PROPOSED TENTATIVE

On October 5, 2022, Santa Barbara County Superior Court Judge Beebe, in a signed order, granted petitioner Lucky Dog Ag Services, LLC's (Lucky Dog or petitioner) verified petition compelling respondents Sonoma King, LLC (dba Sonoma Kind), Edward Fussell (aka Ned Fussell dba Somarosa Farms, aka Soma Rosa Farms), and Mosaic AG, LLC (hereafter, collectively as respondents) to participate in arbitration, and the matter was stayed. According to Judge Beebe's order, Cannacraft, Inc. had previously agreed on the record to participate in the arbitration proceeding. These entities will be referenced as "Alter Ego Respondents" or "respondents" in this order.

On July 18, 2024, Lucky Dog filed a "Petition [Motion] to Confirm" the final contractual arbitration award. The submission includes a declaration from Lucky AG's counsel; the original "Growing Agreement Hemp 2019-2020" and its exhibits, along with its "First Amendment . . . ," consummated between the parties; an "Assignment of Proceeds Of Sale of Crops"; a "Security Agreement" between Lucky Ag and Sonoma Kind; a UCC Filing Acknowledgment; a UCC Financing Statement and Addendum; and the 65-page written arbitration award (entitled "Disposition of Modification of Award"), issued by Arbitrator Dana Walsh, and modified on July 8, 2024. The arbitration award as modified concluded that Sonoma Kind breached the written agreement between the parties; that the remaining respondents are alter egos of Sonoma Kind; and that all respondents are jointly and severally liable for the following amounts: 1) $968,004.94 in actual damages; 2) $75,000 in sanctions; 3) $510,399.15 in attorney's fees and costs, including fees to the American Arbitration Association (AAA) and the arbitrator's compensation; 4) $370,487.91 in pre-award interest; and 5) $527.09 per diem on the damages awarded, which constitutes post-award, prejudgment interest per Civil Code section 3287, subdivision (a), from the date of the final award until judgment is entered by the court. The arbitrator increased the amounts awarded (that is, the arbitrator added into the total amounts above) by $89,854 for arbitration expenses to be paid by respondents. The total damages and reimbursement expenses from the arbitration award amount to $1,923,891.99, plus the per diem amounts from June 17, 2024, to the date of judgment. Lucky Dog requests a total judgment of $1,968,041.79, and has submitted a proposed order and judgment. On July 24, 2024, the case was reassigned to this court. On August 5, 2024, this court signed a stipulation allowing respondents to file a response to the petition to confirm the arbitration award by August 12, 2024. (See fn. 4, *infra*.) No doubt the final amounts will change following the continued hearing dates.

Lucky Dog asks the court to confirm the arbitration award pursuant to Code of Civil Procedure[1] sections 1285 and 1286. According to petitioner, there is "no basis to correct or vacate" the modified arbitration award, or to dismiss the motion. Lucky Dog also asks the court

[1] All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

to supplement the arbitration award by adding costs and attorney's fees associated with the current application, as the signed agreements at issue – and which necessitated arbitration in the first instance (namely Section 6.11 of the Security Agreement) – permits recovery of attorney's fees and costs for enforcement and collection, which includes the present petition.

Respondents filed a voluminous opposition on August 12, 2024, raising numerous challenges to the arbitration award – and asking the court to either vacate or correct the award.

Respondents claim initially that the arbitration award must be vacated pursuant to section 1286, subdivisions (a)(2) [corruption with the arbitrators] and (a)(6) [an arbitrator failed to disclose within the time required a ground for disqualification]. Respondents concede they were ordered to arbitration in the court's order dated October 5, 2022, in light of the alter ego theory as alleged (with the court making it clear at the time that it was not deciding the merits of the claim), and acknowledge they participated in the arbitration proceeding; they claim, however, that they only received the arbitrator's ethics "disclosures" as required pursuant to1281.9, subdivision (a)[2] one year after they were made parties; this delay alone, they contend, mandates vacation of the award, under the authority of *Grabowski v. Kaiser Foundation Health Plan, Inc.* (2021) 64 Cal.App.5th 67, 76. Respondents explain further that when they learned of the disclosures, they objected to the arbitrator in a letter dated October 30, 2023 (Exhibit 12[3]), with an amended objection filed on November 1, 2023 (Exhibit 13[4]). The AAA ultimately rejected respondents' request to recuse the arbitrator. (Exhibit 14.) Respondents rely on section 1281.91, subdivision (a), which provides that an arbitrator "shall be disqualified if he or she fails to comply with section 1281.9 and any party entitled to receive the disclosure serves a notice of disqualification within 15 calendar days after the proposed nominee or appointee fails to comply with section 1281.9."[5]

Respondents supplement this contention by asserting that timely notice would have allowed them to disqualify the arbitrator pursuant to section 1281.9 (i.e., matters that would cause a person aware of the facts to reasonably entertain a doubt that the proposed neutral

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[2] Pursuant to this provision, "when a person is to serve as a neutral arbitrator, the proposed neutral arbitrator shall disclose all matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed neutral arbitrator would be impartial . . . . Among the statutory list of required disclosures in section 1281.9 is for '[a]ny matters required to be disclosed by the ethics standards for neutral arbitrators adopted by the Judicial Council pursuant to this chapter.' (§ 1281.9, subd. (a)(2)." (*Ovitz v, Schulman* (2005) 133 Cal.App.4th 830, 838.)

[3] In the October 30, 2023, letter, the respondents objected on timeliness grounds as well as a claim of actual bias (namely that the arbitrator's actions would lead a reasonable person to believe she was biased), based on the arbitrator's actions taken during discovery.

[4] In this letter, respondents contended the arbitrator should be disqualified because she erred in denying their motion to dismiss Lucky Dog's claim, advancing three challenges to the arbitrator's application of equitable estoppel to deny the motion. It appears the grounds advanced in this letter are not advanced here.

[5] Respondents also rely on section 1286.91. subdivision (b), which provides that if the proposed neutral arbitrator complies with the disclosure requirements of section 1281.9, the proposed neutral arbitrator shall nevertheless be disqualified based on her disclosure statement after any party entitled to receive the disclosure serves a notice of disqualification withing 15 calendar days after service of the disclosure statement.

arbitrator would be able to be impartial), relying on the arbitrator's response to Item 28 given under oath as part of the "Notice of Compensation Agreements" (See Exhibit 10[6]). Item 28 reads as follows: "While the instant arbitration is pending, will you entertain offers of employment or new professional relationships in any capacity other than as a lawyer, expert witness, or consultant from a party or a lawyer for a party, including offers to serve as a dispute resolution neutral in another case?" The arbitrator replied, "Yes," but also declared that if "so appointed, I will provide the notice that is required by California Rule of Court Standards 12(b)." Respondents explain that this response "deeply concerned" them because the arbitrator's response allegedly stands in conflict with the California Rules of Arbitration Ethics Standard 12(b)(2)(B);[7] accordingly, because the arbitrator failed to disclose she would not report any employment involving future employment in a nonconsumer arbitration, and because the AAA refused to honor the objection, vacation of the arbitration award here is appropriate.

Respondents also argue the court should vacate the arbitration award pursuant to section 1286.2, subdivision (a)(6)(B), which charges the court with vacating an arbitration award when an arbitrator making the award was subject to disqualification upon grounds specified in section 1281.91, "but failed upon receipt of timely demand to disqualify himself or herself as required by that provision." Respondents look to section 1281.91, subdivision (a)(1), which provides that an arbitrator is required to disclose "any ground specified in section 170.1 for disqualification of a judge"; they also look to section 170.1, subdivision (a)(6)(A)(iii) as well as section 1281.9, subdivision (a) (an arbitrator shall disclose "all matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed neutral arbitrator would be able to be impartial . . . "). Specifically, respondents note that in both the October 30, 2023, and November 1, 2023, letters, they sought to have the arbitrator disqualified based on a history "of favoritism toward Lucky Ag and its counsel, in disregard of both basic notions of fairness and clearly established legal standards . . . ." They assert: "Looking through the eyes of the average person on the street" at the time of the objection, "the arbitrator was not conducting the proceeding with impartiality and fairness," and demonstrated a predisposition to decide a cause of an issue in certain way. Respondents rely on *United Farm Workers of America, AFL-CIO v. Superior Court* (1985) 170 Cal.App.3d 97 and *Pacific Southwest Annual Conference of United Methodist Church v. Superior Court* (1978) 82 Cal.App.3d 72 as support. Because the AAA failed to

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[6] Exhibit 10 consists of a letter and a document entitled "Notice of Compensation Agreements" by the AAA, governing the arbitrator Dana Welch's appointment as the arbitrator. The documents are dated November 21, 2021, and include the disclosures that respondents claim should have been presented to them personally.

[7] Ethics Standard 12 generally describes the disclosure obligations of an arbitrator "from the time of appointment until the conclusion of arbitration." (Ethics Standards, std. 12(a).) Ethics Standard 12(b) outlines what an arbitrator should disclose when offers for employer or professional relationships are made other than as lawyer, expert witness, or consultant. Pursuant to Ethics Standards 12(b)(2)(B), if the arbitrator discloses that he or she will entertain such offers of employment or new professional relationships while the arbitration is pending, and yet the matter involves a nonconsumer arbitration, "the disclosure must also state that the arbitrator will not inform the parties if he or she subsequently receives an offer while that arbitration is pending." (See *Sitrick Group, LLC v. Vivera Pharmaceuticals, Inc.* (2023) 89 Cal.App.5th 1059, 1066.)

disqualify the arbitrator after the required showing (in their letter in Exhibit 14), they opine, the court must vacate the arbitration award for this reason as well.

Respondents additionally claim the court should vacate the arbitration award under section 1286.2, subdivision (a)(4), which provides that vacation is appropriate if the "arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted." Three grounds are advanced in support of this contention. First, respondents argue the arbitrator had no authority to determine whether Sonoma Kind was the alter ego of the "Alter Ego Respondents". Second, respondents argue that the arbitration award must be vacated because, unlike Sonoma Kind, they were not informed or invited to participate in the mediation process that took place between Lucky Dog and Sonoma Kind within 120 days of the date such claim arose, and which was expressly contemplated by the arbitration agreement between the parties. "Because the Alter Ego Respondents were not invited to mediate, or notified in writing about, Lucky Dog's claim within 120 days of accrual, the arbitrator had no authority to enter an award against them and the award must be vacated." Third, respondents argue the arbitrator exceeded her authority because the "arbitrator's award . . . enforces an illegal agreement" in violation of federal law, for cannabis under federal law cannot exceed a .3% level of "THC" (delta-9 tetrahydrocannabinol); if more than .3%, it is "classified as a Schedule I controlled substance, regulated by the Drug Enforcement Administration under the Controlled Substances Act . . . ." According to respondents, as the evidence during the arbitration hearing (through Exhibit 117) showed that the THC levels in the hemp at issue exceeded .3%; and as the agreement between the parties expressly required Lucky Dog to comply with all "applicable federal laws," the arbitration award cannot be enforced – and thus must be vacated.

