SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Spring Street Courthouse, Department 11

22STCV04606 May 27, 2022
VILLAGE ROADSHOW FILMS (BVI) LIMITED, et al. vs 11:00 AM
WARNER BROS. ENTERTAINMENT INC., et al.

Judge: Honorable David S. Cunningham III
Judicial Assistant: T. Lewis
Courtroom Assistant: C. Concepcion

CSR: Cesar Rodriguez CSR# 13269
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): Mark Charles Holscher via LACC

For Defendant(s): No Appearances

Other Appearance Notes: For Plaintiff(s): Diana Torres (via LACC); Ashley Neglia (via LACC);For Defendant(s): Heather Welles, Daniel Petrocelli, Matt Kline, Emily Hayes;

NATURE OF PROCEEDINGS: Hearing on Motion to Compel Arbitration and Motion for Preliminary Injunctive Relief; Hearing on Motion - Other to File Under Seal Records

Pursuant to Government Code sections 68086, 70044, and California Rules of Court, rule 2.956, Cesar Rodriguez, CSR # 13269, certified shorthand reporter is appointed as an official Court reporter pro tempore in these proceedings, and is ordered to comply with the terms of the Court Reporter Agreement. The Order is signed and filed this date.

The matters are called for hearing.

The parties submit to the Court's tentative ruling via email.

The Court hears oral argument from counsel for Plaintiff and the Defendant.

After reading and considering all moving documents, hearing oral arguments, and conferring with counsel for plaintiff and defendant, the Court rules as follows:

The Court adopts its tentative ruling as the final order of the Court.

**TENTATIVE RULING RE: MOTION FOR PRELIMINARY INJUNCTION

Village’s motion for preliminary injunction is denied in full.

BACKGROUND

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Plaintiffs' Original Complaint filed on February 7, 2022, alleges a single cause of action for declaratory relief and seeks preliminary and permanent injunctive relief. Plaintiffs filed a First Amended Complaint on March 25, 2022, adding Warner Media LLC as a defendant and an additional cause of action under Business and Professions Code section 17200 et seq. The claims arise from a series of contracts between Village and Warner Bros. over 25 years to produce and finance 91 films.

Plaintiffs Village Roadshow Films (BVI) Limited, Village Roadshow Films North Am. Inc., Village Roadshow Distribution (BVI) Limited, and Village Roadshow Distribution USA Inc. (collectively, "Village") partnered to finance and produce several films with Defendants Warner Brothers Entertainment Inc., Warner Bros. Productions Ltd. and WAV Distribution LLC (collectively, "WB"). While Village was not obligated to finance every WB film, Village had the option to do so after WB provided Village with the budget, scripts, casting information, and other detailed information necessary for Village to determine whether to invest. The instant dispute allegedly arose when Warner Media sought to create a streaming service to compete with Netflix. Plaintiffs contend WB ceased providing information necessary for Village to effectively exercise its co-financing rights under a series of agreements negotiated throughout the long-term relationship between the parties.

Village alleges that despite a long-standing prior practice and contractual obligation to do so, WB has not sent Village either formal project notices, the proposed picture elements, or, to the extent available, marketing plans for any of the derivative works developed from films Village co-owned with WB that WB currently seeks to develop. To maintain the status quo so that Village has some prospect of obtaining the benefits due it, Village seeks a preliminary injunction requiring WB to immediately provide Village with scripts, budgets, principal casting, and directorial information for projects that Village has a right to co-finance. WB contends its obligation to provide Village with the proposed picture elements only arises when such elements are in place.

DISCUSSION

The Arbitration Provisions

WB contends the Court should refer the injunction issues to arbitration because “the parties’ agreements contain broad arbitration provisions demanding that ‘any’ dispute arising out of those contracts be decided in arbitration and that the Arbitrator — not the Court — decide threshold questions of arbitrability.” (Opposition, p. 19; see also id. at p. 20 [claiming Village’s requested

injunctions, "if granted, would dramatically alter the status quo and render the JAMS arbitrations meaningless by having the Court prejudge the core legal questions those matters are set to resolve"], emphasis in original.)

Village says it "has a right under the procedural rules of the California Arbitration Act to seek 'a provisional remedy in connection with an arbitral controversy[.]'" (Reply, p. 14.). Two of the relevant agreements contain arbitration provisions that incorporate substantive and procedural provisions of the Federal Arbitration Act ("FAA"). (See the 2017 Omnibus Amendment and the 2020 MPRPA.) WB contends that the threshold matter of arbitrability is subject to mandatory, confidential arbitration under the FAA.

WB's position is reasonable. WB represents that the contracts between WB and Village contain "the same mandatory arbitration provision[.]" (Motion to Compel Arbitration, p. 8.) Relevantly, the provision states:

. . . The foregoing shall not prevent any party from seeking injunctive relief and other forms of non-monetary relief in the state or federal courts located in Los Angeles County, California, which shall apply the laws of the State of California applicable to contracts entered into and fully performed therein (other than its rules of conflicts of laws to the extent that the application of the laws of another jurisdiction would be required thereby); provided, however, that neither VRFNA nor VRF may seek, and each of them hereby waives any right to seek, any injunctive or equitable relief or any order with respect to, and/or to enjoin or restrain or otherwise impair in any manner, the production, distribution, exhibition or other exploitation of any Picture by WB or any of its Affiliates, the exercise of WB's Derivative Rights in any Picture, or the use, publication or dissemination of any advertising by WB or any of its Affiliates in connection with any Picture.

(Id. at pp. 8-9, emphasis added; see also, e.g., Berg Decl., Ex. 13, p. 6, ¶ 5(e)(ii) [attaching 2017 Omnibus Agreement to Co-Ownership Amendment ("2017 Omnibus Amendment")].) The bolded and italicized terms arguably bar Village from obtaining the kinds of injunctive relief that it requests here.

Nevertheless, the Court is mindful of Code of Civil Procedure section 1281.8(b) and finds, as a matter of caution, that it should analyze the injunction issues.

The Preliminary Injunctions

"The general purpose of a preliminary injunction is to preserve the status quo pending a

determination on the merits of the action." (SB Liberty, LLC v. Isla Verde Assn., Inc. (2013) 217 Cal.App.4th 272, 280.) "The granting or denial of a preliminary injunction does not amount to an adjudication of the ultimate rights in controversy." (Ibid.) "It merely determines that the court, balancing the respective equities of the parties, concludes that, pending a trial on the merits, the defendant should or . . . should not be restrained from exercising the right claimed by him." (Ibid.)

A trial court must weigh two interrelated factors when deciding whether to grant a plaintiff's motion for a preliminary injunction: (1) the likelihood that the plaintiff will prevail on the merits at trial, and (2) the relative interim harm to the parties from the issuance or nonissuance of the injunction, that is, the interim harm the plaintiff is likely to sustain if the injunction is denied as compared to the harm the defendant is likely to suffer if the preliminary injunction is issued.

(Ibid.)

