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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DEAN BEAVER and LAURIE BEAVER,

Plaintiffs,

v.

OMNI HOTELS MANAGEMENT CORPORATION, a Delaware Corporation; LC BROKERAGE CORP., a Delaware Corporation; LC INVESTMENT 2010, LLC, a Delaware Limited Liability Company; KELLY GINSBERG, an individual; WILLIAM IMS, an individual; BRETT ALEXANDER COMBS, an individual; and DOES 1 through 50, inclusive,

Defendants.

Case No.: 20-cv-00191-AJB-KSC

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS’ MOTION TO DISMISS AND/OR STRIKE PLAINTIFFS’ FIRST AMENDED COMPLAINT

(Doc. No. 32)

Pending before the Court is Defendants Kelly Ginsberg (“Ginsberg”), William Ims (“Ims”), Brett Alexander Combs (“Combs”), Omni Hotels Management Corporation (“Omni”), LC Brokerage Corp. (“LC Brokerage”), and LC Investment 2010, LLC’s (“LC Investment”) motion to dismiss for failure to state a claim, pursuant to Federal Rule of Civil Procedure (“Rule”) 12(b)(6). (Doc. No. 32.) Plaintiffs Dean Beaver and Laurie

1 Beaver (collectively “Plaintiffs”) filed an opposition to the motion to dismiss (Doc. No.
2 35), to which Defendants replied. (Doc. No. 36.) For the reasons set forth below, the Court
3 **GRANTS IN PART** and **DENIES IN PART** Defendants’ motion to dismiss the First
4 Amended Complaint (“FAC”).

5 **I. BACKGROUND¹**

6 Plaintiffs are husband and wife, who jointly own a villa located in the Omni La Costa
7 Resort and Spa (“Resort”). LC Investment owns the Resort. Like approximately 98% of
8 villa owners at the Resort, Plaintiffs rent their villa pursuant to the terms of a Rental
9 Management Agreement (“RMA”) with LC Brokerage, a California-licensed real estate
10 brokerage company. LC Brokerage is an affiliate of Omni, the manager of the Resort.

11 The core of Plaintiffs’ claims concern Omni’s alleged years-long scheme to self-deal
12 through tortious and fraudulent interference with and management of the villa rental
13 program under the RMA. According to Plaintiffs, although LC Brokerage is ostensibly
14 charged with operating the rental program, it has quietly abdicated its responsibilities to
15 Omni, which has used and abused its power under the RMA to intentionally steer guests
16 into its own hotel rooms rather than the villas—causing Plaintiffs and other villa owners to
17 lose millions of dollars.

18 In addition, all villas are governed by the Unit Maintenance and Operations
19 Agreement (“UMA”), which entitles LC Investment (another Omni affiliate) to \$100 per
20 night or 20% of a villa owner’s nightly rental revenue, if the owner opts not to use LC
21 Brokerage as its managing agent. Plaintiffs state that this high cost of leaving the rental
22 program forces villa owners into Omni’s program because it is too expensive to rent outside
23 of Omni’s control. Plaintiffs claim that Omni, LC Brokerage, LC Investment, and the
24 individual brokers-of-record for LC Brokerage (Ginsberg, Ims, and Combs), have
25 perpetrated this RICO scheme to defraud by using LC Brokerage as an enterprise. Plaintiffs
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27 ¹ The Court takes the following facts from Plaintiffs’ FAC. The Court construes Plaintiffs’ facts as true
28 for the limited purpose of resolving the instant motion. *See Brown v. Elec. Arts, Inc.*, 724 F.3d. 1235, 1247
(9th Cir. 2013).

1 bring the instant putative class action complaint against Defendants on behalf of
2 themselves and all others similarly situated.

3 II. LEGAL STANDARD

4 A Rule 12(b)(6) motion to dismiss tests the legal sufficiency of a complaint, i.e.
5 whether the complaint lacks either a cognizable legal theory or facts sufficient to support
6 such a theory. *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001) (citations omitted). For
7 a complaint to survive a Rule 12(b)(6) motion to dismiss, it must contain “sufficient factual
8 matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v.*
9 *Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544,
10 570 (2007)). In reviewing the motion, the court “must accept as true all of the allegations
11 contained in a complaint,” but it need not accept legal conclusions. *Id.* “Threadbare recitals
12 of the elements of a cause of action, supported by mere conclusory statements, do not
13 suffice.” *Id.* (citing *Twombly*, 550 U.S. at 555).

