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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ALZHEIMER'S DISEASE AND RELATED DISORDERS ASSOCIATION, INC.,  Petitioner,  v.  ALZHEIMER'S DISEASE AND RELATED DISORDERS ASSOCIATION OF SAN DIEGO, INC.,  Respondent.
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Case No.: 17-cv-1690-BTM-JLB

**ORDER GRANTING IN PART  
PETITIONER'S MOTION TO  
STRIKE AND GRANTING  
PETITION TO CONFIRM  
ARBITRATION AWARD [ECF  
NOS. 1-2, 7]**

Presently before the Court are Petitioner Alzheimer's Disease and Related Disorders Association, Inc.'s ("National") petition/motion to confirm an arbitration award (ECF Nos. 1-2) and motion to strike Respondent Alzheimer's Disease and Related Disorders Association of San Diego Inc.'s ("Chapter") answer (ECF No. 7.) For the reasons discussed below, Petitioner's motion to strike is granted in part and its petition/motion to confirm an arbitration award is granted.

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**I. BACKGROUND**

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2 In 1998, Petitioner and Respondent entered into a contractual Statement of  
3 Relationship (“SOR”) to memorialize their affiliation. (ECF No. 1 (“Petition”) ¶ 6.)  
4 The parties modified the SOR on June 1, 2012. (Id. ¶¶ 6–7.) Under section 9.1  
5 of the Amended SOR, the parties agreed to the following provision:

6 2. Disaffiliation: Section 9.1 of the SOR shall be deleted in its entirety  
7 and the following language shall be added as a new Section 9.1:

8 “Upon the determination of either party to sever the relationship  
9 established by this Agreement, the disposition of Chapter Assets  
10 shall be determined by mutual agreement of the parties, or, in the  
11 absence of such mutual agreement, through binding arbitration.

12 The disposition of such assets through binding arbitration is limited to:  
13 (a) transfer of all Chapter Assets to national; (b) funding Alzheimer’s  
14 Association research; (c) some combination of the above options”

(Id., Ex. 2 at 12.)

15 On December 2, 2015, Respondent served Petitioner with a Notice of  
16 Disaffiliation, effective December 3, 2015. (Id. ¶ 9.) On May 16, 2016,  
17 Respondent commenced arbitration proceedings with JAMS because the  
18 parties were unable to reach an agreement regarding the disposition of  
19 chapter assets. (Id. ¶ 11.) On January 19, 2017, the arbitrator issued a  
20 partial final award. (Id. ¶ 13, Ex. 3.) The partial final award ordered  
21 Respondent to remit to Petitioner approximately \$1.7 million in chapter  
22 assets, which were previously placed with two donor-advised funds, and  
23 the net cash in the amount of \$578,547.50. (Id., Ex. 3 at 26.) The partial  
24 award was intended to be final as to the issues and claims submitted for  
25 decision. (Id.) The arbitrator, however, retained “jurisdiction to make any  
26 additional awards as may be necessary and appropriate to supervise,  
27 enforce, carry out, or complete the disposition of assets ordered here.” (Id.)  
28

1 On March 20, 2017, Respondent remitted what remained of the \$1.7  
2 million to Petitioner. (Petition ¶ 15.) Respondent transferred no other  
3 assets to satisfy the partial award. (Id. ¶ 16.) On June 7, 2017, the  
4 arbitrator incorporated by reference the January 19, 2017 partial final  
5 award and issued a final award. (Id., Ex. 4 at 29–30.) The final award  
6 noted that Respondent had failed to remit the net cash it was previously  
7 ordered to pay and ordered Respondent to “immediately transfer its  
8 Currently Available assets up to the amount of \$578,547.50 to [Petitioner]  
9 to partially satisfy the Net Cash remittance order.” (Id. at 30.) The  
10 arbitrator also enjoined Respondent from “dissipating or otherwise  
11 encumbering Currently Available Assets before such transfer for any  
12 purpose, including to satisfy outstanding bills, invoices or other debts,  
13 whether for attorney fees or for any other purpose.” (Id.) On June 26,  
14 2017, Respondent sent a wire transfer to Petitioner in the amount of  
15 \$173,547.80. (Petition ¶ 21.) To date, Petitioner has not received any  
16 further payment to satisfy the award. (Id. ¶ 22.)

17  
18 On August 22, 2017, Petitioner filed a petition to confirm an  
19 arbitration award against Respondent to ensure that it may collect the  
20 remainder of the award. On November 6, 2017, Respondent filed an  
21 answer asserting fourteen affirmative defenses including two grounds for  
22 modifying and vacating the arbitration award. (ECF No. 5.) On November  
23 27, 2017, Petitioner filed a reply and a motion to strike Respondent’s  
24 answer. (ECF Nos. 6–7.)

