" and the "ultimate parent" company of the Plum Enterprise. (DT (Ballif) at 72:11-13; 73:9-10.) As of the beginning of 2014, Bay Bridge effectively owned a 100% interest in SPA. (RT at 366:12-27.) Similarly, through multiple levels of single-member limited liability companies, Bay Bridge effectively owns Plum Healthcare and each of the Holding Company Defendants. (DT (Ballif) at 228:19-23: RT at 8:14-21; 37:9-45:10; Ex. 5.)

The fact that Bay Bridge's own ownership percentages changed as investors, such as GI Partners, re-entered the Plum Enterprise in 2015, is inapposite to this factor. Indeed, it appears that the ownership structure of the Plum Enterprise and its multiple levels of single-member limited liability companies was constructed so as to enable an ownership change at only the Bay Bridge level to effectuate simultaneously an identical effective ownership change for Plum Healthcare, the Holding Company Defendants, and SPA — and for that matter, all of the other entities in the entire Plum Enterprise. The Court finds that for purposes of alter ego analysis, identical equitable ownership exists among all Defendants and therefore, this factor supports finding that the Plum Corporate Defendants are alter egos of SPA.

6. Domination and Control of Entities.

Plaintiffs argue that the Plum Corporate Defendants exercised and maintained control over SPA such that this factor supports finding alter ego. (Plaintiffs' Opening at 19:2-22:17.) In *Associated Vendors*, the Court of Appeal indicated that among the factors relevant to the alter ego determination is "the identification of the equitable owners [in the two entities] with the domination and control of the two entities." *Associated Vendors, supra,* 210 Cal.App.2d at 839 (citations omitted). In *VirtualMagic Asia, Inc. v. Fil-Cartoons, Inc.* (2002) 99 Cal.App.4th 228, the Court of Appeal examined the application of alter ego to parent and subsidiary corporations for purposes of establishing personal jurisdiction over the parent. The court acknowledged that "[n]o single factor is determinative, and instead a court must examine all the circumstances to determine whether to apply the doctrine." *Id.* at 245 (citing *Talbot v. Fresno Pacific Corp.* (1960 181 Cal.App.2d 425, 432. In discussing the particular factor of control, the court stated: "[T]he principal/agent theory [for personal jurisdiction] is a fact-driven inquiry that requires examination of whether the parent exercises a sufficient degree of control over its subsidiary to establish that the subsidiary can be described as a means through which the parent acts, or is nothing more than an incorporated department of the parent. . . . It is the nature of the control exercised by the parent over the subsidiary that is crucial, because some degree of control is an ordinary and necessary incident of the parent's ownership of the subsidiary." *Id.* (citing *Sonora Diamond Corp., supra,* 83 Cal.App.4th at 541-42.) (brackets added). The Court of Appeal added that it is "[o]nly when the degree of control exceeds this level and reflects the parent's purposeful disregard of the subsidiary's independent corporate existence that the principal/agent theory will be invoked." *Id.*

Defendants argue that the absence of the Plum Corporate Defendants' domination and control over SPA is supported by the facts that Plum Healthcare "exists to provide primarily non-clinical administrative services" to SPA; "[t]here is no evidence that Plum Branch Presidents directed any health care at SPA"; and "[t]here is no evidence the holding companies directed decisions at PHG or at SPA." (Defendants' Closing at 25:20-26:24.) Defendants assert that "each of the companies had specific roles and specific legal and practical business purposes."

(Defendants' Closing at 27:11-12.)

The Court finds substantial evidence indicating that the Plum Corporate Defendants had domination and control over SPA within the meaning of the alter ego analysis. Defendants' argument that the Plum Corporate Defendants have not directed health-care-related decisions at SPA does not dispense with the question of whether the Plum Corporate Defendants exercised domination and control over SPA sufficient to satisfy the alter ego analysis. Nor is the characterization of Plum Healthcare as providing merely "administrative services" accurate. The Court finds that the Plum Corporate Defendants exercised domination and control over SPA by imposing the Plum Enterprise operating model onto SPA; by their power over and expectations imposed upon SPA and its Administrator; by their oversight, approval and modification of SPA's operating budget; and most importantly, by their substantial financial relationship with SPA including day-to-day financial control over SPA.

As described earlier, as a skilled nursing facility within the Plum Enterprise, SPA operates as part of the Plum Enterprise's "distinctive operating model," which includes the goal of "grow[ing] market share of high acuity referrals," meaning "taking on patients that . . . have a higher acuity, who are increasingly sicker." (DT (Ballif) at 191:22-192:15.) As Ballif explained, the Plum Enterprise's intent in having SPA and its other skilled nursing facilities take on higher acuity patients was in part due to the fact that "those higher acuity referrals . . . also have a corresponding higher rate of . . . reimbursement associated with them because . . . you're providing more services." (DT (Ballif) at 192:16-19.) As Ballif stated, "those referrals . . . are very attractive for a business. . . . And so that's . . . the rationale for us." (DT (Ballif) at 192:20-22.) Therefore, it is clear that SPA's business model is entirely decided by Ballif and the other owners of the Plum Enterprise and is not decided by SPA as a separate and independent business from the Plum Corporate Defendants.

Further, as explained above, David Terry was SPA's Administrator and its highest ranking employee in 2014. (DT (Terry) at 10:25-11:9.) Terry answered to Aaron Edmonds, who held the position of Plum Branch President for SPA and as such, had the authority to terminate Terry's employment with the input of Plum CEO, Toby Tilford. (DT (Edmonds) at 23:23-24:11;

(Ballif) at 41:4-43:12.) At that time, Edmonds and Tilford were the officers within the Plum Enterprise that had authority to hire and fire administrators at the Plum Enterprise skilled nursing facilities that were within their assigned region which included SPA. (DT (Ballif) at 43:13-20.) Edmond's duties as Plum Branch President included monitoring SPA's performance through an intranet "dashboard" that contained SPA's census and other financial information. (DT (Edmonds) at 38:19-39:20; (Hubbard) at 114:7-116:8.) Thus, Plum Enterprise corporate officers ultimately had oversight over both Terry and SPA's operations.

As part of their duties, Edmonds and Tilford were also responsible for reviewing and approving the budgets for each skilled nursing facility within their region including SPA's budget. (DT (Edmonds) at 53:6-54:6.) Ultimately, the budget of SPA and all other skilled nursing facilities within the Plum Enterprise were "rolled up" and consolidated for review by Bay Bridge at its board meeting. (DT (Kreter) at 32:10-22.) Prior to presenting the budgets for the Bay Bridge board's review, Hubbard's normal practice was to change the consolidated budgets from the skilled nursing facilities (including SPA's budget) by increasing the labor in the budgets and decrease the revenue in the budgets. (RT at 610:20-611:6.) Hubbard would routinely and downwardly adjust the facility budgets (including SPA's budget) from 10% to 15% but would not inform Terry and other administrators at the facilities that he had made this adjustment to their budgets. (RT at 612:7-22.) Thus, despite Terry's trial testimony that no one ever approved his budget for SPA and perhaps unbeknownst to him, SPA's budget was subject to multiple layers of review and modification in the Plum Enterprise structure. (*See* RT at 457:6-17; 478:9.)[25]

Once SPA's budget was approved, in his position as Branch President for SPA, Edmonds made it clear that "meeting budget was a job expectation for the administrator." (DT (Edmonds)

[25] As noted earlier, at his deposition, Terry acknowledged that it "made sense" that Edmonds and Tilford (as Branch President and CEO, respectively) approved SPA's budget. (RT at 478:7-480:22.) But at trial, Terry testified definitively that no one had ever approved his budget for SPA. (RT at 457:6-17; 478:9.) Terry attributed his trial testimony to clarifications that he gained from the time he has since spent "working on this case" and having sent in discovery responses. (RT at 479:17-480:2.) The Court finds that Terry's testimony given at deposition on September 26, 2019, to be the most candid and accurate account of Terry's knowledge and/or lack thereof regarding the Plum Corporate Defendants' relationship with SPA during Terry's eight-years of service as SPA's Administrator. In contrast, clarity obtained through and due to the process of litigation is an understanding clarified or developed *after the fact*.

at 44:8-12; 58:9-11.) Further, this expectation was directly reflected in Terry's compensation given that in 2014 (and up to 2016), Terry received an annual bonus calculated as 15% of SPA's annual distributable income. (DT (Terry) at 46:18-22.) Not only was the Plum Enterprise's bonus to Terry based upon SPA meeting or outperforming its budget, but Terry's bonus was a substantial portion of his income in that 30% to 60% of Terry's annual income came from his bonus. (DT (Terry) at 48:17-49:2.) Therefore, irrespective of directing patient care, these financial incentives/disincentives reflect the Plum Corporate Defendants' influence over SPA.

While these influences over SPA and its Administrator are substantial by themselves, an even greater indication of the Plum Corporate Defendants' domination and control over SPA is their day-to-day financial relationship to SPA. Defendants characterize the Plum Corporate Defendants' financial relationship with SPA as defined by a single written contract, the ASA (Administrative Services Agreement, made June 1, 2013), entered into only by Plum Healthcare and SPA under which Plum Healthcare provides a listed scope of "administrative services" to SPA. (Ex. 116.) Similarly, at trial, Terry conservatively described Plum Healthcare as follows: "Plum Healthcare is a services organization that I retained for different services that I either did not have the expertise to perform or felt was better outsourced to them." (RT at 446:7-10.) The entirety of the relationship, however, was much more than that.

