

United States District Court
Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SIKOUSIS LEGACY INC.,

Plaintiff,

v.

B-GAS LIMITED A/K/A BEPALO LPG
SHIPPING LTD., et al.,

Defendants.

Case No. [22-cv-03273-CRB](#)

**ORDER GRANTING MOTION TO
VACATE**

Pursuant to Rule B of the Supplemental Rules for Certain Admiralty or Maritime Claims,¹ the Court authorized the attachment of the vessel M/T Berica on June 6, 2022. On June 28, 2022, Defendant Bergshav Aframax, Ltd. (“Aframax”), owner of the Berica, made a restricted appearance under Rule E of the Supplemental Rules for Certain Admiralty or Maritime Claims,² moving to vacate the attachment of the Berica, as represented by the substitute security posted for the Berica’s release. See Mot. (dkt. 34); see also Reply (dkt. 41). Plaintiff Sikousis Legacy Inc. and Plaintiffs-in-Intervention Bahla Beauty Inc. and K Investments Inc. (collectively “Plaintiffs”) opposed the motion, arguing that attachment is appropriate in light of the alter ego relationships between Aframax and a family of related corporate entities in Cyprus and Norway. See generally

¹ Rule B provides in part that “If a defendant is not found within the district when a verified complaint praying for attachment and the affidavit required by Rule B(1)(b) are filed, a verified complaint may contain a prayer for process to attach the defendant’s tangible or intangible personal property—up to the amount sued for—in the hands of garnishees named in the process.” Rule B(1)(a).

² Rule E provides in part that “Whenever property is arrested or attached, any person claiming an interest in it shall be entitled to a prompt hearing at which the plaintiff shall be required to show why the arrest or attachment should not be vacated or other relief granted consistent with these rules.” Rule E(4)(f).

1 Opp'n (dkt. 39). The Court held a motion hearing on July 29, 2022. See Motion Hearing
2 (dkt. 47); Transcript (dkt. 53). At that time, the Court set a continued Rule E hearing for
3 November 2022, allowed Plaintiffs to do some "limited discovery in advance of that
4 hearing in support of their alter ego claims," and set a discovery cut-off date of September
5 2022. See Order Continuing Hearing, Permitting Discovery, and Setting Briefing
6 Schedule (dkt. 48). Plaintiffs were then to file a brief in support of their position, and
7 Aframax was permitted to file a response. Id.³

8 Discovery has now taken place, and the parties have each filed a supplemental brief.
9 See Plaintiffs' Sup. Br. (dkt. 58); Aframax Sup. Br. (dkt. 62). In fact, Plaintiffs also filed
10 an additional brief, purportedly pursuant to Civil Local Rule 7-3(c), see Plaintiffs' Sup.
11 Reply (dkt. 63), which was not permitted by the Court, see Order Continuing Hearing,
12 Permitting Discovery, and Setting Briefing Schedule (allowing "a brief" by Plaintiffs and
13 "a response" by Aframax), and which Aframax appropriately moves to strike, see Ex Parte
14 Application (dkt. 64) at 1–3 (explaining that Rule 7-3(c) does not apply). The Court
15 GRANTS the motion to strike, and now turns to the merits of the motion to vacate.

16 I. BACKGROUND

17 Defendants in this case— B-Gas Limited a/k/a Bepalo, LPG Shipping Ltd., B-Gas
18 A/S, Bergshav Shipping Ltd., B-Gas Holding, Ltd., Bergshav Aframax, Ltd., Bergshav
19 Shipholding AS, Bergshav Invest AS, LPG Invest AS, and Atle Bergshaven—"are
20 corporate entities established in Norway and Cyprus," as well as an individual, Atle
21 Bergshaven, the chairman of the board of all of the other named corporate defendants, who
22 lives in Norway. Compl. (dkt. 1) at 2, ¶¶ 3–44.⁴ Plaintiffs are arbitration award-creditors
23 under three maritime London arbitration awards against award-debtor B-Gas Ltd., now
24 known as Bepalo LPG Shipping Ltd.⁵ Opp'n at 1. The \$7.5M arbitration award stems
25 from B-Gas Ltd.'s repudiation of a bareboat charter party contract. Id. at 2. According to
26

27 ³ The dates for the close of discovery, briefing, and hearing subsequently changed. See
Joint Stip. (dkt. 57).

28 ⁴ This order uses "Complaint" to mean the Sikousis Complaint.

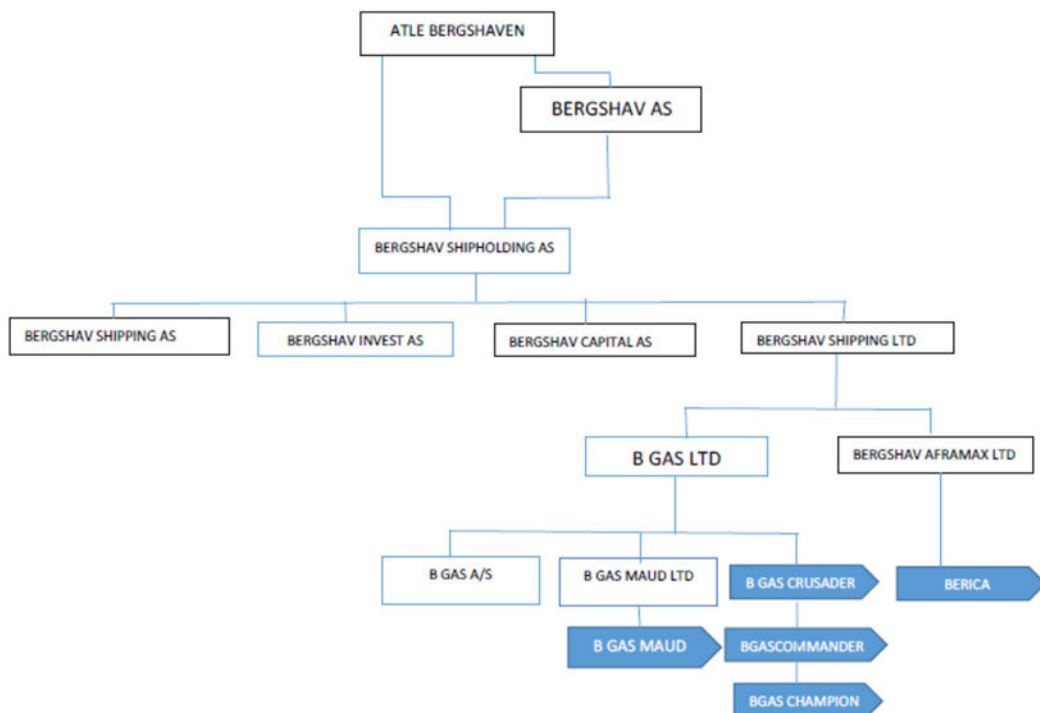
⁵ This order uses the names "B-Gas Ltd." and "Bepalo" interchangeably.

