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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

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| ROBERT WAYNE,<br><br>Plaintiff and Appellant,<br><br>v.<br><br>BAMBI BYRENS,<br><br>Defendant and Appellant. | B227575<br><br>(Los Angeles County<br>Super. Ct. No. SC095496) |

APPEAL from a judgment and orders of the Superior Court of Los Angeles County. Craig D. Karlan, Judge. Affirmed in part and reversed in part with directions.

Law Offices of John A. Case, Jr., John A. Case, Jr. and Mary O. O'Neill for Plaintiff and Appellant.

Henderson Humphrey and J. Scott Humphrey for Defendant and Appellant.

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Plaintiff, appellant and cross-respondent Robert Wayne (appellant) brought an action against defendant, respondent and cross-appellant Bambi Byrens (Byrens) alleging multiple claims premised on the basis she had falsely promised him they would be partners in several real estate ventures and he acted in reliance on those promises for several years in helping to renovate and develop the properties. The jury found in appellant's favor on his claims for fraud and recovery in quantum meruit, and awarded him $1.5 million. The trial court conditionally granted Byrens's motion for a new trial, finding that damages were excessive and ordering that the motion would be denied if appellant accepted a remittitur in the amount of $576,000. Instead, appellant appealed, and Byrens filed a cross-appeal challenging the denial of her motion for judgment notwithstanding the verdict.

We affirm in part and reverse in part. Because the trial court's specification of reasons for granting a new trial was untimely, we must independently review whether any other grounds stated in the motion supported the order. We cannot conclude that the jury's verdict was either against the law or the result of an error in law, and find that substantial evidence supported the verdict. We affirm the denial of Byrens's motion for judgment notwithstanding the verdict, also because substantial evidence supported the verdict. Consequently, we must reverse the order granting a new trial and direct the trial court to reinstate the judgment.

## FACTUAL AND PROCEDURAL BACKGROUND

### *The Parties and Their First Business Venture.*

Appellant came to the United States from Italy in the late 1970's with a $300,000 inheritance which he used to buy and remodel several properties, invest in other businesses and support himself. During the 1980's he joined father and son Richard and Peter Di Iorio to form West Doheny Realty (WDR), a corporation that invested in properties, developed them by rehabilitating or securing entitlements, and then resold them for a profit. Each contributed one-third of WDR's initial $100,000 capital. WDR operated out of one of the condominium units at 999 North Doheny Drive in West

Hollywood (Doheny property) that appellant owned. Appellant served as WDR's vice-president and treasurer, and on a day-to-day basis obtained contractor bids, hired and supervised subcontractors and served as a property manager.[1] Though he did not receive a salary from WDR, he received a share of the profits when properties were sold, earning $50,000 to $150,000 per year. WDR operated from 1985 to 1992. Peter was critical of appellant's skills and integrity.

Appellant met Byrens in 1992 and the two became friends. At that point, appellant was looking for a new source of income because the real estate market had become depressed. He approached investors for capital to open a restaurant, and ultimately took over Ambiante, a struggling restaurant on Sunset Boulevard, paying $22,000 for the kitchen equipment and later approximately $6,000 for the liquor license. He asked Byrens for the $100,000 he believed he needed to open the restaurant, and she asked to be a partner in the venture. The terms of the undocumented partnership were that the lease and liquor license be in Byrens's name, and that she would provide the initial $100,000 but would receive collateral in the form of a lien on appellant's car for his one-half of that amount. Appellant agreed to those terms because he trusted Byrens.

The Trocadero restaurant opened in 1994 and broke even in its first year. During that year, appellant managed the restaurant on a day-to-day basis. In April 1995 when Byrens's mother died, Byrens disassociated herself from the restaurant. She began to rely heavily on appellant for companionship; as a result, appellant spent little time at the restaurant and after two to three months became romantically involved with Byrens. Sometime during 1995, appellant moved in with Byrens at her mother's house at 1000 Loma Vista in Beverly Hills (Loma Vista property). When he moved in, Byrens told him he was her soul mate, she wanted to spend the rest of her life with him, he did not have to worry about anything and whatever was hers was his. After appellant moved in, he transferred his assets to Byrens's checking account, and she added his name to that

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[1] Appellant is dyslexic and typically relied on business associates to read documents to him.

account. Byrens denied that appellant lived with her at the Loma Vista property on a full-time basis.

Upon her mother's death, Byrens inherited trust assets worth several million dollars. By 1999, appellant became concerned about the amount of money that Byrens was spending on items such as antiques and cars. He asked her to take his name off of the checking account so she could write the checks to see how much she was spending. In 2000, Byrens put her assets into a new trust, the Bailey Family Trust, naming appellant as the sole beneficiary. Thereafter, she also named him as the beneficiary of her will and gave him power of attorney over her financial matters and health care decisions. He was also on her health insurance plan. Byrens's friends did not care for appellant.

The Trocadero restaurant remained open until 2000 when it was sold for $125,000. Toward the end it was primarily used for filming and special events, and its losses offset Byrens's taxes. Byrens received the entire purchase price, less a $12,000 sales commission.

***The Properties.***

**Doheny property.**

Sometime in 1994, appellant stopped paying his mortgage on the Doheny property. When he told Byrens he was trying to negotiate a short sale, she assured him that she had the funds to purchase the property out of foreclosure. After appellant's lender foreclosed in December 1995 and initiated unlawful detainer proceedings, Byrens presented a purchase offer; the lender ultimately accepted an offer of $280,000. Appellant believed he and Byrens were equal partners in the venture. Thereafter, appellant proposed converting the two units into a single unit. Appellant contributed approximately $20,000 and Byrens contributed $50,000 to the project. Byrens denied that appellant contributed any money to the renovation. Appellant purchased materials and supervised the renovation, which was completed by 1997. Byrens used the unit as an office. She borrowed $350,000 from her aunt's estate and placed a deed of trust on the Doheny property in favor of her aunt for that amount.

In 2003, the Doheny property sold for $850,000. Appellant received nothing from the sale of the property; the proceeds were deposited into Byrens's personal account.

