

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

OPTRONIC TECHNOLOGIES, INC,  
Plaintiff,  
v.  
NINGBO SUNNY ELECTRONIC CO.,  
LTD., et al.,  
Defendants.

Case No. [5:16-cv-06370-EJD](#)

**ORDER GRANTING IN PART AND  
DENYING IN PART MOTION FOR  
SANCTIONS FOR CIVIL CONTEMPT**

Re: Dkt. No. 645

Plaintiff Optronic Technologies, Inc. (“Orion”) moves this Court for an Order holding Defendant Ningbo Sunny Electronic Co., Ltd.’s Chairman Wenjun “Peter” Ni, and Directors Yin Yiping (“Mr. Yin”) and Dong Yong Xue (“Ms. Dong,” and together with Mr. Yin, the “Directors”) in civil contempt for Ningbo Sunny’s failure to comply with this Court’s March 9, 2020 Order Re Motion for Order to Show Cause (Dkt. No. 598). The Court has considered the parties’ papers and heard their oral arguments. For the reasons discussed below, the Court GRANTS the motion in part and DENIES the motion in part.

**I. Background**

The facts and history of this case are well known to the Court and the Parties, and the Court recounts only the facts relevant to the present motion. On November 26, 2019, the jury entered a verdict in Orion’s favor on all counts. On December 5, 2019, the Court entered a partial judgment on Orion’s damages claims awarding Orion \$50,400,000 after trebling. Dkt. No 518.

After the jury returned its verdict, Orion orally moved the Court for an order restraining Ningbo Sunny from removing assets—specifically, accounts receivable—from the United States.

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1 Trial Tr. 2822. The Parties fully briefed the motion and the Court held a hearing on the matter.  
 2 Following the hearing, Ningbo Sunny filed a declaration from its President Peter Ni, dated  
 3 December 10, 2019, that stated, in relevant part, “Ningbo [Sunny] will not transfer any of its cash  
 4 or other assets located in the United States to a location outside of the United States other than in  
 5 the ordinary course of business while post-trial motions and appeals remain pending.” Dkt. No.  
 6 521-1 (the “Ni Declaration”). Relying on the Ni Declaration and Ningbo Sunny’s representations  
 7 at the hearing, he Court denied the First TRO Application. Dkt. No. 524.

8 On January 6, 2020, Orion brought its second application for an order restraining Ningbo  
 9 Sunny from removing assets from the United States (the “Second TRO Application”). Dkt. No.  
 10 537. Ningbo Sunny opposed the motion arguing that Orion had not shown any need for the TRO  
 11 and emphasizing the Ni Declaration. Dkt. No. 548 at 6. The Court denied the Second TRO  
 12 Application finding that Orion had not shown more than speculation that Ningbo Sunny would  
 13 improperly remove assets from the United States. Dkt. No. 559 at 5.

14 In the course of post-judgment discovery, Orion learned that on January 1, 2020, Ningbo  
 15 Sunny had requested early payment from one of its co-conspirators, Celestron, and that the next  
 16 day, Celestron paid \$4,184,057.70 to Ningbo Sunny’s account with the Agricultural Bank of  
 17 China. Dkt. No. 578-2, Borden Ex. 1. On February 13, 2020, Orion filed a motion for an Order to  
 18 Show Cause why Ningbo Sunny should not be sanctioned for falsely representing to the Court  
 19 under oath that Defendant would not transfer any assets outside of the U.S. except in the ordinary  
 20 course of business. Dkt. No. 578.

21 On March 9, 2020, the Court issued the Order Re Motion for Order to Show Cause levying  
 22 certain sanctions against Defendant Ningbo Sunny. Dkt. No. 598 (the “Sanctions Order”). In the  
 23 Sanctions Order, the Court found that Ningbo Sunny had acted in bad faith by submitting the Ni  
 24 Declaration, which falsely stated that Ningbo Sunny would not transfer assets out of the country  
 25 and by affirmatively relying on that declaration to oppose Orion’s first and second applications for  
 26 a TRO, despite knowing that its conduct had contradicted the Ni Declaration. The Court further

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1 found that Ningbo Sunny had attempted to conceal its misconduct by failing to produce the emails  
 2 evidencing the transaction. Among other sanctions, the Court ordered Ningbo Sunny to pay Orion  
 3 the \$4,184,057 that it had received from Celestron as well as the attorneys' fees and costs incurred  
 4 by Orion in connection with the motion for an order to show cause. The Court further ordered  
 5 Ningbo Sunny to provide a declaration by March 16, 2020 describing the actions it took to ensure  
 6 compliance with post-judgment discovery.

