NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

SAN FERNANDO VALLEY DIVISION

In re: MICHELLE MAHTAB BROKHIM, Debtor.	Case No.: 1:12-bk-16459-MB Chapter 7 **MEMORANDUM OF DECISION** Hearing Date: June 9, 2015 Time: 3:00 p.m. Place: Courtroom 303 21041 Burbank Blvd Woodland Hills, CA 91367

MEMORANDUM OF DECISION

On April 29, 2015 and June 9, 2015, this Court held hearings on the *Notice of Objection and Objection to Proof of Claim No. 9 Filed by Sandra Estrada* ("Objection"). Dkt. 52. The Objection was filed by David Brokhim, the former husband and creditor of the Debtor, Michelle Brokhim (the "Debtor"). The Objection is supported by David Seror, chapter 7 trustee for the estate of the Debtor (the "Trustee"). Dkts. 60 & 68.

Appearances were made as reflected in the record of the hearings. After reviewing and considering all of the pleadings and evidence filed in support of and opposition to the Objection,[1] and the arguments of counsel at the hearings, the Court has determined, for the reasons set forth below, to sustain the Objection and enter an order disallowing Claim No. 9 filed in the above-referenced case by Sandra Estrada ("Estrada").

This Memorandum constitutes the Court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy Procedure 7052, which is applicable to this matter pursuant to Rule 9014(c) of the Federal Rules of Bankruptcy Procedure.

I. Factual and Procedural Background

Prepetition Litigation.

Estrada and her niece, Aura Ramirez ("Ramirez"), are creditors under a judgment (the "Judgment") entered by the California Superior Court on May 29, 2013, against non-debtors Brokhim LLC, and an employee of that entity, Larry Bustamante ("Bustamante"). Dkt. 39 at 51-52. Debtor, Michelle Mahtab Brokhim, holds a 100% ownership interest in Brokhim LLC. Dkt. 1 at Schedule B.

The state court complaint, filed by Estrada and Ramirez in February of 2011, alleged that Estrada and Ramirez, former employees of Brokhim LLC, were the victims of sexual harassment perpetrated by Bustamante in 2009. Dkt. 39 at 20-43. The state court complaint asserted causes of action for statutory violations, negligence, assault, battery, negligent infliction of emotional

[1] As indicated on the record of the June 9 hearing, the Court has not considered and has entered, at docket 77, an order striking the *Reply to Supplement Briefs Containing Misstatements of Law and Fact on the Very Important Issue Before the Court Set for Hearing on June 9, 2015*, Dkt. 71, filed on behalf of Estrada, because this brief was not authorized by the Local Bankruptcy Rules or the Court's request for supplemental briefing.

distress, intentional infliction of emotional distress, invasion of privacy, negligent hiring, supervision and retention, and wrongful termination in violation of public policy. *Id.*

After defaults were entered against the defendants in the action, and the court considered the evidence presented by the plaintiffs, the California Superior Court awarded special, general and punitive damages to Estrada, in the collective amount of $10,024,404.02, and to Ramirez, in the collective amount of $10,027,559.81. Dkt. 39 at 51-52.

Although the complaint referenced the Debtor's status as an owner of the business and specifically described her failure to take appropriate action against employee Bustamante, see, e.g., Dkt. 39 at Ex. B ¶¶ 23, 37, 39, the complaint did not name the Debtor as a defendant. Accordingly, under the Judgment, no relief was entered against the Debtor under the Judgment.

The Bankruptcy Case.

On July 17, 2012, the Debtor filed a voluntary petition, commencing the above-captioned chapter 7 case. Dkt. 1. Following commencement of the case, the Trustee was appointed as chapter 7 trustee for the Debtor's estate. On December 18, 2012, the Trustee filed his *Notification of Asset Case and Notice of Possible Dividend and Order Fixing Time to File Claims* (the "Claims Notices"). Dkt. 23. The Claims Notices, which thereafter were served on creditors and potential creditors, advised that the deadline for filing proofs of claim in the Debtor's case was March 25, 2013. Dkts. 23 & 25. On December 25, 2012, the Court entered a discharge in favor of the Debtor. Dkt. 26. The Trustee thereafter proceeded to administer the case and the estate for the benefit of the Debtor's creditors.