**Loma Vista property.**

After moving into the Loma Vista property, appellant, at Byrens's request, hired some individuals to do minor remodeling. Beginning in late 2002, appellant and Byrens engaged in more extensive remodeling, hiring an architect whose design involved combining several smaller rooms into one great room. Though appellant hired a general contractor to oversee the renovation, he acted as the construction manager on the project, accepting construction proposals, signing contracts with vendors and paying invoices. Because of his lack of experience, the job went very slowly and often poorly. Appellant and Byrens lived together in rental properties during much of the construction.

**8623 Santa Monica Boulevard.**

Upon her mother's death, Byrens also inherited the commercial property at 8623 Santa Monica Boulevard in West Hollywood (8623 Santa Monica). In 2000, Byrens transferred ownership of the Doheny property, the Loma Vista property and 8623 Santa Monica to the Bailey Family Trust, which named appellant as the beneficiary.

The property at 8623 Santa Monica was leased to three separate tenants. Sometime in 2002, appellant and Byrens discovered that one tenant, a hair salon, had opened an illegal spa. Byrens initiated a lawsuit that ultimately settled, with the tenant foregoing options to renew and remaining on the premises for an additional three years. Once the tenant moved out, appellant first supervised some minor renovations costing approximately $30,000 and then, at the recommendation of real estate agent Christopher Mara, gutted the building so that it was a "vanilla shell." Though Mara presented several offers from tenants and at least one offer to purchase the property, the building was not leased or sold. According to Mara, significant additional improvements were still needed to make the property ready to lease.

**8631 Santa Monica Boulevard.**

The property at 8631 Santa Monica Boulevard in West Hollywood (8631 Santa Monica) was adjacent to the property already owned by Byrens. In 2001, it contained an

abandoned church and became available for sale. Byrens took out a $1 million loan against the Loma Vista property to finance the $950,000 purchase that closed in March 2002. At the time of purchase, the property generated some income from a parking lease with the City of West Hollywood. Appellant hired a company that performed a site assessment and environmental evaluation of the property. Appellant believed that he was a one-half owner of the property by virtue of the purchase through a limited liability company (LLC) that he and Byrens had formed.

Byrens and appellant used the proceeds from the sale of the Doheny property to develop 8631 Santa Monica. They ultimately decided to develop a vanilla shell on the property, comprised of a 4,200 square foot ground floor, a 1,400 square foot mezzanine and rooftop parking that could be leased to one or multiple tenants. Appellant worked full time for over one year on the project—hiring professionals, disbursing funds and buying materials—at a cost of $400,000 to $500,000. He had no prior experience developing retail or commercial property. Once the project was completed, appellant worked with Mara to locate tenants. Ultimately, Union Bank accepted appellant's proposal of a ten-year lease beginning at a monthly rent of $25,000 "triple net," meaning the bank would pay for property taxes, insurance and maintenance in addition to rent.

In 2006, Byrens took out a loan secured by 8631 Santa Monica to repay the loan secured by the Loma Vista property. According to Byrens, she spent an additional $859,000 to finish the improvements after appellant left the job.

**916 Westbourne Drive.**

After the purchase of the corner property at 8631 Santa Monica, appellant had the idea to purchase the property immediately adjacent on the other side at 916 Westbourne Drive (916 Westbourne). Though the residence at that location was not on the market, appellant hired a broker who persuaded the owner to sell for $795,000, which was approximately $50,000 over market value. Byrens put 20 percent down and the rest was financed through a traditional mortgage. As with 8631 Santa Monica, appellant believed that he was a one-half owner of the property through the LLC that had acquired it.

In 2004 or 2005, appellant and Byrens refinanced the property and paid off the original mortgage. In June 2007, Byrens sold 916 Westbourne for $1,350,000.

***LLC's.***

Beginning in 2002, appellant and Byrens discussed forming LLC's for the purpose of buying property. According to appellant, Byrens told him that he would be a 50 percent owner of each LLC; Byrens denied making any statements to that effect. They formed ByWay Penthouse LLC for the purpose of holding title to the Doheny property, King Cat Edward LLC (King Cat) for the purpose of holding title to 8631 Santa Monica and 916 Westbourne, and Lilly Lou Shepherd LLC for the purpose of holding title to 8623 Santa Monica. The LLC's were named after appellant and Byrens themselves and their pets, and the parties' goal in forming them was to formalize their partnership. Appellant had full authority to write checks from the King Cat account.

Only Byrens's name was on the LLC's. In 2002, appellant learned that his name was not on any of the LLC's. After appellant confronted Byrens, she stated several times that she would fix the matter.

***Conclusion of Appellant's and Byrens's Relationship.***

Throughout the course of his relationship with Byrens, appellant did not receive a salary from King Cat, though in 2003 and 2004 he received King Cat checks totaling $56,800. Byrens, however, provided complete financial support for appellant from 1995 to mid-2007.

Appellant and Byrens separated in mid-2006. At the time of their separation, Byrens had a $2 million loan secured by 8631 Santa Monica and a $2.5 million loan secured by the Loma Vista property; there were no loans on 8623 Santa Monica or 916 Westbourne. In March 2007, however, at a meeting between appellant, Byrens and Byrens's accountant Ben Karimi in which they discussed the tax consequences of adding appellant's name to the LLC's, Byrens told appellant that she wanted to marry him. But the two did not marry and their business and personal relationship came to a conclusion at the end of March 2007, precipitated by an argument about their sick dog. Byrens had appellant evicted from the apartment in which he had been living since their separation,

removed his ability to write checks from the King Cat account and cut him off from access to any of her assets. She also changed the beneficiary designation on her trust to remove appellant's name.

