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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

| | |
|------------------------|--|
| Proceeding no. | 91264972 |
| Party | Plaintiff Constellation Brands U.S. Operations Inc. |
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| Date | 04/21/2022 |
| Attachments | 2022-04-21 91264972 CBUSOs Opposition to Applicants Motion to Suspend .pdf(931817 bytes) |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Application Serial No.:
88008025 (CRABB’S BLACK BURGUNDY)
Published in the Official Gazette of June 2, 2020

CONSTELLATION BRANDS U.S.
OPERATIONS, INC.,

Opposer,

v.

THE VINEYARD HOUSE LLC,

Applicant.

Opposition No. 91264972

OPPOSER CONSTELLATION BRANDS U.S. OPERATIONS, INC.’S

OPPOSITION TO APPLICANT’S MOTION TO SUSPEND

Opposer Constellation Brands U.S. Operations, Inc. (“Opposer”) hereby opposes the motion to suspend made by Applicant The Vineyard House LLC’s (“Applicant”).

BACKGROUND

Applicant moves to suspend these proceedings, purportedly for six months, but potentially forever, for reasons that can only charitably be called vague, insufficient and incoherent. [17 TTABVUE.] In fact, there is one clear and coherent reason for Applicant’s motion—to avoid discovery and eventual judgment in Opposer’s favor.

Applicant’s discovery failures have been constant and palpable. Rather than address its numerous and substantial discovery deficiencies, Applicant simply refuses to engage. Not only has Applicant failed to produce the documents it represented it would, it did not even provide its availability to meet and confer to discuss the deficiencies in its discovery responses.

Instead, Applicant, without providing any factual basis, states merely that “Applicant’s principal is totally and completely unavailable and unreachable” for an indefinite period of time, and that no one else could possibly assist in defending the opposition. [17 TTABVUE 3.] Applicant does not explain the sudden disappearance of its principal, Jeremy Nickel, or why individuals such as Applicant’s business manager, winemakers or other employees are unable to assist with providing information and documents in response to Opposer’s discovery requests. Nor does Applicant explain why it was not able to comply with its discovery obligations even before its principal’s absence.

Having watched as Mr. Nickel’s quixotic dream—that of trading off of the goodwill associated with Opposer’s valuable marks—has been rejected over and over, including in federal court, Applicant again wastes Opposer’s time and money in this proceeding. But with “push now coming to shove,” Applicant has concocted an undefined but potentially indefinite deferral to avoid further litigation. The Board should not countenance such choreographed gamesmanship¹ between attorney and client, and must prevent the Applicant once and for all from trying to gain the right to trade off the goodwill associated with Opposer’s TO KALON and TO KALON VINEYARD trademarks, and to indirectly trade off that goodwill by adopting the name of the creator of the historic To Kalon Vineyard, H. W. Crabb.

¹ Applicant’s gamesmanship is exemplified by its assertion that:

“Applicant has been diligent in its defense of the oppositions and has been timely in responding to discovery requests from Opposer. Applicant has also timely responded to meet and confer requests received from Opposer.”

[17 TTABVUE 2-3.] While this statement is technically correct—Applicant did *respond* to both discovery and Opposer’s deficiency letter—it ignores the unassailable fact that the former “responses” were woefully deficient, and the latter “response” was actually a refusal to meet and confer.

This proceeding is just one of fifteen pending and concluded proceedings and federal court lawsuits between Opposer, Applicant, and Applicant's related company, To Kalon Stock Farm, LLC. These include thirteen opposition and cancellation proceedings before the TTAB and two federal court lawsuits. These matters all originate with Mr. Nickel, whom the District Court for the Northern District of California described as "obsessive in his desire to leverage the To Kalon name by importing it to all parts of his various businesses including wine and horse racing and ignoring the advice of his own employees regarding the use of the term as a likely trademark violation." [Post-Trial Order Re: Attorneys' Fees And Expert Fees: Wilton Decl. Ex. B at 4:14-17.] The District Court believed that Applicant's case was "self-centered [and] unfounded" [id. at 3:11] and that Applicant's theories "lacked merit and any factual basis" [id. at 4:26].

Applicant's case in the District Court lacked a foundation in fact or law. Its cases before the Board lack a foundation in fact or law. And Applicant's motion to suspend likewise lacks a foundation in fact or law.

Applicant cannot avoid its obligations to participate in discovery, and has not shown good cause for seeking to delay these proceedings. Opposer therefore requests that the Board deny this motion and order Applicant to meaningfully participate in discovery immediately without any adjournment or suspension.

STANDARD

Proceedings may be suspended for good cause upon motion or stipulation of the parties approved by the Board. 37 C.F.R. § 2.117(c). While the Board generally is liberal in granting extensions of time, it only does so if the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused. *See Am. Vitamin Prods., Inc. v. Dowbrands*

Inc., 22 USPQ2d 1313, 1314 (TTAB 1992). It is the moving party that has the burden of persuading the Board that it was diligent in meeting its responsibilities and should therefore be awarded additional time. *Nat'l Football League v. DNH Mgmt., LLC*, 85 USPQ2d 1852, 1854 (TTAB 2008) (citing *Sunkist Growers, Inc. v. Benjamin Ansehl Co.*, 229 USPQ 147 (TTAB 1985)).

“[A] motion to extend must set forth with particularity the facts said to constitute good cause; ‘cursory or conclusory allegations that are denied unequivocally by the nonmovant, and that are not otherwise supported by the record, will not constitute a showing of good cause.’” *Trans-High Corp. v. JFC Tobacco Corp.*, 127 USPQ2d 1175, 1177 (TTAB 2018) (quoting *Instruments SA, Inc. v. ASI Instruments, Inc.*, 53 USPQ2d 1925, 1927 (TTAB 1999); see also *Luemme, Inc. v. D.B. Plus Inc.*, 53 USPQ2d 1758, 1760 (TTAB 1999).

Applicant, by filing a motion that is completely devoid of any admissible evidence regarding the purported reason for suspension, fails to meet these standards. This motion should be denied.

HISTORY OF PROCEEDINGS

The Jeremy Nickel saga began in 2018 when Applicant filed multiple applications to register TO KALON-formative and CRABB-formative marks. [Declaration of Kenneth L. Wilton ¶ 2.] “To Kalon” was the trademark adopted by Mr. H.W. Crabb, a pioneering Napa Valley winemaker in the 1800s. [1 TTABVUE 4 at ¶¶ 6-8.] However, Applicant and Mr. Nickel faced two insurmountable hurdles in their quest to associate themselves with Mr. Crabb and To Kalon, both of which were confirmed by a federal district court in litigation between the parties: Applicant does not own any winemaking land associated with Mr. Crabb, and Opposer owns incontestable registrations of TO KALON and TO KALON VINEYARD.

Not to be deterred, Applicant then filed oppositions to several of Opposer's applications to register TO KALON-formative marks and a petition to cancel Opposer's incontestable registrations for TO KALON and TO KALON VINEYARD. [Wilton Decl. ¶ 3.]

