

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION
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IN RE:

Chapter 11

BING ENERGY INTERNATIONAL, INC.,¹
BING ENERGY INTERNATIONAL, LLC,

Case No. 16-40322

Case No. 16-40323

Debtors.

BING ENERGY INTERNATIONAL, INC.,

Plaintiffs,

v.

Adv. No.

JAMES ZHAI, YUNG CHEN, YOUNGMAN
(QUINGIAN) CAR GROUP CO., LTD,
BING HOLDINGS, LLC, HARRY CHEN,
And NANTONG BING ENERGY CO., LTD.

Defendants.

VERIFIED COMPLAINT

Plaintiffs Bing Energy International, Inc., by and through the undersigned counsel hereby sue James Zhai, Yung Chen, Youngman (Quingian) Car Group, Co., Ltd., and Bing Holdings, LLC (collectively (“Defendants”), and Nantong Bing Energy Co., Ltd. and in support thereof state:

¹ The Debtors in these cases, along with the addresses and last four digits of each Debtor’s federal tax identification number are Bing Energy International, Inc. (0064) and Bing Energy International, LLC (7608). The address of the Debtors is 2051 E. Paul Dirac Drive, Tallahassee, FL 32310.

Parties Jurisdiction and Venue

1. Plaintiff, Bing Energy International, Inc. (“Bing”) is a Cayman Islands LLC, whose principal place of business is in Tallahassee, Florida. International owns 100% of Bing Energy International, LLC.
2. Bing Energy International, LLC (“BEI”), is a Florida Limited Liability Company whose principal place of business is in Tallahassee, Florida. BEI owns 60% of Nantong Bing Energy Co., Ltd. BEI and International share a board of directors.
3. On July 7, 2016, Bing filed a Voluntary Petition for relief under Chapter 11 of the United States Bankruptcy Code. Bing is currently operating its business as a debtor in possession pursuant to 11 U.S.C. § 1107.
4. Defendant Youngman (Quingian) Car Group Co., Ltd. (“Youngman”) is a Chinese Corporation whose principal place of business is No. 501 BaDaStreet Jinhua, Zhejiang China with operations in the Rugao Economic & Technology Zone, in Rugao Jiangsu, PRC.
5. Defendant Nantong Bing Energy Co., Ltd. (“NBE”) is a company whose principal place of business is located in the Rugao Economic & Technology Zone, in Rugao Jiangsu, PRC. NBE is responsible for the production of technology and products developed by Bing.
6. Rugao Special Enterprise Zone Ltd. Company (“RSEZ”) owned 40% of Nantong Bing Energy Co., Ltd. RSEZ was created as a corporation of the Rugao Economic & Technology Zone, in Rugao Jiangsu, PRC (“Rugao”) and is owned by Rugao. Rugao is part of a free trade economic zone in China, and is an economic zone in the Nantong

County of China. RSEZ was created pursuant to a Cooperation Agreement between BEI and Rugao, pursuant to which Rugao invested more than \$6 million in NBE and provided Bing with economic incentives in exchange for Bing's agreement to operate NBE in Rugao.

7. Defendant James Zhai ("Zhai") is an individual who is otherwise *sui juris*. James Zhai was one of the original investors in Bing, and was a director on Bing's board of directors. Zhai had the ability to exert control over Bing. Zhai also signed a Non-Disclosure and Non-Competition Agreement. Pursuant to that agreement, Zhai agreed that he would not compete with Bing directly or disclose any of Bing's proprietary information. A true and correct copy of the Non-Disclosure and Non-Competition Agreement that Zhai signed is attached hereto as **Exhibit "A"**.

8. Accordingly, Zhai is an insider pursuant to 11 U.S.C. § 101 (31).

9. Defendant Yung Chen ("Y. Chen") is an individual who is a resident of Tallahassee and is otherwise *sui juris*. Prior to August 31, 2015, when Y. Chen was terminated from his position, Y. Chen was the CEO and Chair of the board of directors of BEI and International. Y. Chen also signed a Non-Disclosure and Non-Competition Agreement. Pursuant to that agreement Y. Chen agreed that he would not compete with Bing directly or disclose any of Bing's proprietary information. A true and correct copy of the Non-Disclosure and Non-Competition Agreement that Y. Chen signed is attached hereto as **Exhibit "B"**.

10. Accordingly, Y. Chen is an insider of Bing pursuant to 11 U.S.C. § 101(31).

11. Defendant Harry Chen (“H. Chen”)² is an individual who is a resident of Tallahassee and is otherwise *sui juris*. Prior to February 15, 2016, H. Chen was the CTO and a member of the board of directors of BEI and International. H. Chen also signed a Non-Disclosure and Non-Competition Agreement. Pursuant to that agreement H. Chen agreed that he would not compete with Bing directly or disclose any of Bing’s proprietary information. A true and correct copy of the Non-Disclosure and Non-Competition Agreement that H. Chen signed is attached hereto as **Exhibit “C”**.

12. Accordingly, H. Chen is an insider of Bing pursuant to 11 U.S.C. § 101(31).

13. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and 1334(b) as it is a civil proceeding arising under Title 11 of the United States Code, or is a civil action arising in or related to cases under Title 11 of the United States Code.

14. This is a core proceeding pursuant to the provisions of 28 U.S.C. §§ 157(b) (2) (A), (H), and (O). If any of the claims asserted herein constitute non-core proceedings or if this Court lacks constitutional authority to enter final judgment on any of the claims asserted herein pursuant to *Stern v. Marshall*, 131 S. Ct. 2594 (2011), and other applicable law, Bing consents to the entry of final orders and judgment by the Bankruptcy Court.

15. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. Alternatively, venue is proper in the Northern District of Florida pursuant to 28 U.S.C. § 1391(b) because a

² Collectively, H. Chen and Y. Chen are the “Chens.”

substantial part of the events or omissions giving rise to the claims asserted herein occurred in this District.