1 the Complaint, in 2019, Sikousis chartered a vessel to B-Gas Ltd.; Sikousis delivered the
 2 vessel to B-Gas Ltd. and then B-Gas Ltd. demanded a 50% reduction of the charter hire.
 3 Compl. ¶¶ 13–16. Sikousis rejected the proposal and insisted on being paid as provided in
 4 the charter agreement. Id. ¶ 17. B-Gas Ltd. breached the agreement, and Sikousis
 5 initiated, and later prevailed in, arbitration. Id. ¶¶ 18–21. Bepalo subsequently declared
 6 insolvency. Id. ¶ 22.

7 The issue before the Court is whether Plaintiffs can recover from Aframax (the
 8 entity that owns the Berica and the only defendant to have appeared in this case) when they
 9 have a judgment against Bepalo (the entity that breached its contract with Plaintiffs).
 10 Plaintiffs argue that they can, because Aframax and all of the related corporate entities are
 11 alter egos of each other. Key to understanding the relationship between B-Gas Ltd./Bepalo
 12 and Aframax is the corporate structure of the Bergshav Group at different times.

13 Plaintiffs assert that the organizational structure of the Bergshav Group looked like
 14 this in April and May of 2020:

15 **TABLE I**
 16 **BERGSHAV GROUP STRUCTURE IN APRIL AND MAY 2020**



1 Id. ¶ 32. One can see that B-Gas Ltd. and Aframax were initially both subsidiaries of
2 Bergshav Shipping Ltd. Id. In addition, one can see that B-Gas Ltd. owned a number of
3 charters, and that Aframax owned the Berica. Id.

4 Plaintiffs allege that Bergshav Shipholding AS incorporated B-Gas Holding Ltd.
5 and transferred to B-Gas Holding Ltd. “all of the rights, title and interest in B-Gas
6 Limited.” Id. ¶¶ 40–41. Plaintiffs allege that this “gratuitous transfer by Bergshav
7 Shipping Ltd. of its controlling interest over B-Gas Limited to the newly-minted B-Gas
8 Holding Ltd. corporate entity without any assets, was a sham transaction of no lawful
9 economic or financial benefit whatsoever to Bergshav Shipping Ltd. or to B-Gas Holding,
10 Ltd.” Id. ¶ 43. Plaintiffs assert that B-Gas Ltd. was removed from the control of its parent
11 company, Bergshav Shipping, Ltd., and put under the complete control of B-Gas Holding,
12 Ltd., “with a fictitious sale for one US Dollar.” Opp’n at 13 (citing Zambartas Decl. ¶ 11
13 and GZ Ex. 3 thereto; id. ¶ 15 and GZ Ex. 5 thereto at 9 and 13; id. ¶ 16 and GZ Ex. 2
14 thereto at 21). B-Gas Holding Ltd. was only intended to be a “conduit for the insulation of
15 Bergshav Shipping Ltd. from liability to the creditors of B-Gas Limited.” Id. ¶ 45. Atle
16 Bergshaven then incorporated a new entity, LPG Invest AS, id. ¶ 46, and transferred to
17 LPG Invest AS the entire ownership interest that B-Gas Ltd. had in the vessel B-Gas
18 Maud, the “sole trading asset of B-Gas Maud Ltd,” for a fraction of its value. Id. ¶¶ 49,
19 51; see also Opp’n at 14 (asserting that the B Gas Champion, B Gas Commander, and B
20 Gas Crusader were also sold to LPG Invest AS for “a total price of USD 100,000 and a
21 credit of USD 100,000.”).

22 At the conclusion of a series of maneuvers, Plaintiffs allege that the Bergshav
23 Group’s organization looked like this:

24 //

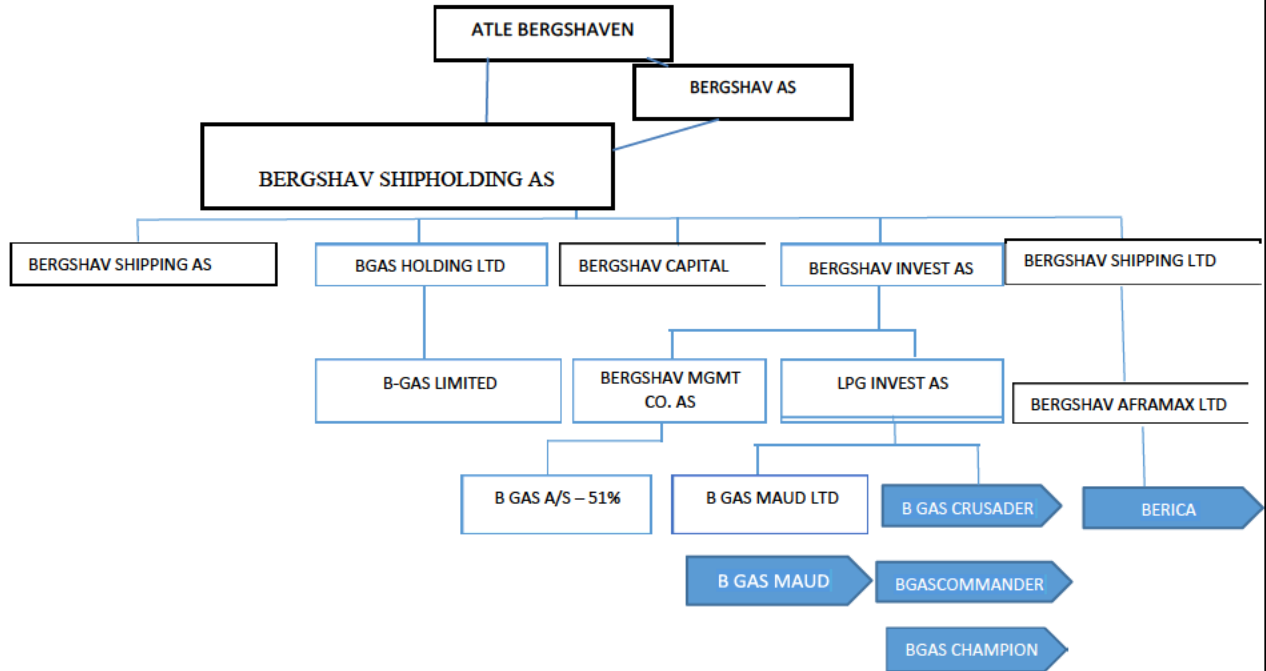
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TABLE III
BERGSHAV GROUP STRUCTURE THROUGH
JULY 2020



Id. ¶ 65. One can see that B-Gas Ltd. and Aframax no longer had the same direct parent company, and that B-Gas Ltd. no longer owned the charters, although Aframax still owned the Berica. Id.