These filings were followed by Applicant filing suit against Opposer in the United States District Court for the Northern District of California, *The Vineyard House v. Constellation Brands U.S. Operations, Inc.*, Case No. 19-cv-01424, which was consolidated with Opposer's later-filed lawsuit² against Applicant (the "Civil Action"). [Wilton Decl. ¶ 4.]

The Civil Action proceeded to a bench trial that concluded in December 2020. [Wilton Decl. ¶ 5.] Opposer prevailed. [Id.] Judgment was entered against Applicant and in favor of Opposer in the Civil Action, and a permanent injunction was issued prohibiting Applicant's use of TO KALON in connection with wine. [Judgment Under Rule 58: Wilton Decl. Ex. A.] Following the entry of judgment, on July 26, 2021, the District Court held that the Civil Action was "exceptional" under 15 U.S.C. § 1117(a) and awarded \$2.3 million in fees and costs against Applicant. [Post-Trial Order Re: Attorneys' Fees And Expert Fees: Wilton Decl. Ex. B.]

HISTORY OF DISCOVERY

On October 29, 2021, Opposer served written discovery in this proceeding. [Wilton Decl. ¶ 7.] In response, Applicant proposed a resolution of this matter. After due consideration, Opposer made a counter-proposal. [Id. ¶ 8.] Rather than respond to that proposal, on December 20, 2021, Applicant served discovery responses, which included little more than general and boilerplate objections, non-responsive answers, and factual assertions contrary to the litigated factual findings of the District Court. [Id. ¶ 9.] In its responses, Applicant also represented that

² *Constellation Brands U.S. Operations, Inc. v. The Vineyard House, LLC*, Case No. 3:20-cv-00238 (N.D. Cal. filed Jan. 10, 2020).

it would be producing documents responsive to 22 of the Requests for Production. [Id. ¶ 10.] On January 25, 2022, Applicant confirmed that it was not accepting Opposer’s settlement proposal. [Id. ¶ 11.] Notwithstanding that rejection, Applicant still has not produced a single document. [Id.]

Opposer sent Applicant a letter on March 18, 2022, outlining the deficiencies with Applicant’s discovery responses. [Id. ¶ 12.] Opposer previously sent Applicant a similar letter concerning Opposition No 91264970 on March 14, 2022. [Id.] In both letters Opposer requested that Applicant supplement or amend its responses, or that it meet and confer to discuss the deficiencies. Applicant did not substantively respond to either letter, did not meet and confer, and did not produce any of the documents it represented it would back in December, 2021. [Id.]

Instead, Applicant’s counsel sent an email on March 23, 2022, that stated:

Due to an unforeseen event, the client is unavailable and we are unable to communicate with him for a period of time, the length of which is currently undetermined.

[Id. ¶ 13 & Ex. C.] When Opposer again reminded Applicant of its discovery obligations, on March 25, 2022, Applicant’s counsel sent another email stating:

We have received the attached letter from your office this afternoon.....

As for the substance of the letter, as we advised you on Wednesday, due to an unforeseen event, our client is unavailable and we are unable to communicate with him for a period of time, the length of which is currently undetermined. For obvious reasons, this unavailability is impactful on the matters now pending before the Board.

[Id. ¶ 14 & Ex. D.] In addition, while Applicant noticed Opposer’s deposition to take place in Opposition No. 91245800 (the “800 Opposition”), when asked whether the deposition would go forward, Applicant responded:

We confirm that in light of the Motion to Suspend, we are not moving forward with the deposition on April 12, 2022.

[Id. ¶ 15 & Ex. E.] Applicant failed to explain why this motion—which had been filed but not decided—precluded Applicant’s counsel from taking a deposition. Concluding Applicant’s trail of non-diligence, on April 11, 2022, Applicant failed to respond to Opposer’s written discovery requests in the ‘800 Opposition, only asking for more time to respond three days *after* the responses were due. [Id. ¶ 16.]

At no time has Applicant’s counsel ever explained *why* they could not communicate with their client, why they could not move forward with a deposition, or why they could not meet even the most basic of Applicant’s discovery obligations. Even Applicant’s motion itself is not supported by any admissible evidence such as a declaration from Applicant or its counsel; the motion consists entirely of the *ipse dixit* of counsel.

ARGUMENT

Applicant’s motion to suspend should be denied because Applicant has not shown good cause to suspend these proceedings. Applicant has made nothing more than cursory allegations that it, a juristic entity, is “left without a meaningful ability to continue its prosecution of this matter at this time.” [17 TTABVUE 3.] Applicant cites no facts, and provides no supporting evidence, that demonstrate its alleged need to suspend these proceedings. Applicant further provides no justification for why the suspension needs to be six months, beyond an unsupported statement that “it is presently unclear how long this period of unavailability will last.” [17 TTABVUE 4.] Additionally, Applicant has not shown that it has made diligent efforts to comply with its deadlines and obligations before requesting suspension.

A. Suspension Is Not Warranted Because Applicant Has Not Shown Good Cause.

A motion to suspend for good cause must set forth with particularity the facts said to constitute good cause. *Trans-High Corp.*, 127 USPQ2d at 1177. Applicant’s motion has not done so, and therefore should be denied.

The extent of Applicant’s explanation is that:

1. “due to sudden and unexpected circumstances ... Applicant’s principal is totally and completely unavailable and unreachable at this time”; and
2. “Applicant’s counsel is unable to communicate in any manner with Applicant’s principal” for an indefinite period of time; and
3. “Applicant’s counsel cannot further elaborate on the details of the situation.”

[17 TTABVUE 3.]

Applicant’s explanation does not set forth the facts said to constitute good cause with any particularity. There are no concrete facts asserted, and only ambiguous allusions to a reason that Applicant asserts is “good cause.”³ And to the limited extent that Applicant has asserted any reason for its motion, its explanation consists entirely of bare assertions, without any supporting evidence.

Applicant’s request to suspend this opposition for six months, and potentially longer given the purported indeterminateness of Applicant’s principal’s unavailability, is simply unreasonable without any context or explanation, and obviously in bad faith given Applicant’s

³ The motion states that Applicant cannot elaborate on the reason for the requested suspension due to “Applicant’s right to medical privacy.” [17 TTABVUE 3.] This “excuse” makes no sense given that Applicant is a juristic entity without any right to medical privacy, or ability to receive medical care.

intentional avoidance of its discovery obligations. Accordingly, Applicant's motion should be denied.

B. Applicant Has Not Shown That It Cannot Meet Its Deadlines Despite Diligent Efforts.

Applicant cites several non-binding federal court decisions for the proposition that good cause exists to extend deadlines where deadlines cannot be met despite the diligence of the party seeking the extension. [17 TTABVUE 4.] The Board has similarly stated, in the context of motions to extend deadlines, that "The moving party, however, retains the burden of persuading the Board that it was diligent in meeting its responsibilities and should therefore be awarded additional time." *Nat'l Football League*, 85 USPQ2d at 1854.