7 On March 16, 2020, Ningbo Sunny filed a Notice Regarding Court's Order Re Motion for  
 8 Order to Show Cause. Dkt. No. 611 (the "Notice"). The Notice stated that "[a]ccording to  
 9 Ningbo Sunny's Chinese counsel James Zou, Ningbo Sunny will not submit a declaration."  
 10 Quoting Mr. Zou, the Notice asserted that Ningbo Sunny had not acted in bad faith, that Ningbo  
 11 Sunny cannot pay Orion the \$4 million because it "returned significant amount of money to its  
 12 bank," that the Agricultural Bank of China would have sued Ningbo Sunny had it not repaid an  
 13 outstanding loan using the money Celestron transferred, and that no one was available to make the  
 14 Court's requested declaration.

15 On April 23, 2020 Orion filed the present motion for civil contempt against non-parties  
 16 Mr. Ni, Ms. Dong, and Mr. Yin. Dkt. No 645 (the "Contempt Motion"). Orion seeks to hold Mr.  
 17 Ni and the Directors personally liable for the \$4,184,057 owed to Orion pursuant to the Sanctions  
 18 Order. The Contempt Motion further seeks to hold Mr. Ni and the Directors liable for the full  
 19 \$50,400,000 judgment as an additional coercive sanction, and requests \$19,142.50 in fees and  
 20 costs for bringing the Contempt Motion. After the Contempt Motion was filed, prior counsel to  
 21 Ningbo Sunny filed an administrative motion to enlarge the time for opposing the motion in order  
 22 to allow Mr. Ni and the Directors time to obtain independent counsel. Dkt. No. 652. In support of  
 23 that motion, Ningbo Sunny filed the Declaration of Leo Caseria, in which Mr. Caseria stated, in  
 24 relevant part, that the Contempt Motion had been provided to Mr. Ni and Ningbo Sunny's Chinese  
 25 Counsel James Zou. Dkt. No. 652-1 (the "Caseria Decl.") at ¶ 3.

26 Mr. Ni and the Directors filed separate oppositions to the Contempt Motion. Dkt. Nos. 670

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1 (“Ni Opposition”), 671 (“Directors Opposition”). According to both oppositions, Ningbo Sunny  
 2 paid Orion’s attorneys’ fees and costs as ordered in the Court’s May 11 Order Granting  
 3 Application for Attorneys’ Fees and Costs pursuant to the Sanctions Order. *See* Ni Opp., p. 4;  
 4 Directors Opp. p. 4. The Oppositions further state that on or about May 23, 3030, Mr. Yin and  
 5 Ms. Dong resigned from their positions as directors on Ningbo Sunny’s board. *Id.*

## 6 **II. Legal Standard**

7 District courts have the inherent power to enforce their orders through civil contempt.  
 8 *Spallone v. United States*, 493 U.S. 265, 276 (1990); *Cal. Dep’t of Soc. Servs. v. Leavitt*, 523 F.3d  
 9 1025, 1033 (9th Cir. 2008). “Civil contempt . . . consists of a party’s disobedience to a specific  
 10 and definite court order by failure to take all reasonable steps within the party’s power to  
 11 comply.” *Inst. of Cetacean Research v. Sea Shepherd Conservation Soc’y*, 774 F.3d 935, 945 (9th  
 12 Cir. 2014) (citing *In re Dual-Deck Video Cassette Recorder Antitrust Litig.*, 10 F.3d 693, 695 (9th  
 13 Cir. 1993)); *see also In re Crystal Palace Gambling Hall, Inc.*, 817 F.2d 1361, 1365 (9th Cir.  
 14 1987) (“A person fails to act as ordered by the court when he fails to take all the reasonable steps  
 15 within his power to insure compliance with the court’s order.”) (citation, quotation marks, and  
 16 alterations omitted). “The contempt ‘need not be willful,’ and there is no good faith exception to  
 17 the requirement of obedience to a court order.” *In re Dual-Deck Video*, 10 F.3d at 695 (citing *In*  
 18 *re Crystal Palace*, 817 F.2d at 1365).