Plaintiffs allege that the changes in the organizational structure between Table I and Table III reflect an effort to strip B-Gas Ltd. of “every tangible asset it had.” Id. ¶ 67. They allege that “[t]here is substantial overlapping in the ownership of the corporate entities made defendants in this proceeding.” Id. ¶ 76. And they allege that “Defendant Atle Bergshaven and his various corporate surrogates caused the methodical transfer [of] all of B-Gas Limited’s assets to newly established entities in advance of its anticipated repudiation of the Bareboat Charter in order to hinder, frustrate, and thwart Plaintiff’s recourse.” Id. ¶ 83.

Sikousis brought suit in this district on June 6, 2022, requesting quasi-in-rem attachment, under Rule B, of the Berica as security to satisfy its \$7.5M arbitration award against B-Gas Ltd. See Compl.; see also K Investments Inc. Intervenor Compl. (dkt. 18); Bahla Beauty Inc. Intervenor Compl. (dkt. 21). Sikousis alleged that because Defendants

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1 could not be found in this district, all assets of the defendants presently in the district,
 2 including the Berica, should be attached and garnished in an amount sufficient to answer
 3 Sikousis’s claim. Compl. at 28; Mot. for Writ (dkt. 3). The Court issued an Order
 4 Authorizing Issuance of Process of Maritime Attachment and Garnishment. See Order on
 5 Writ.

6 Aframax filed a motion to vacate the attachment. See Mot. After the July 29
 7 motion hearing, the Court allowed for some limited discovery and supplemental briefing
 8 on Plaintiffs’ alter ego allegations. See Order Continuing Hearing, Permitting Discovery,
 9 and Setting Briefing Schedule. The Court specifically encouraged Plaintiffs to focus on
 10 “(1) the relationship of B-Gas Limited/Bepalo to Bergshav Shipholding AS; and (2) the
 11 relationship of Bergshav Aframax to the alleged fraud.” Id.

12 **II. LEGAL STANDARD**

13 To obtain pre-judgment attachment under Rule B, a plaintiff must show that (1) it
 14 “has a valid prima facie admiralty claim against the defendant”; (2) the “defendant cannot
 15 be found within the district”; (3) “property of the defendant can be found within the
 16 district”; and (4) “there is no statutory or maritime” bar to attachment. Equatorial Marine
 17 Fuel Mgmt., 591 F.3d 1208, 1210 (9th Cir. 2010).

18 As to alter ego, “[f]ederal courts sitting in admiralty generally apply federal
 19 common law.” Pacific Gulf Shipping Co. v. Vigorous Shipping & Trading S.A., 992 F.3d
 20 893, 897 (2021) (citing Chan v. Society Expeditions, Inc., 123 F.3d 1287, 1294 (9th Cir.
 21 1997)).⁶ “To satisfy the alter ego exception to the general rule that a subsidiary and the

22 _____
 23 ⁶ Aframax spends some time in its brief arguing that the Court should also look to
 24 Norwegian and Cypriot veil-piercing law because “the United States does not have the
 25 strongest connection to the relevant transaction.” Aframax Sup. Br. at 4. But Aframax
 26 asserts that the bar is “high” to piercing the corporate veil in Norway, and that veil piercing
 27 only occurs in “extremely limited circumstances” in Cyprus, id. at 5, which is not terribly
 28 different from the standard in this country, see, e.g., Dole Food Co. v. Patrickson, 538 U.S.
 468, 475 (2003) (“The doctrine of piercing the corporate veil, however, is the rare
 exception, applied in the case of fraud or certain other exceptional circumstances”).
 Moreover, Aframax goes on to state that “the question of law is of reduced significance
 because all potentially applicable law, whether Norwegian, Cypriot, or federal maritime
 common law, requires a showing of fraud, and Plaintiffs have expressly admitted that
 Aframax was not involved in the underlying fraud which forms the basis of their corporate

1 parent are separate entities, the plaintiff must make out a prima facie case ‘(1) that there is
 2 such unity of interest and ownership that the separate personalities [of the two entities] no
 3 longer exist and (2) that failure to disregard [their separate identities] would result in fraud
 4 or injustice.’” Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd., 328 F.3d
 5 1122, 1134 (9th Cir. 2003) (quoting Doe v. Unocal Corp., 248 F.3d 915, 926 (9th Cir.
 6 2001) (per curiam)).

7 The Ninth Circuit recently explained:

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 9 To pierce the corporate veil, a party must show that (1) the
 10 controlling corporate entity exercise[s] total domination of the
 11 subservient corporation, to the extent that the subservient
 12 corporation manifests no separate corporate interests of its
 13 own. . . (2) injustice will result from recognizing [the
 14 subservient entity] as a separate entity . . . and (3) the
 15 controlling entity had a fraudulent intent or an intent to
 16 circumvent statutory or contractual obligations.

17 Pacific Gulf Shipping Co., 992 F.3d at 898 (internal quotation marks and citations
 18 omitted).⁷ “[S]uperficial indicia of interrelatedness’ such as shared office space and phone
 19 numbers are ‘not dispositive of the [alter-ego] question’”; instead, courts are to look at “a
 20 corporation’s ‘practical operation’ as ‘more instructive.’” Id. (quoting Coastal States
 21 Trading, Inc. v. Zenith Navigation, S.A., 446 F. Supp. 330, 334 (S.D.N.Y. 1977)).

22 Pursuant to Rule E, the plaintiff has the burden of showing why the attachment
 23 should not be vacated. See Rule E(4)(f). The Ninth Circuit has apparently not articulated
 24 what standard applies, but there is support for the notion that there must be “probable
 25 cause” to attach property. Tefida v. 1,925 Cartons of Crab, No. 2:13-cv-464-RSM, 2013

26 _____
 27 veil-piercing theory of liability.” Aframax Sup. Br. at 6.