16. This Court has personal jurisdiction over the defendants under the facts of this proceeding as alleged below, under Rule 7004(f) of the Bankruptcy Rules and under any other applicable law.

Factual Allegations

17. Bing was created to develop a mechanism to commercialize a clean-energy technology, which utilizes a power source known as a Bucky Paper Fuel Cells or “BPFCs”. Bing develops technology to make BPFCs compatible with ordinary consumer products, and manufactures BPFC compatible products through NBE.

Bing Agrees to Move its Manufacturing Facilities to Rugao

18. Although the technology that Bing manufactures is revolutionary, the mass production of it is expensive. Accordingly, Bing sought to enter into an agreement with Rugao, in which Rugao would provide Bing with economic incentives, if Bing agreed to operate a manufacturing plant in Rugao.

19. To that end, on December 24, 2010, Bing and Rugao entered into a Cooperation Agreement (the “Cooperation Agreement”). Pursuant to the Cooperation Agreement, Bing would base its manufacturing facility in Rugao, and create a new entity to manufacture Bing’s products in Rugao. That new entity was NBE. A true and correct translated copy of the Cooperation Agreement is attached hereto as **Exhibit “D”**.

20. Y. Chen played an integral role in the formation of NBE and the partnership between Rugao (and later RSEZ) and Bing. Y. Chen is a natural born Chinese citizen,

with the ability to cause the exchange of American and Chinese money.³ Simply put, without Y. Chen, Bing could not invest any money with NBE, and NBE could not make any distributions to Bing.

21. Bing chose Y. Chen to represent its interests in Rugao, and ensure that NBE was properly managed, because Bing did not have any other contacts or connections with Rugao. Without Y. Chen's assistance in Rugao, Bing could not find an "affordable" means to manufacture the technology it developed.

22. Since Bing's interest in NBE was one of Bing's most valuable assets and Bing's interests could not be protected without a local presence, Y. Chen was given the responsibility of being Bing's CEO and the Chair of its board of directors. Y. Chen also served as Bing's representative on NBE's board of directors.

23. Despite the level of responsibility Y. Chen enjoyed, Y. Chen was not a good businessman. However, because of Y. Chen's connections to Rugao, and thus RSEZ, Y. Chen was the only available candidate who could serve as Bing's CEO and the Chair of its Board.

24. Because of Y. Chen's involvement with Bing, Bing was able to invest \$1,500,000 in NBE. Prior to 2015, Bing used NBE to successfully produce a BPFC compatible technology.

25. Through Y. Chen, NBE also regularly made purchase orders with Bing, which permitted Bing to generate revenue. The revenue Bing generated, through NBE, allowed it to operate and develop new technology.

³ Y. Chen also maintains a residence in Shanghai.

Yung Chen Develops a Scheme to Avoid Termination

26. In January 2015, Y. Chen requested a pay raise from Bing's board of directors. Although Bing's board of directors did not oppose the idea, they did not agree to the raise that Y. Chen sought, at that time.

27. In March 2015, Y. Chen again requested a raise. Although the Board agreed to give Y. Chen a raise, it had not officially approved of one because Y. Chen failed to respond to the Board's offer.

28. On information and belief, Y. Chen was not satisfied with the proposed salary increase and wanted more money.

29. In the summer of 2015, Y. Chen's dissatisfaction with Bing became apparent. During that time, Y. Chen became increasingly erratic. Y. Chen would send e-mails that were difficult to comprehend to Bing's board of directors, and would take days to respond to any correspondence from the Bing's board of directors.

30. More importantly, Y. Chen failed to develop any long term strategy for Bing's growth, and lacked vision for Bing, despite encouragement and support from Bing's board of directors.

31. Y. Chen also failed to properly account for unforeseen circumstances and ensure that Bing had sufficient capital to operate. As a result of Y. Chen's conduct, Bing was forced to seek outside funding to meet its obligations.

32. Y. Chen blamed his poor performance on Bing's board of directors and often disagreed with Bing's board of directors on issues relating to Bing's management. Y.

Chen also regularly clashed with other members of Bing's board of directors on the proper security procedures in connection with Bing's intellectual property.⁴

33. On information and belief, Y.Chen intentionally created discourse within Bing's leadership so that he could take advantage of its operational and financial distress.

34. Y. Chen claimed that a conflict between Bing's American board members and their Chinese counter-parts caused a significant problem. However, Y. Chen regularly clashed with Chinese members of Bing's board, including Bing's Chief Scientist, Jian Ping Zheng.

35. Y. Chen also claimed that it would be better for Bing to be owned almost entirely by Chinese citizens. Y. Chen wanted to change Bing's ownership, in part, because he was also asked by Chinese investors in Rugao to be the Chair and CEO of a Chinese company that develops products that are similar to BPFCs.

36. As a result, members of Bing's board questioned Y. Chen's fitness to serve as its CEO and Chair. Those members also questioned Y. Chen's mental well-being. In fact, in May 2015, members of Bing's board discussed replacing Y. Chen with a professional CEO. Bing's board also required Y. Chen to submit to an annual performance review.

37. On information and belief, Y. Chen believed that he would be terminated as Bing's CEO and as the Chair of Bing's board of directors, unless he took action to take control of NBE, which was one of Bing's primary assets.

⁴ Bing limited the technology it provided NBE, to ensure its trade secrets were protected. However, Y. Chen felt that the aforementioned procedures were overly burdensome.

38. To avoid termination, on information and belief, Y. Chen crafted a plan to deprive Bing of its ownership in NBE, so that he could operate Bing from China without the oversight of Bing's board of directors.

39. On information and belief, Y. Chen approached Youngman, his brother H. Chen, and Zhai and developed a plan through which they could deprive Bing of its ownership interest in NBE and take control of that company.