But no matter how many times Applicant repeats that it has been diligent in prosecuting this case, the facts here support a different conclusion.

First, Applicant's statement that it has "timely responded to meet and confer requests" [17 TTABVUE 3] is simply untrue. Applicant's "responses" to meet and confer requests were neither timely nor substantive: they simply stated that "Applicant is unavailable." [Wilton Decl. Exs. C & D.] And while Applicant did timely respond to Opposer's discovery requests, it did so with responses that were plainly inadequate, and has not produced a single responsive document. [*Id.* ¶¶ 9-11.] The combination of Applicant's failure to comply with its discovery obligations has forced Opposer's hand and required a motion to compel. [18 TTABVUE.]

Even if Applicant's principal is unable to participate in discovery, Opposer must question why Applicant cannot do so. Applicant is a juristic entity. To the best of Opposer's knowledge, Applicant has employees who must have some knowledge sufficient to respond to Opposer's

discovery requests. For example, Mr. Craig Norris, Applicant's Director Of Sales/Operations⁴, should be able to assist with discovery requests that concern Applicant's business planning and sales, including the relevant classes of consumers or channels of trade. Mr. Philippe Melka and Mr. Maayan Koschitzky, Applicant's Winemakers⁵, should be able to assist with discovery requests that concern Applicant's Goods, including the provenance of Applicant's Goods. In addition, in the Civil Action Applicant identified two additional employees that it intended to call as witnesses on its behalf. [Wilton Decl. ¶ 17 & Ex. F.]

Furthermore, the parties have been embroiled in this dispute for more than three years. An entire federal trademark infringement lawsuit has been litigated. It simply strains credulity that Applicant and its counsel do not have sufficient information available to respond in substance to Opposer's written discovery. And it is equally hard to fathom that, nearly four months after Applicant first represented that it would produce responsive documents, Applicant now cannot do so because of the sudden unavailability of its founder.

To quote Applicant's motion:

"Although the existence or degree of prejudice to the party opposing the modification might supply additional reasons to deny a motion, the focus of the inquiry is upon the moving party's reasons for seeking modification. If that party was not diligent, the inquiry should end." [17 TTABVUE 4] (citations omitted).

Fin.

CONCLUSION

For the foregoing reasons, Opposer respectfully requests that the Board deny Applicant's motion to suspend for good cause.

⁴ See <https://www.tvhwines.com/About-Us/Craig-Norris>.

⁵ <https://www.tvhwines.com/About-Us/Philippe-Melka--Maayan-Koschitzky>

In the event the Board is inclined to grant the motion, Applicant should not be allowed to benefit from its failure to diligently cooperate in this proceeding. It should be precluded from taking any further discovery, both because it chose not to serve any additional discovery by the last day to serve discovery (which passed before this motion was filed) and because Applicant decided not to take the deposition it had noticed.

Date: April 21, 2022

By: /s/ Kenneth L. Wilton

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Attorneys for Opposer
CONSTELLATION BRANDS U.S.
OPERATIONS, INC.

DECLARATION OF KENNETH L. WILTON

I, Kenneth L. Wilton, hereby declare as follows:

1. I am a partner in the firm of Seyfarth Shaw LLP, attorneys for Opposer Constellation Brands U.S. Operations, Inc. (“Opposer”) in this proceeding. I submit this declaration in support of Opposer’s Opposition to Motion to Suspend (“Motion”). I make this declaration based on personal knowledge of the facts and circumstances set forth herein and on my review of the documents attached hereto.
2. The Jeremy Nickel saga began in 2018 when Applicant filed multiple applications to register TO KALON-formative and CRABB-formative marks. Based on my review of the records of the USPTO, I estimate that Applicant filed 13 applications that included “TO KALON” or a variation thereof, 11 that included “CRABB” or a variation thereof, and another 7 that included both marks.
3. Applicant has filed oppositions to several of Opposer’s applications to register TO KALON-formative marks and a petition to cancel Opposer’s incontestable registrations for TO KALON and TO KALON VINEYARD. All of those proceedings have been decided in Opposer’s favor.
4. In 2019, Applicant filed suit against Opposer in the United States District Court for the Northern District of California, *The Vineyard House v. Constellation Brands U.S. Operations, Inc.*, Case No. 19-cv-01424, which was consolidated with Opposer’s later-filed lawsuit against Applicant (*Constellation Brands U.S. Operations, Inc. v. The Vineyard House, LLC*, Case No. 3:20-cv-00238 (N.D. Cal. filed Jan. 10, 2020) (the “Civil Action”).

5. The Civil Action proceeded to a bench trial that concluded in December 2020. Opposer prevailed. A true and correct copy of the District Court's January 26, 2021 Judgment Under Rule 58 is attached hereto as **Exhibit A**.

6. On July 28, 2021, the District Court issued its Post-Trial Order Re: Attorneys' Fees And Expert Fees, a true and correct copy of which is attached hereto as **Exhibit B**.

7. On October 29, 2021, Opposer served first sets of interrogatories, requests for production and requests for admission on Applicant in this proceeding.

8. In response to receiving the written discovery, Applicant proposed a resolution of this matter. After due consideration, Opposer made a counter-proposal.

9. Rather than respond to that proposal, on December 20, 2021, Applicant served responses to the written discovery. As discussed in full in Opposer's motion to compel, those responses included little more than general and boilerplate objections, non-responsive answers, and factual assertions contrary to the litigated factual findings of the District Court.

10. In its responses to the requests for production, Applicant represented that it would be producing documents responsive to *twenty-two* of the Requests for Production.

11. On January 25, 2022, Applicant confirmed that it was not accepting Opposer's settlement proposal. Notwithstanding that rejection, Applicant has still not produced a single document in this proceeding.

12. I sent Applicant's counsel a letter on March 18, 2022, outlining the deficiencies with Applicant's discovery responses. I previously sent Applicant's counsel a similar letter concerning Opposition No. 91264970 Opposition on March 14, 2022. In both letters I requested that Applicant supplement or amend its responses, or that its counsel meet and confer to discuss the deficiencies. I have not received any substantive response to either letter. Moreover,

Applicant's counsel never contacted me or my colleagues to schedule a meet and confer, and Applicant did not produce any of the documents it represented it would produce when it responded to discovery back in December, 2021.

13. Instead of responding to my letters, Applicant's counsel sent an email on March 23, 2022, that stated:

Due to an unforeseen event, the client is unavailable and we are unable to communicate with him for a period of time, the length of which is currently undetermined.

A true and correct copy of the March 23, 2022 email is attached hereto as **Exhibit C**.

14. On March 25, 2022, I sent a letter to Applicant's counsel as a reminder that we expected to receive amended responses and the production of documents. In response, Applicant's counsel sent another email stating:

We have received the attached letter from your office this afternoon.....