19 “Civil contempt sanctions . . . are employed for two purposes: to coerce the defendant into  
 20 compliance with the court’s order, and to compensate the complainant for losses sustained.”  
 21 *Whittaker Corp. v. Execuair Corp.*, 953 F.2d 510, 517 (9th Cir. 1992) (citing *United States v.*  
 22 *United Mine Workers of Am.*, 330 U.S. 258, 303-04 (1947)). “Generally, the minimum sanction  
 23 necessary to obtain compliance is to be imposed.” *Id.* (citations omitted). “Unlike the punitive  
 24 nature of criminal sanctions, civil sanctions are wholly remedial.” *Id.* (citation omitted). “A court  
 25 has wide latitude in determining whether there has been contemptuous defiance of its order.”  
 26 *Gifford v. Heckler*, 741 F.2d 263, 265–66 (9th Cir. 1984) (citing *Neebars, Inc. v. Long Bar*

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1 *Grinding, Inc.*, 438 F.2d 47, 48 (9th Cir. 1971)). Trial courts also have power to award reasonable  
2 attorneys' fees and costs against the contemnor as a sanction for disobedience of its orders. *Perry*  
3 *v. O'Donnell*, 759 F.2d 702, 705 (9th Cir. 1985).

4 "It is well-settled that a court's contempt power extends to non-parties who have notice of  
5 the court's order and the responsibility to comply with it." *United States v. Montgomery Glob.*  
6 *Advisors V LLC*, No. C-04-00733EDL, 2006 WL 950102, at \*2 (N.D. Cal. Mar. 2, 2006) (citing  
7 *Chicago Truck Drivers v. Brotherhood Labor Leasing*, 207 F.3d 500, 506-07 (8th Cir. 2000)); *see*  
8 *also Inst. of Cetacean Research*, 774 F.3d at 949 ("It has long been settled law that a person with  
9 notice of an injunction may be held in contempt for aiding and abetting a party in violating it.").  
10 In the Ninth Circuit, a non-party can be liable for contempt where the non-party has notice of the  
11 order and (1) aids the party in violating the court order or (2) is legally identified with  
12 him. *Montgomery Glob. Advisors V LLC*, 2006 WL 950102, at \*2 (citing *Peterson*, 140 F.3d at  
13 1323. "The party alleging civil contempt must demonstrate that the alleged contemnor violated  
14 the court's order by 'clear and convincing evidence,' not merely a preponderance of the  
15 evidence." *In re Dual-Deck Video*, 10 F.3d at 695 (citing *Vertex Distrib., Inc. v. Falcon Foam*  
16 *Plastics, Inc.*, 689 F.2d 885, 889 (9th Cir. 1982)).

17 The Federal Rules of Civil Procedure specifically "provide for enforcement of judgments  
18 against non-parties in limited circumstances." *Peterson v. Highland Music, Inc.*, 140 F.3d 1313,  
19 1323 (9th Cir.1998). Pursuant to Federal Rule of Civil Procedure 65(d), an injunction is "binding  
20 only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and  
21 upon those persons in active concert or participation with them who receive actual notice of the  
22 order by personal service or otherwise." Fed. R. Civ. P. 65(d). This is because "[a] command to a  
23 corporation is in effect a command to those who are officially responsible for the conduct of its  
24 affairs." *N.L.R.B. v. Sequoia Dist. Council of Carpenters*, 568 F.2d 628, 633 (9th Cir. 1977).