"The trial court's determination must be guided by a 'mix' of the potential-merit and interim-harm factors; the greater the plaintiff's showing on one, the less must be shown on the other to support an injunction." (Butt v. State of Calif. (1992) 4 Cal.4th 668, 678.) "Of course, '[t]he scope of available preliminary relief is necessarily limited by the scope of the relief likely to be obtained at trial on the merits.'" (Ibid.) "A trial court may not grant a preliminary injunction, regardless of the balance of interim harm, unless there is some possibility that the plaintiff would ultimately prevail on the merits of the claim." (Ibid.)

Equitable factors – e.g., whether a "suit for damages" is an adequate remedy, whether the threatened harm is imminent and irreparable, whether the moving party delayed in seeking injunctive relief, and whether the doctrine of unclean hands applies – should be considered. (Weil & Brown, Cal. Prac. Guide: Civ. Proc. Before Trial (The Rutter Group 2021) ¶¶ 9:504, 9:508, 9:515, 9:521.)

Additionally, "[i]njunctions may be classified as either 'prohibitory' or 'mandatory.'" (Id. at ¶ 9:530, emphasis in original.) "[T]he general rule is that an injunction is prohibitory if it requires a person to refrain from a particular act and mandatory if it compels performance of an affirmative act that changes the position of the parties." (Davenport v. Blue Cross of Calif. (1997) 52 Cal.App.4th 435, 446.)

"The substance of an injunction, and not its form, controls whether it is" prohibitory or mandatory. (Weil & Brown, supra, at ¶ 9:535, emphasis in original; see also id. at ¶ 9:535.1

[instructing that an injunction "drafted to appear 'prohibitory[]'" should be "analyze[d] . . . carefully to see if it is actually mandatory in effect"], emphasis in original.)

"A preliminary mandatory injunction is rarely granted . . . ." (Shoemaker v. County of Los Angeles (1995) 37 Cal.App.4th 618, 625.) When injunctive relief is sought to compel the doing of affirmative acts, a very substantial injury, a clear violation of law or denial of constitutional rights is required. "The granting of a mandatory injunction pending trial 'is not permitted except in extreme cases where the right thereto is clearly established.'" (Ibid.)

Village requests four preliminary injunctions:

[1] enjoining WB from withholding project notices (including Proposed Picture Elements) on derivative works in development that Village has a potential right to co-own and cofinance;

[2] enjoining WB from withholding marketing plans for derivative works that Village has a potential right to co-own and co-finance;

[3] prohibiting WB from refusing to develop Derivative Works unless Village gives up its rights; and

[4] requiring WB to provide the Project Notice with Proposed Picture Elements for Wonka.

(Motion, p. 15.)

The Court agrees with WB that Village's injunctions constitute mandatory injunctions (see, e.g., Opposition, pp. 8-9) but finds that Village fails to satisfy its burden under either standard.

Injunction One

Village asserts that "WB is currently developing Derivative Works based on multiple films co-produced, co-financed, and co-owned by Village." (Motion, p. 6.) Village claims WB is "withholding" Project Notices for the Derivative Works and has a "new plan to release half of all future films on HBO Max simultaneous with their theatrical release[.]" (Motion, p. 10.)

Village requests an injunction requiring WB to provide Village with Project Notices for Derivative Works in development.

WB contends Village is unlikely to succeed on the merits because:

* WB is only obligated to produce a Project Notice when the script, budget, director, and principal cast members are in place (see Opposition, p. 9; see also Berg Decl., Ex. 13 at Attach. 1, ¶ 4(a)]); and

* Village cites zero evidence showing that WB "failed to provide any required Project Notice for any Derivative Work" under such circumstances. (Opposition, p. 9.)

Both sides cite the 2017 Omnibus Amendment, which states:

. . . If at any time, or from time to time, WB proposes to exploit some of the Derivative Rights through production of a theatrical motion picture (a "Sequel or Remake Project"), WB shall provide to VRF and VRFNA a written notice (a "Project Notice") in which WB will delineate its proposed exploitation of the Sequel or Remake Project including (i) the latest draft screenplay, (ii) the most recent budget for the Sequel or Remake Project, net of any anticipated Rebates (the "Projected Budget"), and (iii) the proposed director and principal cast members (the items described in clauses (i), (ii) and (iii) of this sentence being referred to herein collectively as the "Proposed Picture Elements"). . . .

(Berg Decl., Ex. 13 at Attach. 1, ¶ 4(a).) The plain language is conjunctive. It indicates that a Project Notice should include "the latest draft screenplay, [] the most recent budget . . . net of any anticipated Rebates[], and [] the proposed director and principal cast members[.]" (Ibid., emphasis added.)

Are these prerequisites or just suggestions? What is the timing requirement? Does WB need to produce a Project Notice as soon as it "proposes to exploit . . . Derivative Rights" or only after it satisfies all Proposed Picture Elements?

Village seems to argue that a Project Notice is due early, regardless of whether each Proposed Picture Element is complete.

The words "any time, or from time to time" arguably support Village's position.

On the other hand, Village's position could render "and" surplusage in some scenarios and may cause an absurd result – e.g., WB being forced to submit a Project Notice before it completes even one Proposed Picture Element.

Ultimately, the Court finds that Village fails to meet its burden because:

* the provision is ambiguous;

* the record lacks sufficient intent evidence, especially because Plaintiffs fail to cite intent testimony from the people who negotiated and wrote the provision;

* given the ambiguity, the evidence of violations is weak and speculative; and

* for now, the conjunction "and" should be given meaning.

Moreover, the Court agrees with WB that Village fails to show an inadequate legal remedy and imminent, irreparable harm. (See Opposition, p. 11 [arguing that (1) "[i]f Village were to prevail on a claim that Warner failed to offer it the opportunity to co-finance a specific project, an arbitrator could award Village the contractually defined share of profits it would have earned had it co-financed the picture[,]" and (2) "any derivative film on Village's list would not be released until at least 2024[,]" so "the parties have two years to resolve these issues in their pending JAMS arbitrations"], emphasis in original.)

The motion is denied as to injunction one.

Injunction Two

Village contends "[t]he Marketing Plan provisions in the distribution agreements require . . . that WB":

* 'administer and execute the marketing plans . . . in consultation with [Village]'" (Reply, p. 9);

* "provide information 'as requested by' Village" (ibid.); and

* "provide Village 'such information as may be reasonably required by [Village], and which [WB] has historically generally provided . . . in order for [Village] to exercise its consultation rights.'" (Ibid.)

Village asks the Court to enjoin WB from withholding marketing plans related to Derivative Works.

WB asserts that "[m]arketing materials are only due in connection with the planned distribution of a co-financed picture." (Opposition, p. 13, emphasis in original.)

In reply, Village claims "[t]here are no temporal conditions precedent" applicable to marketing plans. (Reply, p. 9.)

