DEPARTMENT 73 LAW AND MOTION RULINGS

Case Number: 22STCV24213 **Hearing Date:** April 28, 2026 **Dept:** 73

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

IMMIGRANT RIGHTS DEFENSE COUNCIL, LLC, a California Limited Liability Company, Plaintiff, vs. AURELIO M. RAMIREZ, an individual; DOES 1 THROUGH 100, inclusive, Defendants.	CASE NO.: 22STCV24213 [TENTATIVE] ORDER RE: RECONSIDERATION OF PLAINTIFF'S MOTION FOR ATTORNEY'S FEES ON REMITTITUR PLAINTIFF'S MOTION FOR ATTORNEY'S FEES ON APPEAL PLAINTIFF'S MOTION TO TAX COSTS Dept. 73 8:30 a.m. April 28, 2026

INTRODUCTION

On July 27, 2022, Plaintiff Immigrant Rights Defense Council, LLC ("Plaintiff") filed this action against Defendant Aurelio Ramirez ("Defendant").

On June 22, 2023, Plaintiff filed the operative First Amended Complaint alleging a cause of action for Violation of the Immigration Consultant Act ("ICA").

The FAC alleges Defendant is in the business of acting as an immigration consultant. The FAC further alleges that Defendant has engaged in multiple violations of the ICA, including the unauthorized practice of law. Plaintiff sought injunctive relief and reasonable fees/costs.

The parties stipulated to a judgment of injunction. On February 27, 2024, the Court entered judgment enjoining Defendant from violating the ICA as well as entitling Plaintiff to reasonable attorney's fees and costs.

On March 4, 2024, Plaintiff filed a Memorandum of Costs.

On September 30, 2024, the Court granted Plaintiff's motion for attorneys' fees pursuant to Business and Professions Code section 22446.5(b) in the amount $83,197.50 ("the Judgment").

On February 28, 2025, the Court granted Defendant's Motion for Stay of Enforcement of Judgment.

After the Judgment was appealed, on October 24, 2025, the appellate court issued an opinion stating that the Court abused its discretion by awarding Plaintiff its attorney fees of $83,197.50. The appellate court reversed and remanded for this Court to further consider Plaintiff's motion for attorney fees. The appellate court awarded Defendant his costs on appeal.

On January 26, 2026, Defendant filed a Memorandum of Costs on Appeal.

On January 28, 2026, Plaintiff filed a Memorandum of Costs on Appeal, which the Court Clerk rejected. On April 9, 2026, the Court found that Plaintiff is not entitled to its costs on appeal and Plaintiff's Memorandum of Costs was appropriately rejected.

On January 28, 2026, Plaintiff filed the instant motion for attorney's fees on appeal. On March 24, 2026, Defendant filed an opposition. On April 21, 2026, Plaintiff filed a reply.

On January 28, 2026, Plaintiff filed the instant motion to tax Defendant's costs on appeal. On March 16, 2026, Defendant filed an opposition. On April 21, 2026, Plaintiff filed a reply.

On April 2, 2026, Plaintiff filed its brief re: reconsideration of its original motion for attorney's fees following the appeal. Not considering the notice and table of contents, the brief is 19 pages, in violation of the 15-page limit imposed by California Rules of Court, rule 3.1113(d). The Court denied Plaintiff's *ex parte* application to consider the entire 19-page briefing. Thus, the Court will not consider Plaintiff's brief beyond page 21. Remarkably, in all these page, Plaintiff makes no real effort to address the Court of Appeal's concerns.

On April 14, 2026, Defendant filed an opposition. On April 21, 2026, Plaintiff filed a reply.

LEGAL STANDARD

Attorney's Fees

"[A]s a general rule, attorney fees are not recoverable as costs unless they are authorized by statute or agreement." (*People ex rel. Dept. of Corporations v. Speedee Oil Change Systems, Inc.* (2007) 147 Cal.App.4th 424, 429.)

The attorney bears the burden of proof as to "reasonableness" of any fee claim. (Code Civ. Proc., § 1033.5(c)(5).) This burden requires competent evidence as to the nature and value of the services rendered. (*Martino v. Denevi* (1986) 182 Cal.App.3d 553, 559.) A plaintiff's verified billing invoices are prima facie evidence that the costs, expenses, and services listed were necessarily incurred. (See *Hadley v. Krepel* (1985) 167 Cal.App.3d 677, 682.) "In challenging attorney fees as excessive because too many hours of work are claimed, it is the burden of the challenging party to point to the specific items challenged, with a sufficient argument and citations to the evidence. General arguments that fees claimed are excessive, duplicative, or unrelated do not suffice." (*Lunada Biomedical v. Nunez* (2014) 230 Cal.App.4th 459, 488, quoting *Premier Med. Mgmt. Sys., Inc. v. California Ins. Guarantee Assn.* (2008) 163 Cal.App.4th 550, 564.)¿¿

In determining whether the requested attorney's fees are "reasonable," the Court's "first step involves the lodestar figure—a calculation based on the number of hours reasonably expended multiplied by the lawyer's hourly rate. The lodestar figure may then be adjusted, based on consideration of facts specific to the case, in order to fix the fee at the fair market value for the legal services provided." (*Gorman v. Tassajara Development Corp*. (2008) 162 Cal.App.4th 770, 774 [internal citations omitted].) In determining whether to adjust the lodestar figure, the Court may consider the nature and difficulty of the litigation, the amount of

money involved, the skill required and employed to handle the case, the attention given, the success or failure, and other circumstances in the case. (*EnPalm LLC v. Teitler* (2008) 162 Cal.App.4th 770, 774; *PLCM Group, Inc. v. Drexler* (2000) 22 Cal.4th 1084, 1095.) "'The reasonable market value of the attorney's services is the measure of a reasonable hourly rate. [Citations.] This standard applies regardless of whether the attorneys claiming fees charge nothing for their services, charge at below-market or discounted rates, represent the client on a straight contingent fee basis, or are in-house counsel. [Citations.]'" (*Center For Biological Diversity v. County of San Bernardino* (2010) 188 Cal.App.4th 603, 619.)

Tax Costs

Except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to recover costs in any action or proceeding. (Code Civ. Proc., § 1032(b).) Under Code of Civil Procedure section 1033.5(c)(2), allowable costs "shall be reasonably necessary to the conduct of the litigation rather than merely convenient or beneficial to its preparation."¿Subdivision (3) requires: "Allowable costs shall be reasonable in amount."¿"Items not mentioned in [Section 1033.5] and items assessed upon application may be allowed or denied in the court's discretion." (Code Civ. Proc., § 1033.5, subd. (c)(4).) There is no requirement that copies of bills, invoices, statements, or any other such documents be attached to the memorandum. Only if the costs have been put in issue via a motion to tax costs must supporting documentation be submitted. (*Bach v. County of Butte* (1989) 215 Cal.App.3d 294, 308.)

On a motion to tax costs, "[i]f the items appearing in a cost bill appear to be proper charges, the burden is on the party seeking to tax costs to show that they were not reasonable or necessary. On the other hand, if the items are properly objected to, they are put in issue and the burden of proof is on the party claiming them as costs. Whether a cost item was reasonably necessary to the litigation presents a question of fact for the trial court and its decision is reviewed for abuse of discretion. However, because the right to costs is governed strictly by statute a court has no discretion to award costs not statutorily authorized." (*Ladas v. California State Auto. Assn.* (1993) 19 Cal.App.4th 761, 774, internal citations omitted.) "The court's first determination, therefore, is whether the statute expressly allows the item, and whether it appears proper on its face. If so, the burden is on the objecting party to show them to be unnecessary or unreasonable." (*Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 131, internal citations omitted.) The objecting party does not meet this burden by arguing

that the costs were not necessary or reasonable but must present evidence and prove that the costs are not recoverable. (*Litt v. Eisenhower Med. Ctr*. (2015) 237 Cal.App.4th 1217, 1224; *Seever v. Copley Press, Inc*. (2006) 141 Cal.App.4th 1550, 1557.)