The Proofs of Claim.

On March 25, 2013, the last day to do so, Estrada and Ramirez each filed a proof of claim asserting a liability against the Debtor in excess of $1,000,000. The claim filed by Ramirez, which was assigned claim number 6, was docketed by the Clerk of the Court on March 27, 2013. For

reasons that are not clear, the proof of claim filed by Estrada, which was assigned claim number 9, was not docketed by the Clerk of the Court, until December 11, 2014.

Both claims consist of Official Form B-10, signed by the same counsel, Robert L. Krasney, and a one-page attachment. The face page of each claim states "Michelle Mahtab Brokhim's acts were willful and malicious and caused injury to" each claimant and incorporates by reference the one-page attachment. The one-page attachments to each proof of claim are largely identical.[2] The attachment to Estrada's claim is reproduced below:

> This is against Michelle Mahtab Brokhim, individually, who acted in an intentional, reckless and willful disregard of the rights and safety of creditor Ms. Sandra Estrada. Ms. Michelle Mahtab Brokhim [sic] conduct against Ms. Sandra Estrada was egregious, including intentionally causing her severe emotional distress and acting in intentional, reckless and willful disregard of the rights and safety of Ms. Ramirez [sic].
>
> The background stems from a horrific case of sexual harassment, discrimination, statutory violations and tortuous conduct and wrongful termination in violation of public policy, suffered by Ms. Sandra Estrada while working at Wilshire Vista Manor. Michelle Brokhim was the owner, director, managing agent and person running the Wilshire Vista Manor where Ms. Estrada worked when she suffered these intolerable acts, including but not limited to the above. Ms. Michelle Brokhim was advised, and at all times, was aware of a male employee, boss and supervisor of Ms. Estrada, being a sexual harasser, including but not limited to masturbating in front of Ms. Estrada, having her clean up his sperm after he ejaculated, touching her sexually without her consent, repeatedly demanding sex from her, and much more. Despite numerous complaints to her, Michelle Brokhim refused to get this behavior stopped, and ratified his behavior and ultimately fired Ms. Ramirez [sic] over her complaints. Ms. Brokhim expressed that the sexual harasser was a man and he had to do something to entertain himself and to grow up. Ms. Michelle Brokhim personally intentionally inflicted emotional distress on Ms. Sandra Estrada and also acted in an intentional, willful and reckless disregard of the rights and safety of Ms. Estrada. Ms. Estrada suffered injuries and damages including severe emotional distress damages and monetary losses and all general and special damages allowed by law. Punitive damages would also be awardable.

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[2] The attachment to Ramirez's claim contains some additional detail regarding the wrongful actions of Bustamante. As this is not material to the Court's analysis, only the Estrada attachment is set forth here.

> Ms. Estrada's damages against Ms. Michelle Brokhim, individually, are over $1,000,000.
>
> This claim is not a claim against Wilshire Vista Manor and/or Brokhim LLC but rather as against Michelle Brokhim, individually, and includes all assets including any interest she had, took out, and/or has in Wilshire Vista Manor and/or Brokhim LLC and/or alienated to anyone, including, but not limited to her former husband, David Brokhim.

Claim No. 9 (Dkt. 52, Ex. B). Neither proof of claim mentioned the pending state court lawsuit, nor was either claim ever amended to address the entry of the Judgment in that lawsuit on May 29, 2013.

Objection to Ramirez's Claim (Claim No. 6).

On November 10, 2014, David Brokhim filed an objection to the claim of Ramirez. Dkt. 39. The objection asserted that Ramirez's claim was precluded under the doctrine of res judicata, that it was time-barred under the applicable statutes of limitations, and that the claim was barred because Ramirez failed to join the Debtor or name her as a defendant in the state court action. Dkt. 39 at 6-10. The objection also contended that Ramirez failed to meet her evidentiary burden, and was not a "creditor" in the bankruptcy case. Dkt. 39 at 10-12. The objection did not address the Estrada claim, which had not yet been docketed.