28 ⁷ See also id. (indicia for piercing the corporate veil include “(1) disregarding corporate formalities such as, for example, in issuing stock, electing directors, or keeping corporate records; (2) capitalization that is inadequate to ensure that the business can meet its obligations; (3) putting funds into or taking them out of the corporation for personal, not corporate, purposes; (4) overlap in ownership, directors, officers, and personnel; (5) shared office space, address, or contact information; (6) lack of discretion by the allegedly subservient entity; (7) dealings not at arms-length between the related entities; (8) the holding out by one entity that it is responsible for the debts of another entity; and (9) the use of one entity’s property by another entity as its own.”).

1 WL 4049011, at *3 (W.D. Wash. Aug. 9, 2013) (adding, “[i]n this context, the probable
 2 cause standard roughly equates to whether plaintiff can make out a prima facie case.”); OS
 3 Shipping Co. Ltd v. Global Maritime Trust(s), No. 11-cv-377-BR, 2011 WL 1750449, at
 4 *5 (D. Or. May 6, 2011) (“the prevailing test appears to be a ‘probable cause’ standard that
 5 requires Plaintiffs to demonstrate the evidence shows a fair or reasonable probability that
 6 Plaintiffs will prevail on their alter-ego claim.”). The Court’s job is therefore not to
 7 determine the “ultimate merits of [the] alter-ego claim,” but, “based on the record to date,”
 8 to “determine whether [Sikousis satisfies] the probable-cause standard by showing [that it
 9 is] reasonably likely to prevail.” See OS Shipping Co. Ltd, 2011 WL 1750449, at *5. The
 10 parties did not dispute at the motion hearing that the probable cause standard applied,⁸
 11 Transcript at 6:10–11, and the Court will apply it again here.

12 III. DISCUSSION

13 Plaintiffs took extensive written discovery since the motion hearing and now argue
 14 that they have met their burden of “show[ing] why the arrest or attachment should not be
 15 vacated.” See generally Plaintiffs’ Sup. Br.; Rule E(4)(f). Aframax asks the Court to
 16 envision the many links between Bepalo and Aframax in Table III (replicated above),
 17 arguing that Plaintiffs’ proof fails in two places: (A) at the first link connecting the two
 18 companies, because Bepalo is not “dominated and controlled” by the Bergshav Group, and
 19 (B) at the last link connecting the two companies, because there is no relationship between
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21 ⁸ However, in its supplemental brief, Aframax argues that now that there has been
 22 jurisdictional discovery, the Court should apply a preponderance of the evidence standard.
 23 See Aframax Sup. Br. at 6–7. The authority that Aframax cites in support of this point is
 24 two district court cases from outside of the Ninth Circuit. See id. (citing Oldendorff
 25 Carriers GMBH & Co., KG v. Grand China Shipping (Hong Kong) Co., No. 2:12-CV-74,
 26 2013 WL 3937450, at *2 (S.D. Tex. July 30, 2013) and Hawknet Ltd. v. Overseas
 27 Shipping Agencies, No. 07-Civ-5912 (NRB), 2009 WL 1309854, at *2 (S.D. N.Y. May 6,
 28 2009)). But Oldendorff and Hawknet both explicitly applied the preponderance standard
 after allowing an evidentiary hearing; this Court has not had an evidentiary hearing.
 Moreover, Aframax cites to no authority within the Ninth Circuit applying a
 preponderance of the evidence standard, and authority from within the Circuit suggests
 that the probable cause standard still applies. See, e.g., OS Shipping Co. v. Glob. Mar.
Tr.(s) Priv. Ltd., No. 11-CV-377-BR, 2011 WL 1750449, at *5 (D. Or. May 6, 2011)
 (holding, after depositions and hundreds of pages of exhibits, “the prevailing test appears
 to be a ‘probable cause’ standard”).

1 Aframax and the alleged fraud. Aframax also addresses (C) Plaintiffs’ additional
2 arguments.

3 **A. First Link: Bepalo**

4 **1. Previous Briefing**

5 In the motion to vacate, Aframax argued that the evidence establishes that Bepalo is
6 a separate and distinct entity from Bergshav Shipholding AS. Mot. at 15. It asserted that:

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- 8 • There is an “incomplete unity of ownership” between Bergshav Shipholding
 - 9 AS and Bepalo;
 - 10 • There are formal agreements in place to protect Bepalo’s minority
 - 11 shareholders (who own 49% of Bepalo) from unilateral action by B-Gas
 - 12 Holding Ltd.⁹;
 - 13 • Two Bepalo board members were appointed by minority shareholders;
 - 14 • Supermajority votes, which include at least one minority appointed director,
 - 15 are necessary to take certain corporate actions;
 - 16 • Bepalo was sufficiently capitalized until the pandemic;
 - 17 • There is no improper commingling of funds or sharing of property;
 - 18 • The daily operations of the companies are kept separate; and
 - 19 • There is no sharing of property.

20 Id. at 16–17. Aframax pointed to the Shareholders’ Agreement, which lays out various
21 actions that require a supermajority, and argued that “if Bergshav Shipholding AS (or Atle
22 Bergshaven individually) had intended for Bepalo to merely be an indistinguishable
23 extension of its majority-shareholding parent company(s), it would not have agreed to limit
its control over Bepalo.” Id. at 17–18 (citing Mot. Ex. G-2).

24 Aframax also relied on the declaration of Andreas Hannevik, deputy CEO of
25 Bergshav Shipholding AS, which purports to set out the legitimate “circumstances and
26 reasoning involved in first attempting to secure additional liquidity during a time of
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28 ⁹ See Hannevik Decl. ¶ 5 (attaching Bepalo Shareholders’ Agreement), Ex. G-2
(Shareholders’ Agreement).

1 economic stress brought on by the global pandemic, and then the unfortunate but necessary
2 decision to wind down Bepalo’s business.” Id. at 19 (citing Hannevik Decl. (dkt. 34-7) ¶¶
3 10, 11). And it attached Board Meeting Minutes which, it asserted, demonstrate that the
4 “decisions to obtain liquidity via sale-leasebacks of its vessels, and later to wind down the
5 company, were done according to proper corporate formalities and not simply at the sole
6 whim of Atle Bergshaven.” Id. at 19 (citing Mot. Ex. G-4) (meeting minutes from B-Gas
7 Ltd.’s Board of Directors meetings on April 6, 2020, May 5, 2020 (which included “Pursue
8 legal possibilities on company structure in Cyprus, Norway and Denmark”), May 15, 2020,
9 July 3, 2020, August 11, 2020).