Rule of Court 3.1700 states, "A prevailing party who claims costs must serve and file a memorandum of costs within 15 days after the date of service of the notice of entry of judgment or dismissal by the clerk under Code of Civil Procedure section 664.5 or the date of service of written notice of entry of judgment or dismissal, or within 180 days after entry of judgment, whichever is first."

EVIDENTIARY OBJECTIONS

Plaintiff objects to certain portions of the declaration of Ann L. Lakhman filed in support of Defendant's opposition to Plaintiff's brief re: reconsideration of attorney's fees. The Court overrules each of Defendant's objections.

DISCUSSION

Reconsideration of Plaintiff's Attorney's Fees

As stated above, on February 27, 2024, judgment was entered in favor of Plaintiff and against Defendant. According to that judgment, Defendant is to be "be permanently enjoined from further violations of the Immigration Consultants Act (the "ICA"), which is codified at Business and Professions Code Sections 22440, et seq." Plaintiff was also found to "be entitled to reasonable attorneys' fees to be determined by post-judgment motion and costs to be determined by memorandum of costs."

Pursuant to the judgment, on September 30, 2024, this Court, under a different judicial officer, had originally awarded Plaintiff its attorney fees and costs in the amount of $83,197.50. Defendant appealed.

On October 24, 2025, the Court of Appeal reversed this Court's original determination regarding the amount of Plaintiff's attorney's fees (hereinafter, "the Appeal"). After finding that the attorney fee award was appealable and Defendant's appeal was timely, the appellate court found that this Court abused its discretion in awarding Plaintiff $83,197.50 in attorney fees. The appellate court found that this Court (1) did not explain the

basis for its conclusion to award Plaintiff's counsel an hourly rate of $750.00; (2) did not explain the basis for its conclusion to award Plaintiff's counsel a 1.5 multiplier; (3) did not appear to account for the reasonableness of the total fee award in light of the apparently limited public benefit achieved by Plaintiff in this case; (4) did not appear to consider whether Plaintiff had a reasonable factual basis for bringing this action in the first instance. The appellate court directed this Court to address and consider these factors on remand. The Court will do so below.

A. Lodestar Multiplier

"The amount of attorney fees awarded pursuant to the lodestar adjustment method may be increased or decreased. Such an adjustment is commonly referred to as a 'fee enhancement' or 'multiplier.' [Citation.] The trial court is neither foreclosed from, nor required to, award a multiplier." (*Mikhaeilpoor, supra,* 48 Cal.App.5th at p. 247-48; see *Montgomery v. Bio-Med Specialties, Inc.* (1986) 183 Cal.App.3d 1292, 1297 ["That figure *may* then be increased or reduced by the application of a multiplier after the court has taken into consideration other factors concerning the lawsuit" (italics added); see also *Rey v. Madera Unified School Dist.* (2012) 203 Cal.App.4th 1223, 1242, 138 Cal.Rptr.3d 192 ["the trial court is not required to include a fee enhancement for exceptional skill, novelty of the questions involved, or other factors. Rather, applying a multiplier is discretionary." (italics omitted)].) The Supreme Court has "set forth a number of factors the trial court may consider in adjusting the lodestar figure. These include: '(1) the novelty and difficulty of the questions involved, and the skill displayed in presenting them; (2) the extent to which the nature of the litigation precluded other employment by the attorneys; [and] (3) the contingent nature of the fee award, both from the point of view of eventual victory on the merits and the point of view of establishing eligibility for an award.' " (*Press v. Lucky Store, Inc., (1983) 34 Cal.3d. 311, 322.)*

Plaintiff's counsel asserts that a 1.5 lodestar multiplier is warranted given that Plaintiff's counsel "represented a private attorney general plaintiff" in an action for injunctive relief aimed at curbing the Defendant's violations of the ICA. Plaintiff's counsel also asserts that he took the case on a contingency fee basis.

The Court finds that a lodestar multiplier should not be issued. Given the lack of any novelty with this case, considering Plaintiff's conceded experience in such matters, lack of complexity with the issues involved,

and the fact that this case resulted in a judgment requiring Defendant to comply with the law, which the appellate court acutely emphasized is "something [Defendant] was bound to do even in the absence of the judgment," a multiplier is not warranted. (The Appeal at p. 23.) Any contingency risk factor is already accounted for in the hourly rates. (*Ketchum, supra,* 24 Cal.4th at p. 1139 ["[A] trial court should award a multiplier for exceptional representation only when the quality of representation far exceeds the quality of representation that would have been provided by an attorney of comparable skill and experience billing at the hourly rate used in the lodestar calculation. Otherwise, the fee award will result in unfair double counting and be unreasonable."].) The Court does not find that counsel sufficiently demonstrated that the quality of his representation "far exceeds" the quality of representation of attorneys with comparable skill and experience.

Thus, the Court declines Plaintiff's request for a multiplier.

B. Reasonableness of Hourly Rate

"In determining hourly rates, the court must look to the "prevailing market rates in the relevant community." (*Bell v. Clackamas County*¿(9th Cir.2003) 341 F.3d 858, 868.) The rates of comparable attorneys in the forum district are usually used. (See¿*Gates v. Deukmejian*¿(9th Cir.1992) 987 F.2d 1392, 1405.) In making its calculation, the court should also consider the experience, skill, and reputation of the attorney requesting fees." (*Heritage Pacific Financial, LLC v. Monroy*¿(2013) 215 Cal.App.4th 972, 1009.) An attorney's time spent and hourly rate are presumed to be reasonable. (*Mandel v. Lackner* (1979) 92 Cal.App.3d 747, 761.)

Here, Plaintiff's counsel is again requesting a $750.00 hourly rate. Counsel claims that he has been awarded that rate in favor of this Plaintiff throughout the State of California, consistently for approximately five years. (Medvei Decl., ¶ 13.) He states that he devotes "95% of [his] practice to civil litigation and appellate matters" and has "represented numerous persons from pleadings to judgment or settlement and have successfully defended appeals and appealed from orders and judgments in both state and federal courts." (*Id.* ¶ 11.) He "regularly file[s] motions for attorney's fees with courts, in the context of paid representation, pro bono representation, and contingency fee representation, that are granted as prayed." (*Id.* ¶ 12.)

However, as the appellate court explicitly stated, "[i]n February 2024, Medvei attested to having an hourly rate of $500 when he sought fees for his discovery motion. Medvei offered no explanation as to how

his rate increased to $750 less than three months later in April 2024 when he filed the postjudgment motion for fees." (The Appeal at p. 21.) Counsel failed to mention this issue and does not provide any explanation for his increase in fees to $750.00, solely relying on the Laffey Matrix and other cases where he obtained similar hourly rates, which are neither considered authority nor are relevant. (See *Prison Legal News v. Schwarzenegger* (9th Cir. 2010) 608 F.3d 446, 454 ["Just because the *Laffey* matrix has been accepted in the District of Columbia does not mean that it is a sound basis for determining rates elsewhere, let alone in a legal market 3,000 miles away."].) Counsel has provided no affirmative evidence supporting his hourly rate, other than that he "represented numerous persons from pleadings to judgment or settlement," and "successfully defend[ed] appeals," which are just a restatement of the job of an attorney. (Medvei Decl., ¶ 11.)