40. On information and belief Y. Chen, Youngman, H. Chen, and Zhai sought to prevent people who were not Chinese citizens, from investing in or otherwise owning NBE or any of its affiliates.

Yung and Harry Chen, Youngman, and James Zhai Deprive Bing of Its Primary Asset

41. Y. Chen knew that Bing was nearly insolvent, if it was not in fact insolvent at that time, because the disputes between Y. Chen and other board members deterred investors.⁵ Y. Chen also knew that Bing was in desperate need of cash and additional financing. H. Chen, Zhai and Youngman were also aware of that fact.

42. On information and belief, Y. Chen had Youngman approach Bing's board of directors to offer to acquire the company for \$12 million. Specifically, Youngman would offer to invest \$6 million in NBE and \$6 million in International. Youngman manufactures trucks and cars that could be converted to utilize technology that Bing was developing, and therefore, seemed like the perfect strategic ally for Bing.

43. However, on information and belief, Youngman never intended to invest the \$6 million in NBE or Bing.

⁵ Bing was insolvent during that time period.

44. Instead, on information and belief, Youngman's offer to invest money in International and NBE was simply a ruse to convince Bing to relinquish its controlling interest in NBE.

45. On or about August 15, 2015, Zhai, Rugao, Youngman and Y. Chen executed an instrument referred to as the Five Party Agreement. A true and correct copy of a translation of the Five Party Agreement is attached hereto as **Exhibit "E"**.

46. The material terms of the Five Party Agreement are as follows:

a. Youngman would invest \$6 million in NBE.

b. In exchange for Youngman's investment in NBE, Bing and Rugao would permit the dilution of its shares in NBE such that Bing and Rugao would each own 20% of NBE, and Youngman would own the remaining 60% of NBE.

c. Youngman would also invest an additional \$6 million in International, in exchange for an 70% ownership in International.

d. The board of directors of NBE would consist of a representative of International, BEI, and Rugao. Youngman would be entitled to appoint three representatives to NBE's board of directors.

47. In sum, the Five Party Agreement provided Youngman with a controlling interest in both Bing and NBE in exchange for a \$12 million capital infusion.

48. The Chens were not authorized to enter into the Five Party Agreement on Bing's behalf, and the Five Party Agreement was simply a façade used to convince Bing's board of directors to relinquish its control over NBE, in exchange for the additional cash investment.

49. However, on August 15, 2015, and despite the fact that the other directors of Bing's board explicitly declined to execute the Five Party Agreement, and Y. Chen, executed the agreement on Bing's behalf.

50. After the Y. Chen executed the Five Party Agreement on Bing's behalf, Y. Chen notified Bing's board of that fact.

51. Bing's board did not discover that H. Chen was involved in the execution of the Five Party Agreement until several months later, when they witnessed a video of H. Chen witnessing the signing of the Five Party Agreement.

52. Although Bing's board did not authorize the transaction, it had no choice but to agree to the Five Party Agreement in principle, because of Bing's financial situation. In other words, Bing's board agreed to sell control of NBE and International to Youngman, but they insisted on significant clarification to and modification of the Five Party Agreement.

53. Y. Chen also convinced Bing's board to rely on his representations by using the fact that his brother, H. Chen, was also a member of Bing's board.

54. H. Chen allowed Bing's board to rely on Y. Chen's representations. However, H. Chen was secretly working with Y. Chen, and H. Chen knew that Y. Chen was not acting to advance Bing's interests.

55. In fact, through a board resolution dated August 21, 2015, Bing authorized its Chief Financial Officer to re-negotiate the terms of the Five Party Agreement on behalf of its shareholders. A true and correct copy of the August 21 Board Resolution is attached hereto as **Exhibit "F."**

56. The August 21 Board Resolution reflected Bing's desperate financial situation. Bing did not have sufficient working capital to meet its current obligations. Notably, Bing had to make payments to FSU or risk losing its license to use certain BPFC technology.⁶

57. Despite the fact that the Bing's board needed to obtain funding through Youngman, Bing terminated Y. Chen as the Chair of its board and CEO on August 21, 2015. In terminating Y. Chen, Bing's board noted that Y. Chen "might have broken both civil and security laws in the United States and Cayman Islands, putting Bing . . . in grave peril." A true and correct copy of that board resolution is attached hereto as **Exhibit "G"**.⁷

58. Despite the fact that Y. Chen was terminated as Bing's CEO, Y. Chen continued to act as the president of NBE and continued to direct NBE's activities. On information and belief, Y. Chen was able to act as NBE's president because Youngman and H. Chen supported him.

59. Y. Chen also continued to claim that he was Bing's CEO and the Chair of its board, notwithstanding his termination.

60. After Y. Chen was terminated as Bing's CEO and the Chair of Bing's board, Youngman agreed to renegotiate the terms of the Five Party Agreement. Youngman conditioned its willingness to renegotiate the terms of the Five Party Agreement on whether Bing performed under that agreement and permitted the dilution of its shares.

⁶ Notwithstanding the loss of the license with FSU, Bing developed its own proprietary technology, which could be used and developed notwithstanding a loss of the licensing agreement with FSU.

⁷ On information and belief, H. Chen signed the aforementioned board resolution to prevent the Bing's board of directors from suspecting that he was assisting Y. Chen.

61. Despite Youngman's representations, Youngman was not actually willing to renegotiate the terms of the Five Party Agreement. It was using Bing's desperation to cause Bing to permit the dilution of the Bing's shares in NBE, which would permit Youngman, Zhai and the Chens to seize control of NBE.

62. Representatives of Youngman, through Y. Chen, H. Chen and Zhai, also told Bing that once Bing allowed the dilution to occur and the associated change in NBE's board occurred, Youngman would contribute \$6 million to NBE, and would make another \$6 million investment in International, as described in paragraph 44 above.