The contract provisions are Exhibit G to the Second Amended and Restated Output Distribution Agreement (Domestic) and Exhibit G to the Second Amended and Restated Output Distribution Agreement (Foreign). They state that WB "shall":

* "prepare and execute" the marketing plan "in consultation with [Village]" (Berg Decl., Ex. 15 and Ex. G, p. 1, ¶ 1; id. at Ex. 16 at Ex. G, p. 1, ¶ 1);

* "furnish suggestions and advice as requested by [Village] regarding all aspects of distribution and marketing" (id. at Ex. 15 at Ex. G, p. 2, ¶ 2; Ex. 16 at Ex. G, p. 2, ¶ 2); and

* "provide to [Village] such information as may be reasonably required by [Village], and which WB has historically generally provided . . . in order for [Village] to exercise its consultation rights hereunder." (Id. at Ex. 15 at Ex. G, p. 2, ¶ 3; id. at Ex. 16 at Ex. G, p. 2, ¶ 3.)

Village fails to meet its burden. Even assuming Village's interpretation is correct, "Village has not identified . . . any upcoming pictures for which [WB] is purportedly required, yet has failed, to provide a marketing plan." (Opposition, p. 13.) Village's reply brief does not cite evidence. (See Reply, pp. 6, 9 [merely citing contract provisions]. The moving brief cites the Apfelbaum, Corbin, and Santor declarations. (See Motion, p. 6.) Apfelbaum declares:

17. I now understand that WB has publicly announced the I Am Legend sequel starring Will Smith (the lead cast member in our co-financed film, I Am Legend) and Michael B. Jordan, with Akiva Goldsman (the writer/producer of our co-financed film, I Am Legend) returning to produce. WB has not provided Village with a script, budget, principal cast, or any other creative information regarding this project.

18. Since May 2021, I have not received any further information from WB related to Wonka.

19. Since February 2021, no WB employee has contacted me to provide any information regarding any Village project currently in development.

(Apfelbaum Decl., ¶¶ 17-19.) Corbin declares:

13. Although in February 2021, l received a placeholder budget for Wonka from Bruce Berman that I understand he received from WB, to date, Village's finance department has not received any financial information on Wonka, Joker sequel, or the I Am Legend sequel. Without having further accurate or settled information from WB, we cannot determine whether these are viable co-financing opportunities.

(Corbin Decl., ¶ 13.) Santor states:

23. Although WB and Village had discussed co-financing a sequel to I am Legend for many years, WB has stopped providing information on the status of development and production, and has not provided deal memos or other financial information. It was therefore surprising when, on March 4, 2022, Village learned through the press that WB had greenlit, i.e., made the official decision to proceed with, I Am Legend, to feature Will Smith and Michael B. Jordan. WB has yet to provide any project notice for this film. In fact, despite the longstanding prior practice between Village and WB, WB has not sent Village any informative materials or information about talent deals or otherwise to help Village assess its investment decision, nor any formal project notices or, to the extent available, marketing plans or P&A estimates for any of the projects noted in paragraph 21 above.

(Santor Decl., ¶ 23.) These paragraphs suggest that WB has not supplied updated information over the past year to year and a half, but none of them states that WB denied an actual request by Village for consultation, or a marketing plan, and none shows that actual new information exists that could be produced to Village. Speculation is not enough to satisfy Village's burden to prove imminent, irreparable harm.

Also, Village fails to demonstrate an inadequate legal remedy.

The motion is denied as to injunction two.

Injunction Three

For injunction three, Village moves to "enjoin WB from requiring Village to relinquish its co-finance and co-ownership rights to future projects related to Derivative Works[.]" (Reply, p. 10.)

Village claims "WB admitted in emails to Village" that "it will proceed with future Derivative Works only if Village is willing to surrender its rights to co-ownership and co-financing." (Reply, p. 11.) Village asserts that WB's "position is designed to frustrate the purpose of the agreements and make Village's rights illusory, thus breaching the implied covenant." (Ibid.; see also Motion, pp. 11-12 [discussing WB's alleged conduct concerning "an upcoming television series based on the co-owned" movie Edge of Tomorrow].)

As support, Village cites Locke v. Warner Bros., Inc. (1997) 57 Cal.App.4th 354:

In Locke, WB entered into a development deal with the plaintiff, who later sued WB alleging that WB "refus[ed] to consider Locke's proposed projects and thereby deprived her of the benefit of the bargain of the Warner/Locke agreement." [Citation.] Reversing summary judgment, the Court of Appeal explained, "the trial court erred in deferring entirely to what it characterized as Warner's 'creative decision'. . . If Warner acted in bad faith by categorically rejecting Locke's work and refusing to work with her, irrespective of the merits of her proposals, such conduct is not beyond the reach of the law." [Citation.] Here, WB argues that it should be afforded complete discretion in the projects that it chooses to develop and demands that — for the lone project that it concedes Village's ownership rights (Furiosa) — Village commit to co-ownership without full information. Where WB's decisions are made in order to deny Village of the benefit of the bargain in bad faith, as is the case here, the Court may step in to prohibit such behavior. [Citations.]

(Motion, p. 12, underlined case named added.)

WB contends Village's claim is "certain" to fail on the merits because "Village granted [WB] the 'unilateral right' and 'sole discretion' to choose whether to develop Derivative Works based on the co-financed pictures." (Opposition, p. 14; see also id. at p. 15 [addressing Edge].)

WB says Locke is distinguishable:

. . . Locke involved a very different contract. There, the agreement gave Warner discretion, but not unfettered discretion, whether to proceed with projects that Locke (a writer and director) developed, and, under those facts, the court held a "subjective standard of honest satisfaction" applied. [Citation.]

Locke has no application here for two reasons. First, this dispute has nothing to do with whether Warner is subjectively satisfied with Village's creative output. Village is a mere co-financier, not

a creator of content, and Village did not submit a proposal for Warner to review in its discretion. The "honest satisfaction" standard makes no sense and cannot be implied.

Second, and more fundamentally, the parties' contract here — like the agreements in [Third Story Music, Inc. v. Waits (1995) 41 Cal.App.4th 798] and [Wolf v. Walt Disney Pictures & Television (2008) 162 Cal.App.4th 1107]; and unlike the agreement in Locke — expressly gives Warner the "unilateral right" — subject to no qualification — "to initiate any exploitation of the Derivative Rights" or not. Locke itself cited this as a point of distinction from Third Story. . . .

(Id. at pp. 15-16, underlined case names added.)

Locke, Wolf, and Third Story rely on the same rules:

[The implied covenant of good faith and fair dealing] is "read into contracts 'in order to protect the express covenants or promises of the contract, not to protect some general public policy interest not directly tied to the contract's purpose.'" [Citations.] For example, covenants to use "good faith" or "best efforts" to generate profits for a licensor are "routinely implied where the licensor grants exclusive promotional or licensing rights in exchange for a percentage of profits or royalties," even though the licensee does not expressly promise to do anything. [Citation.]