### 25 **III. Discussion**

26 Orion argues that Mr. Ni and the Directors should be held in contempt for four reasons:

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1 “(1) Chairman Ni perpetrated a fraud on this Court by submitting his false declaration; (2)  
 2 Chairman Ni aided and abetted Defendant’s violation of the [Sanctions] Order; (3) the Individual  
 3 Contemnors had the responsibility and power to take appropriate action; and (4) the Individual  
 4 Contemnors had actual knowledge of the [Sanctions] Order and judgment.” Motion, p. 6.  
 5 Because Orion’s allegations as to the Directors are different than the allegations as to Mr. Ni, the  
 6 Court address each separately below.

7 **A. The Directors**

8 In order to hold the Directors in contempt, Orion must present clear and convincing  
 9 evidence that the Directors had notice of the Sanctions Order and either aided and abetted Ningbo  
 10 Sunny’s violation of it or that they are legally identifiable with the company.

11 With respect to the Directors’ notice of the Sanctions Order, Orion argues that it is “highly  
 12 likely Ms. [Dong] and Mr. [Yin] were aware” of Mr. Ni’s representations to this Court and of  
 13 Ningbo Sunny’s decision to ask Celestron for early payment. Motion, p. 7. Orion further argues  
 14 that the Directors must have known of Ningbo Sunny’s misconduct because the Sanctions Order  
 15 was served on Ningbo Sunny’s counsel of record, and because according to Ningbo Sunny’s  
 16 Chinese counsel, “many of Ningbo Sunny’s employees are aware of the judgment of this case.”  
 17 Dkt. No. 611 at 2:19-20.

18 As an initial matter, Orion’s argument that it is “highly likely” that the Directors were  
 19 aware of the Sanctions Order, even if true, does not rise to the level of clear and convincing  
 20 evidence of actual notice necessary to hold the Directors in contempt. *In re Dual-Deck Video*, 10  
 21 F.3d at 695. Likewise, the fact that Ningbo Sunny’s counsel was served with the Contempt  
 22 Motion and that other employees are aware of the judgment in this case does not clearly indicate  
 23 that the Directors had actual notice of the Sanctions Order.

24 Even if the Directors had sufficient notice, however, the Court finds that the facts  
 25 presented do not amount to clear and convincing evidence that the Directors aided and abetted the  
 26 violation of the Sanctions Order or were legally identifiable with Ningbo Sunny such that they

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1 may be held personally responsible for the company’s actions. Orion argues that the Directors  
 2 were likely involved in the Celestron transfer because testimony at trial showed that they  
 3 participated in “major decisions” at Ningbo Sunny. However, Orion offers no evidence to suggest  
 4 that requesting early payment from a customer constitutes a “major decision.” Moreover, as the  
 5 Directors point out in their Opposition, testimony at trial actually suggested that Ningbo Sunny’s  
 6 Deputy General Manager of Sales James Qiu, and not the board, typically handled tasks related to  
 7 client relationships. *See* Trial Tr. 412:5-16. Thus, the evidence does not indicate that the  
 8 Directors were involved in the Celestron transfer nor any of the misconduct that gave rise to the  
 9 Sanctions Order.

10 Orion argues that even if the Directors did not participate in Ningbo Sunny’s misconduct,  
 11 they should still be held in contempt for failing to direct Ningbo Sunny to comply with the  
 12 Sanctions Order because they are legally identifiable with the company. A non-party is  
 13 considered legally identified with a corporate defendant for purposes of contempt when the non-  
 14 party has the ability to act on behalf of the defendant-entity. *See Montgomery Global Advisors*  
 15 *LLC*, 2006 WL 950102 at \*2 (holding, in case where contempt order was directed solely to a  
 16 corporate defendant, that managing member could be held personally liable for defendant’s  
 17 contempt because he “had and continues to have the ability to act on behalf of that entity and is  
 18 therefore legally identified with it.”); *Fid. Nat. Fin., Inc. v. Friedman*, 76 Fed. R. Serv.3d 276 at  
 19 \*13 (D. Ariz. 2010) (holding that nonparty was not “legally identified” with the party bound by  
 20 court order for contempt purposes because the plaintiff had not shown that the non-party was at  
 21 the very least either “legally responsible for the affairs of” the party bound or that he “had and  
 22 continues to have the ability to act on [his] behalf”).