63. In reliance on Youngman and H. Chen's representations, Bing agreed to permit the dilution of its shares in NBE.

64. In connection with the dilution of its shares in NBE, Bing allowed the change in the board of directors of NBE to occur as contemplated by the Five Party Agreement.

65. Bing permitted the change in NBE's board of directors based on Youngman, Zhai, and the Chens' assurances that a capital infusion from Youngman would occur shortly after Youngman was given control over NBE's board.

66. Zhai and Y. Chen were appointed as Bing's representatives on NBE's Board of Directors.

67. Once Zhai, Youngman, and Y. Chen had control over NBE, Zhai and Youngman executed a Memorandum of Understanding (the "MOU") on September 21, 2016. A true and correct copy of the MOU is attached hereto as **Exhibit "H"**.

68. Pursuant to the MOU, NBE's shares would be transferred to Bing Holdings, a company that was formed by Zhai. Like the Five Party Agreement, the MOU was a

façade used to authorize the transfer of Bing's NBE shares to Bing Holdings. Moreover, the execution of the MOU was never authorized by Bing's board of directors.

69. RSEZ would not have permitted Bing's shares in NBE to be transferred to Bing Holdings without appropriate authorization, but the MOU provided Zhai with apparent authority. As a result, RSEZ did not question the MOU because it had an interest in ensuring that NBE's productions occurred in China.

70. Shortly after execution of the MOU, NBE caused BEI's shares in NBE to be transferred to Bing Holdings.

71. Neither Zhai nor the Chens ever disclosed the transfer of Bing's NBE shares to Bing Holdings.

72. Moreover, neither Zhai nor Bing Holdings ever provided any consideration to Bing for the transfer of its shares in NBE.

73. Youngman also did not provide Bing with any consideration for its interest in NBE. On information and belief, Youngman invested \$4.5 million into NBE, after Bing's interest in NBE had been transferred to Bing Holdings. More significantly, Youngman never intended to invest \$6 million with International.

The Defalcation Continues

74. Bing did not know that its primary asset had been transferred to Bing Holdings, and Bing's board of directors — except for Zhai and the Chens — believed that Youngman would be investing in Bing and NBE, providing it with the capital it needed to survive.

75. To that end, Bing's board of directors authorized a \$300,000 bridge loan from NBE to ensure that employees and other critical obligations were paid.

76. Because neither Zhai nor the Chens informed the remaining members of Bing's board of directors that Bing no longer owned any shares of NBE pursuant to the MOU, or that Youngman was not going to invest in International, Bing sought to obtain bridge financing through NBE, and did not seek to raise any capital from its domestic investors or other sources.

77. Bing's board of directors felt that borrowing was appropriate because H. Chen assured it that Youngman would promptly provide the promised funding. In fact, during September, 2015, H. Chen repeatedly assured Bing's board of directors that the funding from Youngman would be forthcoming.

78. Because Bing relied on Zhai and the Chens' representations concerning the \$300,000 bridge loan, and neither Zhai nor the Chen — Bing's representatives in China — informed Bing that Bing's shares in NBE had been transferred to Bing Holdings, Bing did not seek alternative financing.

79. However, neither Zhai nor the Chens ever intended to cause NBE to provide Bing with any bridge financing, and neither Zhai nor the Chens ever caused NBE to provide Bing with the money sought.

80. Although NBE caused \$300,000 to be transferred into Bing's Chinese bank accounts, Y. Chen refused to cause the transfer of such money to Bing in the United States where funds were critically needed. On information and belief Y. Chen knew that Bing would close unless it received that money, and therefore intentionally prevented Bing from receiving the bridge funding at issue.

81. Accordingly, Bing was harmed by its reliance on Zhai and the Chens' representations that they would cause NBE to provide Bing with bridge financing, because Bing was unable to meet its obligations and raise additional capital. Among others, Zhai and the Chens' misrepresentations caused Bing to lose its licensing agreement with FSU, and to lose their employees, as Bing lacked capital to pay them.

82. In sum, Zhai and the Chens' conduct ultimately caused Bing to file the instant voluntary petition under Chapter 11 of the United States Bankruptcy Code.

Count I
Fraud
(Against Y. Chen, H. Chen, Youngman, and Zhai)

83. Bing reincorporates by reference paragraphs 1 through 82 above as if set forth in full herein.

84. Youngman, Zhai, and the Chens made material representations to Bing concerning the consummation of the Five Party Agreement in August and September, 2015.

85. Specifically, Youngman, Zhai, and the Chens represented that Youngman would invest \$6 million in NBE, and an additional \$6 million in International in exchange for a controlling interest in International and NBE.

86. Youngman, Zhai, and the Chens made the foregoing representations to Bing with the intention of having Bing rely on such representations.

87. Because of the trust that Bing placed in Youngman, Zhai, and the Chens, Bing reasonably relied on their misrepresentations.

88. However, Youngman, Zhai, and the Chens' representations were false because Youngman never intended to invest \$12 million in NBE and International.

89. Instead, Youngman, Zhai, and the Chens used the Five Party Agreement as a mechanism to deprive Bing of its ownership interest in NBE.

90. Youngman, Zhai, and the Chens' misrepresentations harmed Bing because Bing allowed the dilution of its shares in NBE in reliance on their misrepresentations. The dilution of Bing's shares permitted Youngman, Zhai, and the Chens to transfer all of Bing's shares in NBE to Bing Holdings.

91. As a result of Youngman, Zhai, and the Chens' misrepresentations, Bing was in fact harmed.

WHEREFORE Bing requests entry of Judgment in its favor and against Youngman, Y. Chen, H. Chen, and Zhai (i) Awarding Bing damages as a result of Youngman, Zhai, and the Chens' conduct; and (ii) Granting such further relief as the Court deems just and proper.

