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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re

YUETING JIA,

Debtor.

Case No. 2:19-bk-24804-VZ

Chapter 11

**HAN'S SAN JOSE HOSPITALITY
LLC'S RESPONSE TO OBJECTION TO
CLAIM NO. 60, AND MOTION TO
ESTIMATE CLAIM FOR VOTING
PURPOSES¹**

Hearing

Date: May 7, 2020

Time: 1:30 p.m.

Place: Courtroom 1368

255 East Temple Street

Los Angeles, CA 90012

¹ Unless specified otherwise, all chapter and code references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532. “DS” references are to the Debtor’s Fourth Amended Disclosure Statement, dated March 20, 2020. “RJN” references are to Han’s “Request for Judicial Notice,” dated April 23, 2020, filed herewith. “ECF” references are to the docket in the above-captioned case.

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Han's San Jose Hospitality LLC ("Han's") submits this response (the "Response") to the objection (the "Objection") , dated April 2, 2020, filed by Yueting Jia (the "Debtor") to Han's proof of claim number 60 (the "Claim") filed in this case, and to the Debtor's motion to estimate Han's claim for voting purposes (the "Motion"). The Objection and the Motion are based upon the same argument, namely that Han's has no claim against the Debtor because the Claim is based upon alter ego allegations and there is no proof that the Debtor is the alter ego of the underlying entities. As will be discussed below, Han's claims against the Debtor are based upon his direct actions, not just as the alter ego. Moreover, the alter ego claims are solid. As has been argued by many creditors, Debtor created and controlled many entities through which he did business in an effort to shield either his personal assets or other valuable entities.

BACKGROUND

A. Han's Status in the Bankruptcy Case

Han's is an unsecured creditor of the Debtor having timely filed its Claim in the amount of \$15,651,286.10. The basis of the Claim is set forth in Han's state court complaint filed against the Debtor and certain non-debtors (the "Complaint"), styled *Han's San Jose Hospitality LLC v. Jia Yueting, et al.*, Case No. 19 CV342187 (consolidated with *Han's San Jose Hospitality LLC v. Le Holdings (Beijing) Co., LTD, et al.*, Case No. 17CV317221) (the "Action") pending in the Santa Clara Superior Court, San Jose, California (the "State Court"). In the Disclosure Statement ("DS"), the Debtor has included the Action and its claims against non-debtor parties as one of the "Retained Actions" over which the Reorganized Debtor retains the power to enforce, settle or litigate. (See DS 59, and Schedule "A" to DS).

Han's filed a limited objection to the approval of the Disclosure Statement arguing that the Action is not a Retained Action for several reasons. According to this Court's ruling at the hearing, despite approval of the Disclosure Statement, Han's objection may be raised at the confirmation hearing. Han's intends to file an objection to confirmation of the Debtor's plan.

B. The Basis for Han's Claim

The underlying liability for the Claim is relatively straightforward. Le Technology, Inc. and Le Holdings (Beijing) Co. LTD (collectively, the "Lease Signatories"), two corporate entities controlled and owned by the Debtor, signed a lease (the "Lease") with Han's for the premises at 3553 North First Street in San Jose, California (the "Subject Property"), on or about March 15, 2016, for a lease term of 10 years (the "Lease"). (Complaint ¶ 27). The Subject Property is a commercial building consisting of approximately 86,000 square feet of rented space. (Declaration of Peter Luo "Luo Declaration" at ¶ 2).

The Lease Signatories failed to pay the rent payments under the Lease as of September 1, 2017, have made no payments since that time, and have failed to pay the amounts due and owing arising from the undisputed breach of the Lease. (*Id.* ¶¶ 28-31, Luo Declaration ¶ 5). As set forth in the Luo Declaration, even though Faraday & Future, Inc. ("Faraday") did not sign the Lease, it occupied the vast majority of the Subject Property as an undisclosed subtenant almost from the onset of the Lease, and in direct violation of the Lease. (Declaration of Nelson Goodell – "Goodell Declaration", Exhibit 5 (47:17-48:12)). Neither the Lease Signatories nor Faraday ever asked for, or received, permission from Han's to take over the Lease or occupy the Subject Property. (Luo Declaration ¶ 3). The Complaint alleges that, during the time that the Lease Signatories and Faraday occupied the Subject Property, the Debtor was in control of the Lease Signatories, as well as Faraday, the Debtor caused the Lease Signatories to breach the Lease and was responsible for Faraday's unlawful occupation and use of the Subject Property. The Debtor was well aware of these facts and frequently visited the Subject Property. (Luo Declaration ¶¶ 7-9, Goodell Declaration, Exhibit 4 (18:10-19:22; 26:18-17:11; 85:11-86:25)).

Just prior to failing to pay the rent under the Lease, Qing Ye, an agent of the Debtor, the Lease Signatories and Faraday, claimed that the Lease Signatories had a little over \$2 million in cash, and more than \$7 million in debt. (*Id.* Exhibit 2, 22:01-27:15; Luo Declaration ¶¶ 8-9, Exhibit 2). Qing Ye told Han's that the Lease Signatories would file bankruptcy if Han's

1 declined to accept pennies on the dollar as a settlement offer for the breach of the
2 Lease. (*Id. See also id.* ¶ 66; Luo Declaration ¶¶ 8-9).