Based on the Court's experience, the reasonable hourly rate of an attorney with counsel's experience working in the Los Angeles area is $500.00. (See *Mountjoy v. Bank of America, N.A.* (2016) 245 Cal.App.4th 266, 272 ["[A] reasonable hourly rate is the product of a multiplicity of factors .... the level of skill necessary, time limitations, the amount to be obtained in the litigation, the attorney's reputation, and the undesirability of the case."]; *569 E. Cnty. Boulevard LLC v. Backcountry Against the Dump, Inc., supra,* 6 Cal.App.5th at pp. 436–437 ["The courts repeatedly have stated that the trial court is in the best position to value the services rendered by the attorneys in his or her courtroom [citation], and this includes the determination of the hourly rate that will be used in the lodestar calculus. [Citation.]"].)

C. Reasonableness of Fees

The party seeking fees and costs bears the burden to show "the fees incurred were allowable, were reasonably necessary to the conduct of the litigation, and were reasonable in amount." (*Nightingale v. Hyundai Motor America* (1994) 31 Cal.App.4th 99, 104.) Counsel still has the burden to demonstrate the reasonableness of charges. (*Mikhaeilpoor v. BMW of North America, LLC* (2020) 48 Cal.App.5th 240, 247), but a verified fee bill is "prima facie evidence the costs, expenses and services listed were necessarily incurred." (*Hadley v. Krepel* (1985) 167 Cal.App.3d 677, 682). It is then "the burden of the challenging party to point to the specific items challenged, with a sufficient argument and citations to the evidence. General arguments that fees claimed are excessive, duplicative, or unrelated do not suffice." (*Premier Med. Mgmt. Sys., Inc. v. California Ins. Guarantee Assn.* (2008) 163 Cal.App.4th 550, 564; *Melnyk v. Robledo* (1976) 64 Cal.App.3d 618, 624 ["However, where the items are properly objected to, they are put in issue, and the burden of proof is upon the party claiming them as costs."].)

Counsel declares that he spent 73.9 hours on the instant action, plus the time spent on the instant motion. Counsel also provides that he is entitled to his attorney's fees on appeal, which the Court will later address in Plaintiff's separate noticed motion.

In assessing the reasonableness of the hours spent, the appellate court directed this Court to consider the "apparently limited public benefit achieved by the plaintiff in this case." (The Appeal at p. 23.)

The Court agrees with Defendant that the number of hours allegedly spent is inflated, considering the lack of an achieved public benefit and the fact that Plaintiff's "original complaint was identical to that filed in dozens of other cases" and that the complaint "did not allege any facts particular to [Defendant]." (The Appeal at p. 24.)

It is true that the ICA reflects a legislative judgment that private enforcement of the ICA benefits the public, as it seeks to prevent individuals in the immigration space to engage in the unauthorized practice of law. "'The unique vulnerability of the immigration population, the lack of training of non-lawyer providers of immigration services and the severity of the ramifications that can result from a botched job account for the particularly acute threats to the public interest in the field of immigration due to the unauthorized practice of law.' (Citation.) 'Frequently enough, the immigration consultant knows that the person is not entitled to any benefits under immigration law or is recklessly indifferent to what the law requires. They file applications with [Immigration Services] that trigger removal rather than legal benefits.'(Citation.)" (*Mendoza v. Ruesga* (2008) 169 Cal.App.4th 270, 281.)

However, the Court of Appeal specifically instructed this Court to consider the reasonableness of the fee request "in light of the apparently limited public benefit achieved by the plaintiff in ***this case***." (The Appeal at p. 23 (emphasis added).) Thus, this Court must assess how and to what extent this case particularly benefited the public in addressing the reasonableness of the fees incurred. Plaintiff does not meaningfully address this issue. Instead, Plaintiff solely argues the general notion that "public injunctions are highly beneficial to the public" and that Plaintiff obtained an injunction against Defendant, which will deter Defendant's potential violative practices in the future. (See Brief at p. 20.) But these assertions do not explain to the Court how this particular case benefitted the public in a unique way, especially given that Plaintiff is not alleged to have been personally harmed in any way by Defendant's conduct. As the Court of Appeal indicated (1) the judgment merely provides that Defendant must comply with the law, which he is required to do anyway, (2) Plaintiff's complaint in this case is "identical" to those filed in other similar cases, and (3)

Plaintiff was not personally harmed by the alleged statutory violations. (The Appeal at p. 24.) In possessing this backdrop, the Court will consider the reasonableness of the fees allegedly incurred.

First, Plaintiff's counsel request for 8 hours for pre-filing investigation is unreasonable because Plaintiff did not seem to rely on extensive documentation in the complaint. (See Compl.) Plaintiff does not seem to rely on any documentation at all in the complaint, given that here are not personalized allegations against Defendant. (*Ibid.*) Instead, in his declaration with the instant motion, counsel declares that he "discovered" Defendant's Google page and looked up Defendant's "bond history with the Secretary of State." (Medvei Decl., ¶ 7.) This work cannot reasonably taken counsel 8 hours. The Court reduces this entry to 1.0 hour, which is a 7-hour deduction.

Next, counsel's overall request concerning the drafting and reviewing of written discovery is excessive. Counsel logged 18.5 hours in connection with solely drafting and reviewing written discovery. (Medvei Decl., ¶ 10.) 18.5 hours to prepare standard discovery requests and read over discovery responses is unreasonable, given the lack of complexity in this action. The Court reduces this to 5 hours, which is a 13.5-hour deduction.

Next, the Court finds that Plaintiff excessively billed regarding its motions to compel. Counsel billed 1 hour each for four motions to compel. (Medvei Decl., ¶ 10.) But these motions were almost identical, and would not reasonably warrant a total of 4 hours to prepare. The Court reduces this to 2 hours, which is a 2-hour deduction.

Next, the Court finds that Plaintiff excessively billed for "settlement negotiations" and "meet and confer re settlement" because much of the settlement discussions are attached as emails. Plaintiff logged 2.4 hours, which the Court will reduce to 1 hour, which is a 1.4-hour deduction. (Medvei Decl., ¶ 10.)

Lastly, the Court finds that Plaintiff excessively billed on the prior motion for attorney's fees (6 hours), reply (8 hours) and oral argument (2 hours), a total of 16 hours for work that consists in large part of recycled biographical information and legal argument. The Court further notes that the result of this effort was a reversal by the Court of Appeal. The Court reduces this timeto a total of 6 hours, a reduction of 10 hours.

Concerning the fees requested in connection with the "Preparation of this Brief re: Reconsideration" and preparing a reply to the brief, the Court finds these fees directly connected to the underlying Appeal. But for the Appeal, counsel would not have incurred these costs. So, recovery of this amount is contingent on whether Plaintiff can obtain its attorney's fees on appeal, which the Court will address below.

Thus, the Court will award a total of 40 hours at $500.00/hr, which totals **$20,000.[1]**

2. Plaintiff's Attorney's Fees on Appeal

Next, Plaintiff seeks its attorney's fees in connection with the Appeal pursuant to Business and Professions Code section 22445.5(b). Plaintiff specifically is seeking attorney fees on appeal because of the judgment entered against Defendant.

"Unless the court orders otherwise, an award of costs neither includes attorney's fees on appeal nor precludes a party from seeking them under rule 3.1702." (Cal. Rules of Court, rule 8.278(d)(2).)