According to appraiser Kim Kearney, the value of the Loma Vista property in March 2007 was $5.5 million and in 2010 was $7.3 million; the value of 8623 Santa Monica in March 2007 was $3.6 million and in 2010 was $3.3 million; and the value of 8631 Santa Monica in March 2007 was $5.9 million and in 2010 was $5.3 million. Distinguishing an opinion of broker's value from an appraisal, appraiser Daniel Poyourow appraised the value of the Loma Vista property in March 2007 at $5.77 million, less the cost to complete the remodel. Its appraised value in February 2010 was $6.75 million. He appraised 8631 Santa Monica at $5.1 million as of March 2007 and $4.73 million in 2010. He also appraised 916 Westbourne to have a value of $1.36 million in March 2007.

***Pleadings and Trial.***

Appellant filed his original complaint in October 2007, a first amended complaint in October 2008 and the operative second amended complaint (complaint) in February 2009, which alleged causes of action for breach of fiduciary duty; breach of an oral partnership agreement; breach of the implied covenant of good faith and fair dealing; fraud and deceit; judicial dissolution of partnership and limited liability companies, accounting and appointment of a receiver; slander; intentional and negligent infliction of emotional distress; declaratory relief, invasion of privacy and quantum meruit. He sought general, special and punitive damages. Byrens generally denied the allegations and asserted multiple affirmative defenses.

In March 2010, a jury trial commenced on five claims: breach of partnership agreement, breach of the implied covenant of good faith and fair dealing, breach of fiduciary duty, fraud and quantum meruit. After a two-week trial, the jury returned a special verdict, finding that appellant and Byrens did not enter into a partnership agreement and therefore finding in favor of Byrens on appellant's first three claims. The jury found in favor of appellant on his claims for fraud and quantum meruit, awarding

him $1.5 million in damages. The jury did not find clear and convincing evidence that Byrens had acted with oppression, fraud or malice for the purpose of awarding punitive damages.

In April 2010, the trial court held a bench trial on certain outstanding equitable issues, finding that Byrens failed to meet her burden of proof to establish the affirmative defenses of equitable estoppel and unclean hands, and that appellant failed to meet his burden of proof to establish alter ego liability.

***Judgment and Motion for a New Trial.***

On June 30, 2010, the trial court entered judgment in favor of appellant and against Byrens in the amount of $1.5 million. Thereafter, Byrens moved for a new trial and judgment notwithstanding the verdict.

The trial court held an initial hearing on the motions on August 11, 2010 and continued the hearing to August 12, 2010, permitting the parties additional argument focused on the issue of excessive damages. At the conclusion of the August 12, 2010 hearing, the trial court denied the motion for judgment notwithstanding the verdict and conditionally granted the motion for a new trial, ordering that the motion would be denied in the event that appellant consented to a reduction of the damages award to $575,000. Also on August 12, 2010, the trial court issued a minute order summarizing its ruling and providing that "[t]he Court will file its Specification of Grounds and Reasons, as per Code of Civil Procedure section 657, within 14 days."

In accordance with its initial minute order, on August 26, 2010, the trial court issued a second minute order which both increased the remittitur amount to $576,000 and set forth its specification of grounds and reasons. The trial court found that the $1.5 million award was grossly disproportionate to the injury suffered by appellant. It cited the evidence on which it relied to reach this conclusion, which included that appellant lacked the ability and experience to serve as a construction manager; appellant had a sparse employment history and his work providing "several years of personal assistant services" did not amount to $1.5 million; appellant had no claim to Byrens's inherited properties; much of the increase in property value was due to market conditions

and not appellant's input; he provided no significant services for the 916 Westbourne property and he was entitled only to a proportionate share of 8631 Santa Monica property on the basis of his monetary participation in the renovation and sale of Doheny property; appellant's claim to a 50 percent ownership of any property or LLC was vague and not credible; and the jury appeared to have been motivated by its dislike of Byrens.

Appellant appealed from the August 14 and 26, 2010 orders, and Byrens appealed from the judgment and post-judgment orders.

## DISCUSSION

Appellant contends that the order granting a new trial did not comply with Code of Civil Procedure section 657,[2] thereby rendering it void and requiring us to independently review the order on grounds other than excessive damages. We agree and conclude that the order cannot be supported on any other ground. Nor do we find any basis to reverse the order denying Byrens's motion for judgment notwithstanding the verdict.

### I. The Order Granting a New Trial is Void.

#### *A. The Order Did Not Comply with the Requirements of Section 657.*

"The authority of a trial court in this state to grant a new trial is established and circumscribed by statute. [Citation.]" (*Oakland Raiders v. National Football League* (2007) 41 Cal.4th 624, 633 (*Oakland Raiders*).) The governing statute, section 657, identifies seven grounds for a new trial and requires the trial court not only to state one of the grounds but also to specify the reasons for granting the motion on that ground. (*Oakland Raiders, supra,* at p. 633.) In relevant part, section 657 provides: "When a new trial is granted, on all or part of the issues, the court shall specify the ground or grounds upon which it is granted and the court's reason or reasons for granting the new trial upon each ground stated. [¶] . . . [¶] The order passing upon and determining the

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[2] Unless otherwise indicated, all further statutory references are to the Code of Civil Procedure.

motion must be made and entered as provided in Section 660 and if the motion is granted must state the ground or grounds relied upon by the court, and may contain the specification of reasons. If an order granting such motion does not contain such specification of reasons, the court must, within 10 days after filing such order, prepare, sign and file such specification of reasons in writing with the clerk."

The terms "grounds" and "reasons" have different meanings. (*Oakland Raiders, supra,* 41 Cal.4th at p. 634; *Mercer v. Perez* (1968) 68 Cal.2d 104, 112.) "The word 'ground' refers to any of the seven grounds listed in section 657," and "[a] statement of grounds that reasonably approximates the statutory language is sufficient. [Citations.]" (*Oakland Raiders, supra,* at p. 634.) In contrast, a statement of reasons "should be specific enough to facilitate appellate review and avoid any need for the appellate court to rely on inference or speculation." (*Ibid.*; see also *Meiner v. Ford Motor Co.* (1971) 17 Cal.App.3d 127, 137 [specification of reasons adequate where it enabled the parties "to discuss intelligently the question whether there was any substantial evidence to support the judge's reasons"].)