23 Other than Mr. Ni’s testimony that the board opines on “major decisions,” there is no clear  
 24 and convincing evidence that the Directors have the ability to control Ningbo Sunny or exert  
 25 influence over its compliance with this Court’s orders. The parties dispute whether the Directors  
 26 collectively own a controlling share of Ningbo Sunny and there is contradicting evidence in the  
 27

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1 record on this point. *See* Reply, p. 11; Dir. Opposition, p. 14. This disputed evidence is not clear  
 2 and convincing proof that the Directors are able to control the Ningbo Sunny, and thus, the Court  
 3 does not find that they are legally identifiable with the company.

4 Because the evidence is insufficient to show that the Directors aided and abetted the  
 5 violation of the Sanctions Order or that they are legally identifiable with Ningbo Sunny, the Court  
 6 need not address the Directors' arguments regarding the jurisdiction of this Court or the  
 7 effectiveness of the requested sanctions. The Court **DENIES** the motion for contempt as to the  
 8 Directors.

9 **B. Peter Ni**

10 Unlike the evidence against the Directors, the evidence as to Mr. Ni offers a far more  
 11 compelling argument that Mr. Ni had actual notice of the Sanctions Order and that he is legally  
 12 identifiable with the company sufficient to hold him in contempt for the company's violation of  
 13 the Sanctions Order.

14 Mr. Ni was heavily involved in this case—he was deposed, he testified at trial, and he  
 15 submitted a post-judgment declaration, which the Court ultimately found to have been submitted  
 16 in bad faith. *See* Dkt. No. 521-1. Orion argues that Mr. Ni “must have known” about the  
 17 Celestron transfer because he testified that he personally had to approve all large orders and all  
 18 decisions about customer credit. Borden Decl. Ex. 2, Ni Deposition at 20:6-21. Not only was Mr.  
 19 Ni aware of and involved in Ningbo Sunny's misconduct, the evidence also indicates that he was  
 20 aware of the resulting Sanctions Order. Ningbo Sunny's prior counsel submitted a declaration  
 21 stating that “on April 24, 2020, undersigned counsel informed Ningbo Sunny that Orion had filed  
 22 a motion for civil contempt (Dkt. 645), and provided a copy of the motion to Peter Ni and its  
 23 outside Chinese counsel James Zou.” Caseria Decl. ¶3. The Caseria Declaration offers clear and  
 24 convincing evidence that Mr. Ni received the Contempt Motion. Even if Mr. Ni was not aware of  
 25 the Sanctions Order when it was issued on March 9, 2020, the Caseria Declaration indicates that  
 26 he became aware of it upon receipt of the Contempt Motion, which describes the Sanctions Order.

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1 In his Opposition, Mr. Ni concedes that he has notice of the Contempt Motion, but argues  
2 that Orion failed to properly serve him with the Sanctions Order under Rule 4 of the Federal Rules  
3 of Civil Procedure. Mr. Ni argues that because Orion did not formally serve him this Court lacks  
4 jurisdiction to hold him in contempt. Orion argues that formal service under Rule 4 is unnecessary  
5 because the Sanctions Order is binding on Mr. Ni under Rule 65(d). In support of his argument,  
6 Mr. Ni cites *AF Holdings LLC v. Navasca*, No. 12-cv-2396 EMC, 2013 WL 5701104 (N.D. Cal.  
7 Oct. 16, 2013). In *AF Holdings*, the Court held that it lacked jurisdiction to sanction two non-  
8 party attorneys who were not properly served with the motion for sanctions, despite the fact that  
9 the non-parties had actual notice of the motion. *Id.* at \*8. However, *AF Holdings* involved a  
10 motion for sanctions under 28 U.S.C. § 1927 and the Court’s inherent powers, rather than a  
11 motion to hold a nonparty in contempt for violating a prior court order issued pursuant to Rule  
12 65(d). Therefore, the court in that case did not have reason to address Rule 65(d), which this  
13 Court finds applicable here.