Ramirez responded to the objection on December 1, 2014, and the Court held a hearing, before the Honorable Alan M. Ahart, on December 10, 2014. Ramirez was represented at the hearing by her counsel, Mr. Krasney. Prior to the hearing, the Court posted the following tentative ruling:

> Objecting party, as a "party in interest," has standing to object to the proof of claim.
>
> Sustain the objection because the claimant has not supported its [sic] proof of claim with adequate evidence and, based upon the evidence in this contested matter, the claim is barred by the state law statute of limitations and res judicata.
>
> Dkt. 52, Ex. A.

At the conclusion of the hearing, and hearing the arguments of counsel, the Court announced that it would sustain the objection for the reasons set forth in its tentative ruling. The Court thereafter entered an order disallowing the claim filed by Ramirez. Dkt. 50. Ramirez did not appeal that order.

Objection to Estrada's Claim (Claim No. 9).

On December 24, 2014, after Estrada's claim was docketed on December 11, 2014, David Brokhim filed the present Objection. Dkt. 52. The Objection reasserted all of the same bases for objection to Estrada's claim as had been asserted by David Brokhim against the Ramirez claim and had been sustained by Judge Ahart. Dkt. 52 at 10-15. The Objection, however, now asserted that the Court should disallow the Estrada claim as the "law of the case," referring to the Court's disallowance of the Ramirez claim. Dkt. 52 at 8-10.

On April 6, 2015, this case was reassigned to the undersigned United States Bankruptcy Judge. Dkt. 56. On April 14, 2015, the Trustee filed a statement articulating his non-opposition to the Objection. Dkt. 60. On April 15, 2015, Estrada filed her opposition to the Objection (the "Opposition"), including a declaration of Mr. Krasney (the "Krasney Declaration"). Dkt. 61. The Court held its initial hearing on the Objection on April 29, 2015.

Although Estrada's proof of claim asserted direct liability against the Debtor only, i.e., for her own alleged wrongdoing, Estrada's counsel asserted in the Opposition and at the hearing that Brokhim was liable as the *alter ego* of Brokhim LLC. Following oral argument, the Court continued the hearing to June 9, 2015, and requested the parties provide supplemental briefing on the interplay under California law between the assertion of alter ego liability against an unnamed defendant and the operation of the statute of limitations.

On May 15, 2015, Estrada's counsel filed a supplemental brief on this issue. Dkt. 67. On May 20, 2015, the Trustee filed his response to Estrada's supplemental brief. Dkt. 68. On May 26,

2015, David Brokhim filed his response to Estrada's supplemental brief. Dkt. 70. On June 3, 2015, Estrada's counsel filed a further response, which was not authorized by the Court and as noted above was stricken. Dkts. 71, 77.

On June 9, 2015, the Court held an additional hearing on the Objection, heard the oral argument of the parties, and took the matter under submission.

II. Issues Presented

There are several issues raised by the Objection and subsequent litigation:

- Should the Court disallow the Estrada claim based on the disallowance of the Ramirez claim, under the "law of the case" doctrine?
- Is Estrada entitled to an allowed claim based on a theory of direct liability against the Debtor for her alleged wrongdoing, as asserted in the proof of claim?
- Is Estrada entitled to an allowed claim based on a theory of alter ego liability against the Debtor based on the Judgment entered against Brokhim LLC?

III. Analysis

Law of the Case.

The law of the case doctrine provides that "when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case." *Arizona v. California*, 460 U.S. 605, 618 (1983), *decision supplemented*, 466 U.S. 144 (1984).