"[I]t is established that fees, if recoverable at all—pursuant either to statute or parties' agreement—are available for services at trial and on appeal." (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 637.) "This rule governs whether or not the sole issue on appeal has been fee entitlement." (*Ibid.*; *Morcos v. Bd. of Ret.* (1990) 51 Cal.3d 924, 927 (*Morcos*) ["The conclusion of the Court of Appeal that attorney fees are not recoverable ignores settled case law which has established the general principle that statutes authorizing attorney fee awards in lower tribunals include attorney fees incurred on appeals of decisions from those lower tribunals."]; *People ex rel. Cooper v. Mitchell Bros.' Santa Ana Theater* (1985) 165 Cal.App.3d 378, 387 ["Where attorney's fees are authorized by statute they are authorized on appeal as well as in the trial court."].)

Unless the appellate court orders otherwise, it is within the trial court's sound discretion to entertain a request for appellate attorney's fees notwithstanding the absence of specific direction from the appellate court. (*See* Cal. Rules of Court, rule 8.278(d)(2); *Butler-Rupp v. Lourdeaux* (2007) (*Butler*)154 Cal.App.4th 918, 924.)

However, while Plaintiff is considered the prevailing party at the trial court level, Plaintiff has not cited any authority for the proposition it would be entitled to attorney's fees incurred on an appeal that it lost. Each of Plaintiff's cited cases is distinguishable on the simple fact that neither case dealt with a party, who upon prevailing in the trial court and obtained attorney's fees pursuant to contract or statute, *did not* prevail or even partially prevail on appeal.

For example, in *Morcos,* the trial court ruled in favor of the petitioner, overturned the Board of Retirement's decision in denying petitioner's application for service-connected disability retirement, and awarded attorney fees to petitioner for the expenses incurred. (*Morcos, supra,* 51 Cal.3d at p. 926.) The Board appealed, and the appellate court affirmed the trial court judgment, but denied awarding petitioner her appellate attorney fees. (*Ibid.*) The *Morcos* held that this was error. "[S]ince attorney fees are properly recoverable in the trial court for petitioner's success there, they should be recoverable for his *continued success* on appeal." (*Id.* at pp. 929-930 (emphasis added).)

In *Butler,* the Court of Appeal in the underlying case, which involved both tort and contract claims, reversed a damages award in favor of the respondents/plaintiffs for negligent infliction of emotional distress, affirmed a contract-based award in favor of respondents/plaintiffs, and reversed the trial court order denying respondents/plaintiffs' their attorney fees incurred in connection with the trial. (*Butler, supra,* 154 Cal.App.4th at p. 922.) Respondents/plaintiffs filed a motion for attorney fees, including fees incurred on appeal, which the trial court granted. (*Ibid.*) Defendants/appellants appeal and the *Butler* court affirmed. (*Ibid.*) Respondents/plaintiffs were able to obtain to obtain their attorney fees at the trial court level pursuant to Civil Code section 1717, given that Respondents/plaintiffs prevailed on their contract-based claims. (*Id.* at p. 923 ["Where a section 1717 fee award is made at the trial level, the prevailing party may, at the appropriate time, request fees attributable to a subsequent appeal."].) However, respondents/plaintiffs were the prevailing party pursuant to section 1717 at the trial court level *and* were the prevailing party in the subsequent underlying appeal.

In *Snyder v. Marcus & Millichap* (1996) 46 Cal.App.4th 1099, the appellant partially prevailed on an underlying appeal concerning punitive and emotional distress damages. (*Id.* at p. 1101.) But the *Snyder* court held that the appellant *does not* get its attorney fees connected to the underlying appeal because judgment was entered *against* the appellant. (*Ibid.*) Because the appellant was not the prevailing party in the trial court, it necessarily cannot obtain attorney's fees for its partial appellate success. (*Ibid.*)

In *Mustachio v. Great W. Bank* (1996) 48 Cal.App.4th 1145, the trial court held a jury trial, resulting in a verdict that found that Marie Mustachio was entitled to a damages award, including punitive damages, against appellant for breach of contract and various torts, including conversion. (*Id.* at p. 1148.) Marie was also awarded attorney's fees. (*Ibid.*) On appeal, the appellate court struck the punitive damage award against appellant, and found that Marie was entitled to an award of prejudgment interest on the market value of all the converted property. (*Id.* at pp. 1148-1149.) Marie filed a motion for attorney's fees after appeal, which the trial court granted. (*Id.* at p. 1149.) The appellant argued that it, and not Marie, prevailed on appeal. (*Ibid.*) The Court of Appeal affirmed the trial court's ruling, and found that "upon final resolution, Mustachio was the party prevailing on the contract. While her claim for punitive damages was rejected on appeal, she was ultimately awarded damages in excess of $200,000 as a result of the breach of contract and conversion claims." (*Id.* at p. 1150.) So in *Mustachio*, Marie, who was the prevailing party at the trial court pursuant to contract, partially succeeded on appeal, and was awarded her attorney's fees on appeal. (*Ibid*.)

In *Serrano v. Unruh* (1982) 32 Cal.3d 621, the circumstances before the Supreme Court were the state defendants' appeal of an award to Plaintiffs' attorneys for their *successful* enforcement on appeal of the award granted for *prevailing* at trial. (*Id.* at p. 626.) The Court affirmed the award. (*Ibid.*)

None of these cases support Plaintiff's proposition that solely because it was the prevailing party pursuant to Business and Professions Code Section 22446.5(b) and obtained its attorney fees, it somehow is entitled to attorney's fees connected to an appeal it indisputably lost.

Plaintiff's motion is denied.

3. Plaintiff's Motion to Tax Costs

In his Memorandum of Costs on Appeal, Defendant is seeking $1,010.58 in filing fees and $1,500.00 in Preparation of the Original and Copies of Clerk's Transcript or Appendix. Plaintiff seeks to tax the latter cost.

Here, Plaintiff claims that the clerk's transcript was prepared for Defendant for $55.50, and thus could not have reasonably incurred $1,500.00 to prepare the appendix. (Medvei Decl., ¶ 6.)

Plaintiff's claim is unsubstantiated. Defendant incurred this cost to prepare a compliant, properly organized, and electronically filed record for the Court of Appeal. (Cal. Rules of Court, rule 8.278(d)(1)(B) ["A party may recover only the following costs, if reasonable: . . . (B) The amount the party paid for any portion of the record, whether an original or a copy or both."].) As stated in the declaration of Ann L. Lakhman, the cost of $1,500 for preparing an appellate appendix of this size and complexity is reasonable and consistent with market rates charged by the vendors. (See Lakhman Decl.)

Plaintiff's motion is denied.

CONCLUSION

Based on the foregoing, following remittitur, Plaintiff's motion for attorney's fees Business and Professions Code Section 22446.5(b) is GRANTED in the amount of $20,000.

Plaintiff's motion for attorney's fees on appeal is DENIED.

Plaintiff's motion to tax costs is DENIED. Defendant is entitled to claim its requested costs in the amount of $2,510.58.

Dated this 28th day of April 2026

Hon. Gary D. Roberts

Judge of the Superior Court

Case Number: 24STCV20937 **Hearing Date:** April 28, 2026 **Dept:** 73

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JOSEPH ESFANDI,	)	CASE NO.: 24STCV20937
	)	
Plaintiff,	)	[TENTATIVE] ORDER RE: DEFENDANT LA SOCIETY, LLC, ZHIJIE LIN AND SHIYING FASHION, INC.'S DEMURRER AND MOTION TO STRIKE THIRD AMENDED COMPLAINT
vs.	)	
	)	

LA SOCIETY, LLC, a California limited liability company; QUANZHOU SHIYING CLOTHES CO., LTD., a company of unknown origin; ZHIJIE LIN, an individual; SHIYING FASHION, INC., a California corporation; and DOES 2-20, inclusive, Defendants.	Dept. 73 8:30 a.m. April 28, 2026

INTRODUCTION

On August 19, 2024, Plaintiff Joseph Esfandi ("Plaintiff") initiated this action.