"California courts have consistently required strict compliance with section 657." (*Oakland Raiders, supra,* 41 Cal.4th at p. 634.) Appellant contends that the trial court's order granting a new trial failed to comply with section 657 both because of its failure to state the ground on which a new trial was ordered and the untimely specification of reasons. We acknowledge that the order did not state that a new trial was granted on the ground of excessive damages, instead providing that the trial court ordered "a new trial only as to damages" subject to the condition that the motion would be denied if appellant consented to a reduction in damages. But because section 662.5, subdivision (a)(2) permits such a conditional grant of a new trial only when the ground for the ruling is excessive damages, we could construe the order to have sufficiently specified the ground for the order. (See *Schelbauer v. Butler Manufacturing Co.* (1984) 35 Cal.3d 442, 452–453.) Nonetheless, such a conclusion would be inadequate to save the order, as it is void because the specification of reasons was filed late.

The statutory requirement in section 657 "that the statement of reasons be filed no later than 10 days after the order granting a new trial is jurisdictional, and a statement of reasons filed more than 10 days after the order is ineffective. [Citations.]" (*Oakland Raiders, supra,* 41 Cal.4th at p. 634; accord, *La Manna v. Stewart* (1975) 13 Cal.3d 413, 418; *Hand Electronics, Inc. v. Snowline Joint Unified School Dist.* (1994) 21 Cal.App.4th 862, 867–868.) "Substantial compliance with the statute is not sufficient. [Citations.]" (*Oakland Raiders, supra,* at p. 634; see *Fergus v. Songer* (2007) 150 Cal.App.4th 552, 566 [specification of reasons filed 15 days after minute order granting a motion for new trial deemed a nullity because it was filed more than 10 days after entry of the new trial order]; *Swanson v. Western Greyhound Lines, Inc.* (1969) 268 Cal.App.2d 758, 760 [because trial court's jurisdiction to specify reasons expired 10 days after entry of a minute order granting a new trial, specification of reasons filed 14 days later was ineffective].)

Here, there is no question that the trial court filed its specification of reasons beyond the 10-day period. The August 12, 2010 minute order specifically stated that the trial court would file its specification of reasons "within 14 days." While the subsequent August 26, 2010 specification of reasons complied with this internal directive, it did not comply with section 657.

We find no merit to Byrens's contention that the operative order granting a new trial was the August 26, 2010 specification of reasons because the August 12, 2010 order was a minute order not served on the parties. According to section 660, "[t]he entry of a new trial order in the permanent minutes of the court shall constitute a determination of the motion even though such minute order as entered expressly directs that a written order be prepared, signed and filed." Citing this language, the court in *Smith v. Moffat* (1977) 73 Cal.App.3d 86, 91–92, determined that the entry of a minute order granting a new trial triggers the commencement of the 10-day period for filing a specification of reasons and therefore concluded that a specification of reasons filed approximately 24 days after entry of the minute order was an act in excess of the trial court's jurisdiction. Nor do we find any merit to her alternative contention that the operative

order granting a new trial was the August 26, 2010 order because it corrected the remittitur amount by $1,000. The language of the trial court's August 26, 2010 order belies her contention; in that order the trial court confirmed that "[o]n August 12, 2010, the court granted Defendant Byrens' Motion for a New Trial . . . ." We are therefore guided by *Mercer v. Perez, supra,* 68 Cal.2d at page 121, where the court concluded that a purported judicial act beyond the 10-day time limit specified in section 657 "could not be saved by the device of treating the belated specification as a *nunc pro tunc* 'correction' of the earlier order [citation]."

***B. Consequences of an Untimely Specification of Reasons.***

"The failure to supply an adequate specification of reasons renders the new trial order defective, but not void." (*Thompson v. Friendly Hills Regional Medical Center* (1999) 71 Cal.App.4th 544, 550.) Where the defective order results from the failure to timely supply a specification of reasons for a new trial granted on the grounds of insufficiency of evidence or excessive damages, the order may not be affirmed on those grounds. (§ 657; *Fergus v. Songer, supra,* 150 Cal.App.4th at p. 563 [an appellate court cannot affirm a new trial order grounds of excessive damages when that ground is not stated in the order or when "the trial court has failed to file its specification of reasons within 10 days after the entry of the new trial order in the permanent minutes"].) As explained in *Sanchez-Corea v. Bank of America* (1985) 38 Cal.3d 892, 905: "If an order granting a new trial does not effectively state the ground or the reasons, the order has been reversed on appeal where there are no grounds stated in the motion other than insufficient evidence or excessive or inadequate damages. [Citations.] If, however, the motion states any *other* ground for a new trial, an order granting the motion will be affirmed if any such other ground legally requires a new trial. [Citations.]" (Accord, *Oakland Raiders, supra,* 41 Cal.4th at p. 638; *Mercer v. Perez, supra,* 68 Cal.2d at p. 119; *Fergus v. Songer, supra,* 150 Cal.App.4th at p. 563.)

Here, Byrens's motion for new trial raised all seven grounds specified in section 657. In her points and authorities, however, she expressly confined her request for a new trial to the grounds of insufficiency of evidence, excessive damages, the verdict

being against the law and an error in law objected to at trial. "'In contrast to the grounds of insufficient evidence and excessive or inadequate damages, "the phrase 'against law' does not import a situation in which the court weighs the evidence and finds a balance against the verdict, as it does in considering the ground of insufficiency of the evidence." [Citation.] Because the "against law" ground is distinct from the ground of insufficiency of the evidence, a new trial order must be affirmed as against law even though that ground is not stated in the order or supported by a specification of reasons. [Citations.]' [Citation.]" (*Fergus v. Songer, supra*, 150 Cal.App.4th at p. 567.) Accordingly, we examine whether a new trial was warranted because the verdict was against the law or the result of an error in law objected to at trial.

## II. The New Trial Order May Not Be Affirmed on the Ground the Verdict Was Against the Law or the Result of an Error in Law.