Although a court generally has discretion to revisit its own prior decisions, a court "should [ ] loathe to do so in the absence of extraordinary circumstances such as where the initial decision was clearly erroneous and would work a manifest injustice," *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 817 (1988) (internal quotations omitted), when there are intervening changes in controlling law, or when new evidence becomes available. *See Southwest Marine Inc. v. Danzig*,

217 F.3d 1128 (9th Cir. 2000); *Leslie Salt Co. v. U.S.*, 55 F.3d 1388, 1393 (9th Cir. 1995); *In re Benny*, 81 F.3d 91, 94 (9th Cir. 1996).

However, "the doctrine is discretionary, not mandatory." Merritt v. Mackey, 932 F.2d 1317, 1320 (9th Cir. 1991). "The doctrine 'merely expresses the practice of courts generally to refuse to reopen what has been decided, not a limit to their power.'" *Leslie Salt Co.*, 55 F.3d at 1393 (quoting *Messinger v. Anderson*, 225 U.S. 436, 444 (1912)). Thus, even in the absence of one of the enumerated exceptions, application of the doctrine is committed to the discretion of the Court.

David Brokhim makes an attractive argument. He notes that the Estrada claim and the Ramirez claim were submitted by the same counsel and are nearly identical, but for name of the creditor. David Brokhim contends that if the Estrada claim had been timely docketed, he would have objected to it together with the Ramirez claim, and that Judge Ahart likely would have sustained objections to both claims. David Brokhim contends that there is no reason for a different result in respect of the Estrada claim than the Court reached in respect of the Ramirez claim.

The Court, however, declines in its discretion to apply the law of the case doctrine on these facts. While there is no question that the doctrine generally may be applied in a bankruptcy case, it is less than clear whether it is appropriate to automatically disallow one creditor's claim – without considering the merits – based on the Court's disallowance of a *different* creditor's claim. Neither David Brokhim nor the Trustee have cited authority (and the Court has not located any) that specifically sanctions application of the law of the case doctrine under these circumstances.

Estrada is entitled to her own "day in court" on her claim. Although Ramirez and Estrada were co-plaintiffs in the state court action, and although they are represented by the same counsel in connection with their claims, the fact remains that they are different people and have filed their own individual claims. When Mr. Krasney appeared at the hearing on the objection to the Ramirez

claim, it cannot fairly be said that he was representing Estrada. Estrada's claim had not been docketed and was not yet subject to any objection. Under these circumstances, the Court concludes that the interests of justice are best served by addressing the merits of Estrada's claim.

Direct Liability of the Debtor.

The Objection argues that any direct claims against the Debtor are barred by the applicable statutes of limitations under California law. *See* Dkt. 52 at 12-13. Based on the occurrence of the subject events in 2009, David Brokhim argues that the statute of limitations on all of Estrada's legal claims ran in 2011. *Id.* Because the Debtor was not named as a defendant in the prepetition lawsuit, David Brokhim argues that Estrada's claims are now barred as a matter of law.

Estrada does not dispute the manner in which David Brokhim has calculated the applicable statutes of limitations in the Objection. Instead, Estrada argues (1) that it would not have been appropriate to sue the Debtor under the original complaint, as a matter of California law, and (2) that the timely-filed complaint alleged wrongdoing by fictitious defendants, who can be added to the Judgment, notwithstanding expiration of the statutes of limitations.

Neither of these arguments has merit.

At oral argument, Estrada's counsel argued that naming a supervisor as a defendant in a lawsuit such as the one filed prepetition is "not how it's done." Citing *Reno v. Baird*, 18 Cal. 4th 640 (1998), Estrada argues that only the employer, not the employee's supervisor, can be held liable for an employee's harassment.

But Estrada misconstrues *Reno v. Baird*. There, the California Supreme Court held that a discharged employee may sue and hold liable their employers for discrimination under California's Fair Employment and Housing Act ("FEHA"), Cal. Gov't. Code § 19200 *et seq.*, but not their individual supervisors. "It is well established that *Reno* concerns FEHA discrimination claims, and

that it does not apply to harassment claims." *Martinez v. Michaels*, 2015 U.S. Dist. LEXIS 92180, at *25 (C.D. Cal. July 15, 2015) (citing additional authorities).