Finally, respondents argue that if the award cannot be vacated, it must be corrected pursuant to section 1286.6, subdivision (b), which provides that when arbitrator exceeds her powers, the award may be corrected if doing so can be effectuated without impacting the merits of the decision. Three grounds are also advanced in support of this contention. First, according to respondents, the arbitrator acknowledged that petitioner was seeking damages of $968,004.94, including $79,200 for rent for the JV land, which was an adjacent parcel of property to be cultivated, "for breach of the Agreement." (See p. 28 of arbitrator's award). The arbitrator noted later in the written award that "JV land rent is not the subject matter of the Agreement," falls "outside the scope of the Agreement," and thus the Agreement's integration clause does not apply. Accordingly, to respondents, the actual damage award should therefore be reduced by $79,200, because it should not have been part of the arbitration determination under this reasoning (i.e., for it fell outside the scope of arbitration). Second, respondents recount their argument concerning the arbitrator's authority to determine their liability under an alter ego theory, meaning the award should be corrected to indicate they have no liability (i.e., even if the award is not vacated). Third, respondents contend that the award should be corrected because

the arbitrator "allowed too much [prejudgment interest] interest against respondents" pursuant to Civil Code section 3287. Specifically, the respondents contend that for unliquidated damages, the arbitrator awarded prejudgment interest from the date of the breach, although the statute provides that it can be no earlier than the date of the action was filed. Respondents also contend that the arbitrator erroneously awarded prejudgment interest on arbitration-related expenses, not damages. The award should be reduced accordingly. Lucky Dog filed a reply on August 14, 2024, which attempts to counter to each of respondents' arguments.

The parties stipulated to continue the hearing to October 2, 2024.

The court will initially address Lucky Dog's judicial notice request made in reply. It will then summarize the relevant legal principles necessary to resolve the disputes at play, and then apply those legal principles to address the parties' individual claims. The court will then examine the request to supplement the arbitrator's award with a request for costs and attorney's fees associated with the present request as made by Lucky Dog. The court will finish with a summary of its conclusions.

A) *Lucky Dog's Request for Judicial Notice In Reply*

Lucky Dog asks the court to grant the request to take judicial notice of the following court documents: 1) the Verified Petition for An Order Compelling Alter Egos To Participate in Arbitration, filed with Santa Barbara County Superior Court Judge Beebe, culminating in the October 5, 2022 order; 2) the Memorandum of Points and Authorities in support of the Verified Petition, noted above; 3) Judge Beebe's signed order dated October 5, 2022, directing respondents to arbitration. Although it is not normal practice to file a judicial notice request with a reply (and the request will therefore generally be denied as a result), under the circumstances presented (i.e., the response includes a request to vacate and/or correct) it seems appropriate to grant the request, notably as there is not prejudice to respondents, for respondents have included/referenced many of the same documents in their evidentiary proffer. Accordingly, the court grants the request. The court does not take judicial notice of the truth of the documents, only their existence.

C) *Legal Background*

An arbitration award is not directly enforceable until confirmed or vacated by court proceedings; until that time the award is no more than a contract between the parties to the arbitration. (*Loeb v. Record* (2008) 162 Cal.App.4th 431, 449.) Thus, pursuant to section 1285, any party to an arbitration in which an award has been made may petition[8] the court to "confirm,

[8] Generally, when there is no pending lawsuit, a petition to confirm the arbitration award will be the document that commences the proceeding. (*Loeb, supra,* 162 Cal.App.4th 431, 450, fn. 10.) Where a lawsuit is

correct or vacate the award." Once a petition to confirm an award is filed, the superior court must select one of only four courses of action: It may confirm the award, correct, and confirm it, vacate it, or dismiss the petition. (*Cooper v. Lavely & Singer Professional Corp.* (2014) 230 Cal.App.4th 1, 11; see § 1286 [if a petition or response is filed, the court shall confirm the award as made, unless is corrects the award and confirms it as corrected, vacates the award, or dismisses the petition].)

Within this statutory framework, courts recognize initially that judicial review of an arbitration award is ***extremely*** limited because of the public policy favoring arbitration and the finality of arbitration awards. (*Bacall v. Shumway* (2021) 61 Cal.App.5th 950, 957.) The law minimizes judicial intervention in the proceedings, in part, by the doctrine of arbitral finality. (*Jones v. Humanscale Corp.* (2005) 130 Cal.App.4th 401, 407.) "[I]t is the general rule that, with narrow exceptions, an arbitrator's decision cannot be reviewed for errors of fact or law." (*Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 11.) This is so " 'whether or not such error appears on the face of the award and causes substantial injustice to the parties.' " (*SingerLewak LLP v. Gantman* (2015) 241 Cal.App.4th 610, 616.) Specifically, neither the trial court nor the appellate court may "review the merits of the dispute, the sufficiency of the evidence, or the arbitrator's reasoning, nor may we correct or review an award because of an arbitrator's legal or factual error, even if it appears on the award's face." Review is ordinarily limited to the statutory grounds for dismissing per section 1287.2 (with some glosses), vacating an award under section 1286.2, or correcting an award under section 1286.6. (*Branches Neighborhood Corp. v. CalAtlantic Group, Inc.* (2018) 26 Cal.App.5th 743, 750.) The statutory grounds upon which a party may challenge the award are therefore narrowly construed. (*Moncharsh, supra,* at p. 10; see also *EHM Productions, Inc. v. Starline Tours of Hollywood, Inc.* (2018) 21 Cal.App.5th 1058, 1063–1064; *Bacall v. Shumway* (2021) 61 Cal.App.5th 950, 957; *Branches, supra,* 26 Cal.App.5th at p. 750.) That is, "[courts] do not review the merits of the dispute, the sufficiency of the evidence, or the arbitrator's reasoning, nor may we correct or review an award because of an arbitrator's legal or factual error, even if it appears on the award's face." Review is limited to the statutory grounds enumerated in California Arbitration Act." (*Roehl v. Ritchie* (2007) 147 Cal.App.4th 338, 347.)

Accordingly, a petition to confirm an arbitration award, such as that filed by Lucky Dog, if procedurally proper, should generally be confirmed. (See, e.g., *Eternity Investments, Inc. v. Brown* (2007) 151 Cal.App.4th 739, 745 [generally, confirmation of the arbitration award is the mandatory outcome absent the correction or vacatur or the award or the dismissal of the petition].) The petition is procedurally proper if it sets forth a copy of the agreement to arbitrate,

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pending, either a motion or petition to confirm an arbitration award is generally the procedural designation utilized. (See generally *Mercury Ins. Group v. Superior Court* (1998) 19 Cal.4th 332, 349.) Here, there was a pending lawsuit filed in 2022; while the parties use the terms "petition" and" "motion" interchangeably (which is permissible), the court will utilize the term "petition," in line with the parties portrayals in their briefing.

the names of the arbitrator, a copy of the arbitration award, and is timely filed, namely, it must be filed within four years of the service of the award on petitioner (pursuant to section 1288). (*Valencia v. Mendoza* (2024) 103 Cal.App.5th 427, 440-442; see *Darby v. Sisyphian* (2023) 87 Cal.App.5th 1110, 1112-1113, overruled on other grounds in *Law Finance Group, LLC v. Key* (2023) 14 Cal.5th 832.) Once a petition to confirm that meets the statutory requirements has been served, " 'the burden is on the party attacking the award to affirmatively establish the existence of error.' " (*Rivera v. Shivers* (2020) 54 Cal.App.5th 82, 94,; accord, *Lopes v. Millsap* (1992) 6 Cal.App.4th 1679, 1685.) A request to vacate or correct an award may be made either in a separate petition (*id.*, § 1285) or in a response to the petition to confirm (*id.*, § 1285.2), the latter of which was done here by respondents.[9] In either form -- a petition to vacate or correct an award (or the response) -- respondents "shall set forth the grounds on which the request for such relief is based." (§ 1285.8 *DeMello v. Souza* (1973) 36 Cal.App.3d 79, 84; see *Eternity, supra*, 151 Cal.App.4th at p. 745; *United Firefighters of Los Angeles v. City of Los Angeles* (1991) 231 Cal.App.3d 1576, 1581.) Respondents bear the burden to show vacation or correction of the award is appropriate.

Section 1286.2 enumerates six grounds for vacating an arbitration award (*California Union Square L.P. v. Saks & Company LLL* (2020) 50 Cal.App.5th 340, 348), three of which are relevant here, as advanced by respondents: section 1286.2, subdivision (a)(2) allows vacation if there was corruption in any of the arbitrators; section 1286.2, subdivision (a)(4) allows vacation if the arbitrators exceeded their powers and the award cannot be corrected without affecting the merits of the decision upon the controversy submitted; and section 1286.2, subdivision (a)(6) allows vacation if the arbitrator failed to disclose, within the time required, a ground for disqualification of which the arbitrator was then aware, or was subject to disqualification upon grounds specified in section 1281.9, but failed to disqualify himself or herself as required.