As for the substance of the letter, as we advised you on Wednesday, due to an unforeseen event, our client is unavailable and we are unable to communicate with him for a period of time, the length of which is currently undetermined. For obvious reasons, this unavailability is impactful on the matters now pending before the Board.

A true and correct copy of the March 25, 2022 email is attached hereto as **Exhibit D**.

15. Applicant noticed Opposer's deposition under Rule 30(b)(6) in Opposition No. 91245800 (the "800 Opposition") to occur on April 12, 2022. Prior to the deposition, I wrote to Applicant's counsel to inquire whether the deposition would go forward. Applicant responded:

We confirm that in light of the Motion to Suspend, we are not moving forward with the deposition on April 12, 2022.

A true and correct copy of the April 6, 2022 email thread is attached hereto as **Exhibit E**.

16. In the '800 Opposition Opposer served first sets of written discovery, the responses to which were due to be served on or before April 11, 2022. On April 14, 2022, three days after the due date, Applicant's counsel wrote and requested an extension of the time to respond.

17. In the Civil Action, the parties filed lists of witnesses prior to trial. According to the list submitted by Applicant, it intended to call four witnesses: Jeremy Nickel, Amy Ash, Craig Norris and Tom Bearer. A true and correct copy of Applicant's Trial Witness List is attached hereto as **Exhibit F**.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 21st day of April, 2022 at Los Angeles, California.

/Kenneth L. Wilton/
Kenneth L. Wilton

EXHIBIT A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THE VINEYARD HOUSE, LLC,
Plaintiff,

v.

CONSTELLATION BRANDS U.S.
OPERATIONS, INC.,
Defendant.

Case No. 4:19-cv-01424-YGR
CONSOLIDATED CASE

JUDGMENT UNDER RULE 58

CONSTELLATION BRANDS U.S.
OPERATIONS, INC.,
Consolidated Plaintiff,

v.

THE VINEYARD HOUSE, LLC,
Consolidated Defendant.

TO ALL PARTIES AND COUNSEL OF RECORD, based on the findings of fact and conclusions of law filed concurrently herewith, and for good cause showing,


JUDGMENT IS HEREBY ENTERED in favor of Constellation Brands U.S. Operations, Inc and against The Vineyard House, LLC.

FURTHER, The Vineyard House, LLC and any and all of its agents, members, officers, directors, employees, and/or principals are **HEREBY PERMANENTLY ENJOINED** from using the words To Kalon or To Kalon Vineyard or any variation thereof in any manner on any wine, wine-related product, reference to a wine product, or event or activity where such wine is present or referenced. The permanent injunction extends to any affiliate of the The Vineyard House and its principal Jeremy Nickel including without limitation the To Kalon Farm.

Notice or a copy of this injunction shall be provided to all employees.

IT IS HEREBY ORDERED AND ADJUDGED.

Dated: January 26, 2021


YVONNE GONZALEZ ROGERS
UNITED STATES DISTRICT JUDGE

United States District Court
Northern District of California

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EXHIBIT B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THE VINEYARD HOUSE, LLC.,
Plaintiff,

v.

**CONSTELLATION BRANDS U.S.
OPERATIONS, INC.,**
Defendant.

Case No. 4:19-cv-01424-YGR
CONSOLIDATED CASE

**POST-TRIAL ORDER RE: ATTORNEYS’
FEES AND EXPERT FEES**

Dkt. Nos. 249, 250

**CONSTELLATION BRANDS U.S.
OPERATIONS, INC.,**
Plaintiff,

v.

THE VINEYARD HOUSE, LLC,
Defendant.

United States District Court
Northern District of California

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On January 26, 2021, this Court issued a Rule 52 Order After Trial on the Merits (“Rule 52 Order,” Dkt. No. 244) finding in favor of Constellation Brands U.S. Operations, Inc. (“Constellation”) and against The Vineyard House, LLC (“TVH”) on both the declaratory relief action, Case No. 19-cv-1424 (“Main Action”) and the action necessitated by TVH’s active infringement of Constellation’s trademark, Case No. 20-cv-238 (“Second Action”).¹ Thereafter, Constellation filed a “Motion of Attorney Fees” and recovery of expert witness fees which is now fully briefed. The Court, having considered the briefing, and good cause appearing, **HEREBY GRANTS IN PART** the motion as follows:²

¹ The Court assumes familiarity with the contents of the Rule 52 Order and the procedural history of this consolidated case.

² The Court also **GRANTS** Constellation’s motion to seal (Dkt. No. 248), because the request is narrowly tailored and only includes confidential information. Pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local Rule 7-1(b), the Court finds these motions appropriate for decision without oral argument.

1 **I. LEGAL FRAMEWORK**

2 The parties do not dispute the standard to be used in evaluating the motion, only its
3 application. Two legal standards apply. First, with respect to attorneys' fees, the Lanham Act
4 provides that in "exceptional cases," a court "may award reasonable attorney fees to the prevailing
5 party." 15 U.S.C. § 1117(a). As the Supreme Court has explained, however, an "exceptional case"
6 is "simply one that stands out from others with respect to the substantive strength of a party's
7 litigating position (considering both the governing law and the facts of the case) or the
8 unreasonable manner in which the case was litigated." *Octane Fitness, LLC v. ICON Health &*
9 *Fitness, Inc.*, 572 U.S. 545, 554 (2014); *accord SunEarth, Inc. v. Sun Earth Solar Power Co., Ltd.*,
10 839 F.3d 1179, 1180 (9th Cir. 2016). When determining whether to exercise its equitable
11 discretion to award fees, a court is instructed to look to the "totality of the circumstances," and
12 should consider factors such as "frivolousness, motivation, objective unreasonableness (both in the
13 factual and legal components of the case) and the need in particular circumstances to advance
14 considerations of compensation and deterrence." *Octane Fitness*, 572 U.S. at 554 n.6 (*quoting*
15 *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 534 n.19 (1994)). Second, with respect to expert witness
16 fees, Federal Rule of Civil Procedure 26(b)(4)(E) provides that absent "manifest injustice," a party
17 who seeks discovery from an expert must "pay the expert a reasonable fee for time spent in
18 responding to [the] discovery." Fed. R. Civ. P. 26(b)(4)(E). The Court addresses each.

19 **II. APPLICATION**

20 **A. Attorneys' Fees Under the Lanham Act**

21 This Court cannot recall a single instance where it awarded attorneys' fees under a
22 standard requiring "exceptional" or "extraordinary" circumstances (as opposed to fees authorized
23 by statute or contract to a prevailing party). In short, this case should never have been tried.
24 Perhaps, it should never have been brought. Unlike Mr. Beckstoffer, TVH did not have a
25 legitimate claim.
26

27 However, even giving TVH the benefit of the doubt, certainly, after the Court issued a
28 preliminary injunction, the action should have resolved. The fact that TVH ignored a walk-away

1 offer is baffling. To the extent that TVH now interprets the Court’s Rule 52 Order to argue that its
 2 claim had any merit, the Court can only surmise that TVH has seized on a few phrases included to
 3 cushion the landing for the lawyers hired to pursue, unfortunately, a client’s bidding.³ Ultimately
 4 though, a line must exist across which litigants, and lawyers, should not cross without
 5 consequence. This is the line defined by the concept of “exceptional.” This is the line that TVH
 6 cavalierly traversed without any regard for the attendant costs or impact.