The circumstances surrounding how Plum Healthcare and the Plum Enterprise's skilled nursing facilities enter the ASA signals the Plum Corporate Defendants' domination and control over SPA. As Ballif explained, the language used in the ASA is *identical* for all of the skilled nursing facilities in the Plum Enterprise and *no facility has attempted to opt out* of entering into such agreement with Plum Healthcare. (DT (Ballif) at 88:2-21.) Similarly, as the Plum Branch President for SPA, Edmonds understood that in 2014, all Plum skilled nursing facilities were *required to enter* into the ASA with Plum Healthcare. (DT (Edmonds) at 72:8-12.) The ASA was prepared by Plum Healthcare's legal counsel and Plum Healthcare set the price that each facility would pay pursuant to the ASA. (DT (Ballif) at 89:16-90:6; (Edmonds) at 72:13-18.)

Indeed, prior to trial, Terry gave deposition testimony entirely consistent with this reality. For instance, Terry did not know whether SPA had the option to hire a different company, other

than Plum Healthcare, to provide administrative management services. (DT (Terry) at 72:18-23.) Terry did not conduct any market comparisons to see if there was another competing management company that could provide the same services to SPA but at a more affordable rate. (DT (Terry) at 72:24-73:2.) Terry never negotiated any terms of the ASA or inquired of Plum Healthcare whether he had the opportunity to do so. (DT (Terry) at 73:3-23.) Hence, it is abundantly clear that the Plum Corporate Defendants *expected and required* SPA to enter into the ASA. Needless to say, the idea of SPA finding an alternative administrative service provider *other than Plum Healthcare* was not an option. Thus, the ASA was plainly not the product of a negotiated arm's length transaction between two independent companies. Rather, the Plum Corporate Defendants' requirement that SPA enter into the ASA was a "purposeful disregard of the subsidiary's *independent* corporate existence." *VirtualMagic, supra,* 99 Cal.App.4th at 245 (emphasis added).

But the Plum Corporate Defendants' domination and financial control over SPA did not end with entering into the ASA; rather, the evidence demonstrates that it *began* there. The Court's earlier discussion regarding the Plum Corporate Defendants' commingling of SPA's funds and treatment of SPA's assets as their own applies equally here as demonstrating the Plum Corporate Defendants' domination and financial control over SPA. (*See* Section IV, B, 1, *supra.*) The facts demonstrating the Plum Corporate Defendants' commingling of SPA's funds and treatment of SPA's assets as their own also do not describe independent companies operating at arm's length whereby one merely provides specified "administrative services" to the other for a negotiated price. And tellingly, none of the details of the Plum Corporate Defendants' specific handling and use of SPA's funds appear anywhere in the ASA between Plum Healthcare and SPA. (Ex. 116.) Again, these facts demonstrate the "purposeful disregard of the subsidiary's independent corporate existence" and a nature and degree of financial control that is far beyond the "degree of control [that is] an ordinary and necessary incident of the parent's ownership of the subsidiary." *VirtualMagic, supra*, 99 Cal.App.4th at 245 (brackets added).

Yet, the overwhelming evidence of the Plum Corporate Defendants' domination and control over SPA still does not end there. Although Terry was SPA's Administrator and its

highest-level employee for eight years (from November 2011 to November 2019) Terry had limited-to-no knowledge or involvement regarding many aspects of SPA's day-to-day financial operation and status. (RT at 444:24-445:2; 474:16-21.) This ignorance was not simply due to the fact that SPA contracted for Plum Healthcare to handle "administrative services," such as processing SPA's vendor payments and SPA's payroll. Terry's level of ignorance reached the most *fundamental* financial aspects of any *independent* business.

For example, Terry was ignorant regarding SPA's basic revenue intake such that if SPA received a payment from Medicare for patient care, Terry did not know where that money would actually go. (DT (Terry) at 32:1-8.) Terry believed that SPA had a bank account at Wells Fargo, but he did not have access to withdraw money from that bank account. (DT (Terry) at 32:15-25.) Terry did not know the balance of SPA's own bank account nor could he recall ever seeing a bank statement for SPA's account. (DT (Terry) at 33:25-34:14.) Terry did not know that SPA's revenues went into a "zero balance" account from which all funds were swept out on a daily basis. (DT (Terry) at 35:3-10.)

Nor did Terry know any specifics regarding how SPA's revenue is actually used. For instance, Terry did not know that after it is swept out of SPA's bank account each day, SPA's revenue is then moved into a "lock box" account maintained by Plum Healthcare for payment of the Plum Enterprise's line of credit, or that the Plum Enterprise had a line of credit for its operations at all. (DT (Terry) at 36:5-19.) Terry was never involved in any decision and had no say regarding whether SPA wanted to participate in the line of credit. (DT (Terry) at 36:21-25; (Ballif) at 112:8-17.) Terry was not aware that all SPA's receivables had been pledged as collateral for Plum Enterprise's line of credit. (DT (Terry) at 37:1-6.) Terry was not aware that SPA pays fees and costs related to the Plum Enterprise's maintenance of the line of credit. (DT (Terry) at 38:18-25.) To Terry's knowledge, SPA has never used any part of the line of credit for its own operations. (DT (Terry) at 39:16-18.)

Terry's ignorance also extended to fundamental questions such as what happens to SPA's profits. Terry knew that SPA generated profits while he was Administrator, but did not know where the profits went after SPA generated them or whether there was any requirement within

the Plum Enterprise that such profits be used for SPA's operations. (DT (Terry) at 40:6-22; 41:11-24) Terry had never seen a general ledger that documented financial transactions between SPA and Plum Healthcare. (DT (Terry) at 43:2-.14.) Nor was Terry aware of the existence of any intercompany general ledger that documents the financial transactions between his company and Plum Healthcare. (DT (Terry) at 43:16-20.)

Terry was also ignorant of the circumstances regarding how SPA was located in its own facility. That is, Terry was told that SPA actually owned the building in which it operated. (DT (Terry) at 68:21-69:2.) At the same time, Terry did not know why SPA paid rent to use its building. (DT (Terry) at 70:9-14.) Terry believed there was a lease agreement to which SPA was a party, but he had never read the lease, did not negotiate the lease, and did know who negotiated the lease on SPA's behalf. (DT (Terry) at 70:16-71:2.) Terry did not know the identity of the other party (the landlord) to SPA's lease.[26] (DT (Terry) at 71:3-5.) Also, Terry did not know or recall who owned SPA (i.e., members of Oleander Holdings, LLC) or who SPA's managers were. (DT (Terry) at 12:19-14:15; 17:8-18.)

The extent and nature of Terry's ignorance of his own business's day-to-day financial operation and status are a clear indication of the Plum Corporate Defendants' domination and control over SPA. Under normal circumstances, the highest-level employee of any independent business would know the basic and fundamental financial aspects of his/her business irrespective of whether they use a third party vendor to assist with payroll processing, bookkeeping and other administrative services. But here, under the circumstances, Terry's ignorance of SPA's fundamental financial operation and status cannot be attributed to any individual failure on his part. Rather, it is an intentional product of design. SPA's ongoing financial operation and status is the concern of, and is thereby controlled by, the Plum Corporate Defendants.

In sum, the Court finds substantial evidence indicating the Plum Corporate Defendants'

[26] Defendants do not provide any reasonable explanation for the significant extent of Terry's ignorance regarding SPA's day-to-day financial operation and status. As to SPA's lease, to the extent that the position of SPA's Administrator can be analogized to the highest-level manager position of a company that is owned by a different person, it is plausible that the lease would be negotiated and entered into directly by the company owner and not necessarily by the manager on behalf of the owner. But even in such instance, the manager of an autonomously-operating business would have basic knowledge regarding the company's lease given that it governs the use of the business facility.

domination and control over SPA. While "some degree of control is an ordinary and necessary incident of the parent's ownership of the subsidiary," the Court finds that the nature of control exercised by the Plum Corporate Defendants over SPA far exceeds this level and reflects the Plum Corporate Defendants' purposeful disregard of SPA's independent corporate existence. *VirtualMagic, supra,* 99 Cal.App.4th at 245. Indeed, although the Plum Corporate Defendants may not have directed health care decisions for SPA residents, their day-to-day domination and control over SPA as described above demonstrates that SPA functions akin to "nothing more than an incorporated department of the parent." *Id.* Therefore, the Court finds that this factor strongly supports finding that the Plum Corporate Defendants are alter egos of SPA.

7. Directors and Officers in Responsible Supervision and Management.

Plaintiffs argue that the Plum Corporate Defendants and SPA have similar managers and officers such that this factor supports a finding of alter ego. (Plaintiffs' Opening at 22:17-23:21.) The Court of Appeal in *Associated Vendors* indicated that among the factors relevant to the alter ego determination is the "identification of the directors and officers of the two entities in the responsible supervision and management." *Associated Vendors, supra,* 210 Cal.App.2d at 839 (citations omitted). Plaintiffs argue that Ballif and Hubbard were the sole managers of all Defendants in 2014. (Plaintiffs' Opening at 23:6-10.) Plaintiffs add that SPA, OpCo Hold and Cal OpCo had identical officers; that Plum Healthcare had very similar officers (though not identical); and that Bay Bridge, New Sisu and Flower Farm did not identify officers, which meant that they operated through Ballif and Hubbard. (Plaintiffs' Opening at 23:11-19.) Defendants assert that the "directors and officers" of the limited liability companies are "different at the different levels" and that no one at Bay Bridge or Plum Healthcare directed SPA's operations. (Defendants' Closing at 28:25-29:17.)