The California Arbitration Act (the Act) is meant to be a comprehensive statutory scheme, regulating private arbitration, and ensuring the arbitrator is truly neutral and able to serve as an impartial decision maker. It requires a potential arbitrator to disclose to the party any grounds for disqualification. (*Sitrick, supra*, 89 Cal.App.5th at p. 1065.) As pertinent here, the Act requires a potential arbitrator to "disclose" "any [m]atters required to be disclosed by the Ethics Standards." (§ 1281.9, subd. (a)(2).) Generally, the Ethics Standards "require the disclosure of 'specific interests, relationships, or affiliations' and other 'common matters that

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[9] When a response is filed, there are two timing statutes at play – section 1288.2, which requires a motion to vacate or correct must be filed within 100 days after the date of the service of the arbitrator's award; and section 1290.6, which requires a response to be filed within 10 days after service of the petition to confirm. Our high court in *Law Finance, supra,*14 Cal.5th at pages 946-947, recently explained the interaction between the 100- day and 10-day deadlines. Neither deadline supersedes the other. On the contrary, when a filing both (1) responds to a petition to confirm, and (2) requests that the arbitration award be vacated, both deadlines apply. Absent a written agreement or court order, the response must be filed within 10 days after service of the petition to confirm and (in any event), no later than 100 days after service of the award. (*Ibid.*) Given the stipulation by the parties, signed by the court on August 5, 2024, the court will assume these deadlines have been satisfied, for no party contends otherwise.

could cause a person aware of the facts to reasonably entertain a doubt that the arbitrator would be able to be impartial.' " More specifically, the Ethics Standards as pertinent to the issues in this case require a potential arbitrator to disclose any relationship he or she has with any party or a party's lawyer at the time of the disclosure or at any time in the past. (Ethics Standards, std. 7(d); *Honeycutt v. JPMorgan Chase Bank, N.A.* (2018) 25 Cal.App.5th 909, 922-923; *Roussos v. Roussos* (2021) 60 Cal.App.5th 962, 972.) Further, the Ethics Standards make this "a continuing duty" that applies "until the conclusion of the arbitration proceeding." (Ethics Standards, std. 7(f); *Luce, supra*, 162 Cal.App.4th at p. 729.) As part of that continuing duty, an arbitrator must always disclose, at the time of appointment, if he or she "will entertain offers of employment or new professional relationships" with a party or a lawyer for a party "as a dispute resolution neutral" during the pendency of the arbitration. (Ethics Standards, std. 12(b)(1); *Honeycutt, supra,* at p. 923.) If the parties do not timely object to the arbitrator's indicated willingness to entertain new offers of employment, the scope of the arbitrator's duty to make further disclosures depends on whether the current arbitration is a "consumer" arbitration or a "nonconsumer" arbitration. If the current arbitration is a "consumer" arbitration, the arbitrator has a continuing duty to disclose to the parties "if he or she subsequently receives an offer" and if he or she has accepted any such offer. (Ethics Standards, stds. 12(b)(2)(A), 7(b)(2)(B).) But if the arbitration is a "nonconsumer" arbitration, the arbitrator is "not required" to disclose any future offers of employment if the arbitrator tells the parties, up front, that he or she "will not inform the parties if he or she subsequently receives an offer while th[e] arbitration is pending." (Ethics Standards, std. 12(b)(2)(B), 12(d)(4)(A), 7(b)(2)(A); *Ovitz, supra,* 133 Cal.App.4th 830, 840-841; see also *Sitrick, supra,* at pp. 1065–1066.)

The court's ability to *correct* an arbitration award is governed by section 1286.6, subdivisions (a), (b), and (c). (See, e.g., *Heimlich v. Shivji* (2019) 7 Cal.5th 350, 363 [the grounds for correction of an award are narrow, looking to § 1286.6].) The trial court may correct the award and confirm it as corrected if the court determines that there "was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award"; the arbitrators exceeded their powers but the award may be corrected without affecting the merits of the decision upon the controversy submitted; or "[t]he award is imperfect in a matter of form, not affecting the merits of the controversy." (See *Century City Medical Plaza v. Sperling, Isaacs & Eisenberg* (2001) 86 Cal.App.4th 865, 877.) Corrections under the scheme allow a court to cure defects that have no effect or impact on the merits of the award. (See *E-Commerce Lighting, Inc. v. E-Commerce Trade LLC* (2022) 86 Cal.App.5th 58, 64.) Put another way, judicial corrections are limited to remedying 'obvious and easily correctable mistake[s],' 'technical problem[s],' and actions in excess of authority so long as the correction leaves the merits of the decision unaffected. (*Moncharsh, supra,* at p. 13.)

Per section 1281.9, subdivision (a), a person selected "to serve as a neutral arbitrator ... shall disclose all matters that could cause a person aware of the facts to reasonably entertain a

doubt that the proposed neutral arbitrator would be impartial . . . .." Based on those disclosures, the parties can disqualify the arbitrator. (See § 1281.91, subd. (b)(1).) And, as noted above, the trial court must vacate an arbitration award if it determines the arbitrator "failed to disclose within the time required for disclosure a ground for disqualification of which the arbitrator was then aware[.]" (§ 1286.2, subd. (a)(6)(A).) Thus, an award must be vacated when the arbitrator fails to disclose facts within the purview of section 1289.1, subdivision (a). (See §§ 1281.9, subd. (a), 1281.91, subd. (b)(1), 1286.2, subd. (a)(6)(A); see also *Ovitz,* 133 Cal.App.4th at p. 844 ["Under California law, an arbitrator's failure to comply timely with his or her disclosure obligations risks a severe consequence: the vacating of any arbitration award rendered by the arbitrator"].) Whether the arbitrator was required to disclose certain facts under section 1281.9, subdivision (a) is governed by "an objective test . . . focusing on a hypothetical reasonable person's perception of bias." (*Haworth v. Superior Court* (2010) 50 Cal.4th 372, 385.) Under this test, "[t]he question is not whether [the arbitrator] actually was biased or even whether he was likely to be impartial[.]" (*Ibid.*) Instead, "the question . . . is how an objective, reasonable person" aware of the facts at issue "would view [the arbitrator's] ability to be impartial." (*Id.* at pp. 385-386.) In the context of this test, " '[t]he "reasonable person" is not someone who is "hypersensitive or unduly suspicious," but rather is a "well-informed, thoughtful observer.' " [Citations.] '[T]he partisan litigant emotionally involved in the controversy underlying the lawsuit is not the *disinterested objective observer* whose doubts concerning the [arbitrator's] impartiality provide the governing standard.' " (*Id.* at p. 389, original italics.)

C) *Merits*

i) Requests for Vacatur (§ 1286.2)

Central to the respondents' *initial r*equest to vacate the arbitration award is the contention that they were not notified of the arbitrator's disclosures as required per section 1281.9, after they were added as parties to the arbitration following the trial court's October 5, 2022 order. Further, according to respondents, they only learned of the arbitrator's disclosures in late October 2023 (or thereabouts), one year after they were made parties to the arbitration; as a result, this was a violation of section 1281.91, subdivision (a), which requires that an arbitrator shall be disqualified if she fails to timely disclose and per section 1281.9, as respondents had no opportunity to object to the arbitrator pursuant to section 1281.91, subdivision (a) [giving a party an opportunity to disqualify if the arbitrator is willing to be employed in a nonattorney capacity].) In fact, when they learned of the disclosure, they claim they complied with section 1281.9, subdivision (b), as they objected within 15 days after service of the disclosure statement, objections that were denied. Respondents supplement this request by noting (separately and apart from the delayed disclosure as the basis for vacatur) that the arbitrator's disclosures were defective in any event – acting as an alternative ground to vacate – because the arbitrator in her initial disclosure, having indicated that she would be willing to accept employment in a

nonlawyer capacity, failed to disclose as required by Ethics Standards 12(b)(2)(B) that as to all nonconsumer arbitrations, "the disclosure must also state that the arbitrator will not inform the parties if he or she subsequently receives an offer while that arbitration is pending."

At the outset, the court is not persuaded that there was in fact an untimely disclosure by the arbitrator as alleged by respondents. True, the arbitrator's disclosures were made on November 21, 2021; and Judge Beebe ordered the "Alter Ego Respondents" to arbitration on October 5, 2022. But overlooked by respondents is the critical finding that ***at all relevant times*** Sonoma Kind was the alter ego of all other respondents. The arbitrator made this determination crystal clear in her arbitration decision. (See pp. 42- 45.) This means that at all relevant times there were no separate personalities between corporations and individuals. (*Riddle v. Leuschner* (1959) 51 Cal.2d 574, 581.) Where there is such a unity of interest and ownership that the separate personalities no longer exist, it follows that notice to Sonoma Kind was in fact notice to all. And the record reveals that Sonoma Kind was clearly given notice about the disclosures on November 21, 2021. Simply put, in light of the alter ego determinations, notice to Sonoma Kind *was notice to all*. (See, e.g., *Greenspan v. LADT, LLC* (2010) 191 Cal.App.4th 486, 508 [it is appropriate to amend a judgment to add judgment debtor as alter ego, based on the theory that the court is not amending the judgment to add a new defendant but is merely inserting the correct name of the real defendant, where it can be demonstrated that in their capacity as alter ego they in fact had control of the previous litigation and were virtually represented in the lawsuit].) It would be odd under the circumstances to suggest respondents were on a separate footing from Sonoma Kind considering this determination (i.e., a necessary predicate for respondents' argument).

In any event, even if the court overlooks the import of the alter ego determination in this context, respondents have failed to explain why Mr. Briggs, as counsel for all parties, having taken over representation from Mr. Titus, did not have at least constructive notice of the disclosures made by the arbitrator. The record shows that Mr. Briggs appeared in the matter on December 19, 2022, and at least by December 23, 2022, Mr. Briggs was representing Sonoma Kind and all other respondents. One can reasonably surmise that Mr. Titus possessed the written disclosures made by the arbitrator, as the disclosures were directly sent to him as Sonoma Kind's counsel (indeed, he was expressly named in the November 21, 2022, letter, as part of Exhibit 10 of respondents' proffer). Yet Mr. Briggs, curiously, indicates in his declaration that "I received this correspondence no earlier than October 21, 2023." Nothing further is explained. If Mr. Titus was sent the disclosure notices, and Mr. Briggs was substituted in for Sonoma Kind, and was also representing the "Alter Ego Respondents" no later than December 23, 2022, it seems Mr. Briggs would have at least constructive notice of the disclosures, as it seems logical to assume that Mr. Titus sent the disclosures to Mr. Briggs as new counsel. Respondents fail to address this, which is their burden, to their detriment. And if this is true, the delay between December 23, 2022, and October 30, 2023, would be dilatory, and thus, subject to the rules of

forfeiture. Our Supreme Court has made it clear that a party to an arbitration may not "sit on his rights," content in the knowledge that should there be a setback, he can raise the issue later. A contrary rule would allow procedural gamesmanship, undermining the advantages of arbitration. (*Moncharsh, supra,* 3 Cal.4th at p. 30.) Respondents seem to be doing what our high court has precluded.