3 As stated above, the unlawful sublease to Faraday was in direct contravention to express
4 terms of the Lease. (*Id.* ¶ 64, 89). Moreover, at the Debtor's direction, one of his closest
5 associates and agents, Chaoying Deng, purportedly acting on behalf of the Lease Signatories,
6 signed a Subordination, Non-Disturbance and Attornment Agreement ("SNDA") which stated
7 that there was no sublease of the Subject Property. (Goodell Declaration Exhibit 5 (80:07 –
8 82:24); *see* Luo Declaration ¶ 11, Exhibit 3). The SNDA was used by Han's to secure a loan on
9 July 14, 2017. The Debtor knew that the representations made in the SNDA were false because
10 the Debtor had instructed and caused Faraday to take possession of a majority of the Subject
11 Property. (Goodell Declaration Exhibit 7 (50:10-50:24); Exhibit 6 (29:25-30:04); and Exhibits 27
12 and 30).

13 **C. Evidence of Debtor's Use of Alter Egos**

14 Moreover, despite the Debtor's arguments in the Objection, Han's claims regarding the
15 Debtor's shuffling assets between corporations is based on far more than information and belief
16 and news stories. The Debtor, in conjunction with Chaoying Deng, founded Ocean View Drive
17 Inc. ("OVD"), a corporation created solely for the purpose of holding title to real property and
18 that had no employees. (*See*, DS 44, Goodell Declaration Exhibit 18, Exhibit 5 103:20-104:06;
19 240:14-240:22). The Debtor has conceded in the Disclosure Statement that the Debtor
20 "envisioned that these properties would be used as a venue for offsite meetings and temporary
21 corporate housing accommodations for executives of the FF Group." (DS 44). At one time the
22 Debtor owed OVD through Success Pyramid Ltd. (*Id.*). Debtor was identified as the original
23 chief executive officer of OVD. (Goodell Declaration Exhibit 18). According to judicially
24 noticeable documents, on June 26, 2017, OVD took out a \$19.7 million loan secured against all
25 four of the ocean front properties it owns in Ranchos Palos Verdes. (RJN Exhibit 8).

26 According to testimony in the Action, OVD took out several loans for the benefit of
27 Faraday. (Goodell Declaration Exhibit 6 (52:03-52:20); Complaint ¶ 82-83). Then, on July 16,
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1 2017 — just six weeks before Faraday stopped paying rent — OVD took out an additional \$2.7
2 million against those same properties from the same lender for a total of \$22.4 million. (*See*, DS
3 45).

4 OVD then took another series of loans out against the same set of properties from a
5 different lender in an unspecified amount on November 20, 2017. (RJN Ex. 6). Therefore,
6 Faraday received a \$22.4 million infusion of cash secured against OVD’s assets weeks before the
7 breach of Lease, but failed to pay its monthly “rent” (or any amount) to Le Technology, and Le
8 Technology failed to pay its monthly rent to Han’s in the amount of \$199,856,40. (Request for
9 Judicial Notice - Exhibit 8, Luo Declaration ¶ 4). The above loans were secured by the Debtor’s
10 (and Ms. Deng’s) residences which were held in the name of OVD. (Goodell Declaration Exhibit
11 5, 12:16 -12:19; 81:19 -82:24, Exhibit 9, 22:19 -23:19). And then, while in active breach of the
12 Lease and still in possession of the Subject Property, Faraday received another infusion of cash
13 from OVD, but failed to pay anything at all to Han’s. (Complaint ¶ 82-83).

14 As discovery in the Action has progressed, the true scope of the unity of interest and
15 flippant attitude towards corporate formalities common among the Debtor’s business concerns
16 became inescapable. At the time of the breach, the individual that signed the Lease on behalf of
17 Le Technology, Chaoying Deng, was the CEO of Le Technology, Faraday, and OVD. (Goodell
18 Declaration Exhibits 16-22). Despite her title as the chief executive of Le Technology, Ms. Deng
19 testified under oath that she was a “paper CEO” who held no actual executive authority at Le
20 Technology. (Complaint ¶ 37, 65 Goodell Declaration Exhibit 5, 15:3 -16:1).

21 This arrangement is rather incredible considering that Ms. Deng signed the Lease on
22 behalf of Le Technology. (Complaint ¶ 88, Exhibit 1 to Complaint). Moreover, the other
23 signatory to the Lease, Dongge Jiang, worked in a high-level position for both Le Holdings and
24 Faraday at the time. (Complaint ¶ 67, Exhibit 1 to Complaint, Goodell Declaration, Exhibit 7,
25 34:22, 35:25; 98:12 – 98:19).

26 Instead, Ms. Deng’s position was a ruse to mislead creditors and the authorities as to the
27 true leadership of that company. (Complaint ¶ 37, 65). Moreover, the loans using OVD
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1 properties to secure funding for Faraday were signed by Chaoying Deng as chief financial officer
2 and chairman of the board of OVD. (RJN Exhibit 4-6). At the time the Complaint was filed,
3 Ms. Deng was listed as the chief executive officer, chief financial officer and secretary of OVD,
4 as well as the sole director of the company. (Goodell Declaration Exhibit 12).

5 Despite Ms. Deng being held out as the sole officer and director, the Debtor is the true
6 head of each company. (Complaint ¶ 41; Goodell Declaration Exhibit 7 (12:20 -13:4; 79:16 -
7 80:16), Exhibit 3 (40:11-41:2; 42:5-43:5)). The Debtor attempted to mislead the State Court and
8 the California Secretary of State as to who truly controls Faraday and his other entities.