As discussed earlier, limited liability companies were not yet recognized in California at the time *Associated Vendors* was decided. This factor, as stated, contemplates a corporate board of directors and officers and is premised upon the scope of responsibility and control that persons in those positions normally would have over a corporation. A limited liability company, in comparison, typically has "managers" who, pursuant to the company's operating agreement, are

responsible for performing certain management functions for the company. *See* Cal. Corp. Code § 17701.02(n). The Court finds this distinction to be slight such that this *Associated Vendors* factor is readily transferable to the analysis of alter ego in the limited liability company context.

As Ballif described, in 2014, he was a manager in all of Defendants, including SPA and all of "the upstream entities, up and through and including Bay Bridge Capital Partners, LLC." (DT (Ballif) at 25:9-18.) Along with Ballif, Hubbard was also a manager of Bay Bridge, Plum Healthcare, New Sisu, and Flower Farm, among other entities. (DT (Ballif) at 129:1-4; 134:16-135:18; 139:23-140:4; 140:11-141:1.) This was entirely consistent with the fact that Bay Bridge's ownership group delegated to Hubbard and Ballif the responsibility of carrying out its wishes in the Plum Enterprise. (RT at 577:15-578:16.) As for "officer" positions, SPA, OpCo Hold and Cal OpCo had identical officers: Joseph Alegre, Nick Anderson, Dan Funk, Renee Pugh and Toby Tilford. (DT (Ballif) at 153:11-155:15; Ex. 5.) Similarly, Plum Healthcare's "officers" were Joseph Alegre, Nick Anderson, Dan Funk, Will Huish, Renee Pugh and Toby Tilford. (Ex. 5.)

The Court finds that Ballif and Hubbard's role as limited liability company managers throughout the Plum Enterprise organizational structure, including for each Defendant in this case as of 2014, constitutes identical leadership in the responsible supervision and management for purposes of the alter ego analysis. Further, the identical or nearly identical composition of "officers" for each of Defendants only bolsters this finding. Therefore, the Court finds that this factor under *Associated Vendors* lends support to the finding that the Plum Corporate Defendants are alter egos of SPA.

8. Sole Ownership of All Stock in a Corporation.

Plaintiffs argue that Bay Bridge's sole ownership of every entity within the Plum Enterprise, including all other Defendants, supports a finding of alter ego under this factor. In *Associated Vendors*, the Court of Appeal indicated that among the factors relevant to the alter ego determination is the "sole ownership of all of the stock in a corporation by one individual or the members of a family." *Associated Vendors, supra,* 210 Cal.App.2d at 839 (citations omitted). As explained earlier, this analysis applies the same where the inquiry is the ownership

by one company over other companies, as opposed ownership held by individual persons. *McLoughlin, supra,* 206 Cal.App.2d at 851. Also, although *Associated Vendors* did not contemplate limited liability companies which do not have stock, the Court finds that this factor focuses on the ownership of a company which is readily transferable to the analysis of alter ego in the limited liability company context.

As discussed in detail earlier, Bay Bridge is effectively the sole owner of the entire Plum Enterprise. As Ballif explained, Bay Bridge is "the ultimate ownership for all of the entities" and the "ultimate parent" company of the Plum Enterprise. (DT (Ballif) at 72:11-13; 73:9-10.) Through multiple levels of single-member limited liability companies, Bay Bridge effectively and solely owns SPA, Plum Healthcare and each of the Holding Company Defendants. (DT (Ballif) at 228:19-23; RT at 8:14-21; 37:9-45:10; RT at 366:12-27; Ex. 5.) Therefore, the Court finds that this factor supports finding that the Plum Corporate Defendants are alter egos of SPA.

9. Same Offices or Business Location; Same Employees and Attorneys.

Plaintiffs argue that Defendants' use of the same offices and same attorneys supports a finding of alter ego in this case. (Plaintiffs' Opening at 24:12-26:1.) The Court of Appeal in *Associated Vendors* indicated that among the factors relevant to the alter ego determination is the "use of the same office or business location; [and] the employment of the same employees and/or attorney." *Associated Vendors, supra,* 210 Cal.App.2d at 839 (brackets added; citations omitted). Defendants argue that SPA and Plum Healthcare had different office locations and that Defendants used many different attorneys. (Defendants' Closing at 30:1-27.)

The undisputed evidence demonstrates that Bay Bridge, Plum Healthcare, and each of the Holding Company Defendants, i.e., Flower Farm, New Sisu, OpCo Hold, and Cal OpCo, use the same business office – 100 E. San Marcos Blvd., Suite 200, San Marcos, CA 92069. (Ex. 123 at 3; Ex. 124 at 9; Ex. 125 at 3; Ex. 126 at 3; Ex. 127 at 5; Ex. 128 at 3.) This is entirely consistent with the facts that Plum Healthcare is simply Bay Bridge's "administrative supporting arm" for the entire Plum Enterprise and that Bay Bridge utilizes each of the Holding Company Defendants for accounting purposes simply to facilitate the operations of the overall Plum Enterprise. (RT at 383:6-9; 422:26-423:6; 38:5-10; 39:4-15; 40:8-10; 41:5-12; 42:4-13; 43:12-24.) Only SPA has a

different business address which is where its physical facility is located, at 5255 Hemlock St., Sacramento, CA 95841. (Exs. 102-106.) As to SPA's separate address, the Court finds that it is not as indicative of corporate separateness as it is of the mere fact that the skilled nursing facilities in the Plum Enterprise, by their nature, are located so as to serve patient bases in different regions. Thus, the Court finds that the evidence provides support for this factor.

The evidence is similarly undisputed that all Defendants use the same attorneys — the only meaningful variation being the subject matter for which they retained counsel. For instance, as Ballif explained, all Defendants use the same attorney for litigation matters that are "resident-related" in State of California. (DT (Ballif) at 202:24-203:11.) Likewise, all Defendants rely upon the same corporate compliance counsel. (DT (Ballif at 199:22-200:13; 201:4-22.) Similarly, Defendants used "lots of different firms over the years" for regulatory matters, human resources, employment-related cases, regulatory advice, and licensing issues, but the commonality is that all Defendants relied upon the same attorneys for each such purposes. (RT at 574:6-575:2.) On the other hand, there is no countervailing evidence, for instance, that SPA hired its own attorneys different than those that were hired by Bay Bridge, or by Plum Healthcare, or by any of the Holding Company Defendants. Nor is there any countervailing evidence that at any time or in any instance (including, but not limited to this case) Defendants maintained adverse claims against each other requiring the retention of independent counsel. Therefore, the Court finds that this factor lends support to finding that the Plum Corporate Defendants are alter egos of SPA.

10. Failure to Adequately Capitalize; Undercapitalization.

Plaintiffs argue that the Plum Corporate Defendants failed to adequately capitalize SPA at the outset and that SPA remains undercapitalized thereby supporting a finding of alter ego. (Plaintiffs' Opening at 26:2-28:15.) In *Associated Vendors*, the Court of Appeal indicated that among the factors relevant to the alter ego determination is the "failure to adequately capitalize a corporation; the total absence of corporate assets and undercapitalization." *Associated Vendors, supra,* 210 Cal.App.2d at 839 (citations omitted). In opposition, Defendants principally point to their own statements in the Plum Corporate Defendants' April 2014 proposal regarding their

potential acquisition of Seton Medical Center Coastside, in which they stated that "[o]ver the past 5 years, Plum as invested more than $40 million in growth and maintenance capital expenditures" and "[o]ver the next 5 years, Plum expects to spend $48 million in total capital expenditures." (Defendants' Closing at 32:2-7; 33:8-14; Ex. 143 at 25.) Defendants also point to the Plum Enterprise's $75 million line of credit with Capital One and that SPA has "access" to such funds. (Defendants' Closing at 32:8-18; 33:8-24.)

The Court's earlier discussion regarding the Plum Corporate Defendants' treatment of SPA's funds as their own and the Plum Corporate Defendants' "domination and control" over SPA applies equally here. (*See* Sections IV, B, 1 and 6, *supra.*) That same evidence provides the answer regarding the failure to adequately capitalize and ongoing undercapitalization. By design, on an every-banking-day basis, SPA has no capital in its possession at all. Rather, again by design, SPA's financial needs are met, and only met, by making a request for funds *to Plum Healthcare*, which then may distribute capital back to SPA for its use. The fact that, *so far*, Plum Healthcare may have not yet denied a request from SPA for funds does not alter the fact that SPA is not permitted to maintain its own capital reserves in its own possession.

Defendants' comments regarding the Plum Enterprise's enterprise-wide capital expenditures and its $75 million line of credit merely begs the question of how much capital SPA maintains. The fact that the Plum Corporate Defendants have made capital expenditures throughout the Plum Enterprise *as a whole* does not speak to SPA's initial or ongoing individual capitalization. Similarly, the fact that the Plum Enterprise may steer its line of credit in whatever direction it chooses does not speak to its actual investment of capital in SPA. In fact, to Terry's knowledge, SPA has never used any part of the line of credit for its own operations. (DT (Terry) at 39:16-18.) Indeed, rather than speaking to capitalization, these facts speak loudest to the next *Associated Vendors* factor discussed below. Simply put, the capitalization of SPA does not resemble that of an independent company. Therefore, the Court finds that these factors lend support to finding that the Plum Corporate Defendants are alter egos of SPA.