Other precedent is to similar effect, as reflected in section 1281.91, subdivision (c).[10] " 'The forfeiture rule exists to avoid the waste of scarce dispute resolution resources, and to thwart game-playing litigants who would conceal an ace up their sleeves for use in the event of an adverse outcome. . . . Those who are aware of a basis for finding the arbitration process invalid must raise it at the outset or as soon as they learn of it so that prompt judicial resolution may take place before wasting the time of the adjudicator(s) and the parties . . . . [A] party who knowingly participates in the arbitration process without disclosing a ground for declaring it invalid is properly cast into the outer darkness of forfeiture.' [Citation.]" (*ECC Capital Corp. v. Manatt, Phelps & Phillips, LLP* (2017) 9 Cal.App.5th 885, 906; accord, *Goodwin v. Comerica Bank, N.A.* (2021) 72 Cal.App.5th 858, 868 ["the basic principle [in arbitration is] that a party who learns of a ground for disqualification must either raise it promptly or forfeit it"]; *Alper v. Rotella* (2021) 63 Cal.App.5th 1142, 1152-1153 [a party " " 'cannot passively reserve [an] issue for consideration after the arbitration has concluded' " "]; *Honeycutt v. JPMorgan Chase Bank, N.A.* (2018) 25 Cal.App.5th 909, 926, 927, [a party who learns of a basis to disqualify an arbitrator cannot "wait and see how the arbitration turn[s] out before raising the[ ] issue[ ]," because such conduct would allow the party to " " 'play games' with the arbitration and not raise the issue" until [they] los[e]"].) To the extent present counsel possessed the appropriate documents following their transfer from Mr. Titus, respondents' failure to act earlier (within reasonable time of Mr. Briggs' representation) amounts to a forfeit of the claim pursuant to section 1291.9, subdivision (c) – 15 calendar days after notice of the disclosure. (See *Goodwin, supra,* 72 Cal.App.5th at p. 871 ["Because the bank failed to seek the arbitrator's disqualification within 15 days of discovering the facts requiring disqualification and before the arbitrator decided the pending fee motion, it forfeited the right to demand disqualification"].) Cases examining the interplay between sections 1286.2 and 1281.91 indicate that a remedy is available only to those parties who had no reason to know of the existence of the nondisclosed matter. (*Dornbirer v. Kaiser Foundation Health Plan, Inc.* (2008) 166 Cal.App.4th 831, 842–843); *Fininen v. Barlow* (2006) 142 Cal.App.4th 185, 190–191; see also, *Britz, Inc. v. Alfa–Laval Food & Dairy Co.* (1995) 34 Cal.App.4th 1085, 1096–1097 [reaching a similar conclusion under provisions of the Federal Arbitration Act (9 U.S.C. § 1 et seq.].) Under the circumstances, respondents had reason to know of the issue much earlier than October 30, 2023, meaning the

[10] This provision reads in relevant part: " The right of a party to disqualify a proposed neutral arbitrator pursuant to this section shall be waived if the party fails to serve the notice pursuant to the times set forth in this section, unless the proposed nominee or appointee makes a material omission or material misrepresentation in his or her disclosure . . . ."

latter was dilatory. and thus the disqualification request was forfeited. This issue cannot be a basis to vacate the arbitration award.

Nor is the court persuaded by respondents' claim that the court must vacate the arbitration award because the arbitrator failed to state, in response to Item 28 and in light of the Ethics Standards 12(b)(2)(B), that if employment is sought in a "nonconsumer" arbitration, the arbitrator is "not required" to disclose any future offers of employment as long as the arbitrator tells the parties, up front, that he or she "will not inform the parties if he or she subsequently receives an offer while the arbitration is pending." (*Sitrick Group, LLC, supra,* 89 Cal.App.5th at p. 1066.) Initially, the argument is precluded by the same forfeiture rules enunciated above.

In any event, the claim fails on the merits. Respondents cite to the rule that if an arbitrator fails to disclose within the time required, the trial court must vacate the arbitration award, without a showing of prejudice. (*Grabowski, supra*, 64 Cal.App.5th at p. 76.) But as noted in *Ovitz, supra* 133 Cal.App.4th 830, problems of disqualification (and ultimately vacatur) arise from the arbitrator's failure ***in the first instance*** to disclose whether or not it would entertain other offers of employment from the parties or their lawyers (Ethics Standard 12(b)), ***and then (thereafter) accepting employment*** in violation of Ethics Standards 12(c), which provides "that ***if*** the arbitrator fails to make the disclosure required by subdivision (b) of this standard, from the time of the appointment until the conclusion of the arbitration the arbitrator must not entertain or accept any such offers of employment or new professional relationships, including offers to serve as a dispute resolution neutral." (133 Cal.App.4th at p. 844.) In *Ovitz*, the arbitrator failed to make the employment disclosure and then (thereafter) accepted employment, meaning pursuant to section 1286.2 the court was required to vacate the arbitration award. (*Ibid*.) Here, the arbitrator did not fail to indicate whether it would or would not be interested in employment – she said she would. At worst, she simply failed to indicate per Ethics Standards 12(b)(2)(B) that in a nonconsumer arbitration context, she would not be required to report her employment if employment were accepted. Without that disclosure, if she did accept employment, vacation would be appropriate. But there is no evidence presented and no argument made, that she actually accepted any employment offer, in any way, during the pendency of this arbitration. As there was no violation of Ethics Standards 12(c), there is no basis to vacate the arbitration award.[11]

The court finds *Honeywell v. JPMorgan Chase Bank, N.A., supra*, 25 Cal.App.5th 909 supportive of this conclusion. The *Honeywell* court observed generally that an "arbitrator's violation of his or disclosure obligations under the Ethics Standards . . . *does not automatically*

[11] *Grabowski*, relied upon by respondents, is factually distinguishable. The *Grabowski* court concluded the arbitration award had to be vacated because the arbitrator engaged in an ex parte communication with one party's counsel without disclosing the communication to the other side. (*Id.* at p. 559.) The rules at issue in this case were not at issue in *Grabowski*.

entitle a party challenging an arbitration award to an order vacating the award." (*Id.* at p. 928, italics added.) For vacation, the arbitrator must be actually aware of a ground for disqualification and fail to disclose it. (*Ibid.*) In *Honeywell*, the arbitrator not only failed to comply with the Ethics Standard 12(b), but failed to comply with Ethics Standards 12(c) (as noted above); 12(d), which requires that if the disclosure is made under standard 12(b), in consumer arbitrations, "the arbitrator must inform all parties to the current arbitration of any such offer and whether it was accepted, as provided in this subdivision"; and 7(d), which requires an arbitrator to disclose matters that could cause a person aware of the facts to reasonably entertain a doubt the arbitrator would be able to be impartial. (*Id*. at pp. 927-930.) The arbitrator in *Honeywell* "accepted offers to serve as a neutral in eight other cases involving [Chase's] attorneys and disclosed only four of them . . . ." In this situation, noted the *Honeywell* court, vacation of the award was required because the "arbitrator was actually aware of the four other pending arbitrations involving counsel for Chase. Therefore, under section 1286.2, the arbitrator's failure to disclose the four arbitrations with counsel for Chase was a failure 'to disclose within the time required for disclosure a ground for disqualification of which the arbitrator was aware,' which requires vacatur of the award." (*Id*. at p. 930.) Nothing similar occurred here, as the arbitrator in this matter was not aware of any conflict at any time that actually required disclosure.[12] Again, the court finds this is not basis to vacate the arbitration award.

Respondents alternatively predicate vacatur on section 1286.2(a)(6)(B), which incorporates the standard for disqualification articulated in section 170.1(a)(6)(A)(iii) [a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial].) In support, respondents point to Exhibit 11, which consists of its two letters dated October 30, 2023, and November 1, 2023, detailing what respondents term as the arbitrator's "favoritism toward Lucky Dog and its counsel . . . ." They include declarations from two attorneys – John McClendon and Kevin Carlin as support. Mr. McClendon indicates that he "reviewed the letter from Attorney Corey J. Briggs to the [AAA] dated October 30, 2023, and the exhibits thereto. Based on the information in the letter and exhibits, I entertain doubts that arbitrator Dana Welch would be impartial in the proceeding." Nothing else is offered. Mr. Carlin declares that "based on the information and exhibits in the Briggs Letter I have serious doubts that arbitrator Dana Welch can be unbiased, ethical, fair and treat all parties the same with her sole object and motivation being substantial due process and fairness going forward." Mr. Carlin questions whether he will use AAA in the further, for "I fear my clients could be subject to similar, biased, arbitrary and capricious conduct . . . ." In addition, the October 30, 2023 letter authored by respondents further explains that the arbitrator engaged in misconduct during the

[12] At no point have respondents claimed, in contrast to the plaintiff/petitioner in *Honeywell*, that the arbitrator violated Ethics Standards 12(c),(d) or 7(d), requiring disclosure of other matters involving the same parties or the same lawyers in the consumer context. Significantly, as *Honeywell* involved a forfeiture of any issued involving a violation of Ethics Standards 12(b), as is true for respondents here, *Honeywell* has even more force in the present context, given the complete absence in this case of any conflict (known or even unknown) that required disclosure.

discovery of third party witnesses, and in numerous discovery rulings made against respondents, for the arbitrator relied exclusively on Lucky Dogs' evidentiary proffer, meaning respondents were not provided an opportunity to provide either evidence or briefing These problems of bias were exacerbated, respondents contend, by the fact the arbitrator cited inapposite authority in support of her rulings. Further, opine respondents, the arbitrator "unilaterally decided to add hearing dates so that Lucky Dog's third party witnesses could testify out of order," and she demanded appearances without concern of counsel's unavailability. Because the AAA erred in overruling respondents' objections to the arbitrator based on lack of impartiality and bias, the court must vacate the arbitration.