However, the implied covenant will only be recognized to further the contract's purpose; it will not be read into a contract to prohibit a party from doing that which is expressly permitted by the agreement itself. [Citation.] This principle is consistent with the general rule that implied terms cannot vary the express terms of a contract; if the defendant did what it was expressly given the right to do, there can be no breach. [Citations.] Thus, although it has been said the implied covenant finds "particular application in situations where one party is invested with a discretionary power affecting the rights of another" [citations], if the express purpose of the contract is to grant unfettered discretion, and the contract is otherwise supported by adequate consideration, then the conduct is, by definition, within the reasonable expectation of the parties and "can never violate an implied covenant of good faith and fair dealing." [Citations.]

(Wolf, supra, 162 Cal.App.4th at 1120-1121 [citing Locke and Third Story], emphasis added.)

The Court turns to the contract provision. It states:

Each of VRF and VRFNA shall have the right to propose Sequel or Remake Projects or Television Projects for consideration by WB, provided that WB shall have no obligation to agree

to any such proposal and WB's decision to agree or not to agree to a proposal is within its sole discretion, and neither VRF nor VRFNA shall have any right, as a consequence, to exploit any of the Derivative Rights, nor shall VRF or VRFNA have any right to produce, license or exploit any of the Derivative Rights without WB's written consent, it being understood that only WB shall have the unilateral right in its sole discretion to initiate any exploitation of the Derivative Rights.

(Berg Decl., Ex. 13 at Attach. 1, ¶ 4(f), emphasis added.) Clearly, the plain language gives WB the "unilateral right" and "sole discretion" over development decisions. No qualification or exception is listed. The words seem tantamount to "unfettered discretion," as discussed in Wolf, and support WB's position. (Wolf, supra, 162 Cal.App.4th at 1121.)

Assuming arguendo that the provision "obligate[s] [WB] to exercise [its] discretion honestly and in good faith" (Locke, supra, 57 Cal.App.4th at 367), the Court finds that Village fails to meet its burden. On 11/22/21, Dave Brown, a WB executive, emailed Village's Kevin Berg, stating that, "[i]n our initial conversation, I confirmed that we recognize Village['s] [] rights but are unable to proceed on any project with Village [] as a co-financier." (Santor Decl., Ex. 17, p. 2, emphasis added.) Village contends "any" demonstrates WB's intent to exercise bad faith going forward, yet WB sent the message as part of back-and-forth emails about a specific offer concerning the Edge project. (See id. at Ex. 17, pp. 1-5.) Village is not seeking an injunction as to the Edge project, and there is no evidence of WB pressuring Village to "surrender its right to co-ownership and co-financing" for any other project since 11/22/21. (Reply, p. 11.) Bottom line, Village fails to show imminent, irreparable harm. (See Opposition, p. 16.)

The motion is denied as to injunction three.

Injunction Four

The Wonka movie is set for release in December 2023. Village contends Wonka "is a prequel to Charlie and the Chocolate Factory," which Village co-owns. (Motion, p. 2.) Village alleges that WB "refuses to honor its obligations to allow Village to co-finance" Wonka. (Ibid.; see also id. at pp. 7, 10-11 [arguing that Wonka constitutes a Derivative Work].)

The requested injunction is to "require[e] WB to provide the Project Notice with Proposed Picture Elements for Wonka." (Id. at p. 15.)

WB claims Village will fail on the merits because Wonka is based on a "Library Film" and does not meet the definition of a "Qualifying Derivative Work" under the contract. (See Opposition,

pp. 18-19.)

Since the Wonka dispute is part of the pending JAMS arbitration, and Village's motion fails on other grounds, the Court declines to analyze the merits.

The other grounds are:

* Village waited over nine months to seek injunctive relief. (See id. at p. 16 ["Warner told Village in June 2021 – over 9 months ago – that it was not bound to offer Village the opportunity to co-finance Wonka. Village admits this."], emphasis in original.)

* Village fails to show imminent, irreparable harm. (See, e.g., id. at p. 17 [noting that, prior to filing this lawsuit, Village turned down WB's offer to co-finance Wonka; see also Smith Decl., ¶¶ 36-37 and Ex. B ["On January 27, 2022, I participated in a call with Mr. Berg and John Rogovin (Executive Vice President and General Counsel of Warner Bros.) as part of the parties' pre-arbitration dispute resolution process in connection with the Wonka dispute. During that call, Warner offered to let Village co-finance Wonka, provided that this would not be cited as precedent regarding any other disputes that might arise relating to Library Films and Qualifying Derivative Works. [¶] On February 1, 2022, Mr. Berg responded to Warner's proposal to allow Village to co-finance Wonka and rejected what Mr. Berg characterized as a 'conditional offer.'"].)

* Damages appear to be an adequate remedy. (See, e.g., Opposition, p. 17 ["The parties have asked that JAMS resolve their Wonka dispute well in advance of Wonka's December 2023 release. If Village were to prevail on its contractual interpretation in the arbitration (and it should not), Warner would (again) offer Village the opportunity to co-finance Wonka, and, should Village accept, Warner will account to Village pursuant to the terms of the parties' agreements. If the parties' arbitration is not resolved until after Wonka's release, [citation], the Arbitrator could award Village any profits it would have earned had Warner offered Village the opportunity to co-finance."].)

The motion is denied as to injunction four.

CONCLUSION

The Court denies Village's motion as to all four injunctions.

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Judicial Assistant: T. Lewis ERM: None
Courtroom Assistant: C. Concepcion Deputy Sheriff: None

**END OF TENTATIVE RULING RE: MOTION FOR PRELIMINARY INJUNCTION

**TENTATIVE RULING RE: MOTION TO COMPEL ARBITRATION

WB's motion to compel arbitration is granted. The Court finds that the delegation clause requires the arbitrability issues to be decided by the arbitrator.

Alternatively, the Court finds that Village's claims for injunctive and non-monetary relief appear arbitrable.

WB's stay request is granted.

BACKGROUND

Village and WB co-own several movies. WB allegedly is developing derivative projects – e.g., prequels, sequels, and television series. Village claims WB is breaching the parties' contracts by failing to consult with Village, provide project information, and allow Village to co-finance the derivative projects.

Here, WB moves to compel arbitration.

DISCUSSION

Existence

"[W]hen a petition to compel arbitration is filed and accompanied by prima facie evidence of a written agreement to arbitrate the controversy, the court itself must determine whether the agreement exists and, if any defense to its enforcement is raised, whether it is enforceable." (Rosenthal v. Great Western Fin. Securities Corp. (1996) 14 Cal.4th 394, 413.)

"Under 'both federal and state law, the threshold question . . . is whether there is an agreement to arbitrate.'" (Cruise v. Kroger Co. (2015) 233 Cal.App.4th 390, 396, emphasis in original.)