11. Use of Corporation as a Mere Shell or Instrumentality of Single Venture.

Plaintiffs argue that the Plum Corporate Defendants and SPA are part of a single venture

thereby supporting a finding of alter ego. (Plaintiffs' Opening at 28:26-30:15.) The Court of Appeal in *Associated Vendors* indicated that among the factors relevant to the alter ego determination is 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." *Associated Vendors, supra,* 210 Cal.App.2d at 839 (citations omitted). Under the "single venture" or "single enterprise" rule for finding alter ego, "[t]he theory has been described as follows: "'In effect what happens is that the court, for sufficient reason, has determined that though there are two or more personalities, there is but *one enterprise*; and that this enterprise has been so handled that it should respond, as a whole, for the debts of certain component elements of it. ...[']" *Hasso, supra,* 227 Cal.App.4th at 155 (emphasis added) (quoting *Greenspan, supra,* 191 Cal.App.4th at 512 (internal citations omitted)).

The Court finds overwhelming evidence supporting the conclusion that Defendants collectively operate as a *single enterprise* within the meaning of the alter ego analysis. It is plainly evident that Defendants do not operate as independent enterprises interacting at arm's length and do not have sufficient characteristics of autonomy fundamental to separate enterprises. The evidence includes a plethora of indicia demonstrating the Defendants' collective existence as one enterprise.

a. <u>The Plum Corporate Defendants are Part of a Single Enterprise and Operate as Alter Egos of Each Other.</u>

As a preliminary matter, the Court finds that the evidence establishes that the Plum Corporate Defendants — i.e., Bay Bridge, Plum Healthcare and the Holding Company Defendants (Flower Farm, New Sisu, OpCo Hold, and Cal OpCo) — operate as part of a *single enterprise*. Bay Bridge effectively and solely owns Plum Healthcare and each of the Holding Company Defendants. (DT (Ballif) at 72:11-13; 73:9-10.) Flower Farm and New Sisu were formed as holding companies with a single member (another Plum Enterprise entity) for the purpose of accommodating collateral requirements for loans from the Plum Enterprise's lenders. (DT (Ballif) at 27:21-28:7; 227:16-228:17; *see* Ex. 2.) Bay Bridge organizes its skilled nursing facilities so that each functions under its own operating company and that all such operating

companies were grouped under geographically-designated holding companies, such as California OpCo, LLC, which in turn, were owned by Plum OpCo Holdings, LLC (which later changed its name to OpCo Holdings, LLC). (DT (Ballif) at 144:2-5; RT at 37:20-38:26; 309:13-23; *see* Ex. 4.) As an example of the Bay Bridge's use of single-member limited liability companies to achieve its unitary ownership of all entities, at the time of the time of trial, New Sisu owned Flower Farm, which owned OpCo Hold, which owned Cal OpCo, which owned SPA. (RT at 41:5-12; 148:18-149:3; Ex. 136 at 30.)

Bay Bridge's ownership group delegated to Hubbard and Ballif the responsibility of carrying out its wishes in the entire Plum Enterprise. (RT at 577:15-578:16.) However, Bay Bridge does not have any employees of its own, so if there were any tasks that Bay Bridge needed to perform, it would do so by using Plum Healthcare's employees. (RT at 423:2-6.) Bay Bridge utilizes Plum Healthcare as its "administrative supporting arm" for the entire Plum Enterprise which included the requirement that skilled nursing facilities enter into the uniform and identical ASA with Plum Healthcare. (RT at 383:6-9; 422:26-423:6; DT (Edmonds) at 72:8-12; (Ballif) 88:2-21.) Plum Healthcare's "income" is derived from charging the Plum Enterprise's own skilled nursing facilities pursuant to the ASA and there is no evidence that Plum Healthcare receives any income from sources outside of the Plum Enterprise. (*See* Ex 116 at 3; RT at 426:6-10; 599:16-22; DT (Ballif) at 85:12-86:5.) Bay Bridge also uses Plum Healthcare as its own "cash manager," maintaining at the Plum Healthcare level, the revenue from all of the skilled nursing facilities. (DT (Ballif) at 227:16-229:2.)

As for the Holding Company Defendants, Bay Bridge dominates and controls all of them, utilizing each solely for accounting purposes to facilitate the operations of the overall Plum Enterprise and none of them have independent operations or employees. (RT at 38:5-10; 39:4-15; 40:8-10; 41:5-12; 42:4-13; 43:12-24.) There is no countervailing evidence that any of the Holding Company Defendants received their own capital investment or maintained ongoing capitalization. Indeed, none of the Holding Company Defendants generates any revenue for themselves. (RT at 599:16-22.) If they have any tasks to be performed at all, the Holding Company Defendants accomplish them through their managers and officers which are employees

of Plum Healthcare. (RT at 44:28-45:2.) For federal tax purposes, none of the Holding Company Defendants file tax returns and each of them is treated as a "disregarded entity," indistinct from Bay Bridge. (RT at 45:6-16.) Bay Bridge files a single federal tax return that encompasses all of them. (RT at 44:25-45:7.)

Further, the Plum Corporate Defendants operate out of the same offices and use the same attorneys. (*See* Section IV, B, 9, *supra.*) The Plum Corporate Defendants also had the same limited liability managers (Ballif and Hubbard) and identical or nearly identical "officers" (Alegre, Anderson, Funk, Pugh, Tilford, and Huish). (*See* Section IV, B, 7, *supra.*) And when it suited their interests to do so, the Plum Corporate Defendants described themselves as a single enterprise, making no distinction among Bay Bridge, Plum Healthcare, or the Holding Company Defendants. (*See* Section IV, B, 11b, *infra* (regarding proposed acquisition of Seton Medical Center Coastside; Ex. 143).) In sum, the evidence clearly demonstrates that Bay Bridge exercises significant control over Plum Healthcare and the Holding Company Defendants and that these companies are *not* enterprises that are *independent* from each other. Rather, Bay Bridge uses each of them as an "instrumentality or conduit" for the operation of the overall Plum Enterprise. *Associated Vendors, supra,* 210 Cal.App.2d at 839. The Plum Corporate Defendants are part of a *single enterprise* within the meaning of the alter ego analysis.

Additionally, while evidence of the Plum Corporate Defendants' operation as single enterprise is clear, the Court also finds that the evidence equally satisfies numerous other *Associated Vendors* factors — Bay Bridge's commingling and treatment of assets of the skilled nursing facilities at the Plum Healthcare level; Bay Bridge's identical equitable ownership in Plum Healthcare and the Holding Company Defendants; Bay Bridge's domination and control of Plum Healthcare and the Holding Company Defendants; the same managers and officers for all Plum Corporate Defendants; Bay Bridge's sole ownership of Plum Healthcare and the Holding Company Defendants; the Plum Corporate Defendants' use of the same offices, attorneys and use of Plum Healthcare's employees; and the absence of countervailing evidence that each entity received adequate and ongoing capitalization. *See Associated Vendors, supra,* 210 Cal.App.2d at 838-40. Defendants' arguments that Bay Bridge did not direct how Plum Healthcare should

provide "consulting services" or that Plum Healthcare and the Holding Company Defendants were not created for "improper purposes" do not negate any of the facts that support alter ego.

Overall, the Court finds that Plaintiffs have sufficiently established by a preponderance of evidence that the Plum Corporate Defendants are alter egos of each other under the *Mesler* requirements. The evidence supporting the *Associated Vendors* factors as to the Plum Corporate Defendants demonstrates that there is such a unity of interest and ownership among them that their separate personalities no longer exist for purposes of this case. The evidence establishing the *Associated Vendors* factors also supports the Court's finding that an injustice or inequitable result will occur if alter ego is not found. *See Kao v. Joy Holiday* (2020) 58 Cal.App.5th 199, 206-07 (inference to be drawn from evidence of commingling and treatment of assets sufficient proof of inequitable result). Here, all inferences and demonstrated proof in support of the *Associated Vendors* factors lead to the same inescapable conclusion. As discussed in greater detail herein, because the Plum Corporate Defendants have obtained the benefits of operating the Plum Enterprise as a single enterprise, the only equitable result for purposes of this case is that the Plum Corporate Defendants "should respond, as a whole, for the debts of certain component elements of it." *Hasso v. Hapke* (2014) 227 Cal.App.4th 107, 155. (*See* Section IV, C, 2, *infra.*) Therefore, the Court finds that the Plum Corporate Defendants are alter egos of each other.

b. SPA and the Plum Corporate Defendants are Part of the Same Single Enterprise.

As to the Plum Corporate Defendants vis-à-vis SPA, their collective existence as a single enterprise is evinced initially by the nature of their relationship. The Court's discussion above regarding the Plum Corporate Defendants' "domination and control" over SPA applies equally here. (*See* Sections IV, B, 6, *supra.*) This evidence shows that SPA does not exist independent and autonomous from the rest of the Plum Enterprise.

Defendants argue that the "separate and independent nature of SPA is set out in the ASA." (Defendants' Closing at 34:10-11.) But as discussed earlier, the circumstances surrounding how Plum Enterprise skilled nursing facilities enter into the ASA reveal the opposite of separateness and independence. (*See* Sections IV, B, 6, *supra.*) The ASA is not the product

of a negotiated arm's length transaction between two independent companies. Additionally, Terry was unconcerned that the ASA did not cover additional services that Plum Healthcare provided to SPA and was unconcerned about the potential for additional associated costs. (RT at 477:12-478:6.) This is consistent with the conclusion that SPA had no reason to be concerned because the ASA was never an arm's length transaction to begin with and Plum Healthcare's provision of non-contracted additional services was simply attendant with the single enterprise. The fact that the ASA includes language stating that SPA remains responsible for facility operation does not negate the fact that SPA functions as part of a single enterprise. It simply supports the reality that SPA, like all of the Plum Enterprise skilled nursing facilities, is the *cash-generating component* of the overall single enterprise. (RT at 599:13-26.) That the Plum Corporate Defendants may not have also directed patient care is not determinative of alter ego.