These arguments provide no basis for the court to vacate the arbitration award. "'Impartiality' entails the 'absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind.' [Citation.] In the context of judicial recusal, '[p]otential bias and prejudice must clearly be established by an objective standard.' " (*Haworth, supra*, 50 Cal.4th at p. 389.) " 'An impression of possible bias in the arbitration context means that one could reasonably form a belief that an arbitrator was biased *for or against a party for a particular reason.*' " (*Ibid.*) " 'Bias is defined as a mental [predilection] or prejudice; a leaning of the mind; "a predisposition to decide a cause or an issue in a certain way, which does not leave the mind perfectly open to conviction." ' " (*Baxter v. Bock* (2016) 247 Cal.App.4th 775, 791; see *Grabowski,* s*upra,* at p. 78.) The question before the court is how an objective, reasonable person would view the arbitrator's ability to be impartial. Section 170.1, subdivision (a)(6)(A)(iii) mandates disqualification only when a "person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial." (*Malek Media Group LLC v. AXQG Corp.* (2020) 58 Cal.App.5th 817, 828.) " 'An impression of possible bias in the arbitration context means that one could reasonably form a belief that an arbitrator was biased for or against a party for a particular reason.' " (*Haworth, supra*, 50 Cal.4th at p. 389.) The test is objective and fact-specific; there is no bright-line demarcation for the impression of bias, and each case must be considered considering the particular facts involved. As the parties seeking to vacate the arbitration award, respondents bear the burden to establish a reasonable impression of possible bias. (*FCM Investments, LLC v. Grove Phan, LLC* (2023) 96 Cal.App.5th 545, 555.)

The arbitrator in her written award addressed many of the issues identified by respondents above, all associated with the discovery issues and discovery sanctions ultimately imposed by the arbitrator for apparent discovery abuses by respondents' counsel. The arbitrator in her written award explained the relevant factual background and Mr. Briggs' representation of Mr. Fussell, Sonoma Kind, Cannacraft, and ultimately Mosaic (at least by December 23, 2022); detailed Mr. Briggs' agreement to adopt third party subpoena procedures in the same vein as had Mr. Titus, former counsel; explained Mr. Briggs' alleged discovery abuses relating to depositions, including false representations made by Mr. Briggs, the reasons for allowing

petitioner to depose witnesses out of order, Sonoma Kind's failure to provide its share of deposits for arbitration, and the impact of Mr. Fussell's witness tampering and intimidation. (See pp. 45 to 56 of the written arbitration award.) Respondents challenges in this context appear to involve nothing more than claims of factual and/or legal error, recast as a claim of lack of impartiality and unfairness; in reality, such errors are not reviewable because the arbitrator's (as opposed to the court's) resolution of the disputed issues "is what the parties bargained for in the arbitration agreement." (*California Union Square L.P. v. Saks & Company LLC* (2020) 50 Cal.App.5th 340, 348; see also *Evans v. Centerstone Development Co.* (2005) 134 Cal.App.4th 151, 167 ["Courts have repeatedly instructed litigants that challenges to the arbitrator's rulings on discovery, admission of evidence, reasoning, and conduct of the proceedings do not lie. [Citations.] Plaintiffs' crude attempt to characterize their claims so they would fall within acceptable bases for an appeal is an artifice we condemn."]; see *Baker Marquart LLP v. Kantor* (2018) 22 Cal.App.5th 729, 739 [courts will not review the sufficiency of the evidence supporting an arbitrator's award].) Respondents fail to address the detailed observations made by the arbitrator in the arbitrator's award, instead making global claims without essential factual support (other than pointing to the October 30, 2023, letter sent to the AAA, written long before the June 17, 2024, written award issued by the arbitrator).

A fundamentally fair hearing requires notice, opportunity to be heard and to present relevant and material evidence and argument before the decision makers; the arbitrator must give each of the parties to the dispute an adequate opportunity to present evidence and arguments. (*Baker Marquat, supra*, 22 Cal.App.5th at p. 740.) Respondents fail to demonstrate this standard was not met, as the record shows respondents had a full opportunity during the arbitration process to address all discovery issues raised and decided by the arbitrator. Respondents have not established bias or partiality under an objective standard involving a disinterested objective observer, considering the totality of evidence. In a comparable judicial setting, "[n]either strained relations between a judge and an attorney for a party nor '[e]xpressions of opinion uttered by a judge, in what he [or she] conceived to be a discharge of his official duties, are . . . evidence of bias or prejudice. [Citation.] ' " (*Roitz v. Coldwell Banker Residential Brokerage Co.* (1998) 62 Cal.App.4th 716, 724, quoting *Jack Farenbaugh & Son v. Belmont Construction, Inc.* (1987) 194 Cal.App.3d 1023, 1031.) " '[W]hen the state of mind of the trial judge appears to be adverse to one of the parties but is based upon actual observance of the witnesses and the evidence given during the trial of an action, it does not amount to that prejudice against a litigant which disqualifies him in the trial of the action. ' " (*Jack Farenbaugh & Son v. Belmont Construction, Inc., supra,* 194 Cal.App.3d at pp. 1031-1032, quoting *Kreling v. Superior Court* (1944) 25 Cal.2d 305, 312; see *Department of Forestry & Fire Protection v. Howell* (2017) 18 Cal.App.5th 154, 203 [erroneous rulings against a party not grounds for disqualification], disapproved on other grounds, *Presbyterian Camp & Conference Centers, Inc. v. Superior Ct.* (2021) 12 Cal.5th 493; *Conservatorship of Tedesco* (2023) 91 Cal.App.5th 285, 306 [opinions formed by judge on the basis of facts introduced or events occurring in the court of the

proceedings do not constitute basis for a bias or partiality motion "unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible"; judge's critical, disapproving, or even hostile remarks made to parties during course of trial ordinarily do not support challenge for cause]; *Dietrich v. Litton Industries, Inc.* (1970) 12 Cal.App.3d 704, 719 ["Erroneous rulings against a litigant, even when numerous and continuous, do not establish a charge of bias and prejudice"]; *Magana v. Superior Court* (2018) 22 Cal.App.5th 840, 857 [judge's questioning why attorney was repeatedly late and admonishing attorney for improperly engaging in ex parte communications with court did not support attorney's bias claim].) Considering these principles, equally applicable to arbitrators, respondents' claims fall short of establishing a sustainable level of bias, partiality, or unfairness.[13] Vacatur is therefore unwarranted.

Finally, respondents claim the court must vacate the arbitration award pursuant to section 1286.2, subdivision (a)(4), which requires vacatur when the arbitrator exceeds her powers, and the award cannot be corrected without affecting the merits of the decision. A trial court is authorized to vacate an arbitrator's award when "this issue is outside the scope of an arbitration agreement . . . ." (*Glassman v. NcNabb* (2003) 112 Cal.App.4th 1593, 1598 see also *Jordan v. Department of Motor Vehicles* (2002) 100 Cal.App.4th 431, 443 [listing circumstances in which arbitrators exceed their powers].) And, in determining whether an arbitrator has exceeded his or her powers, courts " 'must give substantial deference to the arbitrator's own assessment of his contractual authority.' " (*Glassman,* at p. 1601 *Jordan,* at pp. 443–444; see also *California School Employees Assn. v. Bonita Unified School Dist.* (2008) 163 Cal.App.4th 387, 408.) Respondents advance four separate claims in support of this challenge, and each will be addressed separately.

Initially, and contrary to respondents' claim, the arbitrator has power to determine whether respondents were Sonoma Kind's alter egos under the circumstances. (See pp. 42 to 45

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[13] Respondents' reliance on *United Farm Workers of America, AFL-CIO (United Farm Workers), supra*, 170 Cal.App.3d 97, and *Pacific, Etc. & Southwest Annual Conference of United Methodist Church, supra*, 82 Cal.App.3d 72, is misplaced. In *United Farm Workers,* the disqualification issue involved a disclosure by the trial court that his wife "had volunteered for and worked two to three days as a replacement worker in a carrot shed," which was owned by plaintiff Maggio, Inc., in its lawsuit against the United Farm Workers of America, AFL-CIO. The trial court denied the disqualification motion, and in a pretrial writ proceeding, the appellate court, while finding the issue "close," concluded that the disqualification motion was properly denied. (170 Cal.App.3d at p. 107.) And in *Pacific* (a procedurally similar posture to *United Farm Workers*), the court found the law and motion judge, one Judge Tharp, as revealed by "uncontradicted evidence of publicly announced prejudgments of issues before him as well as issues and parties not before him, by unchallenged evidence of the interjection of his views and directives indicating his adoption of an advocate's pose," demonstrated bias. (82 Cal.App.3d at p. 86.) This was reflected in a March 20, 1982, letter sent by Judge Tharp to the parties after examining motions to quash, but with pending motions for a preliminary injunction, a class certification motion, and a demurrer, in which Judge Tharp expressed his opposition that "plaintiffs' claims against Pacific & Southwest Conference are meritorious and that they will in all probability prevail at the time of trial." The appellate court found that because the matters had not been tried, Judge Tharp gratuitously offered an opinion on a matter pending before him or her that shows bias or prejudice against a party, and thus had to be recused. (82 Cal.App.3d at p. 84.) Nothing here resembles either case.

of Arbitrator's Written Order). True, as noted in *Benaroya v. Willis* (2018) 23 Cal.App.5th 462, 465, a trial court errs in confirming an arbitration award when the ***arbitrator*** decides whether a nonsignatory to an arbitration agreement can be compelled to arbitrate, even when that party may be an alter ego, because that determination is solely within the authority of the trial court, not the arbitrator. (See also *FCM Investments, LLC, supra,* 96 Cal.App.5th at p. 560 [arbitrator exceeds power by compelling nonsignatory of arbitration agreement to arbitrate and by thereafter finding liability under alter ego theory].) In that situation, it would be error to confirm the arbitration award. (*Benaroya, supra,* at p. 465 [error to for arbitrator during arbitration to allow a party to amend their arbitration demand to include someone not a party to the arbitration agreement].)

But that is not what happened here. Santa Barbara County Superior Court Judge Beebe, not the arbitrator, determined in a written order issued on October 5, 2022, that there was a prima facie basis to find that "Fussell, Somarosa, and Mosaic are each alter-egos of Respondent Sonoma Kind with respect to the agreement, and hence may be compelled to participate in the Arbitration as parties who are potentially responsible for any alleged breaches of the Agreement by Sonoma Kind." According to Judge Beebe, Lucky Dog was entitled to compel "Fussell, Somarosa, and Mosaic to participate in the Arbitration Proceeding," but made it clear that it was not ruling on the ultimate issue of liability under the alter ego doctrine, "as this determination will be made solely by the arbitrator in the Arbitration Proceeding." Judge Beebe made a judicial determination on the alter ego finding in the first instance, to the effect that the arbitrator had jurisdiction over the nonsignatories, as required by *Benaroya*. Nothing in *Benaroya* or progeny remotely suggests that once this judicial determination has been made, the arbitrator cannot determine whether the nonsignatories are actually liable as alter egos.[14] This case is akin to *RN Solution, Inc. v. Catholic Healthcare West* (2008) 165 Cal.App.4th 1511, 1517; *NORCAL Mutual Ins. Co. v. Newton* (2000) 84 Cal.App.4th 64, 70–71; and *Rowe v. Exline* (2007) 153 Cal.App.4th 1276, 1281–1282, in which nonsignatories were compelled to arbitrate in a decision made by the trial court, not the arbitrator. Simply put, this is not a case in which the wrong-decision maker decided whether the arbitrator had jurisdiction to act; it therefore affords no basis upon which to vacate the arbitration award.