### *A. Standard of Review.*

When a new trial order complies with the requirements of section 657, we review the order for an abuse of discretion. (*Lane v. Hughes Aircraft Co.* (2000) 22 Cal.4th 405, 412.) But when the order is defective, a different standard of review applies. Concluding that "the absence of a statement of reasons calls for independent review of the trial court's order granting a motion for a new trial," the *Oakland Raiders* court explained that "[t]he reviewing court should not, in a situation such as that presented here, defer to the trial court's resolution of conflicts in the evidence, or draw all inferences favorably to the trial court's decision, because in the absence of a statement of reasons, the record does not show whether the trial court resolved those conflicts or drew those inferences." (*Oakland Raiders, supra,* 41 Cal.4th at p. 640.)

Under such independent review, the party seeking to uphold the trial court's defective order has the burden of persuasion. The *Oakland Raiders* court stated: "[O]rdinarily 'a party who seeks a court's action in his favor bears the burden of persuasion thereon' . . . . [b]ut when a party such as the Raiders asks a reviewing court to sustain a *defective* trial court order, relying upon a ground stated in the new trial motion

but not supported by a statement of reasons, the situation is reversed. Now 'the burden is on the movant to advance any grounds stated in the motion upon which the order should be affirmed, and a record and argument to support it' [citation] and to persuade the reviewing court that the trial court should have granted the motion for a new trial. Thus, the effect of the trial court's failure to file a statement of reasons in support of the order granting a new trial is to shift the burden of persuasion to the party seeking to uphold the trial court's order." (*Oakland Raiders, supra*, 41 Cal.4th at pp. 640–641; accord, *Whitlock v. Foster Wheeler, LLC* (2008) 160 Cal.App.4th 149, 158 [under the independent review described in *Oakland Raiders*, "the burden of persuasion is on the party seeking to *uphold* the trial court's defective order"].)

In *Sanchez-Corea v. Bank of America*, *supra*, 38 Cal.3d at pages 906 to 907, the court articulated the specific standard of review that applies to the claim that a verdict is against the law, stating "[t]he jury's verdict was 'against law' only if it was 'unsupported by any substantial evidence, i.e., [if] the entire evidence [was] such as would justify a directed verdict against the part[ies] in whose favor the verdict [was] returned.' [Citations.] '[T]he function of the trial court on a motion for a directed verdict is analogous to and practically the same as that of a reviewing court in determining, on appeal, whether there is evidence in the record of sufficient substance to support a verdict.' [Citations.]" (See also *Hoffman-Haag v. Transamerica Ins. Co.* (1991) 1 Cal.App.4th 10, 15 ["'Stated otherwise, a decision is "against the law" where the evidence is insufficient in law and without conflict on any material point'"].) In reviewing whether the evidence was insufficient to support the verdict, we consider the evidence in the light most favorable to appellant as the prevailing party and indulge all legitimate and reasonable inferences to uphold the jury verdict if possible. (*Sanchez-Corea v. Bank of America, supra,* at p. 907.)

***B. The Damages Award Was Not Against the Law.***

The jury found in favor of appellant on the theories of fraud and quantum meruit, and issued a single award of damages in the amount of $1.5 million. Byrens's contention that the verdict was against the law is confined to the sufficiency of the evidence to

support the damages award. We may affirm the award if it is supported by either the fraud or quantum meruit causes of action. (See *Tavaglione v. Billings* (1993) 4 Cal.4th 1150, 1155 ["'we must affirm the judgment if we determine there is any theory of recovery which supports the judgment'"]; *Henderson v. Harnischfeger Corp.* (1974) 12 Cal.3d 663, 673 ["'[w]here there are several counts or causes of action, a general verdict will stand if the evidence supports it on any one sufficient count'"].) Nonetheless, we address both appellant's fraud and quantum meruit claims, and conclude that sufficient evidence supports the damages award under either theory.

**1. Fraud.**

In connection with appellant's claim for fraud, the trial court instructed the jury under both theories of intentional misrepresentation and false promise. With respect to damages for breach of fiduciary duty and fraud, the jury was instructed to decide "how much money will reasonably compensate Robert Wayne for the harm caused by Bambi Byrens' wrongful conduct. This compensation is called 'damages.' [¶] The amount of damages must include an award for each item of harm that was caused by Bambi Byrens' wrongful conduct, even if that particular harm could not have been anticipated. [¶] Robert Wayne does not have to prove the exact amount of damages that will provide reasonable compensation for the harm. However, you must not speculate or guess in awarding damages."[3]

The instruction mirrored Civil Code section 3333, which provides that "[f]or the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not." (See also Civ. Code, § 1709 ["One who willfully deceives another with intent to induce him to alter his position to his injury or risk, is liable for any damages which he thereby suffers"].) Cases interpreting Civil Code section 3333 confirm that "'[t]ort damages are

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[3] The instruction continued to identify the specific items of damage that appellant sought in connection with his claim for breach of fiduciary duty, and we address appellant's claim that the instruction constituted an error in law in section C, *post.*

awarded to fully compensate the victim for all the injury suffered. [Citation.] There is no fixed rule for the measure of tort damages under Civil Code section 3333. The measure that most appropriately compensates the injured party for the loss sustained should be adopted. [Citation.]' [Citation.]" (*Metz v. Soares* (2006) 142 Cal.App.4th 1250, 1255; accord, *Strebel v. Brenlar Investments, Inc.* (2006) 135 Cal.App.4th 740, 749 (*Strebel*) [same]; *Santa Barbara Pistachio Ranch v. Chowchilla Water Dist.* (2001) 88 Cal.App.4th 439, 446–447 [same].) Fraud damages are limited, however, by the principle that "'[a] plaintiff in a tort action is not, in being awarded damages, to be placed in a better position than he would have been had the wrong not been done.' [Citation.]" (*Metz v. Soares, supra*, at p. 1255.)

Byrens contends that the $1.5 million award is against the law because it placed appellant in a better position than he would have been absent the fraud. She argues that the award amounted to a "benefit-of-the bargain" measure of damages and rather than the "out-of pocket" measure of damages appropriate as a remedy for fraud.[4] She claims that, at best, damages should have been limited to the $20,000 appellant expended on the Doheny property renovation, rather than the $1.5 million which could be calculated as one-half of the increased value of the King Cat assets—8631 Santa Monica and 916 Westbourne.