Count II
Fraud by Omission
(Against Y. Chen, H. Chen, Youngman, and Zhai)

92. Bing reincorporates by reference paragraphs 1 through 82 above as if set forth in full herein.

93. Youngman, Zhai, and the Chens, made material representations to Bing concerning the consummation of the Five Party Agreement in August and September, 2015.

94. Specifically, Youngman, Zhai, and the Chens all represented that Youngman would invest \$6 million in NBE, and an additional \$6 million in International in exchange for a controlling interest in International and NBE.

95. Youngman, Zhai, and the Chens all knew or should have known that Youngman never intended to invest \$12 million in International and NBE. Youngman, Zhai, and the Chens also knew that Zhai, purporting to act on Bing's behalf, executed the MOU, which would cause the transfer of Bing's shares in NBE to Bing Holdings.

96. Youngman, Zhai and the Chens used the Five Party Agreement and MOU as a mechanism to deprive Bing of its ownership interest in NBE.

97. However, none of Youngman, Zhai, or the Chens ever disclosed any of the foregoing facts to Bing or its full board of directors.

98. Every time that Youngman, Zhai, Y. Chen, or H. Chen was involved in discussions or negotiations concerning the Five Party Agreement, all of them knew or should have known that the MOU and/or Youngman's true intentions should have been disclosed.

99. However, on each occasion when Youngman, Zhai, and the Chens interacted with Bing about those transactions, they intentionally failed to disclose material facts to Bing.

100. Because of the trust that Bing placed in Youngman, Zhai, and the Chens, Bing reasonably relied on their representations, and on the fact that Youngman, Zhai, and the Chens would have disclosed the aforementioned transactions.

101. Youngman, Zhai, and the Chens' misrepresentations harmed Bing because Bing allowed the dilution of its shares in NBE in reliance on their misrepresentations. The dilution of Bing's shares permitted Youngman, Zhai, and the Chens to transfer all of Bing's shares in NBE to Bing Holdings.

102. Additionally, the Chens and Zhai knew or should have known that Bing would rely on their misrepresentations concerning the \$300,000 in bridge financing. However, the Chens and Zhai failed to disclose that no bridge financing would be received.

103. As a result of Zhai and the Chens' failure to disclose that there would be no bridge financing, Bing was unable to meet its current obligations.

104. As a result of Youngman, Zhai, and the Chens' misrepresentations, Bing was in fact harmed.

WHEREFORE Bing requests entry of Judgment in its favor and against Youngman, Y. Chen, H. Chen, and Zhai: (i) Awarding Bing damages as a result of Youngman, Zhai, and the Chens' conduct; and (ii) Granting such further relief as the Court deems just and proper.

Count III
Negligent Misrepresentation
(Against Y. Chen, H. Chen, Youngman, and Zhai)

105. Bing reincorporates by reference paragraphs 1 through 82 above as if set forth in full herein.

106. Youngman, Zhai, and the Chens made material representations to Bing concerning the consummation of the Five Party Agreement in August and September, 2015.

107. Specifically, Youngman, Zhai, and the Chens all represented that Youngman would invest \$6 million in NBE, and an additional \$6 million in International in exchange for a controlling interest in International and NBE.

108. Youngman, Zhai, and the Chens all knew or should have known that Youngman never intended to invest \$12 million in International and NBE. Youngman, Zhai, and the Chens also knew that Zhai, purporting to act on Bing's behalf executed the MOU, which would cause the transfer of Bing's shares in NBE to Bing Holdings.

109. Youngman, Zhai, and the Chens used the Five Party Agreement and MOU as a mechanism to deprive Bing of its ownership interest in NBE.

110. However, none of Youngman, the Chens, or Zhai ever disclosed any of the foregoing facts to Bing. Instead, all of the foregoing parties made representations to Bing

to induce Bing into believing that the Five Party Agreement was a real agreement and that Youngman would invest \$12 million in International and NBE.

111. When Youngman, Zhai, and the Chens were involved in discussions or negotiations concerning the Five Party Agreement, they knew or should have known that the MOU and/or Youngman's true intentions should have been disclosed.

112. However, on each occasion when Youngman, Zhai, and the Chens interacted with Bing about those transactions, they intentionally failed to disclose material facts to Bing.

113. Because of the trust that Bing placed in Youngman, Zhai, and the Chens, Bing reasonably relied on their representations, and on the fact that Youngman, Zhai, and the Chens would have disclosed the aforementioned transactions.

114. Youngman, Zhai, and the Chens' misrepresentations harmed Bing because Bing allowed the dilution of its shares in NBE in reliance on their misrepresentations. The dilution of Bing's shares permitted Youngman, Zhai, and the Chens to transfer all of Bing's shares in NBE to Bing Holdings.

115. As a result of Youngman, Zhai, and the Chens' misrepresentations, Bing was in fact harmed.

WHEREFORE Bing requests entry of Judgment in its favor and against Youngman, Y. Chen, H. Chen, and Zhai (i) Awarding Bing damages as a result of Youngman, Zhai, and the Chens' conduct; and (ii) Granting such further relief as the Court deems just and proper.

Count IV
Aiding and Abetting Fraud
(Against H. Chen, Youngman, and Zhai)

116. Bing reincorporates by reference paragraphs 1 through 82, 84 through 91, and 93 through 104 above as if set forth in full herein.

117. Count IV is being pled in the alternative.

118. As set forth in Paragraphs 84 through 91 and 93 through 104 above, the Chens, Youngman, and Zhai defrauded Bing.

119. Specifically, Youngman, Zhai, and the Chens all represented that Youngman would invest \$6 million in NBE, and an additional \$6 million in International in exchange for a controlling interest in International and NBE.

120. Youngman, Zhai, and the Chens all knew or should have known that Youngman never intended to invest \$12 million in International and NBE. Youngman, Zhai, and the Chens also knew that Zhai, purporting to act on Bing's behalf, executed the MOU, which would cause the transfer of Bing's shares in NBE to Bing Holdings.