It is clear from her proof of claim that Estrada alleges all sorts of statutory and non-statutory claims against the Debtor *other than* FEHA employment discrimination.

Moreover, in 2001, after the California Supreme Court decided *Reno*, the California legislature "'amended FEHA's harassment provision expressly holding individual employees liable for their harassment.'" *Id.* (quoting *Scott v. Solano Cty. Health & Soc. Servs. Dep't,* 449 F. Supp. 2d 959, 966 (E.D. Cal. 2006)); *see also Winarto v. Toshiba America Electronics Components, Inc.*, 274 F.3d 1276, 1288 (9th Cir.2001) (quoting *Page v. Superior Court*, 31 Cal.App.4th 1206, 1212 (1995) ("As to supervisors . . . the language of FEHA is unambiguous in imposing personal liability for harassment or retaliation in violation of FEHA."); *Roby v. Career Educ. Corp.*, 47 Cal. 4th 686, 709 (2009) (managerial acts can form the basis for a harassment claim where such acts have the secondary effect of communicating a hostile message).

It appears that Estrada made a tactical decision not to name the Debtor as a defendant in the prepetition lawsuit. Estrada has not demonstrated that there was any legal bar to doing so or any legal authority that would have tolled the statutes of limitations while she pursued Brokhim LLC and Bustamante.

The suggestion that Estrada's claim against the Debtor for direct liability might relate back to the prepetition complaint because the complaint named fictitious defendants likewise fails.

As a threshold matter, Estrada's proof of claim makes no mention of the prepetition lawsuit and judgment, and does not allege that the Debtor is one of the fictitious defendants referenced in the state court complaint. Nor does the record reflect that Estrada ever sought or obtained relief from the automatic stay to amend the complaint or Judgment to identify the Debtor as one of the fictitious defendants.

More importantly, regardless of the pendency of the bankruptcy case, Estrada would not have been entitled to such relief. Under Cal. Civ. Proc. Code § 474, an "amended complaint substituting a new defendant for a fictitious Doe defendant filed after the statute of limitations has expired is deemed filed as of the date the original complaint was filed." *Woo v. Superior Court*, 75 Cal. App. 4th 170, 176 (1999) (citing A*ustin v. Mass. Bonding & Ins. Co.*, 56 Cal.2d 596, 599 (1961)). "However, this exception to the general rule has a caveat – the plaintiff must have been genuinely ignorant of the Doe defendant's identity at the time it filed its original complaint." *BMD Mgmt., LLC v. Dane (In re Dane)*, 2014 Bankr. LEXIS 2378, at *29 (B.A.P. 9th Cir. May 15, 2014) (citing *Woo*, 75 Cal. App. 4th at 177).

It is clear from the state court complaint that Estrada was well aware of her potential claims against the Debtor when she filed her complaint against Brokhim LLC and Bustamante. *See* Dkt. 39 at Ex. B ¶¶ 23, 37, 39. Nevertheless, Estrada chose not to pursue those claims before the statutes of limitations expired. As such, Cal. Civ. Proc. Code § 474 does not apply.

Alter Ego Liability of the Debtor.

In her response to the Objection, Estrada contends she holds a claim against the Debtor because the Debtor is the alter ego of Brokhim LLC.

> The figurative terminology "alter ego" and "disregard of the corporate entity" is generally used to refer to the various situations that are an abuse of the corporate privilege. The purpose behind the alter ego doctrine is to prevent defendants who are the alter egos of a sham corporation from escaping personal liability for its debts. The device of disregarding the corporate entity is applicable whether the alter ego is an individual or corporation.
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> Before the courts will disregard the corporate entity of one corporation and treat it as the alter ego of another, even though the latter may own all the stock of the