Additionally, the Court's earlier discussion of the Plum Corporate Defendants' commingling and treatment of SPA's funds as their own is equally indicative of all Defendants operating as a single enterprise. (*See* Section IV, B, 1, *supra.*) While the Court need not restate those facts here, it warrants adding that Defendants' operation as a single enterprise is the most compelling and logical explanation for the otherwise inexplicable characteristics of the financial relationship between the Plum Corporate Defendants and SPA.

For example, if SPA was truly an independent enterprise, it would not contract with an outside vendor (like Plum Healthcare) for "administrative services" which *include* that vendor *dispossessing* SPA of its revenue every banking day so that the vendor can use SPA's money to pay for the operations of completely *unrelated* businesses (like other skilled nursing facilities) that are also the vendor's clients but are experiencing negative cash flow or are unprofitable. If SPA was truly an independent enterprise, it would not allow its accounts receivable to be *pledged as collateral* by another company (like Bay Bridge) so that such company could obtain a line of credit to finance *unrelated* businesses (like other skilled nursing facilities) in exchange for the hope and expectation that if SPA were to ever need money, the borrower will steer its line of credit toward SPA. If SPA was truly an independent enterprise, it would not allow an outside administrative service provider (like Plum Healthcare) to keep all of SPA's profits in the service

provider's bank account with no expectation that "running balances" of money "due to SPA" would ever be paid back to SPA. If SPA was truly an independent enterprise, its Administrator would know where SPA's revenue goes, would have access to withdraw money from its own bank accounts, would have seen a bank statement for SPA, and would know how SPA's revenue is actually used. If SPA was truly an independent enterprise, its Administrator would have known of and seen a general ledger that documented financial transactions between SPA and its administrative service provider. If SPA was truly an independent enterprise, its Administrator would know whether SPA rents or owns the facility from which it operates and would have read, or at minimum, know the use provisions of the operative lease. If SPA was truly an independent enterprise, its Administrator would know the identity of the owners of the company.

These characteristics of the financial relationship between the Plum Corporate Defendants and SPA are inexplicable *if* SPA is viewed as an independent enterprise whose association with the Plum Enterprise is defined by little more than the ASA and Plum Healthcare's handling of the "administrative services" described on one-and-one-third pages therein. (Ex. 116 at 8-9.) But the inexplicable nature of these characteristics *vanishes entirely* once the Plum Corporate Defendants and SPA are collectively viewed as a *single enterprise*. In fact, they all make perfect sense — everything from the efficient utilization of "concentration banking" practices; to the pooling of funds from all skilled nursing facilities for use on an enterprise-wide basis; to the globally-utilized line of credit; to the pledging as collateral the revenue from *all* skilled nursing facilities in the enterprise; to the use of a uniform and required ASA for *every* skilled nursing facility; to the possession and maintaining of all revenue from all facilities in Plum Healthcare's main operating account with no expectation that excess cash be returned to the facilities; to the structure of layers of single-member limited liability companies to achieve the unitary centralization of ownership; to the filing of a single federal tax return for the entire Plum Enterprise; and to the facility-level administrator's ignorance of the most fundamental financial aspects of any independent business. Defendants may be formed as separate companies, but they operate as a single enterprise.

While the evidence discussed thus far is more than enough to establish that Defendants

operate as a single enterprise, the evidence relevant to this factor does not end there. The Plum Corporate Defendants' own personnel operate and describe the Plum Enterprise in a manner *consistent* with the conclusion that Defendants constitute a single enterprise and *inconsistent* with the notion that the skilled nursing facilities such as SPA are autonomous and independent enterprises that by their choice, are connected to the Plum Enterprise by a bargained-for administrative services agreement.

As discussed earlier, Ballif described Bay Bridge as "the ultimate ownership for all of the entities" and the "ultimate parent" company of the Plum Enterprise. (DT (Ballif) at 72:11-13; 73:9-10.) As Hubbard testified, Bay Bridge receives all of the revenue of the Plum Enterprise, which is made up of the revenue generated from all of the skilled nursing facilities including SPA. (RT at 599:13-26.) As Hubbard confirmed, none of the other companies within the Plum Enterprise generates significant revenue for the Plum Enterprise, if any at all. (RT at 599:16-22.) Bay Bridge board meetings included financial decision-making for the entire Plum Enterprise combined including SPA. (Ex. 190.) These explanations from the Plum Corporate Defendants' own personnel are consistent with the conclusion that Bay Bridge and the Holding Company Defendants are not separate enterprises from the skilled nursing facilities. They are all part of a single enterprise and the skilled nursing facilities, like SPA, are the revenue-generating components of that single enterprise.

Similarly, when new investors, such as GI Partners, entered the ownership, they purchased interests in the entire Plum Enterprise, including all of its companies and they did not negotiate or make individual purchases of particular companies within the enterprise. (DT (Park) at 14:1-14.) When a valuation or quarterly report to investors was prepared, "that valuation of Plum is a single valuation based on the entire Plum enterprise." (DT (Park) at 14:10-17.) GI Partners had ongoing quarterly valuations which were "valuations of the overall enterprise." (DT (Kreter) at 65:14-22.) That these valuations were conducted on an enterprise-wide basis is consistent with the Defendants operating as a single enterprise. That is, there was no necessity to treat each skilled nursing facility like SPA as its own *independent* enterprise.

Furthermore, the Plum Corporate Defendants also described their operation as a single

enterprise when it suited their interests to do so. In April 2014, the Plum Corporate Defendants prepared a proposal for the acquisition of Seton Medical Center Coastside, a skilled nursing facility in Moss Beach, California. (DT (Ballif) at 182:16-183:10; Ex. 143). Describing the entire Plum Enterprise (including the Plum Corporate Defendants and all skilled nursing facilities) simply as "Plum," the proposal included an "Overview of Plum" stating, in part, as follows: "*Plum provides* post-acute services *through* skilled nursing facilities . . . 50-facility platform across California, Arizona and Utah . . . 14 owned and 36 leased facilities . . . 5669 licensed beds . . . [a]pproximately 7300 full-time total employees, including 4370 nurses . . . ." (Ex. 143 at 5 (emphasis added).) The proposal describes the Plum Enterprise's "Acquisition History and Milestones" and its "Distinctive Operating Model." (Ex. 143 at 6-8.) The proposal also indicates that the Plum Enterprise has "Fully-Integrated Information Technology Systems" "[d]esigned to provide a highly-scalable solution across a common platform." (Ex. 143 at 12.)

These party-admissions clearly describe the Defendants as an *integrated single enterprise that provides* post-acute services *through* its component skilled nursing facilities. In contrast, nothing in the proposal indicates or in any way suggests that the skilled nursing facilities, such as SPA, are *separate* enterprises that exist and financially operate *independently* from the Plum Enterprise. While SPA and other facilities may make *patient-care-related* decisions independent from the Plum Corporate Defendants, SPA's *financial* operation and existence, as described in detail earlier, is entirely tied to, dependent upon, and ultimately controlled by the Plum Corporate Defendants.

In sum, the Court finds overwhelming evidence that Bay Bridge, Plum Healthcare, the Holding Company Defendants, and SPA operate as a *single enterprise* for purposes of the alter ego analysis. Therefore, the Court finds that this factor strongly supports finding that the Plum Corporate Defendants are alter egos of SPA.

12. Concealment of Identity of Responsible Ownership, Management and Financial Interest.

Plaintiffs argue that Defendants have concealed the ownership of their entities thereby supporting a finding of alter ego. (Plaintiffs' Opening at 30:16-33:12.) In *Associated Vendors,*

the Court of Appeal indicated that among the factors relevant to the alter ego determination is the "concealment and misrepresentation of the identity of the responsible ownership, management and financial interest, or concealment of personal business activities." *Associated Vendors, supra,* 210 Cal.App.2d at 839-40 (citations omitted). Plaintiffs point to the Plum Corporate Defendants' failure to identify GI Partners (as well as the Holding Company Defendants and for a period, the Harmon Group) as an "Owner Having a 5% or More Equity Interest" in multiple years of OSHPD reports filed on behalf of SPA. (Plaintiffs' Opening at 31:24-33:12.) Defendants do not dispute that GI Partners and other entities holding ownership interests were not identified on the OSHPD reports or that GI Partners and other entities held more than a 5% equity interest in SPA in each year referenced by Plaintiffs. Instead, Defendants summarily state that the ownership interests in SPA "are well known to the State and Federal agencies" and that "[e]very transaction between the related party is documented in these Cost Reports." (Defendants' Closing at 34:22-25.)

The undisputed evidence demonstrates that Defendants failed to disclose GI Partners and other entities as required under "Names of Owners Having a 5% or More Equity Interest" in SPA as required in section 3.2 of the OSHPD reports. (*See e.g.*, Ex. 103 at 5.) Nor is it disputed that GI Partners and other entities had ownership interests at a percentage that required such disclosure. It is inapposite whether the OSHPD report documents "every transaction between the related party" as Defendants argue. And it is inexplicable why only Ballif and Hubbard were listed as owners having a 5% or greater equity interest in SPA. The Court finds that this factor supports finding that the Plum Corporate Defendants are alter egos of SPA.