Byrens correctly points out that the general rule in California is that a defrauded party is ordinarily limited to recovering his out-of-pocket loss. (E.g., *Christiansen v.*

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[4] These circumstances are not governed by Civil Code section 3343, which specifies an out-of-pocket standard for fraud by a non-fiduciary vendor or vendee in specified circumstances. That statute provides that "[o]ne defrauded in the purchase, sale of exchange of property is entitled to recover the difference between the actual value of that with which the defrauded person parted and the actual value of that which he received." (Civ. Code, § 3343, subd. (a).) The statute provides the exclusive measure of damages for fraud in property transactions and eliminates the benefit-of-the-bargain measure in such cases. (See *Stout v. Turney* (1978) 22 Cal.3d 718, 725–726.) Because there was no sale of property as between appellant and Byrens, the jury was not instructed to apply Civil Code section 3343. We must therefore apply the general measure of tort damages set forth in Civil Code section 3333 in determining whether appellant's award was against the law.

*Roddy* (1986) 186 Cal.App.3d 780, 790 [plaintiffs not entitled to anticipated interest at a rate of 20 percent in fraudulently induced investment].) But she ignores the broader principle explained in *Strebel, supra*, 135 Cal.App.4th at page 748, that there is no fixed rule for the measure of tort damages for fraud under Civil Code section 3333. For that reason, some courts have held that the measure of damages under Civil Code sections 1709 and 3333 is "'substantially the same as that for breach of contract prescribed by section 3300; i.e., it tends to give the injured party the benefit of his bargain and insofar as possible to place him in the same position he would have been [in] had the promisor performed the contract.' [Citations.] 'Others, however, have concluded that the out-of-pocket rule should apply. [Citations.]" (*Strebel, supra*, at p. 748.) The *Strebel* court further acknowledged: "Sometimes, however, neither the out-of-pocket nor benefit-of-the-bargain measure is particularly helpful or appropriate. 'We often look upon the out of pocket rule and the benefit of the bargain rule as being the sole antagonists on the battlefield of damages when at times neither is truly applicable.' [Citation.] Such is the case here." (*Ibid*.)

Homeowner Strebel sought fraud damages from a real estate broker who induced him both to sell his existing home and to enter into a contract to buy a new home in another county without disclosing that the new home was unsalable due to tax liens. (*Strebel, supra*, 135 Cal.App.4th at p. 743.) The court summarized Strebel's theory of recovery: "Strebel asserted that he was injured because defendants' fraud caused him to sell his San Bruno house sooner than he would otherwise have done, rendering him unable to purchase a replacement home before housing values substantially increased. . . . The resultant harm was a decrease in the buying power of the proceeds of his San Bruno house in a rapidly appreciating housing market. In the words of Strebel's attorney in closing argument, 'All we're asking for here is for him in effect to get enough money to now buy something comparable to the [Sonoma] property in today's market. That would be the net effect of what we're asking for, which would in a sense put him back to where he was back in 1999.'" (*Id*. at p. 749.)

Finding that Strebel's claimed damages could not be readily categorized, the court stated: "The question is not whether Strebel is entitled to his out-of-pocket losses or to the benefit of his bargain, but whether the amount by which the value of his San Bruno home appreciated after he sold it is a reasonable measure of the harm he suffered as the consequence of defendant's fraud." (*Strebel, supra*, 135 Cal.App.4th at p. 749.) The appellate court concluded it was appropriate to permit the jury to consider lost appreciation as an element of damages, explaining that "the trial court properly determined that the jury could reasonably find this element necessary to compensate Strebel for the injury caused by defendants' concealment. Under the circumstances shown by the evidence, the jury was entitled to find the recovery of the lost appreciation was reasonable compensation for Strebel's inability to purchase an acceptable home in Sonoma concurrently with the sale of his San Bruno house." (*Id*. at pp. 749–750.) The court concluded: "The amount by which the value of Strebel's former home appreciated after the fraudulently induced sale was a reasonable measure of his damage in this case." (*Id*. at p. 754.)

We find *Strebel* instructive, as it illustrates the type of detriment that may be compensated pursuant to Civil Code section 3333. Here, the jury found that Byrens either knowingly misrepresented an important fact or made a false promise that was important to the transaction, she intended for appellant to rely on the representation or promise, appellant reasonably relied on the representation or promise, appellant suffered harm as a result of the representation or unperformed promise, and appellant's reliance was a substantial factor causing his harm. In connection with the element of reliance, the jury was also instructed that "Robert Wayne relied on Bambi Byrens' false promise if it caused him to continue providing services to Bambi Byrens, and if he would probably not have done so without such false promise."

The evidence supporting the verdict showed that Byrens falsely and repeatedly told appellant that he was a one-half owner of the LLC's, including King Cat which held title to 8631 Santa Monica and 916 Westbourne. Appellant believed that he was the one-half owner of the properties. The evidence further showed that Byrens intended for

appellant to rely on her statements; when appellant discovered that only Byrens's name was associated with King Cat, she told him more than once that she would correct the mistake to add his name. Appellant reasonably relied on her statements, particularly after she gave him durable power of attorney over her assets and said "'Look, I fixed it. This is a durable power of attorney. You can do anything. You can transfer title, you can sell property, you can do whatever you want. Are you satisfied?" In reliance on Byrens's representations, appellant worked to develop 8631 Santa Monica for lease, retained a real estate broker to obtain a tenant and ultimately secured a favorable, long-term lease with a reliable tenant. King Cat did not pay appellant for his services; nor did appellant receive any of the proceeds of the sale of 916 Westbourne. Appellant was involved with the property acquisition and development because he believed he was a 50 percent partner with Byrens.