14 III. DISCUSSION

15 In a prior Order granting Defendants’ motion to dismiss the original complaint, the
16 Court dismissed without leave to amend Plaintiffs’ cause of action for intentional
17 interference with contract and dismissed Defendant Ginsberg from the action. (Doc. No.
18 30 at 18.)² Additionally, the Court dismissed with leave to amend Plaintiffs’ claims for
19 breach of contract, violations of Bus. & Prof. Code § 17200 et seq., and accounting. The
20 parties’ moving papers make clear, however, that Plaintiffs have elected to amend only
21 their breach of contract action, and that the only issue before the Court is whether Plaintiffs
22 have stated a breach of contract claim against Omni based on an alter ego theory of
23 liability.³ (Doc. No. 35 at 1.)

24 Plaintiffs claim that neither LC Brokerage nor LC Investment are independent, and
25 both serve as Omni’s alter ego. (Doc. No. 31, FAC at ¶ 85.) Plaintiffs allege that LC
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27 ² The pincite page citations herein refer to the ECF-generated page numbers at the top of each filing.

28 ³ As Plaintiffs chose not to amend their causes of action for violations of Bus. & Prof. Code § 17200 et seq. and accounting, the Court dismisses those causes of action without leave to amend.

1 Investment is the fee simple owner of the Resort. (*Id.* at ¶ 14.) Omni manages the Resort.
2 (*Id.* at ¶ 15.) Omni owns a portion of the hotel rooms at the Resort. (*Id.* at ¶ 30.) Omni
3 collects 100% of the revenue generated from renting out Omni-owned rooms. (*Id.*)
4 Additionally, Plaintiffs own hotel rooms at the Resort. (*Id.*) Plaintiffs did not allow Omni
5 to rent out Plaintiffs’ rooms because Omni would have a conflict of interest. (Doc. No. 31,
6 FAC at ¶ 30.) To prevent Omni from self-dealing, Plaintiffs rented out their property
7 through LC Brokerage. (*Id.*) LC Brokerage had the exclusive right to rent out Plaintiffs’
8 property on the Resort. (*Id.* at ¶ 16.) If Plaintiffs chose to rent out their rooms beyond the
9 parameters of the RMA, Plaintiffs would have to pay LC Investment according to the
10 UMA. (*Id.* at ¶ 12.) Pursuant to the RMA, LC Brokerage agreed to maximize revenues for
11 Plaintiffs. (*Id.* at ¶ 27.)

12 Under California law, the theory of “alter ego” refers to situations where a court
13 holds the owner of a corporation liable for the actions of the corporation. *Daewoo*
14 *Electronics America Inc. v. Opta Corporation*, 875 F.3d 1241, 1249 (9th Cir. 2017). The
15 Supreme Court of California has held that “the application of this doctrine is as follows:
16 [t]he two requirements are (1) that there be such unity of interest and ownership that the
17 separate personalities of the corporation and the [owner] no longer exist, and (2) that, if the
18 acts are treated as those of the corporation alone, an inequitable result will follow.”
19 *Associated Vendors, Inc. v. Oakland Meat Co.*, 26 Cal. Rptr. 806 (Ct. App. 1962) (citing
20 *Automotriz del Golfo De California S. A. De C. V. v. Resnick*, 47 Cal.2d 792 (1957)). The
21 Court discusses in turn whether Plaintiffs’ FAC contains sufficient factual allegations to
22 support these elements.

23 A. Unity of Interest

24 To begin, Defendants contend that to plead the unity of interest element of the alter
25 ego doctrine, a plaintiff must allege manipulative control. (Doc. No. 32 at 11.) A review of
26 California court decisions, however, shows that plaintiffs may plead unity of interest by
27 alleging several other factors. *See Associated Vendors, Inc.*, 26 Cal. Rptr. at 813–16 (noting
28 a laundry list of factors that courts have relied on in determining whether alter ego applied).