7 Mr. Nickel, whose actions are one and the same with TVH, showed himself to be one who
 8 cared not whether he was acting in a rash manner, who indiscriminately ignored the findings of
 9 experts when the findings did not suit him and the established parameters of the law in the context
 10 of pending litigation, while later downplaying the actions in his testimony. Courts should be used
 11 in good faith and not as a relatively free means to test one’s self-centered, unfounded ideas. An
 12 award of attorneys’ fees impresses upon those who use the courts primarily for self-indulgent
 13 purposes, and without regard for the law, that the cost will be greater than that expended on their
 14 own side of the ledger.

15 The Court will not regurgitate the findings of the Rule 52 Order which outlined the lack of
 16 any substantive legal or factual basis for pursuing the lawsuit,⁴ other than to highlight some
 17 critical issues which epitomize the point:

- 18 1. Constellation owns and owned an incontestable trademark on the term TO KALON and
 19 TO KALON VINEYARD on wine since 1988. Moreover, the Patent and Trademark
 20 Office warned TVH against using the mark.
- 21 2. The record evidence contained overwhelming numbers of references showing that Mr.
 22 Crabb used To Kalon (or some variation thereof) as a brand on wine, the name of a
 23 company, and the name of his vineyard, all simultaneously. While, of course, the term
 24

25 ³ For instance, the reference in the Rule 52 Order that the “record is replete with
 26 conflicting evidence showing how narrow, or alternatively, how widespread, is the reference to To
 27 Kalon” says nothing about the unambiguous finding that To Kalon does not, and never has, related
 to the Baldrige property.

28 ⁴ The Court concurs with the recitation of citations to the record in Constellation’s moving
 papers. As noted, the Court does not repeat the same here.

1 also included the alluvial fields in Oakville, the argument that it only referred to a vineyard
2 was specifically contradicted by the evidence for which there was no argument addressing
3 this glaring inconsistency.

4 3. TVH's case is not, and never was, Mr. Beckstoffer's case, the latter of whom owned some
5 of the alluvial, grape-growing fields which were previously owned by H.W. Crabb.
6 Further, Mr. Beckstoffer acted as a reasonable businessperson would in settling his own
7 case with a license, understanding the metes and bounds of the law.

8 4. No historical records exist to show that the Baldrige Parcel was ever used to grow grapes.
9 This was confirmed by an independent examiner, *before the litigation commenced*, hired
10 by TVH itself and relied upon for permitting purposes with Napa County. The examiner
11 explicitly advised of the lack of any connection to wine making. The hiring of an academic
12 who is willing to testify to a strained reading of a couple of sentences in a historic report
13 does not provide a valid counter-narrative. Rather, it is easily disregarded as irrelevant.

14 5. Mr. Nickel demonstrated himself to be obsessive in his desire to leverage the To Kalon
15 name by importing it to all parts of his various businesses including wine and horse racing
16 and ignoring the advice of his own employees regarding the use of the term as a likely
17 trademark violation.

18 6. Finally, TVH raised so many issues in a desperate attempt to make something out of
19 nothing that it is not surprising that costs skyrocketed. Constellation did have to defend
20 and respond in kind. Constellation submits, and TVH does not contend otherwise, that the
21 parties exchanged 63 sets of discovery or responses and twenty-two expert reports,
22 including a damages expert opining that TVH was entitled to approximately \$25.7 million
23 in damages. The parties took 21 depositions; 5 of which were experts. Motion practice
24 included two rounds of motions related to pleadings, preliminary injunctions, and
25 discovery disputes. For trial, the parties presented more than 1000 trial exhibits.

26 Across the board, TVH's theories proffered at trial lacked merit and any factual basis. The notion
27 that one can hire an expert who is willing to testify to some proffered theory does not create a
28

1 foundation to argue that the lawsuit had a meritorious basis. An expert's opinion must be
2 grounded in the record. Where the factual basis is vacuous, so too are the expert's opinions.

3 TVH's authorities do not compel a different result as each is distinguishable. *See Globefill*
4 *Inc., v. Elements Spirits, Inc.*, 756 F. App'x 764, 766 (9th Cir. 2019) (affirming the district court's
5 determination that the case was not exceptional where the losing party had reasonable litigation
6 positions); *Angioscore, Inc. v. Trireme Med., Inc.*, No. 12-CV-03393-YGR, 2015 WL 8293455, at
7 *2 (N.D. Cal. Dec. 9, 2015) (finding no exceptional case where the case was reasonably litigated
8 by all parties); *Netlist, Inc. v. Diablo Techs., Inc.*, No. 13-CV-5962 YGR, 2015 WL 5157315, at
9 *2 (N.D. Cal. Sept. 1, 2015), aff'd, 667 F. App'x 774 (Fed. Cir. 2016) (finding no exceptional case
10 where plaintiff submitted credible evidence and expert testimony, thereby making the case not
11 objectively unreasonable); *Blue Spike, LLC v. Adobe Sys., Inc.*, No. 14-CV-01647-YGR, 2015 WL
12 5542995, at *2 (N.D. Cal. Sept. 18, 2015), aff'd, 710 F. App'x 889 (Fed. Cir. 2018) (finding no
13 exceptional case where defendant conceded that plaintiff had at least a colorable basis for an
14 infringement case against it); *Gonzalez v. Tagged, Inc.*, No. 16-CV-00574-YGR, 2016 WL
15 4376343, at *3 (N.D. Cal. Aug. 17, 2016) (holding no exceptional case where a magistrate judge's
16 prior finding and a jury verdict suggested that plaintiff's underlying lawsuit was not objectively
17 unreasonable). As noted above, and confirmed by case cites, this Court does not award such fees
18 lightly.

19 In summary, when a myopic view of litigation untethered to the realities of the facts and
20 the law converge, one finds an "exceptional" case. Fortunately, for the courts and opposing
21 parties, such cases are seldom seen. Usually, resources or business judgment serve to counsel
22 reasonableness. Unfortunately, no such external force bridled the plaintiff here.

23 **B. Reasonableness of Attorneys' Fees**

24 The parties agree that to "calculate reasonable attorneys' fees in a case brought under the
25 Lanham Act, courts utilize the lodestar method." *Athena Cosmetics, Inc. v. Timbo Trading Co.*,
26 2020 WL 4805470, at *3 (C.D. Cal. 2020) "The lodestar figure is calculated by multiplying the
27 number of hours the prevailing party reasonably expended on the litigation (as supported by
28

1 adequate documentation) by a reasonable hourly rate for the region and for the experience of the
2 lawyer.” *Yamada v. Nobel Biocare Holding AG*, 825 F.3d 536, 546 (9th Cir. 2016).