> former, it must further appear that there is such a unity of interest and ownership that the individuality of the one corporation and the owner or owners of its stock has ceased and, further, that the observance of the fiction of separate existence would under the circumstances sanction a fraud or promote injustice. In other words, bad faith in one form or another must be shown before the court may disregard the fiction of separate corporate existence.
>
> . . .
>
> An alter ego defendant has no separate primary liability to the plaintiff. Rather, plaintiff's claim against the alter ego defendant is identical with that claimed by plaintiff against the already-named defendant.
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> A claim against a defendant, based on the alter ego theory, is not itself a claim for substantive relief, e.g., breach of contract or to set aside a fraudulent conveyance, but rather, procedural, i.e., to disregard the corporate entity as a distinct defendant and to hold the alter ego individuals liable on the obligations of the corporation where the corporate form is being used by the individuals to escape personal liability, sanction a fraud, or promote injustice.

Hennessey's Tavern, Inc. v. American Air Filter Co., 204 Cal. App. 3d 1351, 1358-59 (1988) (citations omitted). In order to determine whether an individual and a corporation share a sufficient unity of interest and ownership that the personalities of the two are no longer separate, courts have considered the following, non-exhaustive list of factors:

> [1] Commingling of funds and other assets, failure to segregate funds of the separate entities, and the unauthorized diversion of corporate funds or assets to other than corporate uses;
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> [2] the treatment by an individual of the assets of the corporation as his own;

[3] the failure to obtain authority to issue stock or to subscribe to or issue the same;

[4] the holding out by an individual that he is personally liable for the debts of the corporation;

[5] the failure to maintain minutes or adequate corporate records, and the confusion of the records of the separate entities;

[6] the identical equitable ownership in the two entities;

[7] the identification of the equitable owners thereof with the domination and control of the two entities;

[8] identification of the directors and officers of the two entities in the responsible supervision and management;

[9] sole ownership of all of the stock in a corporation by one individual or the members of a family;

[10] the use of the same office or business location;

[11] the employment of the same employees and/or attorney;

[12] the failure to adequately capitalize a corporation;

[13] the total absence of corporate assets, and undercapitalization;

[14] the use of a corporation as a mere shell, instrumentality or conduit for a single venture or the business of an individual or another corporation;

[15] the concealment and misrepresentation of the identity of the responsible ownership, management and financial interest, or concealment of personal business activities;

[16] the disregard of legal formalities and the failure to maintain arm's length relationships among related entities;

> [17] the use of the corporate entity to procure labor, services or merchandise for another person or entity;
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> [18] the diversion of assets from a corporation by or to a stockholder or other person or entity, to the detriment of creditors, or the manipulation of assets and liabilities between entities so as to concentrate the assets in one and the liabilities in another;
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> [19] the contracting with another with intent to avoid performance by use of a corporate entity as a shield against personal liability, or the use of a corporation as a subterfuge of illegal transactions;
>
> [20] and the formation and use of a corporation to transfer to it the existing liability of another person or entity.

Bank of Montreal v. SK Foods, LLC, 476 B.R. 588, 597-98 (N.D. Cal. 2012) (citing *Zoran Corp. v. Chen*, 185 Cal. App. 4th 799, 811-12 (2010)). "With regard to an inequitable result, the alter-ego doctrine 'does not guard every unsatisfied creditor of a corporation but instead affords protection where some conduct amounting to bad faith makes it inequitable for the corporate owner to hide behind the corporate form.'" *Calvin Brian Intern. Co. v. Gustto, Inc.,* 2014 U.S. Dist. LEXIS 97438, at *7 (S.D. Cal. July 17, 2014) (citing *Sonora Diamond Corp. v. Superior Court*, 83 Cal. App. 4th 523, 539 (2000)).