1 For instance, California appellate courts have relied on evidence showing the “failure to
2 segregate funds of the separate entities” for purposes of determining alter ego. *Id.* Here,
3 Plaintiffs allege that “LC Brokerage never received any revenue from rental of the villas
4 or even accounted for any of that revenue in its financial statements, even though it is
5 ostensibly Plaintiffs’ rental manager.” (Doc. No. 31, FAC at ¶¶ 36, 86.) Instead, Plaintiffs
6 assert, the “rental management revenues and brokers’ fees went directly to Omni controlled
7 bank accounts.” (*Id.* at ¶ 86.) These facts show that LC Brokerage and Omni shared revenue
8 that LC Brokerage was supposed to have exclusive ownership of. The allegations also
9 indicate that LC Brokerage and Omni did not keep their rental revenue in separate, distinct
10 bank accounts. As such, there is a reasonable inference that LC Brokerage and Omni failed
11 to segregate LC Brokerage’s funds from Omni’s funds. Assuming the truth of these
12 allegations and the reasonable inferences drawn therefrom, the Court finds that they
13 demonstrate that Omni and LC Brokerage “failed to segregate funds of the separate
14 entities.”⁴ *Associated Vendors, Inc.*, 26 Cal. Rptr. at 813–16.

15 Another factor supporting the unity of interest element is “the concealment and
16 misrepresentation of the identity of the responsible ownership, management and financial
17 interest, or concealment of personal business activities.” *Id.* at 815–16. Here, Plaintiffs
18 allege that in a prior related case, “Defendant Ims, the broker of record for LC Brokerage,
19 testified that LC Brokerage has zero employees, no regular office hours, an office on the
20 property of [the Resort], and that he was unaware of the identity of LC Brokerage’s
21 corporate officers, suggesting the entity was nothing but a sham.” (Doc. No. 31, FAC at
22 ¶ 87.) These facts reveal that LC Brokerage’s broker of record could not identify who
23 managed and controlled the company. As such, there is a reasonable inference that LC
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25 ⁴ As previously noted, Plaintiffs allege that LC Investment is also an alter ego of Omni; they similarly
26 claim that LC Investment did not receive revenue from rentals despite owning the Resort. (Doc. No. 31,
27 FAC at ¶¶ 14, 86.) Defendants do not meaningfully challenge the sufficiency of Plaintiffs’ alter ego claim
28 concerning LC Investment and Omni. Indeed, they make only a passing reference to this argument in a
footnote in their reply brief. (Doc. No. 36 at 4 n.1.) As a “district court need not consider arguments raised
for the first time in a reply brief,” the Court declines to consider Defendants’ late assertion. *Zamani v.*
Carnes, 491 F.3d 990, 997 (9th Cir. 2007).

1 Brokerage concealed the identity of the company’s responsible ownership and
2 management. Moreover, the Court finds that the allegation concerning Ims’ prior testimony
3 that LC Brokerage did not have regular office hours suggests that the company did not have
4 regular business to conduct. (*Id.* at ¶ 87.) Assuming the allegations as true and construing
5 them in the light most favorable to Plaintiffs, the Court finds there to be sufficient facts to
6 show that LC Brokerage and Omni concealed and misrepresented LC Brokerage’s
7 ownership and management. *See Associated Vendors, Inc.*, 26 Cal. Rptr. at 815–16.

8 An additional factor relevant to the unity of interest element is “the use of the same
9 office or business location.” *Id.* at 814. Here, Plaintiffs allege that LC Brokerage’s office
10 was located on the Omni-managed Resort. (Doc. No. 31, FAC at ¶¶ 16, 87, 89.) Plaintiffs
11 also allege that LC Brokerage, LC Investment, and Omni all disclosed “the same address
12 for their principal executive office and mailing addresses” within their respective filings
13 with the Secretary of State. (*Id.* at ¶ 89.) These facts indicate that LC Brokerage’s and
14 Omni’s respective executives work in the same location. The companies’ use of the same
15 office or business location therefore provides further support for the unity of interest
16 element of Plaintiffs’ alter ego theory. *See Associated Vendors, Inc.*, 26 Cal. Rptr. at 814.