9 According to a Statement of Information filed with the California Secretary of State on February
10 15, 2018, Chaoying Deng was relieved from her duties as CEO and replaced by Jiawei Wang,
11 the Debtor's Nephew. (Goodell Declaration Exhibit 22, RJN Exhibit 13). Despite these
12 representations to the State, in a sworn declaration made to the State Court on April 24, 2018, the
13 Debtor unequivocally (and brazenly) stated that he is in fact the CEO of Faraday. (Goodell
14 Declaration Exhibit 24).

15 In addition to those unities of interest, the Debtor and Ms. Deng also have used the jewel
16 in OVD's crown, a 6-bedroom, 8-bathroom mansion overlooking the bluffs of Rancho Palos
17 Verdes, as their personal residences without paying for the privilege. (Complaint ¶19, 25;
18 Goodell Declaration, Exhibit 9, 40:9-41:22). The Debtor also has allowed his menagerie of
19 corporations to use the OVD properties as office space, as a venue to throw extravagant events
20 for the benefit of his businesses, and as lodging for recently-hired personnel of his other
21 corporations—all without remuneration for use of the property. (*Id.* ¶ 21. Goodell Declaration,
22 Exhibit 9, 22:09-22:23; 40:09 -44:24). The use of these properties was so consistent and
23 prevalent that employees of Faraday knew of this property as "The Clubhouse." (*Id.* ¶ 20, 25,
24 123; Goodell Declaration, Exhibit 10, 115:6 -115:24).

25 Deposition testimony in the State Court Action revealed that OVD is a mere holding
26 company set up strictly to hold title to these properties with no employees. (Complaint ¶ 34,
27 Goodell Declaration, Exhibit 5, 103:20 -104:3). Thus, while trying to insist that Le Technology,
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1 OVD and Faraday are valid and distinct corporations on one hand, the Debtor uses both the
2 Subject Property and the equity of OVD's properties as both his own personal assets and those of
3 his other business entities.

4 The Complaint against OVD was filed on January 25, 2019. Just days later, on February
5 6, 2019, OVD filed a Statement of Information with the California Secretary of State listing
6 Shaojie Chu as OVD's sole director. (Goodell Declaration Exhibit 20). That Statement of
7 Information was puzzlingly filed roughly three weeks after the company's previous Statement of
8 Information, which was filed just *prior* to the Complaint. (*Id.* Exhibit 19). Thus, at the time the
9 State Court Action was filed, the Statement of Information listed Chaoying Deng as the sole
10 officer and director of OVD. (*Id.*). In spite of having been named sole director of a corporation
11 with over \$20 million in assets, Ms. Chu was finishing up a graduate business degree from
12 University of California – Irvine, though she had previously listed internships at Faraday and
13 LeEco, yet another of the myriad corporations the Debtor founded and controls. (*Id.*, Exhibit 28).

14 Though appearing to be another transparent attempt to conceal the true leadership of
15 OVD — just as Chaoying Deng was falsely named CEO of Le Technology— Ms. Chu also ties
16 directly into the events surrounding the unlawful sublease. Indeed, it was an email sent by Ms.
17 Chu produced in discovery that alerted Han's to the purported sublease in the first place. (*Id.*
18 Exhibit 30). Ms. Chu also briefly worked for multiple Debtor-owned entities at this time,
19 including Le Technology – the signatory to the Lease. (Complaint ¶ 80). As noted in the
20 Complaint, a "Faraday employee would perform the following broad services (among others) for
21 Le: "Customers billing," "booking keeping [*sic*]," "analysis and any other administrative work
22 for Finance department," and that Le Technology never reimbursed Faraday for those services.
23 Though not named in the complaint, that employee is none other than Ms. Chu. (Goodell
24 Declaration Exhibits 25-26). Rather than being indicative of a separateness of the corporations,
25 the naming of Ms. Chu as sole director of OVD actually points to a greater unity of interest
26 between and among OVD and the other defendants in the Action. Ms. Chu is both one of many
27 people worked for multiple Debtor-controlled companies (Complaint ¶80), and a key percipient
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1 witness to one of the breaches of the Lease in the State Court Action. This information comports
2 perfectly with the one of the overarching themes of Han's alter ego claims, namely that the
3 Debtor uses the same small cadre of confidants as directors and officers across his surfeit
4 fictitiously separate business entities.

5 While the press was busy documenting the Debtor's profligate debt avoidance across
6 several countries, The Debtor's creditors were starting to catch up with him in domestic courts as
7 well. In July of 2018, the United States District Court for the Central District of California ruled
8 that a case alleging alter ego liability among several other Debtor-controlled corporations could
9 proceed past a motion to dismiss. (Goodell Declaration Exhibit 1). Indeed, in *Vizio v. LeEco*,
10 Judge David Carter noted that the repeated use of the same employees across the Debtor's
11 businesses, including Mr. Hsieh and Chaoying Deng, coupled with the commingling of assets to
12 secure loans and lack of corporate formalities sufficiently stated an alter ego allegation while
13 denying a motion to dismiss. (*Id.* at pg. 28-29). Judge Carter noted, "Throughout the parent and
14 subsidiary companies, there is a connection of intermingling between employees, assets, and
15 office locations. Thus, Vizio sufficiently establishes facts in support of the proposition that the
16 entities are interconnected in ownership (through Jia) and through a unity of interest (through
17 similarities in offices, employees and intermingling assets.)" (*Id.*).