Given the jury's findings and evidence, we conclude that the jury's $1.5 million award was not against the law, as it was "a reasonable measure of the harm he suffered as the consequence of defendant's fraud." (*Strebel, supra*, 135 Cal.App.4th at p. 749.) Just as the jury in *Strebel* found that an award which encompassed damages for lost appreciation compensated the plaintiff for the detriment he suffered as a result of fraud, the jury here could reasonably conclude that an award of some interest in King Cat was necessary to compensate appellant for the detriment he suffered as a result of Byrens's false promises. Illustrating a similar principle, the court in *Ballou v. Master Properties No. 6* (1987) 189 Cal.App.3d 65 reversed an order granting a new trial on damages in a fraud action brought by real estate brokers to recover a commission promised by the sellers for whom they had found a buyer. The appellate court rejected the sellers' argument that their misrepresentation did not deprive the brokers of anything—i.e., there were no out-of-pocket damages—because they would not have paid the brokers more even if the brokers had asked for an equitable share of the commission. (*Id*. at pp. 72–73.) The court explained that "the jury has the right to determine what a fair price for the plaintiffs' services would have been. Here, the jury concluded that an equal division of commissions was equitable. Considering that, according to the plaintiffs, the defendants

had initially promised them the entire 6 percent commission, we do not see this as unreasonable." (*Id*. at p. 73.) Correspondingly, the jury here had the right to determine appellant's fraud damages in light of Byrens's false promise that he would be a partner in King Cat.

The evidence showed that King Cat's assets were worth millions. King Cat purchased 8631 Santa Monica for $950,000. Evidence of additional amounts spent to improve the property ranged from approximately $500,000 according to appellant to approximately $1.5 million according to Byrens. Evidence of the property's value in March 2007 ranged from $5.1 million to $5.9 million. Thus, evidence of the value of the equity in 8631 Santa Monica ranged from a low of $2.65 million ($5.1 million less a $2.45 million cost basis) to a high of $4.45 million ($5.9 million less a $1.45 million cost basis). King Cat also owned 916 Westbourne, which had a value of $1.35 to $1.36 million and had been purchased for $795,000. Adding that additional one-half million means that the jury's $1.5 million verdict was within the range of one-half to less than one-third of King Cat's assets.

Alternatively, the jury could have focused on evidence showing that funds to develop 8631 Santa Monica came from the sale of the Doheny property—a property for which appellant expended both time and some of his own money to improve in reliance on Byrens's statement that the two of them would be equal partners in the venture. Appellant received none of the approximate $460,000 that the sale of the Doheny property yielded. It would have been equally reasonable for the jury to calculate its award on the basis of a percentage of the Doheny property sale that was rolled into 8631 Santa Monica, again in reliance on Byrens's false promises.

In sum, because there was sufficient evidence to show that the jury's award was within a reasonable range that would compensate appellant for the detriment caused by Byrens's fraud, we cannot conclude that the verdict is against the law, justifying a new trial. (See *Pellegrini v. Weiss* (2008) 165 Cal.App.4th 515, 532 ["In examining the sufficiency of the evidence to support an award of damages, it is not required that we be

able to precisely recreate the jury's reasoning. [Citation.] We will uphold a verdict if it is within the range of possibilities supported by any of the testimony"].)

**2. Quantum Meruit.**

In connection with appellant's quantum meruit claim, the jury was instructed: "Robert Wayne claims that Bambi Byrens owes him money for services rendered. To establish this claim, Robert Wayne must prove all of the following: 1. That Bambi Byrens requested, by words or conduct, that Robert Wayne perform services for the benefit of Bambi Byrens; 2. That Robert Wayne performed the services as requested; 3. That Bambi Byrens has not paid Robert Wayne for the services; and 4. The reasonable value of the services that were provided." Byrens contends that the jury's $1.5 million award as it relates to this claim is against the law because appellant offered no evidence on the last element of reasonable value. We disagree.

The doctrine of quantum meruit allows a party who has provided work or services for the benefit of another to recover the reasonable value of the services from the person who benefited from the services. (*Palmer v. Gregg* (1967) 65 Cal.2d 657, 660; see also Black's Law Dict. (9th ed. 2009) p. 1361, col. 2. ["quantum meruit" is "Latin [for] 'as much as he has deserved'"].) In order to recover, the party providing the services must establish they were not rendered gratuitously, but rather, were provided "'under some understanding or expectation of both parties that compensation therefor was to be made' [citations]." (*Huskinson & Brown v. Wolf* (2004) 32 Cal.4th 453, 458.) Nonetheless, quantum meruit recovery for the reasonable value of services rendered does not require a contract to pay for the services. (*Maglica v. Maglica* (1998) 66 Cal.App.4th 442, 449 (*Maglica*).)

Here, there was sufficient evidence to establish the reasonable value of appellant's services under either of two formulations. First, the evidence showed that appellant provided services to renovate and develop the Doheny property and 8631 Santa Monica because he believed he had an agreement with Byrens that they were equal partners in the ventures. As explained in *George v. Double-D Foods, Inc.* (1984) 155 Cal.App.3d 36, 42 (*George*): "It is settled that an agreed price set forth in an unenforceable or invalid

contract nevertheless is relevant as some evidence, or a criterion, of the reasonable value of the services rendered. [Citations.] In other words, the 'oral stipulations of the parties as to compensation to be paid for services rendered . . . are in the nature of admissions by them as to the reasonable value of such services . . . .' [Citation.]" (See also *Oliver v. Campbell* (1954) 43 Cal.2d 298, 305 ["Of course the contract price is competent evidence bearing on the reasonable value of the services"]; *Watson v. Wood Dimension, Inc.* (1989) 209 Cal.App.3d 1359, 1365 ["The court may consider the price agreed upon by the parties 'as a criterion in ascertaining the reasonable value of services performed'"].) In accordance with these principles, the jury's $1.5 million award was consistent with the agreement between appellant and Byrens, and equated to the value of 50 percent of 8631 Santa Monica, alone. (See *George*, *supra*, at p. 43 [promise that a party will be compensated for his services akin to the admission of the value of the services where the promise contains a "formula by which the dollar amount of the compensation is readily ascertainable"].)