13. Disregard of Legal Formalities and Failure to Maintain Arm's Length Relationships Among Related Entities.

Plaintiffs argue that Defendants disregarded legal formalities and failed to maintain arm's length transactions thereby supporting a finding of alter ego. (Plaintiffs' Opening at 33:13-35:20.) The Court of Appeal in *Associated Vendors* indicated that among the factors relevant to the alter ego determination is the "disregard of legal formalities and the failure to maintain arm's length relationships among related entities." *Associated Vendors, supra,* 210 Cal.App.2d at 839-

40 (citations omitted). Plaintiffs argue that there are three examples of transactions between the Plum Corporate Defendants and SPA that demonstrate their failure to maintain arm's length transactions: (1) the ASA; (2) SPA's lease; and (3) the Plum Enterprise's line of credit. (Plaintiffs' Opening at 34:8-35:13.) Defendants argue that the facts of this case are different from the facts of one particular case that found a failure to maintain corporate formalities and arm's length transactions, *Riddle, supra,* 51 Cal.App.2d 574. (Defendants' Closing at 35:5-28.) Defendants next argue that their "related party transactions" for administrative fees and rent charged to SPA "are monitored and known by the State and are identified in annual Cost Reports." (Defendants' Closing at 36:2-13.) Defendants then assert that the amounts that Plum Healthcare charges SPA for administrative services and rent are reasonable and that the line of credit was available to SPA. (Defendants' Closing at 37:1-18.)

The evidence reflects that the Plum Corporate Defendants and SPA have not maintained arm's length relationships within the meaning of the alter ego analysis. The Court's prior discussion applies equally here. In particular, the Court's earlier discussion regarding the Plum Corporate Defendants' commingling of funds and treatment of SPA's assets as their own, the Plum Corporate Defendants' domination and control over SPA, and the operation of the Plum Corporate Defendants and SPA as a single enterprise, most directly demonstrates the failure to maintain arm's length transactions. (*See* Sections IV, B, 1, 6, 11, *supra.*)

Defendants' opposing arguments are unpersuasive. First, the factual differences in this case as compared to *Riddle v. Leuschner* are not dispositive of the alter ego analysis.[27] Second, whether "related party transactions" were reported in SPA's OSHPD reports and were monitored by the state is not determinative given that state agencies that conduct audits for their own circumscribed regulatory purposes have no occasion or reason to analyze the equitable doctrine

[27] At times, both Plaintiffs and Defendants, in their respective post-trial briefing, discuss the specific facts of prior alter ego cases arguing that those courts' observations and conclusions regarding the alter ego analysis should direct this Court's decision in this case. As the Court's discussion should make evident, prior cases identifying types of relevant evidence and general legal principles are instructive. But the Court's analysis in this matter remains specific to the facts in this case and is not directed by attempts to find factually-similar prior cases. Indeed, "[b]ecause it is founded on equitable principles, application of the alter ego [doctrine] 'is not made to depend upon prior decisions involving factual situations which appear to be similar. ... It is the general rule that the conditions under which a corporate entity may be disregarded vary according to the circumstances of each case.'" *Greenspan supra,* 191 Cal.App.4th at 512 (quoting *Las Palmas Associates v. Las Palmas Center Associates* (1991) 235 Cal.App.3d 1220, 1248) (brackets in original).

of alter ego. Finally, Defendants' focus on the argument that Plum Healthcare did not overcharge SPA for administrative services and rent, and that the credit line could be used for SPA, misses the point as to *why* Defendants have failed to maintain arm's length transactions.

For example, as to the ASA, SPA was *required* to accept it; its language was identical for all facilities; no facilities opted out of it; and it was prepared by Plum Healthcare which unilaterally set the price. (DT (Edmonds) at 72-8-18; (Ballif) at 88:2-21; 89:16-90:6.) Once the ASA was entered, Plum Healthcare used it as the tool (well beyond its written terms) to control SPA's finances as part of an *enterprise-wide* financial system, as the Court discussed earlier. SPA and other skilled nursing facilities within the Plum Enterprise could not simply elect to hire an administrative service provider other than Plum Healthcare. These facts are not the indicia of an arm's length transaction where SPA negotiated for and entered into a bargained-for-contract tailored to SPA's demands. The parties' competing expert testimony regarding whether Plum Healthcare also charged a reasonable rate does not change these facts.

Similarly, the circumstances surrounding SPA's lease demonstrate a failure to maintain an arm's length relationship. Terry, though SPA's Administrator, was not involved in the negotiation of SPA's lease and knew nothing about it. (DT (Terry) at 70:16-71:2; 71:3-5.) The reality is that SPA was not involved in negotiating or entering its own lease at all. As Ballif explained, Plum Healthcare negotiated the lease on SPA's behalf where the landlord was one of the Plum Healthcare's "propcos," which are the Plum Enterprise's property holding companies that are owned by Bay Bridge. (DT (Ballif) at 34:24-35:18.) And tellingly, the basis for Plum Healthcare's "authority" to negotiate SPA's lease on SPA's behalf is the ASA – which SPA had no choice but to enter.[28] (DT (Ballif) at 35:9-18; Ex. 116 at 8-9.) Moreover, SPA's rent markedly increased from $33,600 per month to $154,900 per month with no evidence of any related negotiations or any explanation from Plum Healthcare for such a drastic increase. (RT at

[28] Section 1.2 of the ASA states, in part, that "Consultant [Plum Healthcare] does not have the authority to, and will not without Operator's [SPA's] prior approval, enter into, modify, terminate or compromise any right of Operator under any lease or other agreement with any third party in the name of Operator or otherwise regarding the Facility." (Ex. 116 at 1-2 (brackets added).) As to SPA's prior approval to enter into the lease, it was not Terry that gave Plum Healthcare such approval because he had no knowledge regarding the lease at all. Further, even to the extent that the "owners" of SPA might have given such approval to Plum Healthcare, the owners of SPA, Plum Healthcare, and the landlord (the Plum Enterprise "propco" that owns the land and SPA's building) are all the same – Bay Bridge.

434:17-435:25.) Again, these are not the hallmarks of an arm's length transaction, but rather, they suggest the opposite.

Further, the Plum Enterprise's line of credit is yet another example of the failure to maintain an arm's length relationship. As discussed, SPA had no say in participating in the Plum Enterprise's line of credit; SPA had no say in the Plum Corporate Defendants' pledging of all of SPA's accounts receivable as collateral for the line of credit; SPA had no say in the use of its revenues to pay down the line of credit where it is used to finance the operations of other skilled nursing facilities; SPA had no say in paying the fees and costs associated with the line of credit; and SPA has never used the line of credit for its own operations. (RT at 393:18-26; DT (Ballif) at 112:3-17; 113:1-114:7; 120:9-121:9; (Pugh) at 47:8-15; (Terry) at 36:21-25; 37:1-6; 38:18-25; 39:16-18.) While Defendants suggest that the ASA constitutes SPA's agreement to the line of credit, the ASA says nothing of the sort. This was not an arm's length transaction. Whether Defendants believe that the Plum Corporate Defendants will steer the line of credit towards SPA should SPA ever need money is irrelevant to their failure to maintain an arm's length transaction.

In sum, the Court finds that Defendants have failed to maintain arm's length relationships in their dealings with each other. Therefore, the Court finds that this factor strongly supports finding that the Plum Corporate Defendants are alter egos of SPA.

14. Use of Corporate Entity to Procure Benefits for Other Entity.

Plaintiffs argue that the Plum Corporate Defendants use SPA as a conduit to implement their overall business plan to "maximize profits at the expense of patient care." (Plaintiffs' Closing at 35:20-36:6.) In *Associated Vendors,* the Court of Appeal indicated that among the factors relevant to the alter ego determination is the "use of the corporate entity to procure labor, services or merchandise for another person or entity." *Associated Vendors, supra,* 210 Cal.App.2d at 840 (citations omitted). The Court finds that this factor does not apply to the present case. That is, in analyzing whether the Plum Corporate Defendants are alter egos of SPA, this is not a situation, per se, where the Plum Corporate Defendants, or any of them have used SPA "to *procure* labor, services or merchandise" for another company. The Court finds Plaintiffs' argument inapposite to what this factor speaks to. Nor is it the Court's issue in the

bench trial to determine whether the Plum Corporate Defendants have "maximized profits at the expense of patient care."

15. Diversion/Manipulation of Assets.

Plaintiffs argue that the Plum Corporate Defendants moved assets away from SPA to insulate those profits from judgment creditors. (Plaintiffs' Opening at 36:7-37:12.) The Court of Appeal in *Associated Vendors* indicated that among the factors relevant to the alter ego determination is the "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." *Associated Vendors, supra,* 210 Cal.App.2d at 840 (citations omitted). Importantly, the analysis of diversion and alter ego overall does *not* require proof of actual fraud, wrongful intent, conduct amounting to bad faith, or that the purpose of organizing the corporations was to defraud. *Misik, supra,* 197 Cal.App.4th at 1074 (no requirement of fraud); *Relentless Air Racing, supra,* 222 Cal.App.4th at 816 (no requirement of wrongful intent); *Triyar Hospitality Management, supra,* 57 Cal.App.5th at 642 (no requirement of bad faith); *Kohn, supra,* 95 Cal.App.2d at 718 (no requirement of purpose to defraud).

The Court's earlier discussion regarding the Plum Corporate Defendants' commingling of funds and treatment of SPA's assets as their own, the Plum Corporate Defendants' domination and control over SPA, and the operation of the Plum Corporate Defendants and SPA as a single enterprise, applies equally here. (*See* Sections IV, B, 1, 6, 11, *supra.*) As discussed in more detail earlier, by design, Plum Healthcare dispossesses SPA of its revenue every banking day, moving it from bank accounts in SPA's name to bank accounts in Plum Healthcare's name. SPA's funds remain in Plum Healthcare's possession unless and until *Plum Healthcare* decides to move funds back to SPA's accounts, if at all. Indeed, according to the evidence, an adverse judgment creditor attempting to levy on bank accounts in SPA's name would find a "zero balance" in every account. This is the reality regardless of what Defendants argue is stated in SPA's OSHPD reports or tracked in any ledgers. And this remains the reality no matter how much revenue SPA may generate or how profitable SPA may be.