18 Following that ruling, Judge James Otero of the State Court ruled in December 2018 that
19 the four properties "owned by [Jia] through a corporation called OVD" should be frozen due to
20 the risk of the Debtor attempting to move the property to avoid paying a judgment debt. The
21 Debtor also stipulated to a judgment in March 2019 which contained punitive measures if the
22 Debtor fails to "transfer to petitioner any property that a competent court finds or [the Debtor]
23 admits is owned and controlled by [the Debtor]," and gives the Debtor a three-month head start
24 on hiding his assets.

25 Han's filed the Complaint on January 25, 2019, and the Debtor and OVD filed motions to
26 stay, and Han's filed a motion to consolidate. The Court denied the Debtor and OVD's motion to
27 stay and granted Han's motion to consolidate. (RJN Ex. 22). Faraday and OVD, represented by
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1 the O'Melveny firm that is now representing the Debtor, brought demurrers to the Complaint.
2 The State Court previously overruled Faraday's demurrer and OVD's demurrer as well (except
3 for one cause of action).² As demonstrated herein, there is a substantial amount of evidence
4 supporting Han's claims against the Debtor for *both* alter ego and non-alter ego claims.

5 **RESPONSE TO THE CLAIM OBJECTION**

6 **A. The Debtor is Liable to Han's for Le Technology and Le Holdings' Breach of the**
7 **Lease Under an Alter Ego Theory**

8 The Debtor argues in the Objection that he is not a party to the Lease and, therefore,
9 cannot be found liable for such claims has already been rejected numerous times by the State
10 Court. Under California law, the well-settled elements of an alter ego theory are that, "(1) there
11 is such a unity of interest that the separate personalities of the corporations no longer exist; and
12 (2) inequitable results will follow if the corporate separateness is respected." *Zoran Corp. v.*
13 *Chen* (2010) 185 Cal.App.4th 799, 811 (internal quotations omitted).

14 Merely six weeks before the Debtor filed this chapter 11 case, OVD, through one of the
15 Debtor's present lawyers in this case (O'Melveny), filed a demurrer to the Han's Complaint in
16 which nearly all of the same arguments were made that OVD could not be found liable to Han's
17 because OVD was not a party to the Lease, and that there needed to be independent liability in
18 order for Han's to prevail on its claims for fraud, negligent misrepresentation and negligence
19 against OVD. The State Court rejected this argument and ruled that "direct liability is alleged in
20 the present complaint as to Jia, albeit through his other alleged alter egos, Le and Faraday
21 [Future]." (Goodell Declaration, Exhibit 14).

22 The State Court also found that Han's Complaint more than adequately plead sufficient
23 facts that would justify imposing alter ego liability on OVD due to its numerous allegations
24 against the Debtor, Faraday and OVD which would justify imposing alter ego liability.

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27 ² While the rulings of the State Court are not binding in this Court, they are relevant and provide
28 some evidence that the alter ego claim have prima facie validity. (*See* Fed. R. Evid. 401.)

1 (*Id.*) Indeed, as the State Court noted, “[a]llegations in support of unity of interest may include:
2 that the individual dominated the affairs of the corporation; that a unity of interest and ownership
3 existed between individuals and the corporation; that the corporation is a ‘mere shell and naked
4 framework’ for individual manipulations; that its income was diverted to the use of the
5 individuals; that it is inadequately capitalized; that it failed to abide by the formalities of
6 corporate existence; or that it is and has been insolvent. (*First Western Bank & Trust Co. v.*
7 *Bookasta* (1968) 267 Cal.App.2d 910, 915-916.)” Goodell Declaration Exhibit 14.

8 The State Court, in analyzing the Complaint that gives rise to the present Claim, held that
9 “the complaint is replete with allegations of issue of the corporate fun by the corporations and
10 **Jia** sufficient to show unity of interest. In fact, the list nearly exhausts the pleading
11 requirements.” (emphasis added). The Court noted that “Jia routinely shuffles money
12 throughout his various corporate holdings, including Defendant, in an effort to escape debts and
13 obligations (Complaint, RJN Exhibit 4); Jia’s other corporations are undercapitalized, and he
14 hides many of his assets in Defendant which is a “mere shell” (Complaint, 12, 34, 48); funds
15 were comingled between Defendant and Jia’s other business enterprises, including the defaulting
16 tenant (Le) and subtenant (Faraday) (Complaint, 16, 18); Faraday and Defendant operate with
17 disregard of the corporate form and formalities (Complaint, 14, 16, 17, 18, 22); Defendant’s
18 assets, specifically its real estate holdings, are used for personal use by Jia as a primary
19 residence, and a place to entertain employees and hold corporate meetings for Faraday
20 (Complaint 21 , 25); and there is overlap in the corporations’ officers, directors and ownership
21 interests, with Jia being the primary owner and true leader and one overlapping corporate officer
22 stating she is merely a “paper CEO.” (Complaint, 37, 41.)

23 Moreover, as part of his effort to stay the alter ego claims against him, the Debtor made
24 many of the same arguments that he now makes here. (Goodell Declaration Exhibit 11). But the
25 State Court rejected this argument as well and ruled that Han’s claims should proceed against
26 him. (Goodell Declaration Exhibit 13). At the hearing on the motion in the State Court, the
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1 Debtor and OVD requested that discovery be stayed against them and, yet again, the State Court
2 rejected this argument. (Goodell Declaration, Exhibit 23, 5:14-9:5).