Respondents advance two additional claims through the prism of section 1286.2(a)(4). Both grounds involve application of Item 25 of the "Growing Agreement Hemp 2019-2020," which provides in part that all disputes "which cannot be resolved through good faith

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[14] Respondents contend that Judge Beebe did not make the necessary judicial determination contemplated by *Benaroya* because in his order, the court expressly indicated that it was not determining whether the respondents are liable on an alter ego or any basis. The argument misses the mark, for there is an obvious distinction between making a judicial determination about whether an arbitrator has jurisdiction over nonsignatories in the first instance (which is what *Benaroya* requires), and ultimately whether respondents are liable for damages under an alter ego theory, which is what the arbitrator determines when it has jurisdiction to act. Nothing in *Benaroya* suggests otherwise or indicates that the trial court is the only one that can determine ultimate alter ego liability. Indeed, such a gloss would seemingly render arbitration a nullity, a point anathema to both the CAA and the FAA.

negotiations, *and which are raised in writing to the other within 120 days of the date such claim arose*, shall first be submitted to mediation, and if not successfully mediated shall then be resolved by arbitration. . . . ." Respondents in their second argument as alter egos argue that the award must be vacated because they (unlike Sonoma Kind) were "not invited to mediate, or notified in writing about, Lucky Dog's claim within 120 days of its accrual . . . ." According to respondents, the arbitrator had no authority to enter an award against them as a result, meaning it must be vacated. The third ground is advanced by Sonoma Kind alone, to the effect that the arbitrator improperly awarded damages "claimed after the First Amendment." Specifically, respondents contend that because Lucky Dog "did not request mediation until October 15, 2020,"[15] the amounts owed before June 17, 2020, which was the date of the First Amendment to the Growing Hemp 2019-2020 Agreement, could not be the subject of the arbitration under Section 25 of the Growing Agreement, as the demand in writing (on October 15, 2020) was made more than 120 days beyond June 17, 2020.

Both claims were expressly rejected by the arbitrator, although in any event, they are without merit as a basis for vacatur. Respondents' second argument -- that is, respondents were not separately offered mediation in timely way -- is predicated exclusively on the assumption that the alter ego determination has no impact on or application to the 120-day requirement for written demands in section 25 of the critical agreement, meaning that although mediation was timely offered for Sonoma Kind, and even though the remaining respondents have been determined to be the alter egos of Sonoma Kind, the respondents must nevertheless be treated separately for this requirement. The logic, import, and scope of the alter ego determination belies this assumption. A good example is *Greenspan v. LADT LLC* (2010) 191 Cal.App.4th 486, in which the appellate court concluded that even after an arbitration award is confirmed by a trial court, the trial court, pursuant to section 187, may amend to add additional judgment debtors as alter egos. (*Id.* at p. 508.) Indeed, the very nature of alter ego liability shows the nonparties (in this case, the nonsignatory alter egos) "controlled arbitration and were virtually represented in that proceeding [i.e., the arbitration]." The alter ego doctrine is premised on the theory that as a unitary enterprise, there are no "distinct interests"; the interests are in fact identical. (*Id*. at p. 510.) It follows that if the mediation demand was satisfied against one entity, it was satisfied against ***all entities***. The very essence of section 187 and *Greenspan* would be in serious doubt if an alter ego entity could claim a separate identity for purposes of any procedural requirements. Respondents have presented no authority that casts such doubt.

The third ground is equally unconvincing for related (albeit slightly distinct) reasons. Respondents contend that the first demand was made by Lucky Dog on October 15, 2020, and thus this fell outside the 120 days rule required in Item 25 of the original agreement. But that is not what the arbitrator concluded as a matter of fact. The arbitrator concluded that Sonoma Kind

[15] According to respondents, as there was no written claim for damages after the First Amendment was consummated, Sonoma Kind is treating an October 15, 2020, email as the first request for mediation.

stopped making payments as required by the First Amendment on October 17, 2019, and on November 13, 2019, "Lucky Dog's counsel sent a demand letter to Sonoma Kind, seeking payment of the $432,827.33, the amount alleged to be owed as of that date." This court cannot review factual determinations made by the arbitrator, and respondents fail to address the import of this determination on their argument, which (again) is fatal. Indeed, if Sonoma Kind was given notice of the breach not on October 15, 2020, but on November 13, 2019, then the arbitrator acted well within her jurisdictional power to award damages stemming from the First Amendment, for the breach did not occur until October 17, 2019, and the demand was timely (i.e., within 120 days) thereof. And as noted above, since Sonoma Kind was put on notice, so were the alter ego respondents, in line with the authority as noted. This also is no basis to vacate the arbitration award.

Finally, respondents argue that the court must vacate the arbitration award because the cannabis (hemp) at issue (and exchanged between the parties) for the most part contained more than .3% THC (based on Exhibit 117 offered to the arbitrator), which amounts to a clear violation of federal law, and the Growing Agreement expressly required compliance with federal law, namely the Controlled Substances Act. (see § 11 of Grower Agreement, ensuring that Lucky Dog will "comply with all provisions of all federal, state, and local laws applicable to it".)[16]

It is settled that arbitrators exceed their powers to make an award where "the arbitration has been undertaken to enforce a contract that is 'illegal and against the public policy of the state.' " (*Sheppard, Mullin, Richter & Hampton, LLP, v. J-M Manufacturing* (2018) 6 Cal.5th 59, 68.) This is because "the power of the arbitrator to determine the rights of the parties is dependent upon the existence of a valid contract under which such rights might arise. [Citations.] In the absence of a valid contract no such rights can arise and no power can be conferred upon the arbitrator to determine such non-existent rights." (*Loving & Evans v. Blick* (1949) 33 Cal.2d 603, 610 [trial court determines legality of agreement in the first instance notwithstanding any determination made by the arbitrator]; *Brawerman v. Loeb & Loeb LLP* (2022) 81 Cal.App.5th 1106, 1115.) Where, as here, a party claims that an award exceeded an arbitrator's powers because "the entire [underlying] contract or transaction was illegal," the issue of illegality is for the trial court to decide, and it owes no deference to the arbitrator's resolution of that issue. (*Moncharsh,* 3 Cal.4th at pp. 31–32; *Lindenstadt v. Staff Builders, Inc.* (1997) 55 Cal.App.4th 882, 892.)

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[16] It is interesting to note that the Growing Agreement lists the following federal statutes that must be complied with (including "without limitation") the Federal Food, Drug and Cosmetic Act of 1938, the Federal Insecticide, Fungicide and Rodenticide Act, the Federal Fair Labor Standards Act, any and all other applicable laws and regulations governing the use of pesticides or fertilizers or the sale or safety of food products, federal statutes, ordinance rules or regulations relating to health, industrial hygiene, the environment or environmental conditions, or pertaining to hazardous substances, and the Agricultural Improvement Act. What is not mentioned is the Controlled Substances Act relied upon by respondents here.

There are several problems with respondents' arguments. First, and perhaps foremost, there is no issue about the illegality of the contract *as written*. Notably, the arbitrator expressly found in her written award that "Lucky Dog complied with all testing standards for the Crops. All samples of the Crops tested within thirty days of harvest fell below the legally mandated 0.3% THC threshold. No law or regulation required the Crops to be tested for THC levels post-harvest." (See pp. 30-31 of the arbitration order). If true, even under respondents' methodology there would be no illegality or enforcement of an illegal contract.

Second, respondents point to Exhibit 117, which they introduced into evidence before the arbitrator, and claim it shows "more than a dozen lab analysis." It shows (according to respondents) that "the THC levels of the Lucky-Dog-grown hemp on a dry-weight basis exceeded .3% and that those samples therefore 'Failed'." The results in this exhibit are in fact a mixed bag, showing only that on October 25, 2019, two tests show THC levels passed, and two tests showed THC levels failed; that on November 5, 2019, six tests show THC levels passed, while six tests showed THC levels failed; and that on December 23, 2019, two tests showed THC levels failed. On each test report, the following is emboldened: "This report cannot be used to meet final compliance testing requirements . . . ." The court is not told how long after harvesting these tests were made. In the end, respondents have not shown that the arbitrator's determinations in the written award, after taking into account Exhibit 117, were incorrect in any way – that all testing was within 30 days of harvest fell below the legally mandated .3% THC, and that no law or regulation required crops to be tested for THC-levels post-harvest was incorrect. The court cannot say, based on the meagre evidence presented, that the arbitrator's award amounted to the enforcement of an illegal contract in any way.

Further, even if the court were to set these concerns aside, the contract appears enforceable even if some deliveries by Lucky Dog to respondents contained more than .3% THC, and were violative of federal law. Under Civil Code section 1667, a contract is illegal if it is contrary to an express provision of law, or contrary to the policy of an expressed law, though not expressly prohibited. It is clear that the object of the agreement between the parties – to produce hemp with less than .3% THC – was not illegal or against state policy; in fact, quite the opposite is true. (See, e.g., Civil Code section 1550.5 (b) [the Legislature has declared that notwithstanding any law, including federal law, "commercial activity relating to adult-use cannabis conducted in compliance with California law, shall be deemed a lawful object of contract and not against public policy].)

And it is settled that equitable considerations justify enforcing the contract even if at times there was a failure to comply with federal law about THC concentrations. "In compelling cases, illegal contracts will be enforced in order to avoid unjust enrichment to a defendant [i.e., the party seeking to avoid the contract] and a disproportionately harsh penalty upon the plaintiff [i.e., the party seeking to enforce the contract].' [Citations.] " 'In each case, the extent of

enforceability and the kind of remedy granted depend upon a variety of factors, including the policy of the transgressed law, the kind of illegality, and the particular facts.' " (*Asdourian v. Araj* (1985) 38 Cal.3d 276, 292.) Factors courts commonly consider in determining whether to enforce an illegal contract (or more accurately, a legal contract with some illegal possibilities or overtones), include whether the defendant is part of "the group primarily in need of the [law's] protection," whether the contract is inherently immoral or inequitable, the relative sophistication of the parties, and which party is more at fault. (*Id.* at pp. 292–293; *Homestead Supplies, Inc. v. Executive Life Ins. Co*. (1978) 81 Cal.App.3d 978, 990 [" 'Before granting or refusing a remedy, the courts have always considered the degree by the offense, the extent of public harm that may be involved, and the moral quality of the conduct of the parties in the light of the prevailing mores and standards of the community.' "].)