The burden of proof rests with the petitioner. (See Rosenthal, supra, 14 Cal.4th at 413 [requiring the petitioner to prove the existence of the agreement "by a preponderance of the evidence"].) To meet the burden, "the provisions of the written agreement and the paragraph that provides for

arbitration . . . must be stated verbatim or a copy must be physically or electronically attached to the petition and incorporated by reference." (Cal. Rules of Court, rule 3.1330; see also Condee v. Longwood Management Corp. (2001) 88 Cal.App.4th 215, 218 [same].)

"Competent evidence is required to establish both the existence of the arbitration agreement and any ground for denial." (Knight, et al., Cal. Practice Guide: Alternative Dispute Resolution (The Rutter Group December 2021 Update) ¶ 5:321.) "The verified petition (and attached copy of the agreement) normally proves the existence of the arbitration agreement. Affidavits or declarations may be necessary when factual issues are tendered." (Ibid.)

The 8/29/17 Omnibus Agreement to Co-Ownership Amendment ("2017 Omnibus Amendment") and the 11/10/20 Amended and Restatement Motion Picture Rights Purchase Agreement ("2020 MPRPA") contain the same arbitration provision. (See Smith Decl., Ex. E, § 5; see also Berg Decl., Ex. 3, § 13.18.) WB contends this provision is the subject arbitration agreement.

The provision provides that the agreements "shall be governed by and construed in accordance with the laws of the State of California applicable to contracts entered into and fully performed therein . . . ." (Smith Decl., Ex. E, § 5(e)(i); Berg Decl., Ex. 3, § 13.18(a).)

It states that the Federal Arbitration Act's ("FAA") substantive and procedural provisions govern, and it requires arbitration to be conducted according to JAMS rules. (See, e.g., Smith Decl., Ex. E, § 5(e)(ii).)

It defines the kinds of "Disputes" covered by the agreement, and it explains how to initiate the dispute resolution process. (See, e.g., ibid.)

It addresses the location of arbitration, the arbitrator's award, the right to request a written decision, fees and costs, and the right to seek enforcement in court. (See, e.g., ibid.)

It is signed by WB's and Village's representatives. (See, e.g., id. at Ex. E, Signature Page.)

Assent is uncontested.

The Court finds that these terms and facts demonstrate the existence of an agreement to arbitrate.

Arbitrability

WB asserts that arbitrability issues must be resolved by the arbitrator because (1) the arbitration agreements delegate arbitrability to the arbitrator, and (2) the agreements incorporate the JAMS rules. (See Motion, pp. 13-14; see also JAMS Comprehensive Arbitration Rules & Procedures, Rule 11(b) ["[A]rbitrability disputes, including disputes over the formation, existence, validity, interpretation or scope of the agreement under which Arbitration is sought, and who are the proper parties to the Arbitration, shall be submitted to and decided by the Arbitrator. The Arbitrator has the authority to determine jurisdiction and arbitrability issues as a preliminary matter."], emphasis added.)

"Courts must defer 'questions of arbitrability' to the arbitrator where the parties have 'clearly and unmistakably' agreed that the arbitrator decide those issues." (Knight, et al., Cal. Prac. Guide: Alt. Disp. Res. (The Rutter Group 2021) ¶ 5:111.39.) "When a court is required by a valid delegation clause to refer disputes about arbitrability to an arbitrator, it has no power to decide such issues even if it believes that the motion for arbitration is 'wholly groundless.'" (Id. at ¶ 5:111.41.)

"For a delegation clause to be effective, two prerequisites must be satisfied. First, the language of the clause must be clear and unmistakable." (Pinela v. Neiman Marcus Group, Inc. (2015) 238 Cal.App.4th 227, 239.) "Second, the delegation must not be revocable under state contract defenses to enforcement." (Pinela, supra, 238 Cal.App.4th at 240.) "Among these defenses is unconscionability." (Ibid.)

Village does not claim the delegation clause is revocable or unconscionable; the issue is whether it is clear and unmistakable.

The provision states that "any controversies, claims or disputes arising out of or relating to this Omnibus Amendment or the interpretation, performance or alleged breach thereof (including any dispute over the enforceability or validity of this agreement to arbitrate) . . . shall be settled by arbitration, as provided herein." (Smith Decl., Ex. E, § 5(e)(ii), emphasis added; see also Berg Decl., Ex. 3, § 13.18(b).)

Village contends the italicized language "has no bearing here because the parties' disagreement here is not over the enforceability or validity of the arbitration agreement. Instead, the dispute here is the scope of the arbitration provision." (Opposition, p. 13, emphasis in original.)

The Court disagrees. As WB argues, the FAA applies. (See, e.g., Reply, pp. 9-10.) Ninth Circuit precedent instructs that a delegation clause that "delegate[s] to the arbitrators the authority to

decide issues relating to the 'enforceability, revocability or validity'" of the agreement "clearly and unmistakably indicates [the parties'] intent for the arbitrators to decide the threshold question of arbitrability." (Mohamed v. Uber Technologies, Inc. (9th Cir. 2016) 848 F.3d 1201, 1209; see also Momot v. Mastro (9th Cir. 2011) 652 F.3d 982, 988.) WB's provision is clear and unmistakable because it is substantively identical. The fact that it does not say "revocability" like the provision in the Ninth Circuit case did is inconsequential since arbitrability is distinct from revocability. (See, e.g., Zorilla v. Uber Technologies, Inc. (S.D. Tex., Mar. 16, 2017) 2017 WL 3278061, at * 4 [reasoning that "[a] delegation provision that gives an arbitrator the authority to resolve disputes relating to the 'enforceability' or 'validity' of an arbitration agreement constitutes clear and unmistakable evidence that the parties intended to arbitrate arbitrability."].) Thus, the plain language supports deferring the arbitrability issues to JAMS.

Village's authorities are distinguishable. Village cites Firstlight Federal Credit Union v. Loya (Tex. App. 2015) 478 S.W.3d 157, 165 ("Loya"), claiming the Court must determine the scope of the arbitration agreement because "enforceability" and "validity" do not encompass scope. Loya is a Texas state court case, and, on balance, the Court finds that the Ninth Circuit decisions deserve greater weight. Village also cites White v. Aetna Life Insurance Co. (W.D. Ky., May 29, 2019) 2019 WL 2288447. The plaintiff there argued that the arbitration agreement was unenforceable under Kentucky law because it "condition[ed] her employment on acceptance" – i.e., she argued that the agreement was an unconscionable contract of adhesion. (White, supra, 2019 WL 2288447, at *3.) The defendant asserted that the delegation clause obligated the arbitrator to decide unconscionability. The clause provided that "[a] dispute as to whether this [Arbitration] Program applies must be submitted to the binding arbitration process set forth in this program." (Id. at * 2.) Unlike here, the clause did not include the words "enforceability" and "validity," so the court held that unconscionability was a court issue. Neither case changes the analysis.