14 Rule 65(d) expressly states that an injunctive order is binding upon “the parties to the  
15 action, their officers, agents, servants, employees, and attorneys, and upon those persons in active  
16 concert or participation with them who receive actual notice of the order by personal service *or*  
17 *otherwise.*” Fed. R. Civ. P. 65(d) (emphasis added). The “or otherwise” at the end of Rule 65(d)  
18 makes clear that personal service is not required to bind non-party officers of a corporation to a  
19 court order, as long as the non-party has “actual notice” of the order. Thus, this Court agrees with  
20 Orion that because Mr. Ni had actual notice of the Sanctions Order at least as of April 24, 2020,  
21 the Court has jurisdiction to enforce the order against Mr. Ni under Rule 65(d), despite the fact  
22 that he was not served pursuant to Rule 4.

23 Mr. Ni also cites *Hilao v. Estate of Marcos*, in support of his argument that Rule 4 service  
24 was necessary here. 94 F.3d 539, 545 (9th Cir. 1996). At issue in *Hilao* was whether the district  
25 court properly enjoined the Republic of the Philippines, a non-party to the suit, from entering into  
26 agreements with the defendant. The plaintiff argued that the injunction was proper as to the

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1 Republic because the Republic was acting “in active concert or participation with” the defendant  
 2 under Rule 65(d). The *Hilao* Court reasoned that despite the fact that the Republic is bound by the  
 3 injunction under Rule 65(d), the district court would still need personal jurisdiction under the  
 4 Foreign Sovereign Immunities Act (“FSIA”) in order to enforce the injunction. *Id.* at 545.  
 5 Because no jurisdiction under the FSIA existed in that case, the injunction was futile and therefore  
 6 improper. *Id.* at 549.

7 Unlike in *Hilao*, the non-parties in the present case are not foreign sovereigns. Whereas  
 8 “[t]he FSIA is the sole basis for jurisdiction over a foreign state,” no such limitation applies in this  
 9 case. *Id.* at 545. Moreover, there is no contention here that the Sanctions Order was improperly  
 10 issued, and *Hilao* does not suggest that a court is powerless to enforce a properly issued order  
 11 against the parties bound by that order under Rule 65(d).

12 The Court further finds that Mr. Ni is legally identifiable with Ningbo Sunny such that he  
 13 may be held in contempt for the company’s failure to comply with the Sanctions Order. Mr. Ni is  
 14 the President and general manager of Ningbo Sunny. The company represented to the Court that  
 15 his responsibilities include “management and oversight of the entire company.” Dkt. No. 620 at 2.  
 16 Mr. Ni further testified that he manages the “daily operations” of the company, approves all big  
 17 orders, and reviews decisions about customer credit. *See* Trial Tr. 412:5-22.

18 The Court finds that these representations from Mr. Ni and Ningbo Sunny provide clear  
 19 and convincing evidence that Mr. Ni exercises control over and has the ability to act on behalf of  
 20 the company such that he is legally identifiable with it for the purpose of holding him in contempt.  
 21 *See Montgomery Global Advisors LLC*, 2006 WL 950102 at \*2; *Sequoia Dist. Council of*  
 22 *Carpenters*, 568 F.2d at 633 (“It can hardly be argued that the principal officers of a[n entity] are  
 23 not legally identified with it, and thus liable in contempt for disobeying an order directed to the  
 24 [entity].”).

25 Because Mr. Ni is legally identifiable with Ningbo Sunny and had actual notice of the  
 26 Sanctions Order, the Court **GRANTS** Orion’s motion to hold Mr. Ni in contempt.

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1                   **C. Ability to Comply**

2                   “In a civil contempt proceeding such as this, of course, a defendant may assert a present  
3 inability to comply with the order in question . . . It is settled, however, that in raising this defense,  
4 the defendant has a burden of production.” *United States v. Rylander*, 460 U.S. 752, 757 (1983);  
5 *Stone v. City and County of San Francisco*, 968 F.2d 850, 856 n.9 (9th Cir.1992) (once the party  
6 alleging contempt has presented clear and convincing evidence that the alleged contemnor violated  
7 a court order, “[t]he burden then shifts to the contemnors to demonstrate why they were unable to  
8 comply.”). “To satisfy this burden the respondent must show ‘categorically and in detail’ why he  
9 is unable to comply.” *N.L.R.B. v. Trans Ocean Exp. Packing, Inc.*, 473 F.2d 612, 616 (9th Cir.  
10 1973). The alleged contemnor “must show they took every reasonable step to comply.” *Am.*  
11 *Semiconductor, Inc. v. California Assignments LLC*, No. 12-CV-06138-LHK, 2013 WL 5937968,  
12 at \*3 (N.D. Cal. Oct. 30, 2013).