On March 5, 2025, Plaintiff filed a first amended complaint ("FAC").

On June 26, 2025, Plaintiff filed the second amended complaint ("SAC").

On December 5, 2025, Plaintiff filed the operative third amended complaint ("TAC") against Defendants LA Society, LLC ("LAS"), Quanzhou Shiying Clothes Co., LTD. ("QSC"), Zhijie Lin ("Lin"), and Shiying Fashion, Inc. ("Shiying") (collectively, "Defendants"), alleging causes of action for (1) Breach of Employment Contract – Specified Term, (2) Breach of Contract, (3) Fraud, (4) Intentional Interference with Prospective Economic Relations, and (5) Failure to Reimburse for Business Expenses.

The TAC alleges the following. Plaintiff owned LAS prior to selling it to Lin on July 12, 2023. (TAC ¶ 11.) In negotiating the Sale, Plaintiff and his son, Kevin Esfandi ("Kevin") – who acted as Plaintiff's agent and representative – dealt directly with Defendant Lin, and two of Lin's authorized representatives Carrie Syj ("Syj") and Linda Shen ("Shen"). (*Ibid.*)

During the negotiations, Kevin expressed to Lin, Syj, and Shen his displeasure with the low sale price found in the Purchase Agreement. In response – via telephone calls, WeChat, and in-person communications – Defendants, by and through Syj and Shen, proposed that in lieu of a higher sale price, they would split the Sale into three distinct parts. The first part included the eventual purchase price. The second included retaining Plaintiff's services as President for two years by entering into an employment relationship ("Part 2"). The third part included a profit-sharing agreement under which Defendants would assist Plaintiff in selling LA Society's

inventory remaining at the time of the Sale ("Part 3"). The Sale was memorialized by a purchase agreement signed by both Plaintiff and Lin (the "Purchase Agreement"). (*Id.* ¶¶ 12-14.)

Part Two of the Sale – Hiring Plaintiff as President

For Part 2 of the Sale, Defendants and Plaintiff worked collaboratively to reduce the employment relationship to an employment contract ("Employment Contract"). However, rather than signing the Employment Contract, Lin, in both his capacity as an individual and principal of Defendant LAS, orally insisted that the parties could sign the agreement later, and that Plaintiff should begin his employment as President immediately. Although the Employment Contract itself was never signed, the parties continued to perform their respective obligations under the Employment Contract, adopting the Employment Contract by conduct. (*Id.* ¶¶ 14-15, Ex. A [unsigned Employment Contract].)

The Employment Contract, which came into effect on or about July 15, 2023, set forth a two (2) year term (i.e., until July 15, 2025), and set forth a specific termination procedure. (*Id.* ¶ 16.) Despite Plaintiff's performance, and without following the termination procedure set forth in the Employment Contract, Lin, in his capacity as an individual and as the "sole new owner of LA Society, LLC," unilaterally terminated Plaintiff's employment on or about March 8, 2024, and immediately ceased all future salary payments to Plaintiff. (*Id.* ¶ 20.) Accordingly, Plaintiff is owed approximately fifteen (15) months ($120,000.00) of unpaid salary under the Employment Contract. (*Id.* ¶ 22.)

Part Three of the Sale – Profit Sharing Agreement

For Part 3 of the Sale, Defendants and Plaintiff agreed to work together to sell LA Society, LLC's remaining inventory at the time of the Sale. Notably, the remaining inventory itself was not part of the Sale. Instead, Plaintiff and Defendants entered into an Inventory Profit Sharing Agreement (the "Profit-Sharing Agreement") under which Plaintiff and Defendants would work together to sell the remaining inventory and share in the profits, with Plaintiff receiving 60% of the gross revenue, and Defendants receiving the remaining 40%. (*Id.* ¶ 23.) Like the Employment Contract, the Profit-Sharing Agreement was discussed orally, orally agreed to, and reduced to writing, but was not signed. Also like the Employment Contract, it was further acknowledged and adopted by conduct. (*Id.* ¶ 25, Ex. B [unsigned Profit-Sharing Agreement].)

However, Defendants again failed to satisfy their obligations under the ProfitSharing Agreement, by failing to assist Plaintiff in selling LA Society's outstanding inventory. In addition, Defendants began improperly selling copies of LA Society, LLC products – for which there was outstanding inventory and for which Defendants had agreed to assist Plaintiff in selling – on the Defendants' LAS website and a separate website owned and operated by Defendants Lin, QSC, and Shiying (dear-lover.com) at substantially reduced costs, effectively preventing Plaintiff from selling the outstanding inventory as anticipated and agreed upon by the parties. Accordingly, Plaintiff was forced to sell the inventory at substantially reduced prices, resulting in Plaintiff effectively receiving reduced compensation from the sale of both the inventory and LA Society, LLC. (*Id.* ¶ 29.)

On December 19, 2025, LAS, Shiying, and Lin filed a demurrer with a motion to strike.

On April 15, 2026, Plaintiff filed an opposition.

On April 20, 2026, LAS, Shiying and Lin filed a reply.

LEGAL STANDARD

Demurrer

A demurrer is an objection to a pleading, the grounds for which are apparent from either the face of the complaint or a matter of which the court may take judicial notice. (Code Civ. Proc., § 430.30, subd. (a); see also *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The purpose of a demurrer is to challenge the sufficiency of a pleading "by raising questions of law." (*Postley v. Harvey* (1984) 153 Cal.App.3d 280, 286.) "In the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties." (Code Civ. Proc., § 452.) The court "'treat[s] the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law . . .'" (*Berkley v. Dowds* (2007) 152 Cal.App.4th 518, 525.)

When a demurrer is sustained, leave to amend must be allowed where there is a reasonable possibility of successful amendment. (*Goodman v. Kennedy* (1976) 18 Cal.3d 335, 348.) The burden is on the plaintiff to show the court that a pleading can be amended successfully. (*Ibid.*; *Lewis v. YouTube, LLC* (2015) 244 Cal.App.4th 118, 226.)

Motion to Strike

Any party, within the time allowed to respond to a pleading may serve and file a notice of motion to strike a pleading or any part thereof.¿ (Code Civ. Proc., § 435, subd. (b)(1).)¿ The court¿may, upon a motion, or at any time in its discretion, and upon terms it deems proper, strike any irrelevant, false, or improper matter inserted in any pleading.¿ (Code Civ. Proc., § 436, subd. (a).)¿ The court may also strike all or any part of any pleading not drawn or filed in conformity with California law, a court rule, or an order of the court.¿ (Code Civ. Proc., § 436, subd. (b).)¿ An immaterial or irrelevant allegation is one that is not essential to the statement of a claim or defense; is neither pertinent to nor supported by an otherwise sufficient claim or defense; or a demand for judgment requesting relief not supported by the allegations of the complaint.¿ (Code Civ. Proc., 431.10, subd. (b).)¿ The grounds for moving to strike must appear on the face of the pleading or by way of judicial notice.¿ (Code Civ. Proc., § 437.)¿¿¿

DISCUSSION

Demurrer

Shiying and Lin demur to the entirety of the TAC. LAS demurs to the second, third, fourth, and fifth causes of action.