17 Yet another factor demonstrating a unity of interest is “the use of a corporation as a
18 mere shell, instrumentality or conduit for a single venture or the business of an individual
19 or another corporation.” *Id.* Here, Plaintiffs allege that LC Brokerage was an affiliate of
20 Omni. (Doc. No. 31, FAC at ¶ 8.) Plaintiffs believed that LC Brokerage would run the
21 rental program on Plaintiffs’ behalf. (*Id.* at ¶ 16.) Pursuant to the RMA, LC Brokerage
22 agreed to maximize revenues for Plaintiffs. (*Id.* at ¶ 27.) Plaintiffs allege that “LC
23 Brokerage owed fiduciary duties of loyalty and candor to villa owners with respect to its
24 rental management.” (*Id.* at ¶ 32.) Plaintiffs assert that, in practice, LC Brokerage was not
25 involved with the rental program. (*Id.* at ¶ 9.) Omni, rather than LC Brokerage, controlled
26 the rental program. (*Id.*) Plaintiffs also allege that “Ginsberg and Ims have both conceded
27 that they knew at the time buyers signed the RMA that LC Brokerage would have no
28 responsibility for the rental program, but [Ginsberg and Ims] never disclosed such a fact to

1 buyers.” (Doc. No. 31, FAC at ¶ 36.) After Omni sold units at the Resort to a class of buyers
2 which included Plaintiffs, LC Brokerage abruptly “ceased operations” in August 2017. (*Id.*
3 at ¶ 16.)

4 Accepting these facts as true, there is a reasonable inference that Omni used LC
5 Brokerage to make it appear as though there was an independent intermediary between
6 Omni and potential buyers such as Plaintiffs, and that LC Brokerage existed merely to
7 assist Omni in a self-dealing scheme. Indeed, the FAC contains allegations that in a prior
8 related litigation, LC Brokerage’s brokers of record, “Ginsberg and Ims have both admitted
9 under oath that LC Brokerage has never supervised or administered the rental program.
10 Instead, both of these brokers testified that Omni has always administered and controlled
11 the rental program with no supervision by LC Brokerage.” (Doc. No. 31, FAC at ¶ 36.)
12 Based on the foregoing, the Court finds that Plaintiffs have pled sufficient facts to show
13 that Omni used LC Brokerage “as a mere shell, instrumentality or conduit for a single
14 venture or the business of an individual or another corporation.” *Associated Vendors, Inc.*,
15 26 Cal. Rptr. at 814.

16 Accordingly, the Court finds that Plaintiffs have plausibly pled a “failure to
17 segregate funds,” the concealment of LC Brokerage’s “ownership and management,” “the
18 use of the same office or business location,” and “the use of a corporation as a mere shell,
19 instrumentality or conduit for a single venture or the business of an individual or another
20 corporation”—all of which are factors that invoke the unity of interest prong of the alter
21 ego doctrine. *See id.* at 813–16.

22 **B. Inequitable Result**

23 Next, the second alter ego prong requires a plaintiff to show that, “if the acts are
24 treated as those of the corporation alone, an inequitable result will follow.” *Automotriz del*
25 *Golfo De California S. A. De C. V.*, 47 Cal.2d at 796. “Before a corporation’s acts and
26 obligations can be legally recognized as those of [another corporation], and vice versa, it
27 must be made to appear that . . . an adherence to the fiction of the separate existence of the
28 corporation would, under the particular circumstances, sanction a fraud or promote

1 injustice.” *Associated Vendors, Inc.*, 26 Cal. Rptr. at 813. “Finding an ‘inequitable result’
2 under the second element of alter ego liability ‘generally require[s] some evidence of bad
3 faith conduct on the part of defendants.’” *Daewoo Electronics America Inc.*, 875 F.3d at
4 1249 (quoting *Smith v. Simmons*, 638 F.Supp.2d 1180, 1191 (E.D. Cal. 2009)). While
5 “difficulty in enforcing a judgment does not alone satisfy [the inequitable result] element,”
6 *Leek v. Copper*, 125 Cal. Rptr. 3d 56, 70 (Ct. App. 2011), precluding a plaintiff from
7 collecting its judgment by treating an alter ego as a separate entity would be inequitable,
8 *Butler America, LLC v. Aviation Assurance Company, LLC*, 269 Cal. Rptr. 3d 284, 293
9 (Ct. App. 2020).