## 25 **II. DISCUSSION**

### 26 **A. Motion to Strike**

27 Federal Rule of Civil Procedure 12(f) authorizes courts to order stricken  
28 “from any pleading any insufficient defense or any redundant, immaterial,

1 impertinent, or scandalous matter.” Fed. R. Civ. P. 12(f). A motion to strike may  
2 be granted if “it is clear that the matter to be stricken could have no possible  
3 bearing on the subject matter of the litigation.” *LeDuc v. Kentucky Central Life*  
4 *Ins. Co.*, 814 F. Supp. 820, 830 (N.D. Cal. 1992). “[T]he function of a 12(f)  
5 motion to strike is to avoid the expenditure of time and money that must arise  
6 from litigating spurious issues by dispensing with those issues prior to trial . . . .”  
7 *Sidney-Vinsein v. A.H. Robins Co.*, 697 F.2d 880, 885 (9th Cir. 1983). However,  
8 “[m]otions to strike are generally disfavored.” *Leghorn v. Wells Fargo Bank, N.A.*,  
9 950 F. Supp. 2d 1093, 1122 (N.D. Cal. 2013).

10 Petitioner seeks to strike Respondent’s Answer and Affirmative Defenses.  
11 Petitioner argues that because a court’s review of an arbitration award is limited  
12 under the FAA, the court cannot revisit the merits of the case and Respondent’s  
13 affirmative defenses are thus improperly raised. Moreover, Petitioner seeks to  
14 strike as conclusory even those defenses that reference appropriate grounds for  
15 vacating and modifying an award under the FAA.

16 Under the Federal Arbitration Act (“FAA”), if a party seeks a judicial order  
17 confirming an arbitration award, “the court must grant such an order unless the  
18 award is vacated, modified, or corrected as prescribed in section 10 and 11 of  
19 this title.” 9 U.S.C. § 9. “Confirmation is a summary proceeding that converts a  
20 final arbitration award into a judgment of the court.” *Ministry of Def. & Support for*  
21 *the Armed Forces of the Islamic Republic of Iran v. Cubic Def. Sys., Inc.*, 665  
22 F.3d 1091, 1094 n.1 (9th Cir. 2011) (internal citation omitted).

23 “Review of an arbitration award is both limited and highly deferential.”  
24 *Comedy Club, Inc. v. Improv. W. Assocs.*, 553 F.3d 1277, 1288 (9th Cir. 2009)  
25 (internal citation omitted). The FAA “enumerates limited grounds on which a  
26 federal court may vacate, modify, or correct an arbitral award.” *Kyocera Corp. v.*  
27 *Prudential-Bache Trade Servs., Inc.*, 341 F.3d 987, 994 (9th Cir. 2003) (en banc).  
28 “Neither erroneous legal conclusions nor unsubstantiated factual findings justify

1 federal court review of an arbitral award under the statute, which is unambiguous  
2 in this regard.” *Id.* The FAA permits vacatur only:

3 (1) where the award was procured by corruption, fraud, or undue  
4 means; (2) where there was evident partiality or corruption in the  
5 arbitrators, or either of them; (3) where the arbitrators were guilty of  
6 misconduct in refusing to postpone the hearing, upon sufficient cause  
7 shown, or in refusing to hear evidence pertinent and material to the  
8 controversy; or of any other misbehavior by which the rights of any  
9 party have been prejudiced; or (4) where the arbitrators exceeded  
10 their powers, or so imperfectly executed them that a mutual, final, and  
11 definite award upon the subject matter submitted was not made.

12 9 U.S.C. § 10.

13 A court may modify or correct an award upon application of any party  
14 to the arbitration:

15 (a) [w]here there was an evident material miscalculation of figures or  
16 an evident material mistake in the description of any person, thing, or  
17 property referred to in the award[;] (b) [w]here the arbitrators have  
18 awarded upon a matter not submitted to them, unless it is a matter  
19 not affecting the merits of the decision upon the matter submitted[; or]  
20 (c) [w]here the award is imperfect in matter of form not affecting the  
21 merits of the controversy.

22 9 U.S.C. §11.

23 After reviewing Respondent’s Answer, the Court grants Petitioner’s motion  
24 to strike as to Respondent’s first eleven affirmative defenses. As noted, the FAA  
25 substantially limits a court’s review to either vacating or modifying an arbitration  
26 award. Accordingly, these affirmative defenses are immaterial to the action since  
27 they do not constitute adequate grounds for vacating or modifying the arbitration  
28 award.

In its Opposition, Respondent moves the court for leave to amend its  
answer, particularly to expand on its affirmative defenses and formally object to

1 the entry of a judgment. It appears Respondent blames Petitioner for its failure  
2 to adequately raise these objections in its initial response. Respondent takes  
3 issue with Petitioner's filing of a "petition" to confirm an arbitration award, rather  
4 than a "motion" to confirm an arbitration award. The Court is not persuaded by  
5 these semantics. Whether labeled as a petition or a motion, Petitioner applied to  
6 the Court for an order confirming the arbitration award. Indeed, the "petition" was  
7 docketed as both a "petition" and a "motion" on August 22, 2017. Respondent  
8 waived service on September 7, 2017. Respondent, therefore, received notice of  
9 Petitioner's application. Moreover, Respondent has not cited to any authority  
10 supporting its proposition that an application to confirm an arbitration award can  
11 only be filed as a "motion." Respondent has argued why the award should not be  
12 confirmed. The Court finds that the arguments lack merit. Therefore, any  
13 amendments would be futile.