121. Youngman, Zhai and the Chens used the Five Party Agreement and MOU as a mechanism to deprive Bing of its ownership interest in NBE.

122. However, none of Youngman, Zhai, or the Chens ever disclosed any of the foregoing facts to Bing or its full board of directors.

123. Every time that Youngman, Zhai, Y. Chen, or H. Chen was involved in discussions or negotiations concerning the Five Party Agreement, all of them knew or should have known that the MOU and/or Youngman's true intentions should have been disclosed.

124. However, on each occasion when Youngman, Zhai, and the Chens interacted with Bing about those transactions, they intentionally failed to disclose material facts to Bing.

125. Because of the trust that Bing placed in Youngman, Zhai, and the Chens, Bing reasonably relied on their representations, and on the fact that Youngman, Zhai, and the Chens would have disclosed the aforementioned transactions.

126. Youngman, Zhai, and the Chens' misrepresentations harmed Bing because Bing allowed the dilution of its shares in NBE in reliance on their misrepresentations. The dilution of Bing's shares permitted Youngman, Zhai, and the Chens to transfer all of Bing's shares in NBE to Bing Holdings.

127. Additionally, the Chens and Zhai knew or should have known that Bing would rely on their misrepresentations concerning the \$300,000 in bridge financing. However, the Chens and Zhai failed to disclose that no bridge financing would be received.

128. As a result of Zhai and the Chens' failure to disclose that there would be no bridge financing, Bing was unable to meet its current obligations.

129. By failing to disclose the foregoing misconduct, Youngman Zhai and the Chens were aware of and provided substantial assistance to the aforementioned fraud.

130. As a result of Youngman, Zhai, and the Chens' aiding and abetting fraud, Bing was in fact harmed.

WHEREFORE Bing requests entry of Judgment in its favor and against Youngman, Y. Chen, H. Chen, and Zhai: (i) Awarding Bing damages as a result of Youngman, Zhai, and the Chens' conduct; and (ii) Granting such further relief as the Court deems just and proper.

Count V
Breach of Fiduciary Duty
(Against Y. Chen, H. Chen, and Zhai)

131. Bing reincorporates by reference paragraphs 1 through 82 above as if set forth in full herein.

132. As directors of International and BEI, the Chens and Zhai owed Bing fiduciary duties, at all times relevant to this Complaint.

133. Y. Chen also owed Bing an implied fiduciary duty, as Bing placed its trust in Y. Chen to manage its affairs in Rugao. Y. Chen knew of that trust and accepted it by acting on Bing's behalf in Rugao.

134. In 2015, the Chens and Zhai made material representations to Bing concerning the consummation of the Five Party Agreement in August and September 2015.

135. Specifically, the Chens and Zhai both represented that Youngman would invest \$6 million in NBE, and an additional \$6 million in International in exchange for a controlling interest in International and NBE.

136. The Chens and Zhai knew or should have known that Youngman never intended to invest \$12 million in International and NBE. Youngman, Zhai, and the Chens also knew that Zhai, purporting to act on Bing's behalf, executed the MOU, which would cause the transfer of Bing's shares in NBE to Bing Holdings.

137. Youngman, Zhai, and the Chens used the Five Party Agreement and MOU as a mechanism to deprive Bing of its ownership interest in NBE.

138. However, none of Youngman, Zhai or the Chens ever disclosed any of the foregoing facts to Bing. Instead, all of the foregoing individuals made representations to Bing to induce Bing into believing that the Five Party Agreement was a real agreement and that Youngman would invest \$12 million in International and NBE.

139. When Youngman, Zhai, and the Chens were involved in discussions or negotiations concerning the Five Party Agreement, all of them knew or should have known that the MOU and/or Youngman's true intentions should have been disclosed.

140. However, on each occasion when Youngman, Zhai, and the Chens interacted with Bing about those transactions, they intentionally failed to disclose material facts to Bing.

141. Because of the trust that Bing placed in the Chens and Zhai, Bing reasonably relied on their representations and on the fact that the Chens and Zhai would have disclosed the aforementioned transactions.

142. Zhai and the Chens' misrepresentations harmed Bing because Bing allowed the dilution of its shares in NBE in reliance on their misrepresentations. The dilution of Bing's shares permitted Youngman, Zhai, and the Chens to transfer all of Bing's shares in NBE to Bing Holdings.

143. The Chens and Zhai improperly benefitted from the transfer of Bing's shares in NBE to Bing Holdings, because they both held an indirect interest in Bing Holdings.

144. Moreover, on information and belief, as a result of the Five Party Agreement and fraudulent transaction, the Chens and Zhai were given an ownership interest, and/or an indirect ownership interest in NBE.

145. All of the foregoing conduct constitutes a breach of fiduciary duties by the Chens and Zhai.

146. As a result of Zhai and the Chens' breaches of fiduciary duties, Bing was in fact harmed.

WHEREFORE Bing requests entry of Judgment in its favor and against Y. Chen, H. Chen, and Zhai (i) Awarding Bing damages as a result of Zhai and the Chens' conduct; and (ii) Granting such further relief as the Court deems just and proper.

Count VI
Aiding and Abetting Breaches of Fiduciary Duty
(Against Youngman)

147. Bing reincorporates by reference paragraphs 1 through 82, and 132 through 146 above as if set forth in full herein.

148. As set forth in further detail in Paragraphs 111 through 126 above, the Chens and Zhai breached their fiduciary duties.

149. Youngman knew that the Chens and Zhai breached their fiduciary duties because it was a party to the conspiracy, plan, or scheme, whereby Bing would be deprived of all of its interests in NBE.

150. Youngman provided the Chens and Zhai with substantial assistance in breaching their fiduciary duties by representing in the Five Party Agreement and other communications with Bing's board of directors that it would invest in International and NBE, when it had no intention of doing so.