Respondents have failed to demonstrate that the arbitrator exceeded her powers by enforcing the agreement under these standards, even if the court assumes some illegality. There has been a sea change in the acceptance of cannabis in California. (See, e.g., Civ. Code section 1550.5 (b).) The contract is not inherently immoral. Further, respondents are clearly more at fault and would be unjustly enriched if the contracts were not enforced. As noted by the arbitrator on page 35 of her written award, "never once did Sonoma Kind reject the Crops or tell Lucky Dog that the Crops were contaminated due to high levels of THC, heavy metals, or pesticides. Instead, as detailed, *supra*, Sonoma Kind consistently communicated that it would make Lucky Dog whole." The arbitrator went on to note that respondents' argument concerning the supposed illegality of the contract was not raised until July 2023, three and half years after the First Amendment was signed. These actions weigh heavily in favor of enforcement. Lucky Dog provided services and product for which it was never compensated, and it played no apparent role in respondents' ultimate breach. In short, even if some of the deliveries of hemp involved concentrations of .3% THC or more (something the court is assuming only in the alternative as a possibility) there are compelling equitable reasons to enforce the agreement under the specific circumstances of the case, as determined by the arbitrator. Here, as in *Asdourian*, the policy of the transgressed law, the kind of illegality and the particular facts at issue, all weigh in favor of enforcing the agreement, notwithstanding respondents' claims of illegality (even if they are factually justified, a determination the court is not making). Respondents have failed to show that the arbitrator exceeded her powers by entering an award based on it.

The court rejects all of respondents' arguments in support of its request to vacate the arbitration award.

ii) Requests for Correction (§ 1286.6(b)

This leaves the last general ground advanced by respondents – that is, if the court does not vacate the arbitration award, it should correct it, pursuant to section 1286.6(b), because the arbitrator exceeded its powers even if the award may be corrected without affecting the merits of the decision. It advances three arguments in support; each will be examined separately.

The court rejects the first ground for correction identified by respondents – based on the claim the arbitrator had no jurisdiction to determine respondents' alter ego liability. The court rejects this claim for the same reasons it rejected the claim in support of respondents' request to vacate the arbitration award, as discussed above. The arbitrator did not exceed her powers concerning her alter ego determination.

Respondents next ask the correct to correct the arbitration award because, in respondents' view, the arbitrator erroneously awarded damages to Lucky Dog of $79,200 for respondents' failure to pay rent "for the JV land." According to respondents, the JV land lease was "separate and apart from the cultivation under the then-forthcoming Growing Agreement," and thus not a proper subject of arbitration because the rent dispute fell outside the scope of the arbitration agreement. In support of this claim, the respondents point to the following observation made by the arbitrator in her written order: ". . . . Because the JV land rent is not part of the subject matter of the Agreement, it is outside the scope of the Agreement. . . . ." According to respondents, as a result, the arbitrator exceeded her powers when it awarded damages of $79,200.

To understand this contention, it is critical to examine the context in which the arbitrator's statements above were made. The arbitrator, under the heading "Sonoma Kind Owes Lucky Dog its Agreed Upon Payment for the JV Land Rent," noted initially that the parties "contemplated a deal of the entire net acres of Ranch 26. However, Strange [a representative of respondents] changed the terms of the Agreement to include only the growing of Crops on 70 acres. [The JV land involves the other 70 acres.] The 70-acre grow is the explicit subject matter of the Agreement. . . .[¶] The parties initially engaged in discussions about forming a joint venture to grow hemp on the remaining 70 acres [i.e., the JV land.] When that joint venture did not materialize, Fussell orally agreed to pay 55% of the JV land rent. Sonoma Kind paid for the JV land rent without any objection until October 2019, when it ceased making any payments at all. [¶] Because the JV land rent is not the subject matter of the Agreement, it is outside the scope of the Agreement. The Agreement's integration clause does not apply," meaning an oral agreement to rent the JV land was not foreclosed because of the integration agreement. The arbitrator then went on to conclude that the statute of frauds was not implicated, under its exception as contained in Civil Code section 1624(b)(3)(C), in light of Fussell's testimony that an oral contract was made for the JV rent.

With this background, the following rules have developed. Arbitrators are not obliged to read contracts literally, and an award may not be vacated (or corrected) merely because the court is unable to find the relief granted was not authorized by a specific term of the contract. The remedy awarded, however, must bear some rational relationship to the contract and the breach. The required link may be to the contractual terms as actually interpreted by the arbitrator (if the arbitrator has made that interpretation known), to an interpretation implied in the award itself, or to a plausible theory of the contract's general subject matter, framework, or intent. The award must be related in a rationale manner to the breach (as expressly or impliedly found by the arbitrator). The award is rationally related to the breach "it if is aimed at compensating for, or alleviating the effects of, the breach. (*Advanced Micro Devices, Inc. v. Intel Corp*. (1994) 9 Cal.4th 362, 381, and fn. 4.) An award "will be upheld so long as it was even arguably based on the contract; it may be vacated only if the reviewing court is *compelled* to infer the award was based on an extrinsic source." (*Id.* at p. 381.) In *Advanced Micro*, the Supreme Court rejected the argument "that arbitrators may not award a party benefits different from those the party could have acquired through performance of the contract—the cases do not support [this] position. No exact correspondence is required between the rights and obligations of a party had the contract been performed and the remedy an arbitrator may provide for the other party's breach." (*Id.* at p. 382.) Simply put, the arbitrators, unless expressly restricted by the agreement of the parties, "enjoy the authority to fashion relief they consider just and fair under the circumstances existing at the time of arbitration, so long as the remedy may be rationally derived from the contract and the breach. The rights and obligations of the parties under the contract as it was to be performed are not an unfailing guide to the remedies available when the contract was breached. It follows that parties entering into commercial contracts with arbitration clauses, if they wish the arbitrator's remedial authority to be specifically restricted, would be well advised to set out such limitations explicitly and unambiguously in the arbitration clause . . . ." (*Id*. at p. 383.) Accordingly, courts must accord "substantial deference to the arbitrators' own assessments of their contractual authority," and courts "should generally defect to an arbitrator's finding that determination of a particular question is within the scope of his or her contractual authority." (*Id.* at pp. 372-372; see also *VVA-TWO, LLC v. Impact Development Group, LLC* (2020) 48 Cal.App.5th 985, 1009 [citing *Advanced Micro Devices, Inc.*].)

Respondents do not cite to any authority or otherwise offer any reason to counter the clear and obvious import of *Advanced Micro Devices, Inc*., and progeny in the present context. While the contract for rent of the JV land was created by separate oral agreement between the parties technically separate from the written Growing Hemp Agreement, which contained the arbitration agreement, the two contracts and actions at issue were patently related, "grew" out of the same discussions and relationships with the parties from the transactions' inception, were contemporaneously operative, factually related, and breached simultaneously. The arbitration clause itself is broadly worded, indicating that arbitration is appropriate for "any dispute, controversy, or claim arising out of or ***relating to this Agreement*** . . . ." (Item 25 of the Growing

Agreement.) This is sufficiently related to include ***all*** controversies, whether legal, factual, equitable, contractual, or tortious, having their roots in the parties' relationship, including the related rent for the JV property associated with the cannabis crop cultivation. (See generally *Ajida Technologies, Inc. v. Roos Instruments, Inc.* (2001) 87 Cal.App.4th 534, 543-544.) And it would be a factual misnomer to suggest that the rent of the JV property (and its 70 acres as part of Ranch 26) was "unrelated" to the cultivation of the adjacent 70 acres (also part of the same Ranch 26), particularly as it appears from the outset (as expressly noted by the arbitrator) that the parties "contemplated a deal for the entire 140 acres of Ranch 26." Accordingly, the damage award of $79,200 involving the JV land was "rationally derived from the contract and the breach" at issue in the Growing Agreement, coupled with the broadly worded arbitration clause and the fact no limitation on the arbitrator's power was outlined in the arbitration agreement. The court cannot say the arbitrator exceeded its authority "to fashion relief [he] consider[ed] just and fair under the circumstances existing at the time of arbitration." (*Advanced Micro*, *supra*, 9 Cal.4th at p. 383.) Under *Advanced Micro* and progeny, the arbitrator did not act in excess of her powers in making the award.

This leaves respondents' last argument for correction of the arbitration's award – namely, the arbitrator exceeded her powers under section 1286.6, subdivision (b), by awarding "too much prejudgment interest" pursuant to Civil Code section 3287, subdivision (b). Respondents make two claims in support. First, they note that the arbitrator awarded "interest in the amount of 10% per annum on its actual damages of $968,004.94 from the date of breach, August 26, 2020, through June 17, 2024, the date of the Final Award," amounting to $368,902.85. Respondents contend that pursuant to Civil Code section 3289, prejudgment interest for "unliquidated damages" "from a date prior to the entry of judgment as the court may, in its discretion, fix, but in no event earlier than the date the action was filed." Additionally, respondents contend that the arbitrator erroneously awarded prejudgment interest of 10% on three damage categories: 1) prejudgment interest on amounts advanced to cover respondents' deposits for arbitrator compensation of $1,544,84; 2) on prejudgment interest for amounts paid for court reporter no-show fees of $40.22; and 3) for prejudgment interest on the fully liquidated amount of $1,848,892 from the date of the final award (June 17, 2024) through the date judgment is entered by the court. According to respondents, prejudgment interest of 10% is inappropriate because they are not "damages" as contemplated by Civil Code section 3287(b).

Respondents briefing is cursory to say the least, with absolutely no case citations or meaningful legal analysis to support any of these claims. The arguments are in fact perfunctorily made. For these reasons, the court could in its discretion could deem the arguments waived for failing to provide any meaningful analysis.