First Cause of Action: Breach of Employment Contract

Shiying and Lin demur to the first cause of action on the grounds that Plaintiff has not alleged the existence of a contract between the parties.

To state a cause of action for breach of contract, Plaintiff must be able to establish "(1) the existence of the contract, (2) plaintiff's performance or excuse for nonperformance, (3) defendant's breach, and (4) the resulting damages to the plaintiff." (*Oasis West Realty, LLC v. Goldman* (2011) 51 Cal.4th 811, 821.)

If a breach of contract claim "is based on alleged breach of a written contract, the terms must be set out verbatim in the body of the complaint or a copy of the written agreement must be attached and incorporated by reference." (*Harris v. Rudin, Richman & Appel* (1999) 74 Cal.App.4th 299, 307.) On the other hand, "an oral contract may be pleaded generally as to its effect, because it is rarely possible to allege the exact words." (*Khoury v. Maly's of California, Inc.* (1993) 14 Cal. App. 4th 612, 616.) "An implied contract is one, the

existence and terms of which are manifested by conduct." (Civ. Code, § 1621.) "Agreement may be " 'shown by the acts and conduct of the parties, interpreted in the light of the subject matter and of the surrounding circumstances." ' " (*Foley v. Interactive Data Corp.* (1988) 47 Cal.3d 654, 681.)

In some circumstances, a plaintiff may also "plead the legal effect of the contract rather than its precise language." (*Construction Protective Services, Inc. v. TIG Specialty Ins. Co.* (2002) 29 Cal.4th 189, 198-199.) "In order to plead a contract by its legal effect, plaintiff must 'allege the substance of its relevant terms. This is more difficult, for it requires a careful analysis of the instrument, comprehensiveness in statement, and avoidance of legal conclusions.' (Citation.)" (*Heritage Pac. Fin., LLC v. Monroy* (2013) 215 Cal.App.4th 972, 993.)

Here, both Shiying and Lin argue that, as indicated by the Employment Contract attached to the TAC, they both were not parties to the Employment Contract.

Specifically, as to Shiying, Plaintiff argues that he has added Shiying under the "Single Enterprise" / alter ego theory, which would impose upon Shiying the liability of LAS, the party to the Employment Contract, and QSC.

The theory has been described as follows: ' "In effect what happens is that the court, for sufficient reason, has determined that though there are two or more personalities, there is but one enterprise; and that this enterprise has been so handled that it should respond, as a whole, for the debts of certain component elements of it." ' " (*Las Palmas Associates v. Las Palmas Center Associates* (1991) 235 Cal.App.3d 1220, 1249–1250.)

The 'single enterprise,' or alter ego, doctrine is an equitable doctrine: 'A corporate identity may be disregarded—the "corporate veil" pierced—where an abuse of the corporate privilege justifies holding the equitable ownership of a corporation liable for the actions of the corporation. [Citation.] Under the alter ego doctrine, then, when the corporate form is used to perpetuate a fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose, the courts will ignore the corporate entity and deem the corporation's acts to be those of the persons or organizations actually controlling the corporation, in most instances the equitable owners.' " (*Troyk v. Farmers Group, Inc.* (2009) 171 Cal.App.4th 1305, 1341 [90 Cal.Rptr.3d 589] (*Troyk*).)

" 'In California, two conditions must be met before the alter ego doctrine will be invoked. First, there must be such a unity of interest and ownership between the corporation and its equitable owner that the separate personalities of the corporation and the shareholder do not in reality exist. Second, there must be an inequitable result if the acts in question are treated as those of the corporation alone.' " (*Troyk, supra,* 171 Cal.App.4th at p. 1341, 90 Cal.Rptr.3d 589.) Alter ego liability "is not limited to the parent-subsidiary corporate relationship; rather, 'under the single-enterprise rule, liability can [also] be found between sister [or affiliated] companies.' " (*Ibid.*) A court will pierce the corporate veil only where failure to do so "would be to defeat the rights and equities of third persons." (*Kohn v. Kohn* (1950) 95 Cal.App.2d 708, 720.)

However, "the single enterprise theory is only invoked to prevent fraud or oppression[.]" (*Orosco v. Sun-Diamond Corp.* (1997) 51 Cal.App.4th 1659, 1666 fn.4.) Here, Plaintiff has alleged fraud in the TAC.

The Court finds that Plaintiff has sufficiently alleged alter ego allegations to support a unity of interest among Shiying, Lin, and LAS.

In *Rutherford Holdings, LLC v. Plaza Del Rey* (2014) 223 Cal.App.4th 221 ("*Rutherford Holdings*"), the Court of Appeal held the following was sufficient to allege alter ego liability:

> Rutherford alleged that Caswell dominated and controlled PDR; that a unity of interest and ownership existed between Caswell and PDR; that PDR was a mere shell and conduit for Caswell's affairs; that PDR was inadequately capitalized; that PDR failed to abide by the formalities of corporate existence; that Caswell used PDR assets as her own; and that recognizing the separate existence of PDR would promote injustice. These allegations mirror those held to pass muster in *First Western Bank & Trust Co. v. Bookasta* (1968) 267 Cal.App.2d 910, 915– 916, 73 Cal.Rptr. 657. As in *First Western*, "[a]ssuming these facts can be proved, [Caswell] ... may be held liable ... under the alter ego principle." (*Id.* at p. 916, 73 Cal.Rptr. 657.) Defendants argue that Rutherford failed to allege specific facts to support an alter ego theory, but Rutherford was required to allege only "ultimate rather than evidentiary facts." (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 550, 67 Cal.Rptr.3d 330, 169 P.3d 559.) Moreover, the "less particularity [of pleading] is required where the defendant may be assumed to possess knowledge of the facts at least equal, if not superior, to that possessed by the plaintiff," which certainly is the case here. (*Burks v. Poppy Construction Co.* (1962) 57 Cal.2d 463,

474, 20 Cal.Rptr. 609, 370 P.2d 313.) Therefore, we affirm the trial court's ruling that Rutherford sufficiently pled an alter ego theory of liability.

(*Id.* at pp. 235-36.)

Similarly here, Plaintiff alleges (1) Lin dominated the affairs of LAS after the Purchase Agreement was signed, (2) There is a unity of interest between LAS and Lin such that there is no individuality and separateness between the Defendants, (3) LAS is merely a shell and naked framework which Lin uses as a conduit for the conduct of his personal business and affairs, as evidenced by his indiscriminate sale of LAS assets through sister companies all owned by Lin, Lin is presently using LAS to engage in fraudulent conduct, such as his false inducements of Plaintiff to enter into the Purchase Agreement and the sale of LAS assets through other entities, which allows Lin to both avoid individual liability while simultaneously decapitalizing LAS to further avoid liability. (TAC ¶ 46.) Pursuant to *Rutherford Holdings,* the demurrer to the first cause of action as to Lin is overruled.

Also, Plaintiff has now pleaded an abundance of facts to support his single enterprise theory among Lin, LAS and Shiying, such as that (1) Shiying has been operating as a wholesale fashion marketplace by and through its website, shiyingfashion.com. Defendant Lin is listed on the California Secretary of State's records as Defendant Shying's Chief Executive Officer, Chief Financial Officer, Secretary, and Director, (2) Defendant LAS filed a statement of information with the California Secretary of State listing Defendant Lin as its Chief Executive Officer, (3) Each of the named entities are owned by Defendant Lin, such that there is a unity of ownership interest; and (4) Each of the named entities are engaged in the sale of clothing, such that there is a unity of interest in the business enterprise. (See TAC ¶¶ 36-45.) . ""“The particularity required in pleading facts depends on the extent to which the defendant in fairness needs detailed information that can be conveniently provided by the plaintiff; less particularity is required where the defendant may be assumed to have knowledge of the facts equal to that possessed by the plaintiff."”" (*Doheny Park Terrace Homeowners Assn., Inc. v. Truck Ins. Exchange* (2005) 132 Cal.App.4th 1076, 1099 ["This fair notice test is clearly satisfied here."].)