151. Youngman's conduct caused Bing to suffer damages, and in fact Bing suffered damages.

WHEREFORE Bing respectfully requests that the Court enter judgment in its favor and against Youngman for: (i) Damages in an amount to be determined at trial which were caused by Zhai and the Chens' breaches of fiduciary duties; and (ii) Such further relief as the Court deems just and proper.

Count VII
Aiding and Abetting Breaches of Fiduciary Duty
(Against H.Chen)

152. Bing reincorporates by reference paragraphs 1 through 80 and 132 through 146 above as if set forth in full herein.

153. Count VII is being pled in the alternative.

154. As set forth in further detail in Paragraphs 111 through 126 above, Y. Chen and Zhai breached their fiduciary duties.

155. H. Chen knew that the Y. Chen and Zhai breached their fiduciary duties because he was a party to the conspiracy, plan, or scheme, whereby Bing would be deprived of all of its interests in NBE.

156. H. Chen provided Y. Chen and Zhai with substantial assistance in breaching their fiduciary duties by representing that he was unaware of the Five Parties Agreement, and by allowing Y. Chen to use his relationship with H. Chen to secure the transfer of NBE shares from Bing.

157. H. Chen's conduct caused Bing to suffer damages, and in fact Bing suffered damages.

WHEREFORE Bing respectfully requests that the Court enter judgment in its favor and against H. Chen for: (i) Damages in an amount to be determined at trial which were caused by Zhai and Y. Chen's breaches of fiduciary duties; and (ii) Such further relief as the Court deems just and proper.

Count VIII
Civil Conspiracy
(Against all Defendants)

158. Bing reincorporates paragraphs 1 through 157 above as if set forth in full herein.

159. As set forth in further detail above, Defendants committed tortious acts intended to harm Bing.

160. Defendants agreed to a scheme through which Defendants could fraudulently deprive Bing of its ownership interest in NBE.

161. As set forth in further detail above, Defendants fraudulently induced Bing, in what constitutes a breach of Zhai and the Chens' fiduciary duties, to allow the dilution of its shares in NBE.

162. Defendants used that dilution to transfer Bing's shares in NBE to Bing Holdings.

163. As a result of Defendants' conduct, Bing in fact suffered damages.

WHEREFORE Bing respectfully requests that the Court enter judgment in its favor and against Defendants (i) Holding Defendants jointly and severally liable for the harm that

Defendants caused Bing to suffer; and (ii) Granting such further relief as the Court deems just and proper.

Count IX
Avoidance of Fraudulent Transfer
Pursuant to 11 U.S.C. § 548(a) (1) (A) and 11 U.S.C. § 550
(Against Bing Holdings)

164. Bing reincorporates by reference paragraphs 1 through 80, 82 through 89, 91 through 102, 104 through 113, 115 through 129, 131 through 134, and 136 through 140 above as if set forth in full herein.

165. Bing's principal asset is its ownership interest in NBE. Thus Bing's shares in NBE are property of the Estate.

166. Bing Holdings received a transfer of Bing's ownership interest in NBE.

167. Accordingly, Bing Holdings received a transfer of property of the estate.

168. On information and belief, Bing Holdings is owned and controlled by Zhai. Accordingly, Bing Holdings is an insider of Bing.

169. At the time of the transfer, Bing was insolvent.

170. Bing Holdings paid no consideration for the transfer of Bing's shares in NBE.

171. The transfer of Bing's shares to NBE occurred with the actual intent to hinder, delay, and defraud creditors, because it was effectuated as part of a fraudulent scheme, which is set forth in further detail above.

172. Accordingly, the transfer of Bing's shares in NBE to Bing Holdings may be avoided.

WHEREFORE Bing requests that the Court enter Judgment in its favor and against Youngman: (i) Avoiding the transfer of Bing's shares in NBE to Bing Holdings; (ii) Disallowing any claim that Bing Holdings may have against Bing's bankruptcy estate; (iii) Permitting Bing to recover of the value of the transfer pursuant to 11 U.S.C. § 550; (iv) Awarding Bing all costs of this action; and (v) Granting such further relief as the Court deems just and proper.

Count X
Avoidance of Fraudulent Transfer
Pursuant to 11 U.S.C. § 548(a) (1) (A) and 11 U.S.C. § 550
(Against Youngman)

173. Bing reincorporates by reference paragraphs 1 through 80, 82 through 89, 91 through 102, 104 through 113, 115 through 129, 131 through 134, and 136 through 140 above as if set forth in full herein.

174. Bing's principal asset is its ownership interest in NBE. Thus Bing's shares in NBE are property of the Estate.

175. By causing Bing to dilute its interests in NBE to provide Youngman with an interest in NBE, Youngman received a transfer from Bing.

176. Accordingly, Youngman received a transfer of property of the estate.

177. At the time of the transfer, Bing was insolvent.

178. Youngman paid no consideration for the transfer of Bing's shares in NBE to Youngman.

179. The transfer of Bing's share's to NBE occurred with the actual intent to hinder, delay, and defraud creditors, because it was effectuated as part of a fraudulent scheme, which is set forth in further detail above.

180. Accordingly, the transfer of Bing's shares in NBE to Bing Holdings may be avoided.

WHEREFORE Bing requests that the Court enter Judgment in its favor and against Bing Holdings: (i) Avoiding the transfer of Bing's shares in NBE to Youngman; (ii) Disallowing any claim that Youngman may have against Bing's bankruptcy estate; (iii) Permitting Bing to recover of the value of the transfer pursuant to 11 U.S.C. § 550; (iv) Awarding Bing all costs of this action; and (v) Granting such further relief as the Court deems just and proper.