For the reasons more fully discussed above, the Court finds that the Plum Corporate Defendants have diverted assets from SPA to Plum Healthcare to the detriment of creditors. Therefore, the Court finds that this factor strongly supports finding that the Plum Corporate Defendants are alter egos of SPA.

16. Contracting with Another to Avoid Performance by Use of Corporate Entity as Shield Against Personal Liability; Forming Corporation to Transfer Existing Liability.

Plaintiffs argue that these factors support finding alter ego because SPA's business practices were those of the Plum Enterprise and were never intended to provide the level of care for which the Plum Enterprise was compensated. (Plaintiffs' Opening at 38:10-39:6.) In *Associated Vendors*, the Court of Appeal indicated that among the factors relevant to the alter ego determination are the "contracting with another with intent to avoid performance by use of a corporate entity as a shield against personal liability" and the "formation and use of a corporation to transfer to it the existing liability of another person or entity." *Associated Vendors, supra,* 210 Cal.App.2d at 840 (citations omitted).

The Court finds that these factors do not apply to the present case. As to the first of the two factors, it specifically contemplates the alter ego defendant's *contracting* with a third party with intent to evade liability. Plaintiffs do not allege, nor does the evidence include, the existence of such a contract or the act of contracting with such intent by the Plum Corporate Defendants or SPA. As to the second factor, it specifically contemplates the alter ego defendant forming a new company so as to *transfer* to it an *existing* liability. The Court finds no evidence of the formation of a company for the purpose of transferring to it an existing liability of another entity. Therefore, the Court finds that these factors do not support a finding of alter ego in this action.

C. Defendants as Alter Egos Under *Mesler* Requirements.

As referenced earlier, the California Supreme Court explained the legal test for alter ego as follows: "There is no litmus test to determine when the corporate veil will be pierced; rather the result will depend on the circumstances of each particular case. There are, nevertheless, two general requirements: '(1) that there be such unity of interest and ownership that the separate

personalities of the corporation and the individual no longer exist and (2) that, if the acts are treated as those of the corporation alone, an inequitable result will follow.'" *Mesler, supra*, 39 Cal.3d at 300 (quoting *Automotriz, supra,* 47 Cal.2d at 796). "The essence of the alter ego doctrine is that justice be done. 'What the formula comes down to once shorn of verbiage about control, instrumentality, agency, and corporate entity, is that liability is imposed to reach an equitable result.'" *Mesler, supra,* 39 Cal.3d at 301 (quoting Latty, *Subsidiaries and Affiliated Corporations* (1936) at 191).

As discussed earlier, the kind of evidence that may satisfy the two elements referenced in *Mesler* is that described in the many factors discussed in *Associated Vendors, Inc. v. Oakland Meat Co.* In *Associated Vendors*, the Court of Appeal's survey of cases provided relevant factors under which evidence was present and contributed towards satisfying the two general requirements of alter ego in each case. As such, the Court's prior discussion of the evidence under each *Associated Vendors* factor is equally applicable towards satisfying the two general requirements of alter ego set forth in *Mesler*.[29] The Court briefly summarizes its prior findings and states its ultimate conclusions herein.

1. Unity of Interest and Ownership Such That Separateness Does Not Exist.

The Court finds that for purposes of this case, Plaintiffs have sufficiently established by a preponderance of evidence that there is such a unity of interest and ownership that the separate personalities of the Plum Corporate Defendants and SPA no longer exist. The Court's conclusion is based upon its discussion and findings relating to the Plum Corporate Defendants' commingling of funds and treatment of SPA's assets as their own (*see* Section IV, B, 1, *supra*); the Plum Corporate Defendants' representation of liability for the debts of SPA (*see* Section IV, B, 3, *supra*); Bay Bridge's identical equitable ownership in all other Defendants (*see* Section IV., B, 5, *supra*); the Plum Corporate Defendants' domination and control over SPA (*see* Section IV, B, 6, *supra*); Ballif and Hubbard's role as limited liability company managers for all Defendants (*see* Section IV, B, 7, *supra*); Bay Bridge's sole ownership of all Defendants (*see* Section IV, B, 8, *supra*); the Plum Corporate Defendants' centralized location of their offices and Defendants'

[29] Likewise, in their post-trial brief, Defendants do not separately discuss the first requirement in *Mesler* (unity of interest and ownership) presumably resting upon their discussion of the *Associated Vendors* factors.

use of the same attorneys for each purpose of retention (*see* Section IV, B, 9, *supra*); the Plum Corporate Defendants' failure to adequately capitalize SPA and SPA's undercapitalization due the fact that SPA has no capital in its possession (*see* Section IV, B, 10, *supra*); the fact that Defendants operate as a single venture or single enterprise (*see* Section IV, B, 11, *supra*); Defendants' failure to disclose fully the persons and entities having equity interests in SPA as required (*see* Section IV, B, 12, *supra*); Defendants' failure to maintain arm's length transactions among them (*see* Section IV, B, 13, *supra*); and the Plum Corporate Defendants' diversion of SPA's funds from SPA's own possession (*see* Section IV, B, 15, *supra*).

The Court finds that the multiple *Associated Vendors* factors which Plaintiffs have established are collectively well beyond the threshold necessary to establish that Defendants have a unity of interest and ownership such that their separate corporate personalities no longer exist. For instance, the Court notes that the overwhelming evidence supporting the conclusion that the Plum Corporate Defendants and SPA operate as a *single enterprise* would be sufficient to establish Defendants' unity of interest and ownership required under alter ego analysis. The relationship among the Plum Corporate Defendants and their relationship vis-à-vis SPA transcends the typical parent/subsidiary relationship and constitutes that of a unified and singular enterprise. Evidence unique to the other *Associated Vendors* factors further bolsters the Court's conclusion as to this element.

2. Inequitable Result If Alter Ego Not Found.

The Court finds that for purposes of this case, Plaintiffs have sufficiently established by a preponderance of evidence that if SPA's acts are treated as those of SPA alone, an inequitable result will follow. Importantly, evidence establishing the *Associated Vendors* factors equally supports a court's finding that an injustice or inequitable result will occur if alter ego is not found. *Kao v. Joy Holiday* (2020) 58 Cal.App.5th 199, 206-07 ("[f]actors a trial court may consider when deciding unity of interest *and* whether the fiction of a separate existence would promote fraud and injustice[30] include . . . [listing *Associated Vendors* factors]"; brackets added).

[30] As to the second requirement, the Court of Appeal in *Kao* noted: "On the second score it is sufficient that it appear that a recognition of the acts as those of a corporation only will produce *inequitable results*." *Kao*, 58 Cal.App.5th at 205 (emphasis added) (citing *Watson v. Commonwealth Ins. Co.* (1936) 8 Cal.2d 61, 68; *Turman v. Superior Court* (2017) 17 Cal.App.5th 969, 981).

For example, "the inference to be drawn" from evidence of "commingling of assets and unauthorized use of corporate assets to pay personal expenses was 'sufficient proof' that a failure to disregard the corporate entity would lead to an inequitable result." *Kao, supra,* 58 Cal.App.5th at 207 (citing *Goldberg v. Engelberg* (1939) 34 Cal.App.2d 10, 13)

The Court's findings regarding the *Associated Vendors* factors equally support the Court's conclusion that an inequitable result will follow absent a finding of alter ego in this action. Overall, as the Court has discussed, Defendants have obtained significant benefits from operating as a single enterprise. Indeed, while the parties dispute the *characterization* of the Defendants' operations and interrelations, it is undisputed that the Plum Corporate Defendants *benefit* from the organizational structure and interrelationships that they have chosen to implement. The Court finds that the Plum Corporate Defendants have directly benefited from the commingling of SPA's funds, the treatment of SPA's assets as their own, their domination and control over SPA, and the resulting efficient and uniform operation of their skilled nursing facilities as a single enterprise. Like the Plum Enterprise's other skilled nursing facilities, SPA functions as the revenue-generating component for this single enterprise. As discussed, none of the other Defendants generates significant revenue for the Plum Enterprise, if any at all. Because the Plum Corporate Defendants have reaped the benefits of operating the Plum Enterprise as a single enterprise, the only equitable result for purposes of this case is that the Plum Corporate Defendants "should respond, as a whole, for the debts of certain component elements of it," which here, includes any potential judgment that may arise from the acts and/or omissions of SPA. *See Hasso, supra,* 227 Cal.App.4th at 155.

The Court notes that "it is not sufficient to merely show that a creditor will remain unsatisfied if the corporate veil is not pierced, and thus set up such unhappy circumstance as proof of an 'inequitable result.'" *Associated Vendors, supra,* 210 Cal.App.2d at 842. As explained, such is not the situation here because the inherent inequity of allowing Defendants' corporate separateness in this case stems from the *benefits* that Defendants have obtained by operating as alter egos. Nor is this a case where a company's potential inability to pay a debt is simply due to its financial unsuccessfulness or overall unprofitability. In fact, SPA always

exceeded its budget during the 2014-16 timeframe. (DT (Edmonds) at 42:15-21.) SPA was profitable year after year. (RT at 67:9-20; Ex. 101.) But yet, not a single dollar of SPA's profit resides in SPA's possession. Indeed, according to the evidence, an adverse judgment creditor levying on any SPA bank account would *always* find a "zero balance."[31] The facts support the conclusion that an inequitable result will occur without a finding of alter ego.