3 Constellation seeks reimbursement of fees of \$4,419,57.90. Alternatively, they seek
4 reimbursement of \$190,517.30 with respect to the Second Action and \$2,570,164 on the Main
5 Action for time spent after the Court’s issuance of the Preliminary Injunction Order. (*See* Second
6 Action, Dkt. 40.) Even though the Court could likely find recoverable fees incurred *prior* to the
7 issuance of its Order Granting Motion for Preliminary Injunction (“PI-Order”), those fees incurred
8 after are certainly recoverable. Three factors weigh towards that infliction point. First, by that
9 date, the legal theories and the Court’s analysis had been vetted. Second, Constellation offered to
10 resolve the matter with both sides walking away without further expense. Third, TVH understood
11 its factual arguments and expert analysis. Given Constellations’ offer, much of the remaining
12 depositions and intense trial preparation could have reasonably been avoided.

13 **Number of Hours Spent:**

14 With respect to the Second Action, the total hours billed equaled 246.5, and with respect to
15 the other, the hours billed post the PI-Order totaled 3,260.2. In one paragraph, TVH complains
16 that Constellation’s counsel “overstaffed and over-worked this case” contrasting it with its own
17 approach of using two lawyers and one paralegal billing “far fewer hours.” TVH cites
18 Constellation’s use of ten lawyers, five paralegals, and three other billable staff. Notably, plaintiff
19 does not take issue with a single entry, nor does it advise the Court how many hours its own
20 counsel spent. Rather, it merely asks the Court to reduce the amount so that “only hours
21 reasonable expended” are assessed.

22 TVH overstates the facts. A review of the documentation shows that the case was
23 principally litigated by five attorneys (Edward Colbert, Erik Kane, William Merone, Jeremy
24 Boczko, and Armin Ghiam). The ranges of experience are appropriate for the size and complexity
25 of this case. The others played an insignificant role. Further, the hours billed post the PI-Order
26 were reasonably incurred. Having reviewed the billings, the Court confirms that defense counsel
27 has eliminated block billing, potentially duplicative charges, and those billings related to an
28 unsuccessful claim.

1 However, the Court does make further adjustments. First, given the award of attorneys’
 2 fees, the Court does eliminate those hours expended (a) on Constellation’s unsuccessful attempt to
 3 settle and (b) on the unsuccessful opposition to the TVH’s motion to amend. These entries
 4 subtotal \$7,326.41 and \$41,470.19, respectively. Second, the Court does not award any fees for
 5 the filing of the motion for attorneys’ fees. Not only is over \$102,500.00 excessive for this
 6 motion, but the entries contain research attempting to find authority to support this portion of the
 7 award. Having not read any legal justification in the briefing, the Court surmises that Constellation
 8 could not find any such authority. Third, the research relative to the Bill of Costs was also
 9 excessive and the Court discounts those fees by \$10,000.00. Finally, the Court deducts an across-
 10 the-board amount of ten percent. It is the Court’s experience that attorneys can always be more
 11 efficient. A ten percent savings is a reasonable estimate to achieve that end.

12 **Hourly Billing Rates:**

13 TVH argues that the billing rates tendered are not commensurate with those more
 14 common in the Northern District of California, but are at a premium for New York and
 15 Washington, D. C. The Court disagrees. While slightly on the high side, the rates are within the
 16 range of those charged in the Northern District by lawyers practicing intellectual property.
 17 Constellation has justified the rates with third party analysis and the amounts are consistent with
 18 others with which this Court is familiar.

19 **Summary:**

20 Based on the foregoing, the Court calculates the award of attorneys’ fees as follows: On
 21 the requested amount of \$190,517.30 with respect to the Second Action plus \$2,570,164 for work
 22 on the Main Action after the PI Order subtotaling \$2,760,681.30, the Court deducts (a) \$7,326.41;
 23 (b) \$41,470.19; (c) \$102,500.00; and (d) \$10,000.00 resulting in \$2,599,384.70. From this figure,
 24 the Court deducts ten percent and awards a net amount of \$2,339,446.23.

25 **C. Expert Fees Under Federal Rule of Civil Procedure 26(b)(4)(E)**

26 Federal Rule of Civil Procedure 26(b)(4)(E) mandates that a court “require that [a] party
 27 seeking discovery [from an expert]: (i) pay the expert a reasonable fee for time spent in responding
 28 to discovery under Rule 26(b)(4)(A) or (D); and (ii) for discovery under (D), also pay the other

1 party a fair portion of the fees and expenses it reasonably incurred in obtaining the expert's facts
 2 and opinions." Subsection (A) applies here as it relates to the "Deposition of an Expert Who May
 3 Testify," more specifically, it provides that "[a] party may depose any person who has been
 4 identified as an expert whose opinions may be presented at trial."

5 In terms of evaluating the reasonableness of the request, the Court agrees that it should use
 6 its discretion and consider objective criteria such as: "(1) the witness's area of expertise; (2) the
 7 education and training required to provide the expert insight that is sought; (3) the prevailing rates
 8 of other comparably respected available experts; (4) the nature, quality, and complexity of the
 9 discovery responses provided; (5) the fee actually charged to the party who retained the expert; (6)
 10 fees traditionally charged by the expert on related matters; and (7) any other factor likely to assist
 11 the court in balancing the interest[s] implicated by Rule 26." *Granite Rock Co. v. Int'l Bhd. of*
 12 *Teamsters*, No. C 04-2767 JW (RS), 2008 WL 618897, at *1 (N.D. Cal. Mar. 3, 2008) *citing*
 13 *Fisher-Price, Inc. v. Safety 1st, Inc.*, 217 F.R.D. 329, 333 (D. Del. 2003).

14 Here, Constellation seeks reimbursement of \$20,981 which represents the expert fees
 15 associated with four depositions, both in terms of preparation for the deposition and the deposition
 16 itself. The parties disagree over whether Constellation can seek amounts for preparation.
 17 Apparently, district courts are split on this issue and the Ninth Circuit has not ruled.

18 To resolve the dispute, the Court relies on the plain language of the rule and finds that
 19 nothing in the plain language mandates the reimbursement for preparation time associated with the
 20 deposition. The extent to which such preparation is needed and beneficial lies more with the
 21 responding party rather than the party noticing the deposition. Given the obligation to reimburse,
 22 the noticing party can control the extent to which it requires the testimony in order to prepare for
 23 trial. Thus, the Court awards \$11,681.00 which represents the 16.33 hours the three experts
 24 actually spent in deposition. The Court finds the hourly rates charged reasonable. Certainly,
 25 plaintiff was on notice of the amount and could have shortened the deposition if it believed the
 26 rates were too high.

27 **III. CONCLUSION**


28 For the reasons set forth herein, the Court **HEREBY GRANTS** the motion but in an amount

1 less than the full amount requested, namely attorneys' fees in the amount of \$2,339,446.23 and
2 reimbursement of expert fees in the amount of \$11,681.00 for a total amount of \$2,351,127.23.

