PARTIES/ATTORNEYS

Plaintiff	Jose Apolinar	Frank P. Cuykendall
Defendant	E Cortez Corporation dba Central Coast Produce	Vaughn Taus
Alter Ego/ Successor	United Foods Inc.	Mary Herlihy

TENTATIVE RULING

The court's ruling has not changed. Absent service of process or service of a noticed motion to add United Foods, Inc., the judgment entered on June 13, 2024 is void for lack of jurisdiction and must be vacated as to United Foods Inc. under Code of Civil Procedure section 473 subdivision (d) ("The court may, ... on motion of either party after notice to the other party, set aside any void judgment or order.")

The parties are instructed to appear at the hearing for oral argument. Appearance by Zoom Videoconference is optional and does not require the filing of Judicial Council form RA-010, Notice of Remote Appearance. (See Remote Appearance (Zoom) Information | Superior Court of California | County of Santa Barbara.)

Plaintiff Jose Appolinar filed his initial complaint on June 13, 2014, against defendant E Cortez Corporation dba Central Coast Produce alleging wage and hour violations. Trial was initially set for June 15, 2015. That date was vacated after it was reported that defendant intended to file for bankruptcy. Notice of Stay of Proceedings pursuant to the automatic stay in bankruptcy was filed on February 5, 2016. On February 7, 2023, the court was advised that the automatic stay had been lifted. A court trial was held on June 3, 2024. Defendant did not appear. The court found in favor of the plaintiff and against defendant E. Cortez Corporation for total Judgment of $278,721.73. The Judgment filed on July 13, 2024, specified it was against E Cortez Corporation *and* against United Foods Inc. "as Alter Ego."

On August 8, 2024, United Foods Inc. filed a Motion to Set Aside the Judgment as it pertains to United Foods, arguing that it had no notice of the proceeding. Opposition was filed on August 16, 2024. At the December 17, 2024, hearing, the court continued the matter and allowed further briefing.

On January 15, 2025, plaintiff filed a Motion to Affirm the Amended Judgment. On January 17, 2025, United Foods filed a response that seemed to function as both a reply to plaintiff's opposition to the Motion to Set Aside the Judgment and as opposition to the Motion to Affirm Amended Judgment.[1] The motions were heard on February 4, 2025, and continued to April 11, 2025, and again to July 22, 2025.

On June 13, 2025, United Foods filed another Motion to Set Aside the Judgment. Opposition was filed and the matter was heard on July 22, 2025, and continued to September 23, 2025.

This court has consistently concluded that absent service of process on United Foods, or service of a noticed motion to add United Foods, Inc. to the judgment, it must be set aside. (See Tentative Rulings for December 17, 2024, August 27, 2024, and February 4, 2025.) Those rulings focused on plaintiff's efforts to add United Foods as an alter ego. The court now considers and rejects plaintiff's argument that the conclusion should be any different for the addition of United Foods under the doctrine of successor liability.

As stated in previous tentative rulings, the court is focused on how the amended judgment was presented procedurally. Consequently, arguments whether United Foods qualifies to be added to the judgment based on substantive factors, whether sufficient evidence to add United Foods was presented, or whether any such request would now be timely, have not been addressed.[2]

The record confirms that plaintiff did not add United Foods as a defendant to this action (e.g., by amendment to the complaint and service of process). Nor is it disputed that plaintiff did not give notice to United Foods that it was being added to the judgment under a successor liability theory pursuant Code of Civil Procedure[3]

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[1] The motion to affirm amended judgment was not timely served or filed. (Code Civ. Proc., § 1005, subd. (b)—"Unless otherwise ordered or specifically provided by law, all moving and supporting papers shall be served and filed at least *16 court days* before the hearing." [Emphasis added].) To be timely, the motion must have been served and filed by January 10, 2025. Nevertheless, United Foods does not raise untimeliness as an issue and the court will thus consider the motion.

[2]The question whether there is sufficient evidence to make this finding is arguably advisory as there is no motion pending before the court to add United Foods as a judgment debtor. Courts may not render advisory opinions on disputes which the parties anticipate might arise, but which do not presently exist. (*Stonehouse Homes LLC v. City of Sierra Madre* (2008) 167 Cal.App.4th 531, 542.) Moreover, the proper procedural mechanism to present United Foods' argument that the finding it was an additional debtor was not supported by facts should be made by a motion for reconsideration, which is precluded after entry of judgment. (*Nave v. Taggart* (1995) 34 Cal.App.4th 1173, 1177.) The court thus considers United Foods' Motion to Set Aside Judgment filed on June 13, 2025, only to the extent it requests the judgment be set aside based on procedural reasons. Whether United Foods may, in fact, be liable as a successor entity or for any other reason does not factor into the court's decision.

[3] All future statutory references are to this code unless specified otherwise.

section 187.[4] It is thus undisputed that United Foods received no notice that plaintiff intended to add it to the judgment as a party, either pre- or post-judgment.