Additionally, the Court finds Defendants' opposing arguments to be unpersuasive. Defendants argue that "there was no evidence of any past inequitable result to demonstrate that a potential future inequitable result will follow if the acts at issue were treated as the acts of SPA alone." (Defendants' Closing at 12:10-12.) However, the existence of a past inequitable result is not a prerequisite to the alter ego analysis. Indeed, *so far,* Plum Healthcare has released funds from its main operating account to SPA's account such that SPA has paid all "properly-submitted" bills and financial liabilities. (RT at 392:17-393:12; 403:7-9; 460:19-24; 461:1-6.) Whether Plum Healthcare will continue to do so in every circumstance is unknown. What is certain is that *Plum Healthcare* must allow funds to be transferred from Plum Healthcare's main operating account to SPA in order for SPA to pay any bill or invoice. (DT at (Pugh) 40:22-41:20.) The Plum Corporate Defendants do not concede that they must, by contractual obligation or otherwise, continue to transfer funds from Plum Healthcare's main operating account to SPA's account to pay any liability of SPA, including any potential judgment in this action.[32]

Defendants next argue that an injustice or inequitable result cannot exist because SPA has provided quality patient care and because SPA has received favorable "star ratings" and its citations for deficiencies did not rise to a level of "substandard" care. (Defendants' Closing at

[31] The inequitable result in this case is not dependent on whether or not an adverse judgment creditor might attempt to levy upon SPA's funds in Plum Healthcare's possession and whether or not such attempt might have any degree of success. *See* Cal. Civ. Proc. Code § 700.040. As discussed, the inequitable result that would result absent a finding of alter ego stems from the principle that Defendants should not be permitted to benefit from operating as a single enterprise only to raise the shield of their corporate separateness if and when their enterprise incurs a liability.

[32] As referenced earlier, Pugh believed that "Plum is contractually obligated" to "pay *any liability* of Sacramento Post-Acute" even if SPA's liability is "greater than what it's bringing in in service receipts in any period of time." (RT at 405:19-27; 407:7-17 (emphasis added).) Pugh reiterated: "It's not whatever Plum deems appropriate, but it's you know – it's honoring the obligations of all of the facilities, and it's a treasury mechanism for that to happen seamlessly." (RT at 407:18-408:1.) If Pugh's understanding was accurate such that the Plum Corporate Defendants are already required to pay any adverse judgment against SPA, it would be a fact that would tend to weigh *against* finding alter ego liability. But Defendants make no such concession and have provided no evidence establishing such contractual indemnity or obligation.

13:10-22.) However, whether an injustice or inequitable result will occur in this case absent a finding of alter ego is not dependent on "star ratings" or the level of seriousness of SPA's citations. The Court finds Defendants' argument to be inapposite. Notably, in this bifurcated trial, should a jury ultimately find that SPA has no liability to Plaintiffs, a finding that the Plum Corporate Defendants are alter egos of SPA will have no practical effect as such a finding is solely for the purposes of this case.

Defendants also argue that regulators and the State of California are aware of the organizational structure of SPA and Plum Healthcare, it is a commonly-used corporate organization in the skilled nursing profession, and that Defendants had legitimate reasons to organize their companies in this manner, including use of the ASA. (Defendants' Closing at 13:23-13:7.) However, adjudicating the equitable remedy of alter ego is outside the authority and purview of state regulators. Further, whether other companies in the industry use similar practices as Defendants is not determinative of the case-specific examination of alter ego here.

As to Defendants' argument that the reasons for organizing their companies as they did were legitimate, it warrants noting again that to establish alter ego, it is *not* necessary to demonstrate actual fraud, wrongful intent, conduct amounting to bad faith, or that the purpose of organizing the corporations was to defraud. *Misik, supra,* 197 Cal.App.4th at 1074 (no requirement of fraud); *Relentless Air Racing, supra,* 222 Cal.App.4th at 816 (no requirement of wrongful intent); *Triyar Hospitality Management, supra,* 57 Cal.App.5th at 642 (no requirement of bad faith); *Kohn, supra,* 95 Cal.App.2d at 718 (no requirement of purpose to defraud). Perhaps Defendants' operation as a single enterprise may be the most efficient method of governing and controlling a large venture where 50 separate skilled nursing facilities uniformly function as the enterprise's revenue-generating components. But under the very specific facts of this case, it is not an effective method of shielding upstream entities, like the Plum Corporate Defendants, from liabilities that may be incurred by their revenue-generating components.

Defendants next argue that "[t]here is no evidence for the court to reasonably conclude, that if SPA has a judgment rendered against it, SPA would act to avoid its obligation and responsibility to satisfy that judgment." (Defendants' Closing at 14:8-12.) Interestingly,

Defendants' phrasing of this argument highlights some of the relevant facts supporting the Court's finding that injustice and inequity will occur in absence of finding alter ego. The fact that Plum Healthcare dispossesses SPA of all of its funds and maintains SPA's money in *Plum Healthcare's* main operating account demonstrates that if SPA has a judgment rendered against it, the question is not so much what *SPA* would do (because SPA possesses no funds to pay any judgment), but rather, what *Plum Healthcare* would do as the *de facto* possessor of SPA's funds. As explained earlier, Defendants do not concede that the Plum Corporate Defendants are under any requirement whatsoever to release a single dollar of SPA's money in such instance. Indeed, Defendants' argument signals why the alter ego finding is necessary.

Finally, Defendants argue that an injustice or inequitable result cannot occur because there is evidence of a $1 million liability insurance policy that covers SPA. (Defendant's Closing at 14:13-18.) The Court finds that the evidence is insufficient to support Defendants' argument. For example, in support of their argument Defendants cite to a single answer given by Terry at trial regarding insurance. Terry stated: "I would have to send the liability insurance to . . . sometimes the Department of Health I believe. You just needed to verify that we had some type of liability insurance. . . . And from my memory, the liability insurance was one million dollars per, I think, case; 3 million dollars generally." (RT at 459:28-460:7.) Terry's answer is insufficient to establish that SPA has any insurance applicable to potential liability for the claims alleged in this case. Further, if it were true that SPA has insurance coverage for any potential judgment in this action, one would expect Defendants to offer SPA's insurance policy into evidence for the Court's analysis of the scope of coverage. SPA's insurance policy is not part of the evidence in this case. Therefore, the Court finds no basis to conclude that SPA has any applicable insurance that would cover any potential judgment in this action.

In sum, the Court's finding remains that Plaintiffs have sufficiently established by a preponderance of evidence that if SPA's acts are treated as those of SPA alone, an inequitable result will follow. Overall, applying the alter ego requirements stated in *Mesler* and in consideration of the entire record of evidence, the Court finds that the Plum Corporate Defendants are alter egos of SPA for purposes of this case.

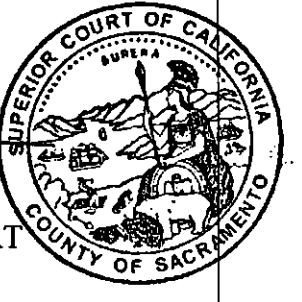
V. FURTHER PROCEEDINGS

As previously indicated, the Court issues this Proposed Statement of Decision pursuant to California Rule of Court 3.1590(c)(1). The provisions in Rule 3.1590(g), et seq., remain in effect, as applicable. After the Court has issued the Final Statement of Decision and prior to the jury trial phase of this case, the Court will require the parties to prepare a statement of determined facts to be presented to the jury. *See Amtz Contracting Co. v. St. Paul Fire & Marine Ins. Co* (1996) 47 Cal.App.4th 464, 487-88. Also, after the Court has determined when the jury trial phase of this case may take place given public health directives and court-wide protocols due to the COVID-19 pandemic, the Court will set a status conference to address setting a date for the jury trial phase. The parties stipulated and the Court ordered that preparation of a written proposed judgment shall be delayed until all subsequent phases of trial are completed, consistent with Rule 3.1591(a).[33]

IT IS SO ORDERED.

DATED: April 9, 2021

HON. RICHARD K. SUEYOSHI
JUDGE OF THE SUPERIOR COURT



[33] Plaintiffs request "that the Court issue an Order finding that all named defendants in this action are alter egos of each other." (Plaintiffs' Opening at 3:11-2.) A separate order is not the proper procedure. After the conclusion of all phases of trial, the Court's finding of alter ego as set forth in its Final Statement of Decision will be properly incorporated into the final judgment if the jury finds liability against SPA.

CERTIFICATE OF SERVICE BY MAILING
(C.C.P. Sec. 1013a(4))

I, the Clerk of the Superior Court of California, County of Sacramento, certify that I am not a party to this cause, and on the date shown below I served the foregoing **PROPOSED STATEMENT OF DECISION** by depositing true copies thereof, enclosed in separate, sealed envelopes with the postage fully prepaid, in the United States Mail at 720 9th Street, Sacramento, California, 95814 each of which envelopes was addressed respectively to the persons and addresses shown below

William Wilson
Mark Ginella
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12555 High Bluff Drive, Suite 270
San Diego, CA 92130

Edward Dudensing
Jay Renneisen
The Law Office
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Sacramento, CA 95811

I, the undersigned deputy clerk, declare under penalty of perjury that the foregoing is true and correct.

Dated: April 9, 2021

Superior Court of California, County of Sacramento

By: K. Madden

K.Madden, Deputy Clerk