10 Plaintiffs responded that, while Aframax argues that control over B-Gas Limited
11 was exercised by a supermajority under a Shareholders’ Agreement, “there is no proof of
12 that.” Opp’n at 18. They went on: “The October 14, 2011 voting agreement of the
13 shareholders of B-Gas Limited is private and governed by Norwegian law, and is subject
14 to arbitration in Norway. It was not made part of any public corporate record in Cyprus
15 where B-Gas Limited was incorporated” and “Cypriot Articles of Incorporation govern
16 and prevail over it.” Id. (citing Zambartas Decl. ¶ 61¹⁰).

17 At the time of the motion hearing, the Court found the Hannevik declaration to be
18 rather persuasive evidence that Bepalo is not dominated and controlled by Bergshav
19 Shipholding AS in its practical operation.

20 2. New Evidence

21 Given the Court’s suggestion that Plaintiffs focus discovery in part on “the
22 relationship of B-Gas Limited/Bepalo to Bergshav Shipholding AS,” see Order Continuing
23 Hearing, Permitting Discovery, and Setting Briefing Schedule, the Court expected that

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25 ¹⁰ Zambartas declared: “It is brought to my attention that the shareholders of B-Gas
26 Limited had, some years ago, entered into a shareholders agreement, and on this basis they
27 dispute whether the controlling majority shareholder could alone exercise control over
28 decisions of the shareholders. However, having reviewed the Articles of Association of B-
Gas Limited/Bepalo, I do not find any of the provisions of the shareholders’ agreement
having been incorporated in the Articles. Accordingly, as the reserved matters have not
been incorporated into the Articles[,] the terms in the Articles which regulate the decision-
making processes and procedures of the shareholders should prevail.” Id.

1 Plaintiffs would do further discovery on Bepalo. But Plaintiffs apparently chose not to
2 take depositions of Bergshav Group representatives, see Aframax Sup. Br. at 2, and did not
3 delve into issues of Bepalo’s minority shareholders’ rights in written discovery, id. at 9. In
4 fact, Plaintiffs just briefly addressed the issue of Bepalo’s independence in their
5 supplemental brief. See Plaintiffs’ Sup. Br. at 4 (stating that “From its inception, B-Gas
6 Limited was held by Bergshav Shipping Ltd . . . which owned 51% of its shares. The
7 remaining 49% of B-Gas Limited’s shares were held by Lorentzen Skibs AS and Pareto
8 Secondary Opportunity Fund AS.”), 5 (“Two (2) Norwegian individuals—Jan Haakon
9 Pettersen and Nicolai Eirik Lorentzen—were directors on the board of B-Gas Limited
10 appointed by the respective minority shareholders,”). Plaintiffs’ arguments about
11 corporate control as to Bepalo were fairly conclusory, see, e.g., id. at 7 (“ . . . it is obvious
12 that Bergshav Shipholding AS exercised complete control of the corporate entities of its
13 Cypriot Arm.”), 19 (“The domination and control of B-Gas Limited by the Bergshaven
14 Group, i.e., Bergshav Shipholding AS, is also indisputable. . . .”), and their examples of
15 corporate control generally do not pertain to Bepalo itself, see, e.g., id. at 5–6 (example of
16 Bergshav Management Co. AS directing Bergshav Shipping Ltd. activity). While
17 Plaintiffs describe the Bergshaven Group’s “plan” to strip assets from B-Gas limited, see
18 id. at 8–11, they do not address the Bepalo Shareholders’ Agreement and its role. See
19 Aframax Sup. Br. at 8 n.8.

20 The new evidence pertaining to Bepalo was primarily put into the record by
21 Aframax. See Aframax Sup. Br. at 2 (“to ensure that it would be able to adequately defend
22 itself with admissible evidence (especially after Aframax learned at the 11th hour that
23 Plaintiffs would not be conducting depositions), Aframax also voluntarily produced
24 additional materials”). Aframax notes that Bepalo has had two shareholders in addition to
25 B-Gas Holding, Ltd. ever since it was incorporated in January 2011: Lorentzen Skibs AS
26 (10%) and Pareto Secondary Maritime Opportunity Fund (39%). Id. at 8–9. Nicolai
27 Lorentzen, a co-owner of Lorentzen Skibs AS and a director of Bepalo since the
28 company’s formation, submitted a declaration. Id. at 9. Lorentzen declares:

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- “Because of the relatively small percentage of ownership interest that Lorentzen Skibs AS would hold in the company, we insisted that there be minority shareholder protections as a condition of our participation in the business venture, so as to prevent a situation where the majority shareholder (here, B-Gas Holding Ltd.) could exert total and unilateral control over the company. We were not interested in merely being a blind investor in Bepalo Ltd.” Lorentzen Decl. (dkt. 62-5) ¶ 4.
- “I participated in negotiating the Shareholder Agreement.” Id. ¶ 5.
- “The Agreement provides that shareholders holding more than 10% and up to 50% of the shares of the Company are entitled to appoint a director to the Board of Directors. . . . For certain matters, the Agreement also requires a supermajority vote of at least five directors, one of whom shall have been nominated by a shareholder other than the majority shareholder.” Id. ¶ 6.
- “In the spring of 2020, the gas market in Europe collapsed as a result of the Covid pandemic. As a result, Bepalo’s revenue stream collapsed with it. The company’s Board was confronted with an existential crisis not of its own making, and decisions had to be made how to address it. In June 2020, ultimately the Board decided to sell its shares in subsidiary B-Gas Maud Ltd., which owned the gas tanker B GAS MAUD, and lease back the vessel from the new owner so that the company could continue to maintain control of that asset anticipating that the market would eventually return to normalcy. The Board also decided to sell three small gas tankers that it owned, which had, more or less, reached their service life, and to lease back the tankers, which were still under charter to third parties.” Id. ¶ 8.
- “As a result of these transactions, the company received an immediate cash injection of USD 1.65 million in June 2020. . . . The goal was to

1 weather the pandemic’s financial storm. These negotiations . . . fell
2 through resulting in the company having to unilaterally cut charter hire
3 payments by one-half to remain afloat. Thereafter, the owners of four of
4 the vessels initiated arbitration proceedings, and ultimately the company
5 had no choice but to file for insolvency in Cyprus.” Id. ¶ 9.¹¹

- 6 • “The decisions described above were made by the board of Bepalo Ltd.
7 on a unanimous basis, after having considered and discussed the
8 business realities that existed as a result of the global pandemic, and the
9 options that were available. . . . I did not simply defer to the position of
10 Atle Bergshaven or any other board member—I believe that each
11 decision reached was appropriate based on my own evaluation of the
12 facts.” Id. ¶ 10.