Count XI
Breach of Contract
(Against Y. Chen, H. Chen, and Zhai)

181. Bing reincorporates by reference paragraphs 1 through 80 as if set forth in full herein.

182. Count XI is being pled in the alternative.

183. The Chens and Zhai entered into Non-Disclosure and Non-Competition Agreements (the "Bing NDAs") with Bing. A true and correct copy of the Bing NDAs are attached to the Complaint as Exhibits A, B, and C.⁸

184. Pursuant to the Bing NDAs the Chens and Zhai were prohibited from disclosing any "Confidential Information" to third parties. Confidential information includes any confidential or proprietary information owned possessed or used by Bing and includes:

(a) all industrial and intellectual property rights, including without limitation confidential information, copyright applications, copyrights, development tools, discoveries, franchises, ideas, improvements, instructions, inventions, know-how, letters patent, licenses, logos and designs, marketing materials, patent applications, patent rights, patents, proprietary processes and formulae, recipes,

⁸ The Bing NDAs are substantially the same.

service mark applications, service marks, trademark applications, trademarks, trade names, trade secrets, trade dress, and all documentation and media constituting, describing or arising out of, connected to, incidental to or related to the foregoing, including manuals, memoranda and records; (b) algorithms, concepts, devices, formats, graphics, methods, procedures, products, programs, specifications, techniques, user interfaces and all other technology; (c) the "look and feel" of any software and websites; (d) agent and independent contractor lists and related information, books and records, business acquisition plans, business plans, compilations, computer software programs (including object code and source code), cost information, current and anticipated client requirements, client lists and related information, data and documentation and databases (including architectures, structures, systems and technologies), details of agreements and contracts (including those with agents, clients, employees, independent contractors, suppliers and vendors), distribution channels, financial information and data (including budgets, financial statements, forecasts and projections), market studies, marketing plans, new personnel acquisition plans, operational methods, pricing information (including price lists and pricing policies), product development plans and techniques, research and development (including past, current and planned), strategies, supplier lists and related information, vendor lists and related information; (e) any information that constitutes a "trade secret" under the Laws of the State of Florida ("Trade Secret"); and (f) any confidential or proprietary information disclosed to the Employee by any of the Company's affiliates, agents, directors, employees, members, officers, owners, partners or representatives (including its accountants, attorneys and financial advisors) (collectively, the "Company's Representatives").

Exhibits A, B and C at 1.

185. To further protect its interests, Bing required the Chens and Zhai to return or destroy all of Bing's "tangible materials (and all copies thereof) and any material stored in any medium including any electronic format that disclose or embody Confidential Information, including any Confidential Information prepared by the Employee." *Id.*

186. Moreover, a provision of the Bing NDAs prohibits the Chens and Zhai from competing with or soliciting any of Bing's customers and employees for two years. *Id.* at 2-3.

187. The Chens and Zhai were also required to acknowledge that they did not own any intellectual property they developed, and were obligated to disclose any and all patent applications filed by its employees or on their behalf. *Id.* at 3-4.

188. In the event the Chens or Zhai violated any covenants in the Bing NDAs, they also agreed to the immediate issuance of an injunction. *Id.* at 4.

189. The Chens and Zhai signed the Bing NDAs and agreed to be bound by its terms.

190. The Chens and Zhai are currently operating NBE, or an affiliated entity in China.⁹ However, Bing currently has no interest in NBE or its affiliates, as a result of Zhai and the Chens' misconduct.

191. Accordingly the Chens and Zhai are directly competing against Bing.

192. Further, on information and belief the Chens and Zhai are improperly using Bing's intellectual property to develop BPFC products through companies which they own and control, including NBE.

193. Accordingly, the Chens and Zhai are currently using Bing's Confidential Information (as defined in the Bing NDAs) and have disclosed it to third parties without Bing's authorization.

194. As such, the Chens and Zhai have breached the terms of the Bing NDAs.

195. As a result of Zhai and the Chens' conduct, Bing has suffered damages.

WHEREFORE Bing requests that the Court enter judgment in its favor and against Defendants Y. Chen, H. Chen and Zhai: (i) Awarding Bing damages for Y. Chen, H. Chen and

⁹ Zhai is effectively working for NBE and is competing with Bing, through his ownership in Bing Holdings.

Zhai's breach of contract; (ii) Enjoining Y. Chen, H.Chen, and Zhai from continuing to compete with Bing, or using Bing's Confidential Information, without Bing's authorization; (iii) Awarding Bing attorney's fees and costs; and (iv) Granting such further relief as the Court

Count XII
Declaratory Judgment
(Against Y. Chen, H. Chen, Youngman, and Zhai)

196. Bing reincorporates by reference paragraphs 1 through 80 above as if set forth in full herein.

197. Count XII is being pled in the alternative.

198. During the course of negotiations concerning this adversary proceeding, certain defendants have claimed that Bing still holds an ownership interest in NBE.

199. As a result, Bing has made a demand for records establishing its rights in respect to NBE, and to seek an accounting.

200. However, representatives of NBE have not provided Bing with access to its books and records and have refused to permit Bing to exercise any rights that are attributable to its alleged ownership interest.

201. Accordingly, there is a dispute as it relates to the parties rights and interests in NBE.

WHEREFORE Bing requests entry of Judgment in its favor and against Youngman, Y. Chen, H. Chen, and Zhai (i) Declaring that Bing holds an ownership interest in NBE; (ii) Ordering Youngman, Y. Chen, H. Chen and Zhai to acknowledge Bing's ownership interest in NBE and permit Bing to exercise all rights attendant to its ownership interest in NBE; and (iii) Granting such further relief as the Court deems just and proper.

deems just and proper.

Dated: October 31, 2016

Respectfully submitted,

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Declaration Under 28 U.S.C. § 1746

I declare under penalty of perjury that I have reviewed the foregoing Complaint, and all the factual statements stated therein are true and correct.

Executed on July 5, 2017.

R. Dean Minardi, Director Chief Executive Officer
of Bing Energy International, Inc. and Bing Energy
International, LLC