The demurrer to the first caused of action is overruled.

Second Cause of Action: Breach of Profit-Sharing Agreement

Shiying, Lin and LAS all demur to the second cause of action.

Plaintiff then attaches to the TAC the purported Profit-Sharing Agreement, which is unsigned. (TAC Ex. B.) Pursuant to the written form of the Profit-Sharing Agreement that Plaintiff claims was "adopted by conduct," the parties of the contract are Plaintiff, on behalf of LAS, and Lin on behalf of third party, "Dear Lover." (*Ibid.*) The Court's concern in its ruling in the prior demurrer was that there were no allegations to support that third party "Dear Lover" manifested assent to the Profit-Sharing Agreement or that third party Dear Lover had the ability to bind LAS or Shiying. The SAC also had no allegations to support that Lin intended to sign the Profit-Sharing Agreement on behalf of himself, personally. The TAC properly addresses these concerns.

Here, Plaintiff alleges that "Dear Lover" is actually owned and operated by QSC and Lin serves as its principal. (TAC ¶¶ 38, 43(a).) "Plaintiff is informed and believes and thereon alleges that "Dear Lover" is not a separate legal entity, but merely a trade name and online sales platform used by QSC and Shiying, controlled by Lin." (*Ibid.*) When Lin was identified in the Profit-Sharing Agreement as signing on behalf of "Dear Lover," he did so as principal of QSC and Shiying. (*Id.* ¶¶ 40, 43(b)-(d).) Furthermore, Plaintiff alleges that Defendant Lin, Defendant LAS, Defendant Shiying, and Defendant QSC operate as a single enterprise, with a unity of interest and ownership. (*Id.* ¶¶ 43-44, *see above*.) Thus, Plaintiff alleges, that because Dear Lover is merely a trade name under which QSC and Shiying operate, the Profit-Sheering Agreement, which identified Lin as the signatory, bound QSC and Shiying, and by extension LAS as part of the same enterprise. (*Ibid.*) It would then bind Lin personally through an alter ego theory. (*Ibid.*)

As to assent, Plaintiff alleges that the Profit-Sharing Agreement was adopted by conduct, and that all parties performed consistent with its terms. The TAC alleges that Lin's agents, Ms. Syj and Ms. Shen, emailed Plaintiff a marketing plan to sell the outstanding inventory and expressly confirmed their agreement to "help sell the inventory," consistent with the terms of the Profit-Sharing Agreement. (TAC, ¶ 26.) Given the adequacy of the alter ego and single enterprise allegations, "Dear Lover's" mutual assent is sufficiently established.

The demurrer to the second cause of action is overruled.

Third Cause of Action: Fraud

Shiying, Lin and LAS all demur to the third cause of action.

"The elements of fraud are (a) a misrepresentation (false representation, concealment, or nondisclosure); (b) scienter or knowledge of its falsity; (c) intent to induce reliance; (d) justifiable reliance; and (e) resulting damage." (*Hinesley v. Oakshade Town Ctr.* (2005) 135 Cal.App.4th 289, 294.) The facts constituting the alleged fraud must be alleged factually and specifically as to every element of fraud, as the policy of "liberal construction" of the pleadings will not ordinarily be invoked. (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.) To properly allege fraud against a corporation, the plaintiffs must plead the names of the persons allegedly making the false representations, their authority to speak, to whom they spoke, what they said or wrote, and when it was said or written. (*Tarmann v. State Farm Mut. Auto. Ins. Co.* (1991) 2 Cal.App.4th 153, 157.)

Here, the misrepresentations that Plaintiff relies upon are that "during telephone calls, WeChat, and in-person communications . . . Defendants, by and through Ms. Syj and Ms. Shen[, who were Lin's personal representatives], represented to both Plaintiff [], that in lieu of a higher purchase price, they would: (a) retain Plaintiff's services for a 2-year period, as evidenced by the Employment Contract; and (b) assist Plaintiff in selling outstanding LA Society, LLC inventory, as evidenced by the Profit-Sharing Agreement." (TAC ¶ 60.) Ms. Syj and Ms. Shen are alleged to be managing agents with the ability to bind Defendants, as evidenced by their roles in negotiating the Sale, their delivery of Plaintiff's termination notice on behalf of Lin and LAS, and their transmission of the marketing plan confirming Defendants' obligations under the Profit-Sharing Agreement. (*Id.,* at ¶¶ 20, 26, 40, 42; see *Kiseskey v. Carpenters' Trust for So. California* (1983) 144 Cal.App.3d 222, 230 ["The general allegation of agency is one of ultimate fact, sufficient against a demurrer."].)

"But to be held liable in tort, a defendant must commit a tort. If all the defendant has allegedly done is violate the terms of the parties' contract, depriving the plaintiff of the benefits the contract ensures, the defendant's liability is limited by the contract. Broader tort liability only arises if a defendant violates an independent legal duty and the type of harm that ensues was not reasonably contemplated or accounted for by the contractual parties." (*Rattagan v. Uber Techs., Inc.* (2024) 17 Cal.5th 1, 37.)

Here, the alleged misrepresentations were made *prior* to the contracts' formation. While these promises were then memorialized into the Employment Contract and Profit-Sharing Agreement, the Court finds that

they are representations distinct from the duties that flowed from these contracts. They are representations made to induce Plaintiff to enter into the contracts and perform accordingly.

However, Plaintiff does not sufficiently plead falsity or knowledge of falsity. Here, Plaintiff alleges that "Defendants' knew or should have known their statements were false when made because shortly after the Purchase Agreement was finalized, Defendants began selling copies of LA Society, LLC products – for which there was outstanding inventory and for which Defendants had agreed to assist Plaintiff in selling – on the LAS website and a separate website owned and operated by QSC and Shiying – dear-lover.com – at substantially reduced costs, effectively preventing Plaintiff from selling the outstanding inventory as anticipated and agreed upon by the parties." (TAC ¶ 63.) When Ms. Syj was confronted, "she quickly prepared a template marketing plan related to the outstanding inventory and sent it to Mr. Esfandi as purported evidence that Defendants did intend on following through with their prior representations and the ProfitSharing Agreement." (*Id.* ¶ 64.) These allegations do not support that Shiying or LAS, by and through their alleged agents, *knew* at the time of contract formation that they would not assist Plaintiff in selling outstanding inventory, as represented prior to contract formation. An after-the-fact failure to perform as agreed upon may support a breach of contract cause of action, but falls short to allege knowledge of falsity to support fraud. (*Riverisland Cold Storage, Inc. v. Fresno-Madera Prod. Credit Assn.* (2013) 55 Cal.4th 1169, 1183 (citation omitted) ["Proof of intent not to perform is required. It is insufficient to show an unkept but honest promise, or mere subsequent failure of performance. " ' [S]omething more than nonperformance is required to prove the defendant's intent not to perform his promise.' [Citations.] To be sure, fraudulent intent must often be established by circumstantial evidence.... However, if [a] plaintiff adduces no further evidence of fraudulent intent than proof of nonperformance of an oral promise, he will never reach a jury."].)