3 Moreover, there is substantial additional evidence to support Han's alter ego allegations
4 against the Debtor. Numerous witnesses testified that the Debtor was effectively the head of Le
5 Technology and that Le Holdings was the parent company of Le Technology. (*Id.* Exhibit 4,
6 20:1-29:6 and Exhibit 3, 37:13-41:2) In addition, the primary domestic signatory to the Lease, Le
7 Technology, is not an active California corporation anymore. (*Id.* Exhibits 16 and 17) They have
8 virtually no domestic assets and are not operational. (*Id.*) Indeed, on this point, Le Technology's
9 corporate license has been suspended by the California Secretary of State and it cannot conduct
10 business. (*Id.*; see, *Casiopea Bovet, LLC v. Chiang* (2017) 12 Cal. App. 5th 656. Since
11 inadequate capitalization is one of the most important criteria of an alter- ego analysis, this
12 heavily militates in favor of imposing alter ego liability here. *Associated Vendors v. Oakland*
13 *Meat* (1962) 210 Cal.App.2d 825, 840.

14 As stated above and as plead in the Complaint, Le Technology demanded that Han's take
15 pennies on the dollar or threatened that it would file its own bankruptcy case. For its part, the
16 other signatory to the Lease, Le Holdings (Beijing) Co. LTD, despite being a signatory to the
17 Lease, has never even appeared in the State Court Action and default was previously entered
18 against it. (Request for Judicial Notice, Exhibit 15)

19 In addition, Ms. Deng, one of the Debtor's top advisors, testified under oath that they
20 created OVD for the sole reason to hold title to real property. (Goodell Declaration Exhibit 5,
21 103:20-104:3) A former senior accounting manager at one of the Debtor's other companies,
22 Michael Do (who was senior accounting manager at Faraday) testified that Faraday used OVD's
23 real property as collateral to borrow money for Faraday. (Goodell Declaration, Exhibit 6, 51:1-
24 52:19). Thus, Debtor created a new corporation (of which he was listed as the CEO) to act as a
25 shell company to hold title to real property, thereby keeping creditors away from his assets, and
26 then used the assets to borrow money for yet another entity he controlled. Furthermore, Ms.
27 Deng testified that she was the CEO of both Le Technology and Faraday but, in reality, she was
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1 really just a “paper CEO” that had no genuine authority at Le Technology. (Goodell
2 Declaration, Exhibit 5, 15:3 -16:1). Incredibly, at her deposition, Ms. Deng testified that she
3 had no independent recollection of even signing the ten-year Lease (which has obligations
4 exceeding \$250 million), but simply signed whatever documents her counsel told her to sign.
5 (Goodell Declaration, Exhibit 5, 16:6-16:18).

6 Mr. Do further testified that the Debtor personally made the decision that Faraday
7 would not pay Le Technology for occupying the Subject Property due to the fact that there was a
8 substantial “crisscross” in expenses in that Le Technology was paying for Faraday’s expenses,
9 and vice-versa. (Goodell Declaration, Exhibit 6, 20:19-21:14, 24:4-25:5, 29:21-30:04, 69:18-
10 70:19). As such, the Debtor personally made the decision to effectively have Faraday occupy the
11 Subject Property without paying rent which damaged Han’s which did not receive any rent from
12 either Le Technology, Le Holdings, Faraday, or the Debtor for the past 2 ½ years. (Goodell
13 Declaration Exhibit 6, 19:21-30:04, Luo Declaration ¶¶ 4,6, 10 and 15).

14 Mr. Do notably testified that both Le Technology and Faraday were doing work for each
15 other, but that neither company was paying the other company for said work. (Goodell
16 Declaration, Exhibit 6, 24:4-25:5, 52:3 – 52:19, 69:18-70:19). Mr. Do testified that he found this
17 quite odd as an accountant because, “you know, we just -- we didn’t have any processes in place
18 to -- or make sure that we were accumulating all of those expenses and getting them documented
19 and billed out to the other party.” (Goodell Declaration Exhibit 6, 25:14-25:17). Mr. Do testified
20 that Faraday had no “procedure or process” in place to account for said expenses. (Goodell
21 Declaration Exhibit 6, 25:24).

22 Notably, as mentioned above, Mr. Do also testified that the Debtor personally made the
23 decision that Faraday would list as an expense on their books their “rent” of the Subject
24 Property, even though they were not actually paying Le Technology any money for occupying
25 the Subject Property. (Goodell Declaration Exhibit 6, 29:21-30:04, 70:16-72:17). He
26 further testified that Faraday was ran as an affiliate of LeEco and the Debtor’s other entities, with
27 Ms. Deng wielding power at multiple companies. (*Id.* 48:8-50:15). Mr. Do further testified that
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1 money would come into Faraday from the Debtor and his other companies and that it would be
2 deposited into a bank account that only Ms. Deng had access to, which would then be used to
3 pay other suppliers and payroll. (*Id.* 46:11-47:5). Another Faraday employee, Mr. Steve
4 Howard, also testified that Ms. Deng was the sole person with the access to Faraday's bank
5 accounts. (*Id.* Exhibit 10, at p. 114)

6 Mr. Do further testified that Faraday's chief financial officer at the time, Stefan Krause,
7 was severing partnerships with LeEco and, in fact, resigned because the Debtor refused to permit
8 Faraday to file for bankruptcy. (*Id.* 59:10-60:9).