10 In this case, Plaintiffs’ FAC alleges facts from which the Court can reasonably infer
11 that an inequitable result would follow if LC Brokerage’s acts were treated as if they were
12 its acts alone. First, Plaintiffs allege facts supporting the inference that while LC Brokerage
13 was still operational, LC Brokerage was either noncapitalized or undercapitalized because
14 it did not receive any rental revenue. (Doc. No. 31, FAC at ¶ 86.) Second, Plaintiffs allege
15 that the rental revenue intended for LC Brokerage were directed to Omni-controlled bank
16 accounts. (*Id.*) Third, Plaintiffs also allege that LC Brokerage was a sham corporation
17 without employees or corporate officers. (*Id.* at ¶ 87.) And fourth, Plaintiffs allege that LC
18 Brokerage abruptly “ceased operations” in August 2017. (*Id.* at ¶ 16.)

19 The Court finds unavailing Defendants’ argument that the FAC does not specifically
20 allege that LC Brokerage could not satisfy a judgment entered against it. (Doc. No. 36 at
21 5.) Based on Plaintiffs’ allegations that LC Brokerage was noncapitalized and ceased
22 operations years ago, the Court can reasonably infer that LC Brokerage could not satisfy a
23 judgment. Additionally, as previously discussed, the FAC contains allegations indicating
24 that LC Brokerage was a mere shell for Omni’s self-dealing. (Doc. No. 31, FAC at ¶¶ 11,
25 33, 34, 60–64, 73–76, 85–95.). Plaintiffs’ allegations therefore indicate that adherence to
26 the fiction of LC Brokerage as a separate entity would sanction a fraud or promote injustice
27 in this case. *See Associated Vendors, Inc.*, 26 Cal. Rptr. at 813.

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1 The Court also finds that Plaintiffs have pled allegations sufficient to indicate bad
2 faith on the part of Omni. *Daewoo Electronics America Inc.*, 875 F.3d at 1249; *Associated*
3 *Vendors, Inc.*, 26 Cal. Rptr. at 813 (stating “bad faith in one form or another is an
4 underlying consideration and will be found in some form or another in those cases wherein
5 the trial court was justified in disregarding the corporate entity”). Considering Plaintiffs’
6 allegations that LC Brokerage is a sham rental corporation with no rental revenues,
7 employees, or corporate officers, and existed to assist in Omni’s self-dealing, the Court
8 finds that precluding the application of the alter ego theory may “sanction a fraud or
9 promote injustice” in this case. *Associated Vendors, Inc.*, 26 Cal. Rptr. at 813.
10 Consequently, the Court finds that Plaintiffs have adequately pled the second element of
11 the alter ego doctrine.


12 In sum, having found that Plaintiffs sufficiently pled facts showing unity of interest
13 and inequitable result, the Court **DENIES** Defendants’ motion to dismiss Plaintiffs’ breach
14 of contract claim.

15 IV. CONCLUSION

16 Accordingly, for the reasons stated, the Court **GRANTS IN PART** and **DENIES**
17 **IN PART** Defendants’ motion to dismiss the FAC. (Doc. No. 32.) Specifically, the Court
18 dismisses without leave to amend the causes of action for which Plaintiffs were previously
19 afforded an opportunity to but did not amend. As such, the Court grants Defendants’
20 motion as to those claims.⁵ The Court, however, declines to dismiss Plaintiffs’ breach of
21 contract claim against Omni, and therefore denies Defendants’ motion as to that claim.

22 IT IS SO ORDERED.

23 Dated: October 29, 2021

24 
25 Hon. Anthony J. Battaglia
26 United States District Judge

27 ⁵ As noted earlier, these include Plaintiffs’ unamended claims for accounting and violation of the unlawful
28 and fraud prongs of the UCL. Additionally, the Court notes that Defendant Ginsberg was dismissed from
this action pursuant to the Court’s Order on the first motion to dismiss in this case. (Doc. No. 30.)