#### 14 **B. Confirmation of Arbitration Award**

15 In its Opposition, Respondent challenges the final award by arguing that  
16 the arbitrator exceeded the scope of his authority. Respondent does not oppose  
17 Petitioner's request to enter judgment on the outstanding amount owed under the  
18 award. Instead, Respondent argues that the "final award" should be modified  
19 under section 11(b) of the FAA because it encompasses injunctive relief that  
20 would potentially preclude it from satisfying its monetary obligations to third  
21 parties. Respondent moves the Court to exclude from the judgment any  
22 language enjoining it from satisfying its monetary obligations to third parties out  
23 of the identified "Currently Available Assets." Because Respondent seeks a  
24 modification, it bears the burden of establishing the grounds to modify the  
25 arbitration award. See *U.S. Life Ins. Co. v. Superior Nat'l Ins. Co.*, 591 F.3d  
26 1167, 1173 (9th Cir. 2010).

27 Respondent's argument fails because the arbitrator did not rule on a matter  
28 not submitted to him. The parties agreed to arbitrate the disposition of

1 Respondent's assets which was limited to: "(a) transfer of all Chapter Assets to  
2 national; (b) funding Alzheimer's Association research; (c) some combination of  
3 the above options." (Petition, Ex. 2 at 12.) Based on the parties' Amended SOR  
4 and arbitration clause, the arbitrator found that "upon [Respondent's] disaffiliation  
5 from [Petitioner], [Petitioner] became, in essence, the successor trustee to  
6 administer [Respondent's] collected donations." (Id., Ex. 3 at 25.) As such, the  
7 arbitrator issued a partial final award and ordered Respondent to remit all chapter  
8 assets as of December 3, 2015 including net cash in the amount of  
9 \$578,547.50<sup>1</sup>. (Id. at 26.) The arbitrator retained jurisdiction to "facilitate any  
10 final steps that may be required to complete any matters relating to this  
11 arbitration." (Id. at 25.) Because Respondent had not fully satisfied the partial  
12 final award, the arbitrator issued a final award ordering Respondent to  
13 immediately transfer the net cash and enjoining it from "dissipating or otherwise  
14 encumbering Currently Available Assets before such transfer for any purpose,  
15 including to satisfy outstanding bills, invoices or other debts, whether for attorney  
16 fees or for any other purpose." (Id., Ex. 4 at 30.)

17 Under JAMS Rule 24(c), to which the parties appear to have consented,  
18 the arbitrator was authorized to "grant any remedy or relief that is just and  
19 equitable and within the scope of the Parties' agreement, including but not limited  
20 to, specific performance of a contract or any other equitable or legal remedy."  
21 (Opp'n, ECF No. 9, Ex. B at 26.) Additionally, "[t]he arbitrator may grant  
22 whatever interim measures are deemed necessary, including injunctive relief and  
23 measures for the protection or conservation of property and disposition of  
24 disposable goods." (Id. at 27.) Because in enjoining Respondent the arbitrator  
25 awarded upon a matter submitted before him, the award may not be modified

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26  
27 <sup>1</sup> "The parties agreed that the net cash . . . on hand at the disaffiliation date was \$578,547.50."  
28 (Petition, Ex. 3 at 25.)

1 under 9 U.S.C. § 11(b).

2 Furthermore, courts have recognized an arbitrator’s power to award  
3 equitable relief, including injunctive relief against a party to an arbitration  
4 agreement. See *Biller v. Toyota Motor Corp.*, 668 F.3d 655, 660–61, 670 (9th  
5 Cir. 2012) (affirming an arbitration award that included a permanent injunction);  
6 see also *Ferguson v. Corinthian Colleges, Inc.*, 733 F.3d 928, 937 (9th Cir. 2013)  
7 (“[A]n arbitrator generally has the authority to enter injunctive relief against a  
8 party that has entered into an arbitration agreement . . . however, an arbitrator  
9 may do so only if the arbitration agreement at issue permits it.”); *Gilmer v.*  
10 *Interstate/Johnson Lane Corp.*, 500 U.S. 20, 32 (1991) (recognizing that  
11 arbitrators have the power to fashion equitable relief).

12 Lastly, Respondent appears to argue that the injunction is invalid because  
13 enforcement of the award must be done through a writ of execution in  
14 accordance with Federal Rule of Civil Procedure 69(a). Respondent has not  
15 cited to any authority stating that Rule 69(a) precludes an arbitrator from  
16 enjoining a party to ensure the conservation of an arbitration award. As such,  
17 Respondent’s argument is unavailing.

18 Accordingly, Petitioner’s application to confirm the arbitration award is  
19 granted.

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**IV. CONCLUSION**

For the reasons discussed above, Petitioner’s motion to strike (ECF NO. 7) is **GRANTED** in part and its petition/motion to confirm an arbitration award (ECF Nos. 1–2) is **GRANTED**. Petitioner shall submit a proposed judgment within ten days of the entry of this Order.

**IT IS SO ORDERED.**

Dated: March 29, 2018



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Barry Ted Moskowitz, Chief Judge  
United States District Court

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