Moreover, the Court agrees with WB regarding the incorporated JAMS rules. "[R]eference" to these rules "further evidences the parties' clear and unmistakable intent to submit issues of arbitrability to the arbitrator." (Aanderud v. Superior Court (2017) 13 Cal.App.5th 880, 892; see also id. at 893 ["An arbitration provision's reference to, or incorporation of, arbitration rules that give the arbitrator the power or responsibility to decide issues of arbitrability may constitute clear and unmistakable evidence the parties intended the arbitrator to decide those issues."]; Rodriguez v. American Technologies, Inc. (2006) 136 Cal.App.4th 1110, 1123 [incorporating the American Arbitration Association's ("AAA") Construction Industry Rules "evidenced" the parties' "intention to accord the arbitrator the authority to determine issues of arbitrability"]; Han v. Synergy Homecare Franchising, LLC (N.D. Cal., Feb. 2, 2017) 2017 WL 446881, at *2

[noting that "the Ninth Circuit held that the 'incorporation of AAA rules constitutes clear and unmistakable evidence that the contracting parties agreed to arbitrate arbitrability[,]'" especially in cases involving "sophisticated parties"].)

Lastly, Village claims "the parties unequivocally did not agree that all questions of arbitrability should be resolved by an arbitrator; in fact," they "carved out claims for injunctive relief and other forms of non-monetary relief from the scope of their arbitration clause." (Opposition, pp. 12, 13, emphasis in original.)

The "carve out" sentences state:

The foregoing shall not prevent any party from seeking injunctive relief and other forms of non-monetary relief in the state or federal courts located in Los Angeles County, California, which shall apply the laws of the State of California applicable to contracts entered into and fully performed therein (other than its rules of conflicts of laws to the extent that the application of the laws of another jurisdiction would be required thereby); provided, however, that neither VRFNA nor VRF may seek, and each of them hereby waives any right to seek, any injunctive or equitable relief or any order with respect to, and/or to enjoin or restrain or otherwise impair in any manner, the production, distribution, exhibition or other exploitation of any Picture by WB or any of its Affiliates, the exercise of WB's Derivative Rights in any Picture, or the use, publication or dissemination of any advertising by WB or any of its Affiliates in connection with any Picture.

(Smith Decl., Ex. E, § 5(e)(ii), emphasis added; see also Berg Decl., Ex. 3, § 13.18(b).)

The Court disagrees with Village:

* The plain language and the incorporated JAMS rules clearly and unmistakably demonstrate that the parties intended arbitrability to be determined by the arbitrator.

* Whether the arbitration agreements cover the "carve out" claims for injunctive relief and other non-monetary relief is an arbitrability question. (See, e.g., Oracle America, Inc. v. Myriad Group A.G. (9th Cir. 2013) 724 F.3d 1069, 1075-1076 [finding that the arbitrator should decide the arbitrability of claims falling within a "carve out" clause].)

* Assuming arguendo that the Court is supposed to determine arbitrability as to the "carve out" claims, Village's argument fails. The bolded and italicized terms establish that Village is barred from seeking – and waived the right to seek – injunctive or non-monetary relief related to WB's

"production, distribution, or exploitation of a motion picture or its exercise of derivative rights in any picture." (Reply, p. 20.) The Court agrees with WB that Village's claims "directly" target WB's "development and distribution of motion pictures[.]" (Ibid. [noting that Village seeks (1) "[a] declaration with respect to the 'marketing and distribution of [Matrix IV],'" (2) an order enjoining WB "from conditioning the development of Derivative Works," and (3) "a declaration that [WB's] 'refusal to move forward with a Derivative Work based on the film Edge of Tomorrow . . . wrongly deprives Village' of its rights"], emphasis in original.)

Consequently, the Court defers the arbitrability issues to the arbitrator. This includes the arbitrability of Village's claims for injunctive and non-monetary relief.

In the alternative, Village's claims for injunctive and non-monetary relief appear arbitrable.

Stay Request

The Court grants WB's request to stay the case until the arbitration is finished.

Conclusion

WB's motion to compel arbitration is granted.

**END OF TENTATIVE RULING RE: MOTION TO COMPEL ARBITRATION

**TENTATIVE RULING RE: MOTION TO STRIKE

WB's motion to strike the first amended complaint ("FAC") is denied.

The arbitrability of the Unfair Competition Law ("UCL") cause of action is a question for the arbitrator.

BACKGROUND

Village and WB co-own several movies. WB allegedly is developing derivative projects – e.g., prequels, sequels, and television series. Village claims WB is breaching the parties' contracts by failing to consult with Village, provide project information, and allow Village to co-finance the derivative projects.

Here, WB moves to strike Village's FAC, which adds Warner Media, LLC ("Warner Media") as a Defendant and alleges a new cause of action pursuant to Business & Professions Code section 17200, the UCL.

DISCUSSION

WB asserts that the FAC should be stricken because Village filed it in violation of the Court's 2/15/22 Initial Status Conference ("ISC") stay order, the Federal Arbitration Act ("FAA"), and Code of Civil Procedure section 1281.4. (See Motion, pp. 9-10.)

The first issue is whether WB violated the Court's ISC stay order.

WB contends the answer is yes because (1) the stay order states that "these proceedings are stayed in their entirety" (ISC Stay Order, p. 5), and (2) Village filed the FAC on 3/25/22 without leave. (See Motion, p. 9.)

Village contends the answer is no because the stay order "do[es] not preclude the filing of amended pleadings[.]" (Opposition, p. 8.)

Village also argues:

[T]he purpose of the stay in the ISC Order was to permit the parties to develop "an orderly schedule for briefing and hearings on procedural and substantive challenges to the complaint." [Citation.] The addition of Village's UCL claim does not frustrate this purpose. Village's UCL claim overlaps substantially with its original claim for declaratory relief, as both claims are based on the same allegations that WB engaged in a pattern of deceptive conduct to frustrate Village's co-finance and co-ownership rights to derivative works. [Citation.] Moreover, the addition of Village's UCL claim does not modify Village's requested relief, which—in both the original Complaint and in the FAC—is in the form of narrow injunctive and declaratory relief that would require WB to honor its obligations to provide certain information to Village. [Citation.] Nothing about Village's FAC, therefore, requires an extended or modified schedule for briefing or hearings on any challenges to the complaint. Indeed, the parties will have the opportunity to make arguments regarding the UCL claim at the May 17 hearing on the parties' cross motions.

(Id. at pp. 7-8, footnotes omitted.)

22STCV04606 May 27, 2022
VILLAGE ROADSHOW FILMS (BVI) LIMITED, et al. vs 11:00 AM
WARNER BROS. ENTERTAINMENT INC., et al.

Judge: Honorable David S. Cunningham III CSR: Cesar Rodriguez CSR# 13269
Judicial Assistant: T. Lewis ERM: None
Courtroom Assistant: C. Concepcion Deputy Sheriff: None

The Court turns to the stay order. It states:

Pending further order of this court, and except as otherwise provided in the Initial Status Conference Order, these proceedings are stayed in their entirety. This stay shall preclude the filing of any answer, demurrer, motion to strike, or motions challenging the jurisdiction of the Court . . . . This stay shall not preclude the parties from continuing [to] informally exchange documents that may assist in their initial evaluation of the issues presented in this case, however[, it] shall stay all outstanding discovery requests.