In any event, on the merits, respondents challenges to the prejudgment interest amount of $368,902.85 is unavailing. Civil Code section 3287, subdivision (a) allows liquidated damages –

as opposed to unliquidated damages outlined in section 3287, subdivision (b) – from the date of the breach. That is, for a party to obtain prejudgment interest under Civil Code section 3287, subdivision (a) from the date of breach, as the arbitrator determined here, the party must have known "or have been able to calculate from reasonably available information the amount of plaintiff's claim as of a particular date." (*Glassman v. Safeco Ins. Co. of America* (2023) 90 Cal.App.5th 1281, 1294.) If that cannot be ascertained (meaning the damages are unliquidated), recovery can be no earlier than the date the action, as detailed in Civil Code section 3287, subdivision (b), as relied upon by respondents. Damages are deemed certain or capable of being made certain within Civil Code section 3287, subdivision (a) where there is essentially no dispute between the parties concerning the basis of computations. That is, "the test for recovery of prejudgment interest under Civil Code section 3287[subdivision (a)] is *whether defendant actually know[s] the amount owed or from reasonably available information could the defendant have computed that amount.* [Citation.]" (*Id.* at p. 1315, italics added.) Uncertainty as to liability is irrelevant. (*Howard v. American National Fire Ins. Co.* (2010) 187 Cal.App.4th 498, 535.)

The record does not show the arbitrator exceeded her powers in awarding prejudgment interest of $368,902.85 from the date of the breach, August 26, 2020, through June 17, 2024. As noted by Lucky Dog in reply, damages were ascertainable from the very beginning of the breach via invoices, billing dates, less amounts recovered for sales of crops and payments. This is reflected in Exhibit 1 (and Exhibit F schedule attached thereto) of petitioner's request for judicial notice. There is no disputed evidence about this amount from the litigation's inception. (*Olson v. Cory* (1983) 35 Cal.3d 390, 402.) There is no disparity between the amounts demanded and the damages awarded. (See, e.g., *Wisper Corp v. California Commerce Bank* (1996) 49 Cal.App.4th 948, 961 [the greater the disparity between the complaint and the damages is factor that militates against a finding of the certainty mandated by section 3287, subd. (a)].) Damages were ascertainable from truthful data supplied by Lucky Dog; the issue was resolved by the arbitrator after hearing. Accordingly, an award of prejudgment interest of $368,902.85 did not exceed the arbitrator's power; it thus need not be corrected.

The entire thrust of respondents second challenge rests on the assumption that the following are not "damages" as required by the prejudgment interest statute: amounts ordered to be repaid to Lucky Dog for arbitrator compensation, after Sonoma Kind failed to pay its share; the amounts paid for court reporter fees following witness no-shows because of discovery abuses by respondents; and, amounts associated with the post-award, prejudgment interest ordered to be paid on a per diem basis. There is no challenge to the amounts as calculated.

Again, no briefing or analysis is provided, and the court could deem the issue forfeited as a result.

In any event, each challenge fails on the merits. Civil Code section 3281 defines the term "damages" as follows: "Every person who suffers detriment from the unlawful act or omission

of another, may recover from the person in fault a compensation therefor in money, which is called damages." (*See Flethez v. San Bernardino County Employees Retirement Assn*. (2017) 2 Cal.5th 630, 635, fn. 2 [same].) Money advanced to cover the amounts respondents were required to pay for arbitrator compensation and the amounts paid for court reporters resulting from respondents' improper no-shows at deposition appear to be "detriments from the unlawful act or omission" of respondents, meaning they are "damages" and thus subject to prejudgment interest pursuant to Civil Code sections 3287. (See *Cortez v. Purolator Air Filtration Products Co.* (2000) 23 Cal.4th 163, 174[" 'Damages,' as that term is used to describe monetary awards, may include a restitutionary element . . . ."]; *Currie v. Workers' Comp. Appeals Bd.* (2001) 24 Cal.4th 1109, 1116, fn. 3; see *Collins v. City of Los Angeles* (2012) 205 Cal.App.4th 140, 151, fn. 7 [courts have broadly construed the term damages as used in Civil Code §§ 3281 and 3287].) The basis for these two categories (arbitration deposits and costs for no-shows at depositions[17]) have fraudulent or at least negligent misrepresentative qualities as their basis, meaning the arbitration award, even if termed a form of restitution, can be treated as "damages." (*Cortez, supra*, at p. 174; see *also Aiu Ins. Co. v. Superior Court* (1990) 51 Cal.3d 807, 826, fn. 11 ["damages" generically includes restitutive and punitive measures].) Respondents have provided no authority to suggest the prejudgment interest awarded to Lucky Dog regarding these amounts (i.e., pre-judgement interest for damages based on respondents failure to pay required fees for arbitration and based on out of pocket expenses associated with respondents' wrongful conduct) was in excess of the arbitrator's powers under the circumstances. There is therefore nothing to correct.

Respondents' challenge to the arbitrator's post-award prejudgment interest award of $527.09 per diem is equally unavailing. Civil Code section 3287(a) permits post-arbitration, , pre-judgment interest as "damages," which must be awarded. (*Britz, Inc. v. Alfa-Laval Food & Dairy Co.* (1995) 34 Cal.App.4th 1085, 1106 [a successful party to arbitration is entitled to post-award, prejudgment interest, because on the date the arbitrator renders her award, the damages are "certain" within the meaning of section 3287(a)]; see *Pierotti v. Torian* (2000) 81 Cal.App.4th 17, 27 ["B*ritz* controls this case. The court erred when it failed to award post-award, pre-judgment interest under Civil Code section 3287, subdivision (a)"]; see *Glassman, supra*, 90 Cal.App.5th at p. 1319 [prejudgment interest under section 3287(a) is generally available in matters subject to contractual arbitration, even if only from the date of the final award, which itself becomes a new contractual obligation or fixed liability regardless of the individual elements that comprised that liability, to entry of judgment]; see also *Tenzera, Inc. v. Osterman* (2012) 205 Cal.App.4th 16, 21–23 [same]l *County of Solano v. Lionsgate Corp.* (2005) 126

[17] The court emphasizes that the underlying amounts to which the prejudgment interest amounts were awarded -- $28,625 advanced by Lucky Dog to pay for the respondents share of the deposits for arbitration; $3,578.25 advanced by Lucky Dog to pay for respondents share of the deposits for additional study and the final award writing; and the $1,080 for costs associated with court reporters for respondents' no shows at depositions were not part of arbitrator's sanctions award, but were amounts involving direct recompense for out-of-pocket expenses wrongfully incurred by the Lucky Dog as a result of respondents' actions.

Cal.App.4th 741, 753 [same].) Under this well-developed authority the arbitrator did not exceed her powers in awarding this per diem amount; again, there is nothing to correct.

For all these reasons, the court denies respondents' request to correct the arbitration award.

Accordingly, the court grants Lucky Dog's motion to confirm the arbitration award.

D) *Post-Arbitration Attorney's Fees and Costs*

In addition to its request to affirm the arbitration award, Lucky Dog seeks *post-arbitration* attorney fees and costs incurred in association with the motion to confirm. Case law is clear -- if the underlying contract awards attorney's fees to the prevailing party, per Civil Code section 1717 -- reasonable attorney fees and costs for post-arbitration judicial proceedings are appropriate, pursuant to section 1293.2.[18] (*Carole Ring & Associates v. Nicastro* (2001) 87 Cal.App.4th 253, 260 [when a party is the prevailing party as a matter of law, the mandatory language of the contractual attorney fees clause and section 1293.2 entitle the party to reasonable attorney fees and costs incurred in post-arbitration judicial proceedings associated with a petition to confirm]; see also *Cohen v. TNP 2008 Participating Notes Program. LLC* (2019) 31 Cal.App.5th 840, 878 ["The award of costs pursuant to section 1293.2, including attorney fees when authorized by contract, is mandatory"]; *Corona v. Amherst Partners* (2003) 107 Cl.App.4th 701, A 707 ["a court must award costs in a judicial proceeding to confirm, correct or vacate an arbitration award"].) Here, there is an express attorney's fees and costs provision in the Growing Hemp Agreement (§ 26(h)) and in the Security Agreement (§ 6.11) (both at issue in the arbitrator's award and consummated between the parties). Unquestionably Lucky Dog is the prevailing party. Attorney's fees and costs are appropriate in the present context.

The real issue is not whether fees and costs are appropriate, but how much is reasonable. Lucky Dog has submitted a declaration from attorney Effie Anastassiou, indicating that $66.95 was spent for the costs of filing. This is not challenged, and seems reasonable. Ms. Anastassiou explains that she bills at $600 an hour and spent 10 hours and 26 minutes on the petition and its attendant documents, for a total of $6,264; counsel anticipates spending 4 hours on response, for an additional $2,400; and counsel bills $100 an hour for "processing for preparation, filing and

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[18] Section 1293.2 provides in relevant part as follows: "The court shall award costs upon any judicial proceeding under this title [governing arbitration] as provided in Chapter 6 (commencing with Section 1021) ... of this code." Section 1033.5, part of chapter 6 of the Code of Civil Procedure, provides that items recoverable as costs include attorney fees when authorized by contract. (§ 1033.5, subd. (a)(10)(A).) The judicial proceedings covered by this provision include petitions to confirm or vacate an arbitration award. (§ 1285; see *Marcus & Millichap Real Estate Investment Brokerage Co. v. Woodman Investment Group* (2005) 129 Cal.App.4th 508, 513.)

serving the foregoing by legal assistants," who spent 11 hours and 35 minutes for total of $1,158. ($66.95 + $6,264 + $2400+ $1,158 = $9.888.95.)

The court finds that $600 an hour is high for the local area, and reduces the hourly rate to $500. Additionally, the court finds that the time counsel spent on the initial motion to confirm the arbitration award -- 10 hours and 26 minutes -- to be unreasonable and reduces (for purposes of the lodestar calculation) the total hours to 8. The court finds 4 hours for respondents' response, given the voluminous documents filed, to be appropriate. Accordingly, the court reduces Ms. Anastassiou's attorney fee request to $6,000 in total, and awards costs and attorney's fees of $7,224.95 in aggregate, to be added to the judgment. The court directs counsel for Lucky Dog to submit a new proposed order and judgment for signature.

Summary:

The court grants petitioner's request for judicial notice.

The court rejects respondents request to vacate and/or correct the arbitration award, for the reasons articulated in this order.

The court grants the motion to confirm the arbitration award in full. It awards petitioner costs and attorney's fees of $7,224, to be added to the arbitration award and entered as part of the judgment.

Petitioner is directed to submit a new order and judgment for signature commensurate with this order.