13 This declaration supports Aframax’s positions, both about Bepalo’s independence¹²
14 and about the specific decisions in Spring and Summer 2020. Given this additional
15 evidence, Plaintiffs have failed to demonstrate that Bepalo is an alter ego of Bergshav
16 Shipholding AS such that a judgment against Bepalo can be collected against another
17 entity within that group. “The first and most critical link in the alter-ego chain (i.e., from
18 the alleged debtor-obligor Bepalo to its parent company) is therefore missing.” See
19 Aframax Sup. Br. at 11.

20 **B. Last Link: Aframax**

21 **1. Previous Briefing**

22 Also in the motion to vacate, Aframax essentially argued that the evidence did not
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24 ¹¹ Plaintiffs’ improperly filed Reply disputes that Bepalo ever went into “a judicially
25 supervised/controlled bankruptcy.” Reply at 13. The Court will not consider this
argument as it has stricken the Reply.

26 ¹² Of course, the “general rule” is that parents and subsidiaries are separate. See Harris
27 Rutsky & Co. Ins. Servs., 328 F.3d at 1134. Absent sufficient allegations of
dominion/control, the Court need not even reach the questions of whether there would be
28 injustice in failing to pierce the corporate veil and whether the controlling entity had
fraudulent intent. See Pac. Gulf Shipping Co., 992 F.3d at 898 (Ninth Circuit has a
conjunctive test: all three elements must be present).

1 demonstrate its culpability. Aframax asserted that, comparing Table I and Table III from
2 the Complaint (replicated above), “no assets of Bergshav Shipping Ltd., Bepalo (B-Gas
3 Limited), or B-Gas AS are shown to have been transferred to [Aframax]—instead, all that
4 is alleged are that assets and entities that were previously owned by Bergshav Shipping Ltd
5 (or its subsidiaries) were ultimately transferred such that they are now owned by Bergshav
6 Invest AS (or its subsidiaries).” Mot. at 10 (emphasis in original). Aframax insisted that
7 “Aframax is completely absent from any relevant chain of ownership.” *Id.* (emphasis in
8 original); see also Transcript at 11:1–4 (Aframax counsel: “The plaintiffs’ counsel referred
9 to [Aframax] as a receiving entity, that is, a pocket. Well, it never received any monies
10 that—that have been identified in any of the complaints.”); *id.* at 14:8–10 (Aframax
11 counsel: “There are no factual allegations that—that [Aframax] committed any tort,
12 breached any contract, committed any fraud.”).

13 It is true that in Table I and Table III, Aframax is unchanged: in both tables, it sits
14 below Bergshav Shipping Ltd and it owns the Berica. See Compl. Table I, III. While
15 Table I shows that B-Gas Ltd. (or Bepalo) owns 4 vessels (B Gas Maud, B Gas Crusader,
16 B Gas Commander, and B Gas Champion), Table III shows that B Gas Ltd. (or Bepalo)
17 owns nothing, and that the four B Gas vessels are all now owned by LPG Invest AS, which
18 sits below Bergshav Invest AS. *Id.* Aframax argued accordingly that “Aframax had no
19 direct connection to the alleged fraud which purportedly justifies piercing the corporate
20 veil”—the “asset stripping” from Bepalo. Mot. at 1.

21 Concerned about this issue at the motion hearing, the Court prompted Plaintiffs:
22 “The argument that I heard the defendants making is what can you point to regarding
23 Aframax that brings it in as—as the alter ego? Because it is the defendant that owns the
24 vessel [Berica], as I understand it.” Transcript at 17:14–17. Plaintiffs responded that they
25 needed discovery. *Id.* at 18:16–17. In allowing discovery, the Court encouraged Plaintiffs
26 to focus on “the relationship of Bergshav Aframax to the alleged fraud.” Order Continuing
27 Hearing, Permitting Discovery, and Setting Briefing Schedule.

28

2. New Evidence

1 Plaintiffs now point to new evidence of what they allege to be “extensive
2 commingling of funds between Bergshav Shipholding AS . . . and [Aframax],” “the ad hoc
3 informality accounting treatment of intercompany transfers,” “the establishment of B-Gas
4 Holding Ltd., a shell entity admittedly [created] to cabin existing risks of the direct parent
5 company of [Aframax],” “the fraudulent concealment from Plaintiffs of the sale of all of
6 the assets of B-Gas Limited to LPG Invest AS,” “the undercapitalization of B-Gas Ltd.,”
7 “the concentration of valuable assets in LPG Invest AS and [Aframax],” and “the
8 concentration of liabilities in B-Gas Limited and B-Gas Holding Ltd.” Plaintiffs’ Sup. Br.
9 at 13–14; see also id. at 4–11.

10 Some of this evidence relates to Aframax. Specifically, Plaintiffs point to the
11 Bergshav Group transferring funds to Aframax and dictating how those funds would be
12 entered in Aframax’s accounting system, bailing Aframax out with injections of funding,
13 and providing commitments on behalf of Aframax in connection with debts. See id. at 18–
14 19. Aframax counters that “these transfers do not represent improper ‘commingling’ of
15 funds,” as the transactions were duly recorded, and that what Plaintiffs deem “‘ad hoc’
16 informality of intercompany transfers” is “routine in Norway—the transfers need only be
17 properly recorded for tax, accounting and auditing purposes at years’ end.” Aframax Sup.
18 Br. at 14. In any case, such evidence only relates to the Ninth Circuit’s requirement that to
19 pierce the corporate veil, a parent must “exercise[] total domination of the subservient
20 corporation, to the extent that the subservient corporation manifests no separate corporate
21 interests of its own.” See Pacific Gulf Shipping Co., 992 F.3d at 898.