3 This Order terminates Docket Nos. 249 and 250.

4 **IT IS SO ORDERED.**

5 Dated: July 28, 2021

6 
7 YVONNE GONZALEZ ROGERS
8 UNITED STATES DISTRICT JUDGE
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United States District Court
Northern District of California

EXHIBIT C

Wilton, Kenneth

From: Seror, Matthew L. <mseror@buchalter.com>
Sent: Wednesday, March 23, 2022 3:32 PM
To: Wilton, Kenneth
Cc: Heinbockel, John; Kang, Helen; Bhatti, Farah P.
Subject: Constellation v. Vineyard House Proceedings [IWOV-BN.FID2786059]

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Ken-

I wanted to follow up with you regarding the pending Board proceedings between our respective clients (Opposition Nos. 91245800, 91246515, 91264972 and 91264970)

Due to an unforeseen event, the client is unavailable and we are unable to communicate with him for a period of time, the length of which is currently undetermined.

As a result, we are seeking an extension of all currently set dates (including discovery deadlines). At this point, we think 6 months would be appropriate given the circumstances.

Please advise if your client will consent to this extension. If not, we intend on filing an appropriate motion in these proceedings.

Buchalter

Matthew L. Seror

Shareholder

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F (213) 630-5798

mseror@buchalter.com

18400 Von Karman Avenue, Suite 800

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EXHIBIT D

Wilton, Kenneth

From: Seror, Matthew L. <mseror@buchalter.com>
Sent: Friday, March 25, 2022 4:07 PM
To: Wilton, Kenneth
Cc: Bhatti, Farah P.; Heinbockel, John; Terzoli, Roberto S.; Kang, Helen
Subject: Constellation Brands v. Vineyard House [IWOV-BN.FID2786059]
Attachments: 2022-03-25 - Letter to Buchalter re 91264970.pdf

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Ken-

We have received the attached letter from your office this afternoon (I note that I was not copied on the email where it was transmitted. Please copy me on all correspondence relating to the Constellation/Vineyard House matters).

As for the substance of the letter, as we advised you on Wednesday, due to an unforeseen event, our client is unavailable and we are unable to communicate with him for a period of time, the length of which is currently undetermined. For obvious reasons, this unavailability is impactful on the matters now pending before the Board. As a result, and recognizing the foregoing, I indicated in my earlier correspondence that we were seeking an extension of all currently set dates (including discovery related dates), and asked whether your client would consent to the extension. I do not believe a response to our request has been received (unless it was sent and I was not copied).

Please advise as to your position on our request at your earliest convenience.

Buchalter

Matthew L. Seror

Shareholder

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EXHIBIT E

Wilton, Kenneth

From: Bhatti, Farah P. <fbhatti@Buchalter.com>
Sent: Wednesday, April 6, 2022 5:57 PM
To: Wilton, Kenneth; Seror, Matthew L.; ipdocket; Blan, Henry
Cc: Heinbockel, John; Kang, Helen; TTAB Docket,; Maluf, Edward
Subject: RE: CBUSO v. TVH , Opp. No. 91245800

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This message came from outside your organization.

Dear Ken,

We confirm that in light of the Motion to Suspend, we are not moving forward with the deposition on April 12, 2022.

Sincerely,
Farah

Buchalter

Farah P. Bhatti

Shareholder

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F (949) 720-0182

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From: Wilton, Kenneth <KWilton@seyfarth.com>
Sent: Wednesday, April 6, 2022 5:17 PM
To: Bhatti, Farah P. <fbhatti@Buchalter.com>; Seror, Matthew L. <mseror@buchalter.com>; ipdocket <ipdocket@buchalter.com>; Blan, Henry <hblan@Buchalter.com>
Cc: Heinbockel, John <jheinbockel@seyfarth.com>; Kang, Helen <hkang@seyfarth.com>; TTAB Docket, <LAXTTABDocket@seyfarth.com>; Maluf, Edward <EMaluf@seyfarth.com>
Subject: CBUSO v. TVH , Opp. No. 91245800

This message has originated from an **External Email**. Wilton, Kenneth <kwilton@seyfarth.com>:

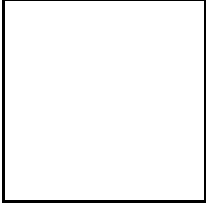
Dear Farah and Matt:

In light of the motion to suspend TVH filed on Friday, the fact we had not heard from you regarding scheduling, and that Veritext does not have the deposition calendared, we have concluded that TVH will not be taking the deposition of CBUSO it had noticed to take place on April 12, 2022.

Please confirm.

Best,
Ken

Kenneth L. Wilton | Partner | Seyfarth Shaw LLP
2029 Century Park East | Suite 3500 | Los Angeles, California 90067-3021
Direct: +1-310-201-5271 | Fax: +1-310-282-6971
kwilton@seyfarth.com | www.seyfarth.com



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EXHIBIT F

1 BUCHALTER
A Professional Corporation
2 JEFFREY M. JUDD (SBN: 136358)
PETER H. BALES (SBN: 251345)
3 55 Second Street, Suite 1700
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4 Telephone: (415) 227-0900
Fax: (415) 227-0770
5 Email: jjudd@buchalter.com
pbales@buchalter.com
6

7 Attorneys for Plaintiff and Consolidated Case Defendant
THE VINEYARD HOUSE

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA – OAKLAND

10
11 THE VINEYARD HOUSE,
12 Plaintiff and Consolidated Case
13 Defendant,
14 vs.
15 CONSTELLATION BRANDS U.S.
OPERATIONS, INC.,
16 Defendant and Consolidated Case
17 Plaintiff.

CASE NO. 4:19-cv-1424-YGR
**PLAINTIFF THE VINEYARD HOUSE,
LLC’S TRIAL WITNESS LIST**

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1 As required by the Court's Pretrial Deadlines Order (Dkt. 114), plaintiff The Vineyard
 2 House, LLC ("TVH"), hereby submits the following Trial Witness List. TVH reserves the right to
 3 add witnesses as information may be revealed during discovery, which is not yet complete.