13                   Mr. Ni argues that Ningbo Sunny is not able to comply because the money it received from  
14 Celestron has been transferred to Ningbo Sunny’s bank in satisfaction of a prior debt. None of  
15 Mr. Ni, the Directors, or Ningbo Sunny have provided evidence to support this claim. The Court  
16 is not convinced that such a transfer would alleviate Ningbo Sunny’s obligation to comply with  
17 the Sanctions Order, but in any event, Mr. Ni has not met his burden of demonstrating that  
18 compliance is impossible. Nor has Ningbo Sunny or any of the non-parties shown that they took  
19 “reasonable steps to comply” with the order.

20                   **D. Appropriate Sanctions**

21                   Sanctions for civil contempt are limited to “(1) compel or coerce obedience to a court  
22 order, and/or (2) compensate the contemnor’s adversary for injuries resulting from the  
23 contemnor’s noncompliance.” *Ahearn ex rel. N.L.R.B. v. Int’l Longshore & Warehouse Union,*  
24 *Locals 21 & 4*, 721 F.3d 1122, 1131 (9th Cir. 2013). “Generally, the minimum sanction necessary  
25 to obtain compliance is to be imposed.” *Whittaker Corp.*, 953 F.2d at 517 (citing *Spallone v.*  
26 *United States*, 493 U.S. 265, 280 (1990); *Shillitani v. United States*, 384 U.S. 364, 371 (1966)).

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1 Orion seeks to hold Mr. Ni personally liable for not only the \$4.2 million at issue in the  
2 Sanctions Order but also for the full judgment over approximately \$52 million. Given Mr. Ni's  
3 involvement in the misconduct that gave rise to the Sanctions Order and his ability to control  
4 Ningbo Sunny, the Court finds coercive sanctions appropriate. Orion has not shown that it is  
5 necessary to hold Mr. Ni liable for the entire judgment in order to coerce Ningbo Sunny's  
6 compliance with the Sanctions Order. Rather, the Court finds it appropriate to hold Mr. Ni liable  
7 for the \$4.2 million that Ningbo Sunny owes Orion unless or until Ningbo Sunny fully complies  
8 with the Sanctions Order.

9 Orion additionally seeks \$19,142.50 for attorneys' fees and costs incurred in bringing the  
10 Contempt Motion. "An award of attorneys' fees and costs is also an appropriate remedy for civil  
11 contempt and is wholly independent of an award of compensatory damages." *Lovell v. Evergreen*  
12 *Res., Inc.*, No. C-88-3467 DLJ, 1995 WL 761269, at \*5 (N.D. Cal. Dec. 15, 1995). This Court has  
13 recently approved Orion's counsel's rates (*see* Dkt. Nos. 629, 657) and finds that the hours  
14 reportedly expended on the Contempt Motion are reasonable. Thus, the Court **GRANTS** Orion's  
15 requested attorneys' fees and costs in the amount of \$19,142.50.

#### 16 **IV. Conclusion**

17 For the reasons stated above, the Court **DENIES** the motion as to Ms. Dong and Mr. Yin  
18 and **GRANTS** the motion as to Mr. Ni. The Court **ORDERS** Mr. Ni to pay Orion a total of  
19 \$4,203,200.20, consisting of the \$4,184,057.70 due under the Sanctions Order and \$19,142.50 in  
20 attorneys' fees and costs. Mr. Ni's obligation to pay Orion shall be purged upon Ningbo Sunny's  
21 full compliance with the Sanctions Order, including its payment of the same sum to Orion.

22 **IT IS SO ORDERED.**

23 Dated: July 2, 2020



24  
25 EDWARD J. DAVILA  
United States District Judge

26  
27 Case No.: [5:16-cv-06370-EJD](#)

28 ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR SANCTIONS FOR  
CIVIL CONTEMPT