22 Most of Plaintiffs’ new evidence does not relate to Aframax. Aframax did not
23 establish B-Gas Holding, conceal information from Plaintiffs, undercapitalize B-Gas
24 Limited, or concentrate liabilities anywhere.¹³ Plaintiffs do not point to any “concentration
25

26
27 ¹³ There is therefore little evidence in support of the Ninth Circuit’s additional requirement
28 that “injustice will result from recognizing the [subservient entity] as a separate entity.”
See Pacific Gulf Shipping Co., 992 F.3d at 898. Plaintiffs’ argument that “it would be
inequitable to allow the subservient entity [Aframax], or any subservient entity of
Bergshav Shipholding AS, to be recognized as a separate entity,” Plaintiffs’ Sup. Br. at 20,

1 of valuable assets” in Aframax in connection with B-Gas Ltd.; in fact, Plaintiffs explicitly
 2 do not contend that Aframax participated in the asset-stripping of B-Gas Ltd. See
 3 Plaintiffs’ Sup. Br. at 14. Plaintiffs do point to a number of transactions between April
 4 2020 and June 2020 in which Bergshav Shipholding AS can be seen directing the conduct
 5 of its subsidiaries, specifically in connection with B-Gas Ltd. See id. at 8–11. These
 6 transactions may or may not be above board. See, e.g., id. at 8 (quoting 4/27/20 Hannevik
 7 email: “We would like to make a few changes to the legal structure of Bergshav in Cyprus
 8 to separate the various assets and risks better.”); id. Ex. 15 (June 3, 2020 Bergshav Group
 9 “Notat” re B-Gas Ltd. structure, mentioning “disposal of assets to increase the Company’s
 10 liquidity,” and anticipating litigation by Plaintiffs if B-Gas Ltd. reduced bareboat charter
 11 hire).¹⁴ But they do not involve Aframax.

12 To pierce the corporate veil, “[t]he entity sought to be held liable must be involved
 13 in misuse of the corporate form.” d’Amico Dry d.a.c. v. Nikka Fin., Inc., 429 F Supp. 3d
 14 1290, 1302 (S.D. Ala. 2019); see also id. (“fraud analysis focuses on ‘whether the
 15 corporate form itself was abused and whether the misuse of the corporate form constituted
 16 the fraud or injustice complained of in the underlying suit.’”); Pac. Gulf Shipping Co., 992
 17 F.3d at 899 (entity to be held liable under an alter-ego theory must itself have been “used .
 18 . . for a fraudulent purpose.”). Given Tables I and III, and Plaintiffs’ concession, see
 19 Plaintiffs’ Sup. Br. at 14 (“It is not Plaintiffs’ case that [Aframax] participated in the asset-
 20 stripping [of] B-Gas Limited.”), it is hard to see how Aframax was involved in the alleged
 21 fraud here: the asset-stripping from Bepalo.

22 Plaintiffs argue, though, that they need not demonstrate that Aframax was itself

23 _____
 24 is not especially compelling when Aframax played no role in Plaintiffs’ harm. Moreover,
 25 “a creditor’s inability to collect a judgment alone is insufficient to justify piercing the
 26 corporate veil.” Eitzen Chem. (Singapore) PTE, Ltd. v. Carib Petroleum, 749 F. App’x
 27 765, 773 (11th Cir. 2018).

28 ¹⁴ Aframax moves to strike Exhibit 15 as untimely. See Ex Parte Mot. to Strike and
Preclude (dkt. 59). The Court denied that motion without prejudice to the parties raising
 those issues again at the motion hearing. See Order Denying Ex Parte Mot. to Strike and
Preclude (dkt. 60). The issue did not come up again at the motion hearing. In any case, it
 is a document that was generated by the Bergshav Group and therefore may have already
 been in Aframax’s possession.

1 used for a fraudulent purpose. Id. at 16. Plaintiffs observe that the Ninth Circuit in Pacific
 2 Gulf Shipping Co. required that the plaintiffs demonstrate that the alleged alter ego
 3 defendants dominated and controlled either the corporate owner of the attached vessel or
 4 its holding company, and used the corporate form for a fraudulent purpose. Plaintiffs’
 5 Sup. Br. at 16. This is correct, but in Pacific Gulf Shipping Co., 992 F.3d at 895–96, both
 6 the vessel owner and the holding company had appeared; in this case, only Aframax, the
 7 vessel owner, has appeared. Aframax notes that the court in Pacific Gulf Shipping Co.
 8 relied on M/V American Queen v. San Diego Marine Construction Corp., 708 F.2d 1483
 9 (9th Cir. 1983), which clarifies the point. See Aframax Sup. Br. at 17 (citing Pacific Gulf
 10 Shipping Co., 992 F.3d at 899) (citing M/V American Queen, 708 F.2d at 1490)). In M/V
 11 American Queen, 708, F.2d at 1489–90, the Ninth Circuit held:

12 To disregard San Diego Marine’s [the subsidiary’s] corporate
 13 existence . . . there must be more than just its control by
 14 Campbell [the parent company]. There must be factors that
 15 indicate a disregard of San Diego Marine’s corporate form. . . .
 16 Further, it must appear that injustice will result from
 recognizing San Diego Marine as a separate entity and that
 Campbell had a fraudulent intent or an intent to circumvent
 statutory or contractual obligations in its control of San Diego
 Marine.

17 The court went on to say that if the alter ego theory was correct, “Campbell would be
 18 liable only if San Diego Marine were also liable.” Id. at 1490. Thus, the court held that, to
 19 pierce the subsidiary’s corporate veil, the parent company had to have a fraudulent intent
 20 in its use of the subsidiary. See also Blankenship v. Omni Catering, Inc., 21 F.3d 1111
 21 (9th Cir. 1994) (unpublished) (“Fraudulent intent may be proved in either of two ways:
 22 through evidence of fraudulent intent in the formation of the corporation or through
 23 evidence of the subsequent misuse of the corporate form to perpetrate a fraud.”) (citing
 24 Board of Trustees v. Valley Cabinet & Mfg. Co., 877 F.2d 769, 774 (9th Cir. 1989)).
 25 Here, because Plaintiffs do not even allege that Aframax was used to perpetrate a fraud
 26 relating to B-Gas Ltd., see Plaintiffs’ Sup. Br. at 14 (“It is not Plaintiffs’ case that
 27 [Aframax] participated in the asset-stripping [of] B-Gas Limited.”), they fail to meet the
 28 requirement that “the controlling entity had a fraudulent intent or an intent to circumvent

1 statutory or contractual obligations.” See Pacific Gulf Shipping Co., 992 F.3d at 898.