The issue of alter ego liability may be raised at various stages of litigation prior to judgment. *See Hennessey's Tavern, Inc.,*, 204 Cal. App. 3d at 1358-59. It also may be raised after a judgment has been entered. *See* Cal. Civ. Proc. Code § 187. Section 187 has been interpreted to grant courts the authority to amend a judgment to add a defendant that is the alter ego of a named

judgment debtor. *See Katzir's Floor and Home Design, Inc. v. M-MLS.com*, 394 F.3d 1143, 1148 (9th Cir. 2004) (citing *Issa v. Alzammar*, 38 Cal. App. 4th Supp. 1, 3-4 (1995)).[3]

Amendment of a judgment for such purpose requires "(1) that the new party be the alter ego of the old party *and* (2) that the new party had controlled the litigation, thereby having had the opportunity to litigate, in order to satisfy due process concerns." *In re Levander,* 180 F.3d 1114, 1121 (9th Cir. 1999) (emphasis in original) (citing *Triplett v. Farmers Ins. Exchange*, 24 Cal.App.4th 1415, 1421 (1994)). "Control of the litigation sufficient to overcome due process objections may consist of a combination of factors, usually including the financing of the litigation, the hiring of attorneys, and control over the course of the litigation. Clearly, some active defense of the underlying claim is contemplated." *NEC Electronics, Inc. v. Hurt*, 208 Cal. App. 3d 775, 781 (1989) (internal quotations and citations omitted).

Estrada's contention that she is entitled to an allowed claim against the Debtor, based on alter ego liability for the Judgment against Brokhim LLC, fails for several reasons.

First, Estrada's proof of claim does not assert that the Debtor is liable for the Judgment as the alter ego of Brokhim LLC. It does not even mention the Judgment, and emphasizes that the proof of claim represents the Debtor's individual liability for her conduct – which is a different

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[3] Cal. Civ. Proc. Code § 187 states as follows:

> When jurisdiction is, by the Constitution or this Code, or by any other statute, conferred on a Court or judicial officer, all the means necessary to carry it into effect are also given; and in the exercise of this jurisdiction, if the course of proceeding be not specifically pointed out by this Code or the statute, any suitable process or mode of proceeding may be adopted which may appear most conformable to the spirit of this Code.

claim.[4] To make out a claim for alter ego liability on the Judgment, the proof of claim would have had to allege how, when and why the separateness between Brokhim LLC and the Debtor ceased to exist, and why the corporate entity should be disregarded. *See BMD Mgmt., LLC*, 2014 Bankr. LEXIS 2378, at *25-26. It also would have had to allege that fraud or injustice would result if the Debtor were not treated as the alter ego of the corporate entity. *Id*. at *26. None of this was alleged in the proof of claim. Estrada's effort to assert this claim in response to the Objection (i.e., long after the bar date in this case) is an improper effort to assert a new, untimely claim.

Second, notwithstanding Cal. Civ. Proc. Code § 187, Estrada could never add the Debtor as an alter ego defendant after the Judgment was entered because she was aware of the Debtor's existence before trial. See Dkt. 39 at Ex. B ¶ 23 (alleging that the Debtor was the owner of the business); *BMD Mgmt., LLC*, 2014 Bankr. LEXIS 2378, at *28-29 (alter ego defendant could not be added to judgment because plaintiff was aware of defendant's existence before trial) (citing *Jines v. Abarbanel*, 77 Cal. App. 3d 702, 717 (1978) (holding that trial court erred by amending judgment against a doctor to add his corporation as a judgment debtor because plaintiff was aware of corporation's existence before trial)).

In addition to the foregoing infirmities, Estrada has failed to prove by a preponderance of the evidence that she would be entitled to add the Debtor to the Judgment as the alter ego of Brokhim LLC.

First, Brokhim LLC defaulted on the state court complaint and the Debtor was not named as a defendant under that complaint. Under these circumstances, the Debtor did not "control" the litigation in the manner necessary to satisfy due process concerns. On similar facts, in *Katzir's*

[4] The proof of claim states that Estrada is not asserting a claim based on the liability of Brokhim LLC: "This claim is not a claim against Wilshire Vista Manor and/or Brokhim LLC but rather as against Michelle Brokhim, individually." Claim No. 9 (Dkt. 52, Ex. A).