9 The fact that the Debtor has employed the same counsel (O'Melveny & Myers) to
10 represent OVD and himself is instructive and relevant. (Goodell Declaration ¶ 25, Request for
11 Judicial Notice, Exhibits 2 & 10). Moreover, the Debtor also employed another counsel in an
12 action presently pending in state court that is also presently representing Faraday in the state
13 court action at issue here, as well as a matter in state court in Washington. (See Goodell
14 Declaration ¶ 25). The employment of the same attorneys is another factor which favors a
15 finding of alter ego liability. (See, *Associated Vendors v. Oakland Meat* (1962) 210 Cal.App.2d
16 825, 840. *Automotriz del Golfo de California S.A. De C.V. v. Resnick* (1957) 47 Cal.2d 792,
17 799.)

18 Given the above facts, there is sufficient evidence for this Court to determine there is an
19 "unity of interest" between the Debtor and Le Technology, Le Holdings, Faraday, and OVD.

20 Moreover, there is substantial evidence that it would be inequitable to not impose liability
21 on the Debtor for the Claim. As the State Court ruled in the Action when denying OVD's
22 demurrer, "[i]nequitable result is alleged where "some conduct amounting to bad faith makes it
23 inequitable for the corporate owner to hide behind the corporate form." (*Eleanor Licensing LLC*
24 *v. Classic Recreations, LLC* (2018) 21 Cal.App.5th 599, 615 (citations omitted)). Here, Han's
25 has alleged that one of the Debtor's shell corporations entered into a lease agreement that was
26 intended to benefit Faraday. (Complaint, ¶¶ 31, 36, 38, 42, 43). Le Technology and Faraday have
27 failed to make good on rent obligations. (Complaint, ¶¶ 28, 29). A representative of Le
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1 Technology allegedly threatened bankruptcy proceedings unless Han's agreed to settle for two
2 months' rent in full satisfaction of its claims, stating it was undercapitalized but never
3 mentioning its affiliation to Faraday or Faraday's occupation of the Subject Property.
4 (Complaint, ¶ 47.) Meanwhile, Han's has alleged that the Debtor has hidden substantial assets in
5 his related companies, while both Le Technology and Faraday are undercapitalized and failing to
6 pay their debts. (Complaint, ¶¶ 12, 14, 21, 46, 48). The facts demonstrate a pattern of bad faith
7 dealings intended to defraud creditors, such that it would be inequitable to allow the Debtor to
8 hide behind the corporate forms. As with the unity of interest allegations, an inequitable result
9 has been more than sufficiently pleaded.

10 Indeed, the evidence reflects that, at the same time that the Debtor and his associate
11 Chaoying Deng engaged in a ruse to secretly "sublet" the Subject Property to themselves
12 (through Le Technology and Faraday), they were stashing their funds in lavish mansions in Los
13 Angeles which were legally titled in the name of OVD. (Goodell Declaration, Exhibit 29 and 30;
14 RJN Exhibits 8-9). These same mansions served as offices for both OVD and Faraday, and also
15 served as the personal residences of the Debtor and OVD. (Complaint, ¶ 21). Even though OVD
16 held title to these mansions, the proceeds of the mortgage that OVD took out on said mansions
17 went to Faraday. (Goodell Declaration Exhibit 6 at p. 52) On this point, Faraday "rented" the
18 mansions, but did not actually pay any money for the use of the mansions. (*Id.* Exhibit 9 at 40:9-
19 41:22). Rather, the luxury homes were used as a source of funding by Faraday. Finally, and
20 critically, Faraday's vice president of accounting, Pascal Coustar, testified that OVD is an
21 affiliate company of Faraday, and was another corporation related to the Debtor. (*Id.*; Goodell
22 Declaration Exhibit 9 (40:9-41:22, 43:5-43:15)).

23 Finally, and with respect to the "sublet" issue, Mr. Do testified that Debtor was directly
24 involved in the unlawful sublet in that he decided that Faraday would simply account for the
25 "rent" (for which no money was paid) on their books. (RJN Exhibit B, ¶107; Goodell
26 Declaration Exhibits 9, 10).

1 Finally, Charles Hsieh has worked for Le Technology and Le Global Group, and he
2 presently works for both Faraday and OVD. (Goodell Declaration, Exhibit 8, pgs. 9, 23). Mr.
3 Hsieh as admitted to working for a bevy of Debtor-owned businesses, some of which listed the
4 Subject Property as a return address. (Exhibit 8, pgs. 9, 23, 79-84).

5 **B. Han's Third Through Sixth Claims in the Complaint Are Not Dependent on**
6 **Alter Ego Liability**

7 While Debtor asserts that the only basis for Han's claim is alter ego, Han's has four
8 additional claims in the State Court Action against the Debtor that are meritorious, and which the
9 Debtor fails to address in his objection. A director or officer of a corporation can be personally
10 liable for a tort if the director or officer "specifically authorized, directed or participated in the
11 allegedly tortious conduct; or that although they specifically knew or reasonably should have
12 known that some hazardous condition or activity under their control could injure plaintiff, they
13 negligently failed to take or order appropriate action to avoid the harm." (*Frances T. v. Village*
14 *Green Owners Assn.* (1986) 42 Cal.3d 490, 508 (internal citations omitted)).