2 Plaintiffs do make a last ditch claim of having shown that Aframax was “involved
3 in misuse of the corporate form.” See Plaintiffs’ Sup. Br. at 14–15; d’Amico Dry d.a.c.,
4 429 F Supp. 3d at 1302. They argue:

5 “[I]nvolved in the misuse of corporate form” as held in
6 d’Amico Dry d.a.c. is not co-extensive in meaning with
7 “participated” as Defendant cites and argues. It is not
8 Plaintiffs’ case that [Aframax] participated in the asset
9 stripping [of] B-Gas Limited. But this is not to say that
10 [Aframax] was not involved in the unjust actions of the
11 Bergshaven Group in this case. Specifically, Bergshav
12 Shipping Ltd., the direct parent company of [Aframax],
13 transferred its controlling interest over B-Gas Limited
14 (Plaintiffs’ debtor) for the price of \$1 in pursuit of a deliberate,
15 well considered plan to remove the risk of the contemplated
16 insolvency of B-Gas Limited from Bergshav Shipping Ltd.
17 (emphasis added). This demonstrates Defendant’s involvement
18 in the bad acts alleged by Plaintiffs. In the very words of Mr.
19 Hannevik, the Chief Financial Officer of the Bergshaven
20 Group, the intent of the restructuring was: “To confine the risk
21 of [B-Gas Limited] to B Gas Holding Ltd. for USD 1.00.”

22 Plaintiffs’ Sup. Br. at 14–15 (emphasis in original); see also id. at 15 (speaking to “the
23 Bergshaven Group’s intent” and to fraudulent actions by “Bergshav Shipping Ltd. and
24 Bergshav Shipholding AS”). The block quote above demonstrates nothing about Aframax.
25 Allegations about what Bergshav Shipping Ltd. did are not allegations about what
26 Aframax did—even if prefaced with the word “Specifically” and sandwiched by assertions
27 that Aframax was involved.

28 Given Plaintiffs’ failure to point to new evidence of Aframax’s involvement in the
alleged fraud, Plaintiffs have failed to demonstrate that Aframax’s corporate veil is subject
to veil piercing in order to recover for Bepalo’s debt.

23 C. Additional Arguments

24 Finally, Plaintiffs make two arguments for the first time in their supplemental brief:
25 that this Court may “look into an allegedly fraudulent transfer where the question was
26 relevant to execution upon a decree in admiralty,” and that the entire Bergshav Group is a
27 single business enterprise. See Plaintiffs’ Sup. Br. at 21–26. These arguments are
28 unavailing.

1 Plaintiffs have already conceded that Aframax was not directly involved in the
2 allegedly fraudulent transfers of which they complain. See Plaintiffs’ Sup. Br. at 14.

3 Plaintiffs’ argument under California’s single business enterprise doctrine is also
4 flawed. Federal, not California, law governs the Court’s alter ego analysis. See Pacific
5 Gulf Shipping Co., 992 F.3d at 897. While state law can be used where it is not
6 inconsistent with admiralty principles, see Kite Shipping LLC v. San Juan Nav. Corp. No.
7 11-cv-02694 BTM (WVG), 2012 WL 6720624, at *3 (S.D. Cal. Dec. 26, 2012) (“Courts
8 applying federal common law in an admiralty case ‘can look to state law in situations
9 where there is no admiralty rule on point.’”) (quoting Ost-West-Handel Bruno Bischoff
10 GmbH v. Project Asia Line, Inc., 160 F.3d 170, 174 (4th Cir. 1998)), here, it is
11 inconsistent. Admiralty principles require both domination and control and that the
12 subservient entity be used “for a fraudulent purpose.” See Pacific Gulf Shipping Co., 992
13 F.3d at 899.¹⁵

14 Accordingly, the Court rejects both arguments.¹⁶

15 In addition, Plaintiffs’ single business enterprise argument is based largely on the expert
16 report of a forensic accountant named Michael Molder. See Molder Decl. (Plaintiffs’ Sup.
17 Br. Ex. 28). Aframax moves to strike that declaration as untimely. See Ex Parte Mot. to
18 Strike and Preclude. Aframax argues that the discovery cut-off was October 31, 2022, but
19 that some of Plaintiffs’ exhibits, including Exhibit 28, were not produced until November
20 28, 2022. Id. at 1. Aframax contends that it was prejudiced by the late production and
21 unable to respond. Id. at 7. This Court denied that motion without prejudice to the parties
22 raising it again at the motion hearing. See Order Denying Ex Parte Mot. to Strike and
23 Preclude. It did not come up again at the motion hearing. In any case, the Court would
24 limit the impact of the Molder report because Molder largely opines on a legal conclusion:
25 whether the Bergshav Group operates as a single business enterprise. See Molder Decl.
26 (dkt. 58-28) ¶ 7 (“The interlocking Boards of Directors, shared management and
27 intercompany transfers dressed up as preferred share transactions indicate that the Group is
28 actually a single entity.”).

16 For the sake of completeness, the Court addresses a final argument. Plaintiffs argued in
their opposition to the motion to vacate—but did not repeat in their supplemental
briefing—that they can also attach the Berica via reverse veil piercing. Opp’n at 10.
Plaintiffs relied on Pacer Construction Holdings Corp. v. Pelletier, No. 19-cv-1263-MMA
(BGS), 2020 WL 583982, at *4 (S.D. Cal. Feb. 6, 2020), which defined reverse veil
piercing as a tool used “to satisfy the debt of an individual through the assets of an entity
of which the individual is an insider.” See id. at 10–11. Plaintiffs asserted that “[t]he
individual insider in this instance is Atle Bergshaven, 100% owner of Bergshav Aframax
Ltd., through the chain of ownership of this corporate entity as set out in the Verified
Complaints . . . and his own identification as the ‘ultimate controlling party in its financial
statements it filed in Cyprus.” Id. at 11. The problem with this argument is that it relies on
calling Atle Bergshaven the “shareholder debtor,” see id. at 12, but he is not; Bepalo/B-

IV. CONCLUSION

For the foregoing reasons, the Court cannot attach property belonging to Aframax in order to recover for a debt of Bepalo’s. The Court therefore GRANTS the motion to vacate. However, the Court STAYS this order for 30 days so that Plaintiffs may seek a further stay in the Ninth Circuit Court of Appeals if they wish to do so.

IT IS SO ORDERED.

Dated: January 19, 2023



CHARLES R. BREYER
United States District Judge

United States District Court
Northern District of California

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Gas Limited is the debtor, see Compl. at 1 (“Plaintiff . . . is an arbitration award-creditor of defendant B-Gas Limited.”).