| 5 WITNESS NAME | ADDRESS | WITNESS TYPE: TESTIMONY TYPE |
|--|--|--|
| 6 Jeremy Nickel | The Vineyard House Post Office Box 422 Oakville, CA 94562 | Fact witness; live (will call) |
| 7 Amy Ash | The Vineyard House Post Office Box 422 Oakville, CA 94562 | Fact witness, live (will call) |
| 8 Craig Norris | The Vineyard House Post Office Box 422 Oakville, CA 94562 | Fact witness; live (will call) |
| 9 Tom Bearer | The Vineyard House Post Office Box 422 Oakville, CA 94562 | Fact witness; live (will call) |
| 10 W. Andrew Beckstoffer | Beckstoffer Vineyards P.O. Box 405 Rutherford, CA 94573 | Fact witness; live (will call) |
| 11 Kevin Block | 1109 Jefferson Street Napa, CA 94559 | Fact witness; live (will call) |
| 12 Representative of Alpha Omega | Alpha Omega Winery, LLC 1101 Mee Lane Saint Helena, CA 94574 | Fact witness; live (will call) or by stipulation and declaration |
| 13 Representative of Amici Cellars | Amici Cellars, Inc. 475 Eleanor Drive Woodside, CA 94062 | Fact witness; live (will call) or by stipulation and declaration |
| 14 Representative of AXR | AXR Napa Valley 3199 St. Helena Hwy N St. Helena, CA 94574 | Fact witness; live (will call) or by stipulation and declaration |
| 15 Representative of B Cellars | B Cellars 703 Oakville Cross Rd Napa, CA 94558 | Fact witness; live (will call) or by stipulation and declaration |
| 16 Representative of Bacio Divino | Bacio Divino Cellars, LLC 386 Dutch Henry Cyn Rd Calistoga, CA 94515 | Fact witness; live (will call) or by stipulation and declaration |
| 17 Representative of Boich Family Cellars | Boich Family Cellars 651 Wall Rd. Napa, CA 94558 | Fact witness; live (will call) or by stipulation and declaration |
| 18 Representative of Breton Wines | Breton Wines 1431 Railroad Ave #100 St. Helena, CA 94574 | Fact witness; live (will call) or by stipulation and declaration |
| 19 Representative of Bure Family Wines | Bure Family Wines 18301 Clifftop Way Malibu, CA 90265 | Fact witness; live (will call) or by stipulation and declaration |
| 20 Representative of Carter Cellars | Carter Cellars 1170 Tubbs Ln Calistoga, CA 94515 | Fact witness; live (will call) or by stipulation and declaration |
| 21 Representative of | Emmitt Scorsone Wines LLC | Fact witness; live (will call) |

| | | | |
|----|---|--|--|
| 1 | Emmitt Scorsone | 222 N. Sepulveda Blvd. Ste. 200 El Segundo, CA 90254 | or by stipulation and declaration |
| 2 | Representative of Paul Hobbs | Paul Hobbs Winery, LP 3355 Gravenstein Hwy North Sebastopol, CA 95472 | Fact witness; live (will call) or by stipulation and declaration |
| 3 | Representative of Cliff Lede Vineyards | Cliff Lede Vineyards / S Anderson Vineyard 1473 Yountville Cross Rd Yountville, CA 94599 | Fact witness; live (will call) or by stipulation and declaration |
| 4 | Representative of Macauley Vineyards | Macauley Wine Corporation 3520 Silverado Trail St. Helena, CA 94574 | Fact witness; live (will call) or by stipulation and declaration |
| 5 | Representative of Realm Cellars | Realm Cellars 5795 Silverado Trail Napa, CA 94558 | Fact witness; live (will call) or by stipulation and declaration |
| 6 | Representative of Ren Acquisition | Ren Acquisition, Inc. 851 Napa Valley Corporate Way, Napa, CA 94558 | Fact witness; live (will call) or by stipulation and declaration |
| 7 | Representative of Oscar Renteria | Renteria Vineyard Management, Inc. 1106 Clark St. Napa, CA 94559 | Fact witness; live (will call) or by stipulation and declaration |
| 8 | Representative of Schrader Cellars | Schrader Cellars, LLC CT Corporation C0168406 818 W. Seventh Street, Ste. 930 Los Angeles, CA 90017 | Fact witness; live (will call) or by stipulation and declaration |
| 9 | Representative of Stewart Cellars | Stewart Cellars LLC 574 Este Madera Dr. Sonoma, CA 95476 | Fact witness; live (will call) or by stipulation and declaration |
| 10 | Representative of Tor Family Wines | Kenward Family Vineyards, LLC 2385 Saint Helena Hwy N St. Helena, CA 94574 | Fact witness; live (will call) or by stipulation and declaration |
| 11 | Representative of Triumph Beverage | Triumph Beverage Company, LLC 22837 Ventura Blvd. Ste. 300 Woodland Hills, CA 91364 | Fact witness; live (will call) or by stipulation and declaration |
| 12 | Representative of World's End | World's End, LLC 5 Financial Plaza Suite 116 Napa, CA 94558 | Fact witness; live (will call) or by stipulation and declaration |
| 13 | Lonette Merriman | Constellation Brands U.S. Operations, Inc. 1255 Battery Street San Francisco, CA 94111 | Fact witness; live (will call) |
| 14 | Nova Cadamatre | Robert Mondavi Winery 7801 Saint Helena Highway Oakville, CA 94562 | Fact witness; live (will call) |
| 15 | Mark de Vere | Robert Mondavi Winery 7801 Saint Helena Highway Oakville, CA 94562 | Fact witness; live (will call) |
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|----|----------------------|--|---------------------------------------|
| 1 | Kenneth R. Minami | The Family Coppola 300 Via Archimedes Geyserville, CA 95441 | Fact witness; live (will call) |
| 2 | John Seethoff | N/A | Fact witness; deposition testimony |
| 3 | Glenn Workman | Robert Mondavi Winery 7801 Saint Helena Highway Oakville, CA 94562 | Fact witness; live (will call) |
| 4 | Doug Frost | 4510 West 82nd Terrace, Prairie Village, KS 66208 | Expert witness; live (will call) |
| 5 | Matt Ezell | Ford Bubala & Associates 16400 CA-1 # 211 Huntington Beach, CA 92649 | Expert witness; live (will call) |
| 6 | Jon Webb | Albion Surveys, Inc. 113 Hunt Avenue St. Helena, CA 94574 | Expert witness; by declaration |
| 7 | Scott Miltenberger | JRP Historical Consulting, LLC 2850 Spafford Street Davis, CA 95618 | Expert witness; live (will call) |
| 8 | Paul Reidl | 25 Pinehurst Lane, 2d Floor Half Moon Bay, CA 94019 | Expert witness; live (will call) |
| 9 | Mike Weiss | Contact through TVH counsel | Expert witness; live (will call) |
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| 14 | DATED: July 24, 2020 | BUCHALTER A Professional Corporation | |
| 15 | | | |
| 16 | | By: <u> /s/ Jeffrey M. Judd </u> | |
| 17 | | PETER BALES JEFFREY M. JUDD | |
| 18 | | Attorneys for Defendant | |
| 19 | | THE VINEYARD HOUSE, LLC | |
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **OPPOSER**
CONSTELLATION BRANDS U.S. OPERATIONS, INC.'S OPPOSITION TO
APPLICANT'S MOTION TO SUSPEND has been served on Applicant The Vineyard House
LLC, by forwarding said copy on April 21, 2022, via email, to the correspondence address of
record for Applicant The Vineyard House LLC at fbhatti@buchalter.com,
ipdocket@buchalter.com; and a courtesy copy to mseror@buchalter.com and
hblan@seyfarth.com

/Helen Kang/

Helen Kang