Floor and Home Design, Inc., 394 F.3d 1143, 1149-50 (9th Cir. 2004), the Ninth Circuit Court of Appeals held that it was error to amend a judgment to add an entity's sole shareholder as an alter ego, where the corporate entity abandoned its defense of a lawsuit and the court entered a default judgment against it. 394 F.3d at 1147. The Court of Appeals noted that the individual was not named individually in the suit, knew that the corporate entity was on the verge of a dissolution and had no personal duty to defend the underlying lawsuit. *Id*. at 1150. Contrary to Estrada's argument, Dkt. 67 at 2, the Debtor's 100% ownership of the entity is insufficient to satisfy this requirement. *Id*. at 1148-49.[5]

Second, even if the Debtor "controlled" the litigation for purposes of the alter ego doctrine, Estrada fails to offer sufficient evidence to demonstrate (i) a unity of interest and ownership such that the personalities of Brokhim LLC and the Debtor are no longer separate, and (ii) conduct amounting to bad faith makes it inequitable for the corporate owner to hide behind the corporate form. *Hennessey's Tavern, Inc.*, 204 Cal. App. 3d at 1358. Estrada's "evidence" largely comprises of references to documents already in the Court's record, but none of it is individually or collectively sufficient to establish alter ego liability.[6]

Estrada notes that in the Debtor's Schedule I – Current Income of Individual Debtor, the Debtor wrote, "Note many of my personal expenses are paid through Brokhim LLC." Dkt. 67 at 1-2. Estrada contends that this is evidence of "commingling" and adequate justification to pierce the corporate veil. *Id*. The Court disagrees. That Brokhim LLC paid certain expenses of the Debtor –

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[5] Estrada makes a series of contentions in her brief regarding the Debtor's control of the prepetition litigation. Dkt. 67 at 4. Estrada, however, does not provide admissible evidence to support these statements.

[6] The Court notes that the Krasney Declaration is bereft of any probative value. The Krasney declaration is comprised almost exclusively of arguments and unsupported factual assertions. It is not admissible evidence. To the extent Mr. Krasney's statements are factual in nature, there is no foundational testimony to establish the basis of his personal knowledge.

without more – is not necessarily evidence of commingling, bad faith, or any other conduct that would justify piercing the corporate veil.

Estrada also notes that in the Debtor's Schedule B – Personal Property, the Debtor lists the current value of Brokhim LLC as $0.00. Dkt. 67 at 3. It is not clear what point Estrada intends to make by this observation, but to the extent she is arguing that Brokhim LLC was undercapitalized, her observation is unavailing. That the equity in Brokhim LLC may have been worthless as of the date of the Debtor's bankruptcy filing, says nothing of whether it was the result of inadequate capitalization or some other cause.

Finally, Estrada cites to a marital settlement agreement between the Debtor and her ex-husband, David Brokhim, Dkt. 67 at 2, which agreement provides for an "allocation of community debts and obligations" between them such that the Debtor was allocated "[a]ll present and prospective liabilities and obligations of Brokhim LLC and Wilshire Vista Manor." Dkt. 38 at 13-14.

Nothing about this marital allocation agreement, however, establishes grounds to pierce the corporate veil under the alter ego theory. Nor does it establish, as Estrada's counsel suggested at oral argument, that the Debtor has conceded liability for any and all debts of Brokhim LLC. The agreement provides nothing more than that if their marital community is liable for a debt of Brokhim LLC, as between them, the Debtor would be responsible for such liability.

IV. Conclusion

For all of the foregoing reasons, the Court concludes that under applicable non-bankruptcy law, the claims asserted by Estrada are not enforceable against the Debtor.[7] As such, Estrada's claims are disallowed under Bankruptcy Code section 502(b). The Court will enter a separate order in accordance with this Memorandum Decision.

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Date: September 30, 2015

Martin R. Barash
United States Bankruptcy Judge

[7] The Court need not address David Brokhim's additional arguments based on Estrada's lack of standing as a creditor, Estrada's failure to join Debtor in the state court action, and res judicata as the Court has determined Estrada's proof of claim should be disallowed for the reasons already set forth in this Memorandum.