As background, section 187 authorizes the court to amend a judgment to add a judgment debtor. (*Favila v. Pasquarella* (2021) 65 Cal.App.5th 934, 942.) That section gives the court "all the means necessary to carry" its jurisdiction "into effect" and permits the court to adopt "any suitable process or mode of proceeding," if there is no statute specifically pointing out the applicable "course of proceeding."[5] The court may add judgment debtors under several theories, including the alter ego doctrine and the successor corporation theory. (*Favila, supra*, 65 Cal.App.5th at p. 942.) Under the doctrine of successor liability, a company may step into the shoes of a predecessor company and become liable for the predecessor's actions. (*McClellan v. Northridge Park Townhome Owner's Ass'n Inc.* (2001) 89 Cal.App.4th 746; *Wolf Metals Inc. v. Rand Pacific Sales, Inc*. (2016) 4 Cal.App.5th 698, 704; see also *Ray v. Alad Corp.* (1977) 19 Cal.3d 22, 29.)

In his latest briefing, plaintiff suggests no due process was owed to the alleged successor company before finding it to be a successor, citing *Wolf Metals*:

> "In view of the nexus between a corporation and a second corporation constituting its "'mere continuation,' " when a judgment is entered against the former due to a failure to present a defense, *the judgment may be modified to name the latter as an additional judgment debtor without contravening due process."* (Emphasis in briefing.)

In *Wolf Metals*, the court considered whether addition of the judgment debtor after trial as an alter ego was an appropriate exercise of its powers under Code of Civil Procedure section 187. The court found that to do so, it must find the new party controlled the litigation, thereby satisfying the Fourteenth Amendment of the United States Constitution which guarantees that any person against whom a claim is asserted in a judicial proceeding shall have the opportunity to be heard and to present his defenses. It concluded that since defendant defaulted in the case before it, no such finding could be made. (*Motores De Mexicali v. Superior Court* (1958) 51 Cal.2d 172, 176—"To summarily add [the three individuals] to the judgment heretofore running only against [the corporation] without allowing them to litigate any questions beyond their relation to the allegedly *alter ego* corporation would patently violate this constitutional safeguard.... They were under no duty to appear and defend personally in that action, since no claim had been made against them personally.")

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[4] The court notes that here, the finding was not made post-judgment and therefore the cases cited by plaintiff are not factually similar to the instant situation.

[5] Section 187 states in full: "When jurisdiction is, by the Constitution or this Code, or by any other statute, conferred on a Court or judicial officer, all the means necessary to carry it into effect are also given; and in the exercise of this jurisdiction, if the course of proceeding be not specifically pointed out by this Code or the statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this Code."

The *Wolf Metals* court then considered whether a finding of successor liability (as opposed to alter ego liability) to a defaulted defendant would similarly contravene due process and found that it would not. It found that even when there was a default, a court may nevertheless make a finding of successor liability without offending due process. It was in this context that the *Wolf Metals* court made the above observation, upon which plaintiff relies. In other words, a corporation that is the "mere continuation" of another corporation that is liable on a judgment can be added as a judgment debtor irrespective of whether it controlled the prior litigation. (See also *McClellan v. Northridge Park Townhome Owners Ass'n, Inc.* (2001) 89 Cal.App.4th 746, 757—"Northridge Park contends the judgment should be reversed because it [] lacked the opportunity to litigate the underlying action. However, in view of our finding that substantial evidence supports the trial court's ruling herein that Northridge Park was the successor corporation to Peppertree, [ ] Northridge Park cannot be heard to complain that because it did not exist at the time the arbitration award was entered, its interests were not represented in the underlying action.")

But any suggestion that *Wolf Metals* stands for the proposition that no notice at all need be given to an alleged successor corporation is unsupported by case law. A successor corporation's liability may be determined by various procedural means, including an action naming the successor corporation as the actual defendant, or by a motion to add the successor. (*McClellan, supra,* 89 Cal.App.4th at 754.) "A motion pursuant to the procedural mechanism of section 187 enables the court to consider disregarding the corporate entity on any of several theories in order to add an additional judgment debtor. Once the trial court properly acquired jurisdiction of the matter [] by virtue of [plaintiff's] motion to amend the judgment, section 187 enabled the trial court to utilize 'any suitable process or mode of proceeding' to resolve the issue." (*Id.*—disregarding the corporate entity by finding successor liability was proper.)

Nothing in *Wolf Metals* suggests that notice of motion need not be given to those who are alleged to be successor entities. In fact, a motion to add the additional judgment debtors was filed in *Wolf Metals* after post-judgment discovery suggested that an individual named Koh was defendant judgment debtor's alter ego and that a business entity named SGS was a successor corporation of defendant judgment debtor. (*Wolf, supra,* at 702—"Following that [debtor] examination, Wolf Metals *filed a motion* under Code of Civil Procedure section 187, seeking to amend the default judgment to name Koh and SGS as additional judgment debtors." [Emphasis added.].)

Here, in contrast, no such notice was served, nor was United Foods named as a defendant. Thus, United Foods had no opportunity to dispute whether it was an

additional debtor judgment debtor of E. Cortez Corporation under successor liability theory. For that reason, the court grants the Motions to Set Aside the Judgment, to the extent the judgment includes United Foods Inc. as a defendant and/or debtor, on the basis it was procedurally defective. The court commensurately denies the Motion to Affirm the Amended Judgment.