Similar issues lie with Plaintiff's alleged misrepresentation as to Lin. Plaintiff alleges that Lin falsely represented that the parties could "sign the [Employment Contract] later, and that Plaintiff should begin his employment as President immediately." (TAC ¶ 16.) There are no allegations that support Lin's intent not to perform at the time he made those statements.

The demurrer to the third cause of action is sustained.

Fourth Cause of Action: Intentional Interference with Prospective Economic Relations

Shiying, Lin and LAS all demur to the fourth cause of action.

To sufficiently plead Interference with Economic Relations, the plaintiff must establish "(1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentional acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant." (*Youst v. Longo* (1987) 43 Cal.3d 64, 71.)

Further, "a plaintiff seeking to recover for alleged interference with prospective economic relations has the burden of pleading and proving that the defendant's interference was wrongful "by some measure beyond the fact of the interference itself." (*Della Penna v. Toyota Motor Sales, U.S.A., Inc.* (1995) 11 Cal. 4th 376, 392–93.) "An act is not independently wrongful merely because defendant acted with an improper motive." (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1158.) "[A]n act is independently wrongful if it is unlawful, that is, if it is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard." (*Ibid.*) "[A]n actor's breach of contract, without more, is not "wrongful conduct" capable of supporting a tort, including the tort of intentional interference with prospective economic advantage." (*Drink Tank Ventures LLC v. Real Soda in Real Bottles, Ltd.* (2021) 71 Cal App.5th 528, 533 (*"Drink Tank"*) (internal citations omitted).)

Here, Plaintiff alleges that (1) Plaintiff and LAS were engaged in economic relationships with third party vendors that probably would have resulted in a significant economic benefit to Plaintiff related to the sale of outstanding inventory, (2) Defendants knew of those relationships, (3) Defendants knowingly engaged in conduct that interfered with Plaintiff's economic relationship, specifically as to the sale of outstanding inventory, (4) Defendants' actions did, in fact, disrupt Plaintiff's relationships with third party vendors and forced Plaintiff to sell outstanding inventory at a significant discount, and (5) Plaintiff has been damaged no less than $1,787,922.72, not including interest. (TAC ¶¶ 71-77.)

However, Plaintiff must allege independently wrongful conduct. Given that Plaintiff did not adequately plead fraud, he cannot rely on Defendants' alleged misrepresentations in establishing the independent wrongful conduct.

Instead, Plaintiff also alleges that Defendants were "refusing to uphold the terms of the Profit-Sharing Agreement, terminating Plaintiff's employment, improperly selling copycat products on its own website at a

significantly reduced rate, and refusing to handle the costs associated with the sale of outstanding inventory." (TAC ¶ 74.) Selling counterfeit items is certainly considered independently wrongful conduct.

However, the Court agrees that Plaintiff failed to plead identifiable third-party vendors, which causes this claim to fail. (See *Westside Ctr. Assocs. v. Safeway Stores 23, Inc.* (1996) 42 Cal.App.4th 507, 527 ["Without an existing relationship with an identifiable buyer, [plaintiff's] expectation of a future sale was 'at most a hope for an economic relationship and a desire for future benefit.' [Citation]"]; *Id.* at p. 520 [prospective relationships comprised of "those involving the class of possible but as yet unidentified tenants or buyers" insufficient for interference with prospective economic advantage claim].)

The demurrer to the fourth cause of action is sustained.

Fifth Cause of Action: Failure to Reimburse for Business Expenses

Shiying and Lin demur to the sixth cause of action.

Labor Code section 2802(a) provides that "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties. . . ." (Labor Code § 2802, subd. (a).) The elements of a claim under section 2802 are: "(1) the employee made expenditures or incurred losses; (2) the expenditures or losses were incurred in direct consequence of the employee's discharge of his or her duties, or obedience to the directions of the employer; and (3) the expenditures or losses were necessary." (*Arroyo v. Int'l Paper Co.* (N.D. Cal. 2020) 611 F. Supp. 3d 824, 844.) "[A]n employee's failure to submit a request for reimbursement does not waive his or her rights under Section 2802. Rather, when the employer knows or has reason to know that the employee has incurred an expense, then it has the duty to exercise due diligence and take any and all reasonable steps to ensure that the employee is paid for the expense." (*Ibid.* (internal citations omitted).)

The Court finds that this claim is sufficiently alleged as to both Shiying and Lin.

As to Lin, Labor Code states that "[a]ny employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, [Section 2802], may be held liable as the employer for such violation." The TAC alleges that Lin was the owner, CEO, and managing agent of LAS – Plaintiff's direct employer – and

that Lin personally caused LAS to fail to reimburse Plaintiff for his necessary business expenses incurred in the course of his employment. (TAC, at ¶¶ 5, 37, 46(a), 85-87.)

As to Shiying, as stated above, the TAC alleges that LAS and Shiying operate as a single enterprise under Lin's unified ownership and control.

The demurrer to the fifth cause of action as to Shiying and Lin is overruled.

Motion to Strike

LAS is seeking to strike Plaintiff's prayer for punitive damages and its accompanying allegations, specifically paragraphs 69, 70, 78, and 79 of the TAC.

Punitive damages may be imposed where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice. (Civ. Code, § 3294, subd. (a).) A motion to strike punitive damages is properly granted where a plaintiff does not state a prima facie claim for punitive damages, including allegations that defendant is guilty of oppression, fraud or malice. (*Turman v. Turning Point of Cent. California, Inc.* (2010) 191 Cal.App.4th 53, 63.) Moreover, conclusory allegations are not sufficient to support a claim for punitive damages. (*Brousseau v. Jarrett* (1977) 73 Cal.App.3d 864, 872.) Lastly, "[t]he mere allegation an intentional tort was committed is not sufficient to warrant an award of punitive damages. Not only must there be circumstances of oppression, fraud, or malice, but facts must be alleged in the pleading to support such a claim." (*Grieves v. Superior Court* (1984) 157 Cal.App.3d 159, 166.)

The Court agrees that Plaintiff's punitive damages prayer and accompanying allegations must be stricken. Like with the SAC, Plaintiff has not alleged any grounds upon which imposition of punitive damages would be warranted. Plaintiff has only alleged conclusory statements that "in engaging in the acts of intentional misrepresentation [or intentional interference] as alleged above, Defendants, and each of them, acted with malice, oppression, and conscious disregard for Plaintiff's rights and the likelihood of injury to Plaintiff." (TAC ¶¶ 69, 78.) These allegations are simply not specific enough to support a punitive damages claim.

And given that the Court did not find that Plaintiff has sufficiently pleaded a cause of action for fraud or intentional interference with prospective economic relations, Plaintiff cannot rely on these causes of action as a basis for his punitive damages prayer. (See *Walton v. Anderson* (1970) 6 Cal.App.3d 1003, 1010 ["When

there is express fraud there is evil motive (malice)"]; *Oakes v. McCarthy Co.* (1968) 267 Cal.App.2d 231, 263, ["Fraud alone is an adequate basis for awarding punitive damages"].)

Thus, LAS, Shiying and Lin's motion to strike is granted.

CONCLUSION

Based on the foregoing,

LAS, Shiying and Lin's demurrer is OVERRULED and SUSTAINED in part. The demurrer is overruled as to the first, second, and fifth causes of action. The demurrer is SUSTAINED as to the third and fourth causes of action.

LAS, Shiying and Lin's motion to strike is GRANTED. Paragraphs 69, 70, 78, and 79 of the TAC are hereby stricken.

Plaintiff is entitled to 30 days leave to amend.

Dated this 28th day of April 2026

Hon. Gary D. Roberts

Judge of the Superior Court