(ISC Stay Order, p. 5, emphasis added.) The bolded words clearly indicate that the case is stayed in its "entirety" until the Court issues a "further order[.]" (Ibid.)

Village fails to identify a further order, and the italicized words go against Village's argument:

* Village fails to show an exception in another part of the stay order that permits an amended pleading to be filed without leave.

* The fact that the stay order highlights answers, demurrers, motions to strike, and motions to quash but not amended pleadings is inconsequential given the preceding sentence staying the proceedings "in their entirety." (Ibid.)

The Court has discretion to strike the FAC for these reasons, but it would not advance the ball. Allowing the amendment and deciding whether and how the new UCL cause of action fits into the arbitration is the more efficient approach.

The next issue is whether Village violated the FAA and section 1281.4.

WB cites 9 U.S.C. § 3, Mahamedi IP L., LLP v. Paradice & Li, LLP (N.D. Cal., Feb. 14, 2017) 2017 WL 2727874, Code of Civil Procedure § 1281, and Twentieth Century Fox Film Corp. v. Superior Court (2000) 79 Cal.App.4th 188 for the proposition that federal and state law require the case to be stayed until the motion to compel arbitration is decided. (See Motion, pp. 9-10; see also Reply, pp. 7-8.)

Village claims the California Arbitration Act ("CAA") applies, not the FAA. Village asserts that the CAA "allows a party to seek preliminary injunctive relief in court" while an arbitration motion is pending. (Opposition, p. 10.)

Village's reliance on the CAA is dubious. (See Reply, p. 7; see also Victrola 89, LLC v. Jaman Properties 8 LLC (2020) 46 Cal.App.5th 337, 349 ["[R]eferences to California law do not override the Agreement's provision that 'Enforcement of this agreement to arbitrate shall be governed by the [FAA].'"].)

However, the Court disagrees with WB. Federal law and California law instruct that, if a motion to stay is filed, the proceedings must be stayed until the arbitration issue is resolved. (See Knight, et al., Cal. Prac. Guide: Alt. Disp. Res. (The Rutter Group 2021) ¶¶ 5:347 ["If any suit . . . be brought in any of the courts of the United States upon any issue referable to arbitration . . . the court in which such suit is pending . . . shall on application of one of the parties stay the trial of the action . . . providing the applicant for the stay is not in default in proceeding with such arbitration."], 5:342 ["Under state law, a stay must be granted where a court of competent jurisdiction (in California or elsewhere) has already ordered arbitration of the dispute involved in litigation pending in any court in California; or where an application for such an order has been made but not yet ruled upon."], emphasis in original.) Village filed the FAC on 3/25/22, the same day that WB filed the motion to compel arbitration and the motion to stay. WB merely noticed the stay request on that date; it was not decided, and it did not go into effect, so it did not bar Village from filing the FAC.

The last issue concerns the arbitrability of the UCL claim.

WB argues that the arbitration agreements delegate the arbitrability question to the arbitrator. (See Motion, p. 10; see also Reply, pp. 9-10.)

Village claims the Court should decide the arbitrability question because the delegation clause is unclear. (See Opposition, pp. 11-12.)

The Court incorporates the tentative ruling on WB's motion to compel arbitration. As explained there, the delegation clause defers arbitrability matters to the arbitrator. The result is that the arbitrator must decide whether the UCL claim is arbitrable.

Village asserts that the UCL cause of action is excepted from arbitration because the parties carved out claims for injunctive relief and other forms of non-monetary relief from the scope of the arbitration clause. (See Opposition, p. 12; see also Opposition to Motion to Compel Arbitration, p. 13.)

The Court disagrees for the reasons stated in the incorporated tentative ruling. Village's assertion

does not change the analysis.

Accordingly, the Court denies the motion to strike, allows the FAC, and finds that the UCL claim's arbitrability is a question for the arbitrator.

**END OF TENTATIVE RULING RE: MOTION TO STRIKE

**TENTATIVE RULING RE: MOTIONS TO SEAL

Village's motion to seal records in support of Village's motion for preliminary injunction ("Motion One"), motion to seal records in support of Village's reply to the motion for preliminary injunction ("Motion Two"), and motion to seal records in support of Village's opposition to the motion to compel arbitration ("Motion Three") are granted.

If it has not already, Village should (1) lodge all unredacted versions (hard copies) under seal, and (2) submit redacted versions (hard copies) for the public file.

BACKGROUND

Village and WB co-own several movies. WB allegedly is developing derivative projects, namely, prequels, sequels, and television series. Village claims WB is breaching the parties' contracts by failing to consult with Village, provide project information, and allow Village to co-finance the derivative projects.

At issue is Village's three motions to seal.

DISCUSSION

Law:

The Court may order that a record be filed under seal only if it expressly finds facts that establish:

(1) There exists an overriding interest that overcomes the right of public access to the record;

(2) The overriding interest supports sealing the record;

(3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;

(4) The proposed sealing is narrowly tailored; and

(5) No less restrictive means exist to achieve the overriding interest.

(Cal. Rules of Court, rule 2.550(d).)

The parties' agreement to seal documents is not enough to support a motion to seal. (See Weil & Brown, Cal. Prac. Guide: Civ. Proc. Before Trial (The Rutter Group 2021) ¶ 9:417.1 ["Parties sometimes operate under an informal arrangement pursuant to which documents are 'deemed filed under seal' unless an objection is made. Such an arrangement 'is entirely inconsistent with the mandatory requirements of rules 2.550 and 2.551 and the constitutional values informing those requirements.'"].)

"Only the specific words of documents that constitute the sensitive material should be sealed; generally, it is not permissible to seal the entire document." (Id. at ¶ 9:418.5.)

However, the California Constitution's right of privacy extends to confidential financial information. (See Overstock.com, Inc. v. Goldman Sachs Group, Inc. (2014) 231 Cal.App.4th 471, 503 [the right of privacy "embraces confidential financial information in 'whatever form it takes, whether that form be tax returns, checks, statements, or other account information'"].)

Absent voluntary disclosure by the moving party, financial information ordinarily should be sealed because it involves confidential matters relating to business operations and would prejudice the moving party's business interests if made available to the public. (See Universal City Studios, Inc. v. Superior Court (2003) 110 Cal.App.4th 1273, 1285-86.)