15 Most relevant and fundamental to the issues here, "[d]irectors are liable to third persons
16 injured by their own tortious conduct regardless of whether they acted on behalf of the
17 corporation and regardless of whether the corporation is also liable... This liability does not
18 depend on the same grounds as "piercing the corporate veil," on account of inadequate
19 capitalization for instance, but rather on the officer or director's personal participation or specific
20 authorization of the tortious act. " *Id.* at 504. As a result of the foregoing authority, the Debtor's
21 liability is not predicated solely on alter ego theories of recovery against the other Defendants
22 besides the other Defendant.

23 Han's has therefore plead multiple causes of action as to the direct liability of the Debtor
24 in his individual capacity. As an initial matter, there is little doubt that the Debtor is liable for
25 intentional interference with contract. Under California law, "[t]he elements which a plaintiff
26 must plead to state the cause of action for intentional interference with contractual relations are
27 (1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of this
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1 contract; (3) defendant's intentional acts designed to induce a breach or disruption of the
2 contractual relationship; (4) actual breach or disruption of the contractual
3 relationship; and (5) resulting damage." *Pacific Gas & Electric Co. v. Bear Stearns & Co.*
4 (1990) 50 Cal.3d 1118.

5 As discussed above, the Debtor was well-aware of the fact that OVD was unlawfully
6 occupying the Subject Property. The Debtor personally made the decision to permit Faraday to
7 occupy the Subject Property and to not pay Le Technology or Le Holdings for its occupation of
8 the Subject Property. Thus, the Debtor intentionally interfered with the Lease contract by
9 causing Le Technology and Le Holding's breach of the Lease and causing an unlawful sublease,
10 all to Han's detriment.

11 Similarly, there is little doubt that the Debtor's actions were negligent (also asserted in
12 the Complaint). Under California law, "a plaintiff in any negligence suit must demonstrate "'a
13 legal duty to use due care, a breach of such legal duty, and [that] the breach [is] the proximate or
14 legal cause of the resulting injury.'" (*Beacon Residential Community Assn. v. Skidmore, Owings*
15 *& Merrill LLP* (2014) 59 Cal.4th 568, 573 [173 Cal.Rptr.3d 752, 327 P.3d 850] (*Beacon*),
16 quoting *United States Liab. Ins. Co. v. Haidinger-Hayes, Inc.* (1970) 1 Cal.3d 586, 594 [83
17 Cal.Rptr. 418, 463 P.2d 770].)" *Kesner v. Superior Court* (2016) 1 Cal.5th 1132. Here, there is
18 little doubt that the Debtor had a duty to not permit a financially unsound entity to occupy the
19 Subject Property under a purported sublease, and that the breach of that duty caused substantial
20 damage to Han's.

21 Although Han's has not alleged fraud against the Debtor, the fraudulent acts of his agents
22 give rise to claims against the Debtor. As stated above, the Debtor's agent Chaoying Deng, made
23 intentional misrepresentations to Han's in conjunction with the SDNA. Under California
24 law, "the elements of fraud are (1) the defendant made a false representation as to a past or
25 existing material fact; (2) the defendant knew the representation was false at the time it was
26 made; (3) in making the representation, the defendant intended to deceive Han's; (4) Han's
27 justifiably relied on the representation; and (5) Han's suffered resulting damages. (*Lazar v.*
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1 Superior Court (1996) 12 Cal.4th 631, 638 [49 Cal.Rptr.2d 377, 909 P.2d 981].) The elements of
2 negligent misrepresentation are the same except for the second element, which for negligent
3 misrepresentation is the defendant made the representation without reasonable ground for
4 believing it to be true. (Wells Fargo Bank, N.A. v. FSI, Financial Solutions, Inc. (2011) 196
5 Cal.App.4th 1559, 1573 [127 Cal.Rptr.3d 589]; National Union Fire Ins. Co. of Pittsburgh, PA
6 v. Cambridge Integrated Services Group, Inc. (2009) 171 Cal.App.4th 35, 50 [89 Cal.Rptr.3d
7 473].).” (West v. JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780).

8 Moreover, pursuant to well-settled principles of California law, “[A] principal is liable to
9 third parties ... for the frauds or other wrongful acts committed by [its] agent in and as a part of
10 the transaction of” the business of the agency. (Grigsby v. Hagler (1938) 25 Cal.App.2d 714, 715
11 [78 P.2d 444].).” (Daniels v. Select Portfolio Servicing (2016) 246 Cal.App.4th 1150).

12 In the SDNA, Ms. Deng stated under penalty of perjury that Le Technology “has not
13 assigned, mortgaged, **sublet**, encumbered or otherwise transferred any or all of its interest under
14 the Lease and, during the term of the Loan, agrees to not . . . sublet any or all of its interest . . .
15 without the prior written consent of the Lender” (emphasis supplied). Ms. Deng made this false
16 misrepresentation, even though Faraday had already occupied the Subject Property. (Goodell
17 Declaration Exhibit 5 80:06-82:20). As set forth in the Luo Declaration, Han’s detrimentally
18 relied upon this misrepresentation and has a viable claim under an agency theory. West v.
19 JPMorgan Chase Bank, N.A. (2013) 214 Cal.App.4th 780.