Analysis:

Motion One:

Village moves to seal:

1. Exhibit 3 to the Declaration of Gregory Basser, an unredacted version of a September 10, 2014 email from Greg Basser to Steve Spira re: Warner Village Films;

2. Exhibit 6 to the Declaration of Gregory Basser, an unredacted version of May 1, 2017 and April 24, 2017 emails from Greg Basser to Steve Spira re: Warner Village Films;

3. Exhibit 10 to the Declaration of Kevin P. Berg, the Qualified Cost Sharing Agreement between WV Films III LLC and WV Film Partners III L.P., dated May 6, 2003 (the "2003 QCSA");

4. Exhibit 11 to the Declaration of Kevin P. Berg, the Motion Picture Rights Purchase Agreement between Warner Bros. Entertainment Inc. and Village Roadshow Pictures North America Inc., dated October 27, 2014 (the "2014 MPRPA");

5. Exhibit 13 to the Declaration of Kevin P. Berg, the Omnibus Amendment to CoOwnership Agreements by and among Warner Bros. Entertainment Inc., Village Roadshow Films (BVI) Limited, Village Roadshow Films North America Inc., and Village Roadshow Pictures North America, Inc., dated August 29, 2017 (the "2017 Omnibus Amendment");

6. Exhibit 14 to the Declaration of Kevin P. Berg, the Amended and Restated Motion Picture Rights Purchase Agreement between Warner Bros. Entertainment Inc. and Village Roadshow Pictures North America Inc., dated November 10, 2020 (the "2020 MPRPA");

7. Exhibit 15 to the Declaration of Kevin P. Berg, the Second Amended and Restated Output Distribution Agreement (Domestic) between WAV Distribution LLC and Village Roadshow Distribution USA Inc., dated November 10, 2020 (the "Domestic ODA"); and

8. Exhibit 16 to the Declaration of Kevin P. Berg, the Second Amended and Restated Output Distribution Agreement (Foreign) between Warner Bros. Productions Limited and Village Roadshow Distribution (BVI) Limited, dated November 10, 2020 (the "Foreign ODA").

Each of these exhibits merit a sealing order to protect the terms of the confidential agreements and commercially sensitive communications between the parties. Plaintiffs respectfully request that the above-referenced exhibits be filed under seal.

(Motion One, pp. 1-2.)

The motion is granted as to Exhibits 3 and 6 because:

* The emails contain "commercially sensitive information, including financial information" and "business strategies" concerning specific movie projects. (Id. at p. 3; see also Basser Decl., Exs. 3, 6.)

* The California Constitution's right of privacy extends to confidential financial information. (See Overstock.com, supra, 231 Cal.App.4th at 503.)

* Absent voluntary disclosure by the moving party, financial information ordinarily should be sealed because it involves confidential matters relating to business operations and would prejudice the moving party's business interests if made available to the public. (See Universal City Studios, supra, 110 Cal.App.4th at 1285-86.)

* Consequently:

-- An overriding interest exists in the confidential financial information and business strategies.

-- The overriding interest supports sealing the confidential financial information and business strategies.

-- There is a substantial probability that the overriding interest will be prejudiced if the motion is denied because competitors will be able to see the confidential financial information and business strategies.

-- The sealing is narrowly tailored and the least restrictive means to protect the overriding interest. (See Motion One, p. 3 ["Plaintiffs have taken the further step of redacting the sensitive portions of the Exhibits while granting the public access to the remainder."].)

For the same reasons, the motion is granted as to Exhibits 10, 11, 13, 14, 15, and 16. The need to seal these Exhibits is even more imperative because they are confidential, private contracts.

Motion Two:

Next, Village moves to seal:

1. An unredacted version of the Declaration of Kevin P. Berg in Support of Plaintiffs' Reply

Brief in Support of Their Motion for Preliminary Injunction; and

2. Exhibit 20 to the Declaration of Kevin P. Berg in Support of Plaintiffs' Reply Brief in Support of Their Motion for Preliminary Injunction, an email chain including a July 20, 2021 email from Wayne Smith to Kevin Berg and a January 9, 2020 email from Kevin Berg to David Sagal.

(Motion Two, p. 1.)

The motion is granted as to Berg's unredacted reply declaration because:

* It states "proprietary information from a third-party subscription service whose terms of service contain a confidentiality clause, as well as a confidential term of the parties' agreement with respect to the Training Day television deal." (Id. at p. 2.)

* "A contractual obligation not to disclose can constitute an overriding interest for purposes of a motion to file under seal." (Ibid. [citing, e.g., Universal City Studios, supra, 110 Cal.App.4th at 1283].)

* Public disclosure of the Training Day deal "would interfere with the parties' ability to effectively compete in the industry because those terms may be more beneficial to Plaintiffs than the terms of other companies' deals with Defendants, or vice versa." (Ibid.) "If the confidential information reflecting the parties' commercial dealings became part of the public record, Plaintiffs would be prejudiced in future business negotiations." (Ibid.)

* Village satisfies the "narrowly tailored" and "least restrictive means" requirements. Indeed, Village has "taken the further step of redacting the sensitive portions . . . while granting the public access to the remainder." (Id. at p. 3.)

The motion also is granted as to Exhibit 20 because:

* It "contains commercially sensitive information, including information related to the parties' business operations and strategies that reflect confidential provisions of the parties' distribution agreements for certain motion pictures." (Id. at p. 2.)

* "Public disclosure of this information would interfere with the parties' ability to effectively compete in the industry because other companies would learn about the business operations and strategies that have made the parties successful in the competitive entertainment industry."

(Ibid.)

* "If the confidential information regarding the parties' commercial operations and strategies became part of the public record, Plaintiffs would be prejudiced in future business dealings." (Ibid.)

* "The proposed order would permit Plaintiffs to file under seal only an unredacted version of . . . Exhibit 20[.]" (Id. at p. 3.)

Motion Three:

Village asks the Court to seal:

1. Exhibit 1 to the Declaration of Kevin P. Berg, an unredacted version of the July 12, 2005 Co-Ownership Agreement for Charlie and the Chocolate Factory by and between Warner Bros. Entertainment Inc. and Village Roadshow Films (BVI) Limited.

(Motion Three, p. 1.)

The analysis regarding Motion One applies equally to Motion Three. The motion is granted because Exhibit 1 is a confidential, private contract. (See id. at p. 3 [noting that Village has "taken the further step of redacting the sensitive portion of Exhibit 1 while granting the public access to the remainder"].)

Unredacted Copies and Redacted Copies:

Unless it already did, Village needs to (1) lodge the unredacted versions (hard copies) under seal, and (2) submit redacted versions (hard copies) for the public file.

**END OF TENTATIVE RULING RE: MOTIONS TO SEAL

The Court sets the following:

Post-Arbitration Status Conference is scheduled for 12/12/23 at 09:00 AM in Department 11 at Spring Street Courthouse.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Spring Street Courthouse, Department 11

22STCV04606 May 27, 2022
VILLAGE ROADSHOW FILMS (BVI) LIMITED, et al. vs 11:00 AM
WARNER BROS. ENTERTAINMENT INC., et al.

Judge: Honorable David S. Cunningham III
Judicial Assistant: T. Lewis
Courtroom Assistant: C. Concepcion

CSR: Cesar Rodriguez CSR# 13269
ERM: None
Deputy Sheriff: None

The parties are to file a five(5) page Joint Post-Arbitration Status Conference Statement five(5) days prior to the above scheduled status conference.

Notice is deemed waived.