20 **LEGAL ARGUMENT**

21 Rule 3001(f) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”)
22 provides that a “proof of claim executed and filed in accordance with these rules shall constitute
23 prima facie evidence of the validity and amount of the claim.” Fed. R. Bankr. P. 3001(f); *see also*
24 *In re Castaneda*, 2010 WL 9498474, at *1 (Bankr. E.D. Cal. Sept. 30, 2010) (“If the allegations
25 in a proof of claim ‘set forth all the necessary facts to establish a claim and are not self-
26 contradictory, they prima facie establish the claim.’”) (quoting *In re Holm*, 931 F.2d 620, 623
27 (9th Cir.1991)). If a debtor objects to a claim, the burden is on the debtor to submit sufficient
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evidence to overcome the prima facie validity of the proof of claim. *In re Cook Inlet Energy LLC*, 583 B.R. 494, 501 (9th Cir. B.A.P. 2018) (“To overcome this presumption, the objecting party must present evidence with probative value equal to that of the proof of claim to rebut the claim.”) (citing *Lundell v. Anchor Constr. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000); *see also In re Castaneda*, 2010 WL 9498474, at *1. “A mere formal claim objection, without evidence, cannot defeat a claim if the claim is presumed to be valid under Rule 3001(f).” *In re Cook Inlet*, 583 B.R. at 501; *see also In re Keating*, 2017 WL 2533338, at *2 (Bankr. C.D. Cal. June 9, 2017).

Thus, if a debtor objects to a claim, but fails in that objection to offer evidence sufficient to overcome the prima facie validity of the claim, the objection must be denied. *See In re F-Squared Investment Management, LLC*, 546 B.R. 538, 544 (Bankr. D. Del. 2016) (“If an objector fails to meet its burden of production, its objection should be dismissed.”).

Here, the Debtor has not met his burden of presenting sufficient evidence to overcome the prima facie validity of Claim No. 60. As explained above and in the Luo and Goddell Declarations, Han’s has submitted significance evidence (including the testimony of Debtor’s own agents) supporting the Claim. These documents, including the Complaint, set forth all necessary facts to establish the prima facie validity of the Claim.

In the Objection, the Debtor argues in summary fashion that he has no liability for the Claim because he is not a party of the Lease and there is no alter ego liability. Objection 9-10. Such a general objection is not sufficient to overcome the *prima facie* validity of the Claim established above. Moreover, as discussed above and as set forth in the supporting declarations and related exhibits filed along with this brief, there is ample basis for Debtor’s liability. Accordingly, the Objection should be overruled, and the Claim should be allowed for voting and distribution purposes.

RESPONSE TO ESTIMATION MOTION

The Debtor argues that this Court should use its discretion under Bankruptcy Rule 3018(a) to disallow the Claim for voting purposes or to estimate the Claim at zero for voting

1 purposes. The only basis the Debtor offers to support this relief is the assertion that there is no
2 alter ego liability to support the Claim. As discussed above, hat basis is insufficient to prevent
3 Han's from voting on a chapter 11 plan.

4 First, the issue of alter ego liability has not been determined by this Court. As stated
5 above, Han's already has convinced the State Court that a *prima facie* case of alter ego liability
6 exists. There is no reason why Han's should not be given the opportunity to present the same
7 evidence and arguments to this Court. Second, the Claim asserts liability theories that are not
8 based on an alter ego theory (e.g. intention interference with contract). Those independent
9 theories of liability are not dependent on an alter ego finding. Han's has submitted significant, if
10 not overwhelming, evidence of Debtor's liability. Debtor has failed to rebut the *prima facie*
11 validity of the Claim and the Claim should be allowed as filed for both voting and distribution
12 purposes under Bankruptcy Rule 3018.

13 **RESERVATION OF RIGHTS**

14 Han's expressly reserves and preserves all its procedural and substantive rights and
15 remedies at law and equity with respect to the Claim and the right to prosecute such and defend
16 the Claim from further objection, as well as its right to object to the Plan.

17 WHEREFORE, Han's respectfully requests that the Debtor's Claim Objection be
18 overruled as to Claim No. 60, and that Claim No. 60 be allowed for voting purposes in the
19 amount of \$15,651,286.10.

20 Dated: April 23, 2020

FINESTONE HAYES LLP

21
22 /s/ Stephen D. Finestone
23 Stephen D. Finestone
24 Attorneys for Han's San Jose Hospitality LLC
25
26
27
28

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
Stephen D. Finestone, Finestone Hayes LLP, 456 Montgomery Street, Floor 20, San Francisco, CA 94104.

A true and correct copy of the foregoing document entitled (*specify*): Han's San Jose Hospitality LLC's
Response to Objection to Claim No. 60, and Motion to Estimate Claim for Voting Purposes

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 04/23/2020, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

See attached page.

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) 04/23/2020, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) 04/23/2020, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

See attached page.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

04/23/2020 Stephen D. Finestone
Date *Printed Name*

/s/ Stephen D. Finestone
Signature

1. SERVED BY CM/ECF

On April 23, 2020, I checked the CM/ECF docket for this bankruptcy case and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

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2. SERVED BY OVERNIGHT MAIL

On April 23, 2020, I served the following persons and/or entities by overnight Federal Express mail service.

Presiding Judge's Copy

Not required per Amended General Order 20-02 and Second Amended General Order 20-02.

Trustee

Served by CM/ECF pursuant to LBR 2002-2(a)(2).