Byrens claims there was no evidence that she and appellant reached an "'agreed price'" for his services, because she disputed the existence of any promise at trial. But conflicting evidence is not synonymous with the absence of evidence. (See generally *Rabbit v. Atkinson* (1941) 44 Cal.App.2d 752, 758 ["Although the evidence was conflicting . . . , it was the exclusive province of the trial court to determine the credibility of the witnesses, the weight and effect to be given to the evidence, to consider inferences reasonably deducible from it, and from the conflicting evidence determine the disputed fact"].)

Moreover, Byrens focuses on only the first of two promises at issue in *George, supra,* 155 Cal.App.3d 36 in arguing that the evidence was inadequate to establish an agreed price. *George* involved a claim to recover the value of an executive's uncompensated services to his former employer; specifically, he sought to recover additional compensation on the basis of the employer's promises to sell him 10 percent of the company's stock at its book value when he commenced employment and to pay him a yearly bonus equal to 10 percent of the company's annual profits in excess of $200,000.

(*Id.* at pp. 42–43.) Byrens cites the court's conclusion that the first promise could not be the basis of an award of compensation because the ability to purchase shares lacked the common characteristics of compensation and the promise itself contained no evidence of the monetary value placed on the executive's services. (*Ibid*.) On the other hand, the court concluded the second promise was one for compensation that contained an agreed price readily ascertainable through a simple mathematical calculation. (*Id*. at p. 43) Byrens's promise that appellant would be a one-half owner of the LLC's resembles the second promise in *George*, as appellant's interest in the LLC's was a form of compensation for his performing services designed to enhance the value of their assets, and the promise contained a mathematically calculable monetary value.

Further, we cannot conclude that the jury's award is against the law under the reasoning of *Maglica, supra*, 66 Cal.App.4th 442. There, an unmarried couple, Anthony and Claire, lived together as husband and wife, and both worked for and earned salaries from Anthony's business. (*Id*. at p. 447.) There was no evidence that Anthony ever agreed to give Claire a share of the business. (*Ibid*.) Years later when Claire sued Anthony alleging quantum meruit and other claims, the jury awarded her $84 million, finding that figure to be the reasonable value of her services. (*Ibid*.) The appellate court reversed, finding that the jury's award was based on evidence of the resulting benefit of Claire's services rather than any evidence of their reasonable value. (*Id*. at pp. 450–451.) The jury's error stemmed from an improper instruction that allowed it "to value Claire's services as having bought her a de facto ownership interest in a business whose owner never agreed to give her an interest." (*Id*. at p. 452.) Here, in contrast, there was evidence of Byrens's promise that appellant would receive a one-half interest in the LLC's that owned the properties for which he had been providing services. This promise was sufficient to serve as evidence of the reasonable value of appellant's services. (See *George, supra*, 155 Cal.App.3d at pp. 42–43.)

In any event, it would have been equally reasonable for the jury to have calculated the $1.5 million quantum meruit award on the basis of evidence of appellant's former earnings. Appellant testified that he earned $50,000 to $150,000 per year while at WDR.

He testified that the duties he performed at WDR were similar to those he performed on behalf of the LLC properties, including obtaining contractor bids, hiring and supervising subcontractors and serving as a property manager. On the basis of this evidence, the jury could have concluded that $1.5 million was the reasonable value of appellant's services by calculating his annual compensation at $150,000 for the 10-year period between 1996 and 2006 that he assisted Byrens in purchasing, developing and renovating all four properties, including Loma Vista and 8623 Santa Monica.

Contrary to Byrens's position, appellant did not need to offer expert testimony about the reasonable value of his services. (See *White v. Kanrich* (1962) 201 Cal.App.2d 356, 360 [plaintiff's testimony about the value of his services sufficient, once expert testimony about reasonable value of services was disregarded].) Nor do we find any merit to Byrens's contention that appellant is now foreclosed from asserting that the jury's verdict was premised on evidence of his prior earnings because his counsel in closing argument contended that appellant was entitled to a share of the partnership assets as reasonable compensation. "Argument of counsel is not evidence. [Citations.]" (*Fuller v. Tucker* (2006) 84 Cal.App.4th 1163, 1173.) The jury was instructed in accordance with this principle: "The arguments of attorneys are not evidence of damages. Your award must be based on your reasoned judgment applied to the testimony of the witnesses and the other evidence that has been admitted during trial." Absent a contrary indication in the record, we must presume that the jury followed the trial court's instructions and that its verdict reflects the legal limitations those instructions imposed. (*Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 803–804.) Byrens has offered nothing to overcome the presumption that the jury followed its instructions and rendered its award on the basis of the admissible evidence. Because there was sufficient evidence to establish the reasonable value of appellant's services, the award of quantum meruit damages was not against the law.

### *C. There Was No Instructional Error.*

Byrens argues that any error in the jury's award was "compounded" by an erroneous damages instruction. Notwithstanding Byrens's failure to object to the

challenged instruction below, we may examine whether it constituted an "error in law" warranting a new trial. (§ 657; *McCarty v. Department of Transportation* (2008) 164 Cal.App.4th 955, 983–984.)

In connection with his claims for both breach of fiduciary duty and fraud, the trial court utilized a modified form of CACI No. 3900 that told the jury it was to decide how much money would reasonably compensate appellant if it determined he proved either his breach of fiduciary duty or fraud and deceit claim; it was to award compensation for harm caused by Byrens's conduct; and appellant did not have to prove the exact amount of damages that would provide compensation, though an award of speculative damages was not permitted. The instruction concluded with the following: "The following are specific items of damages claimed by Robert Wayne: [¶] Robert Wayne claims that he suffered damages from Bambi Byrens' wrongful repudiation of the partnership, in her breach of her fiduciary duty to him as a partner, in an amount equal to 50% of the value of the assets owned by that partnership as of March 31, 2007, plus interest on such value from that date."

Byrens argues that the giving of this instruction—coupled with the absence of any instruction further defining damages for fraud—misled the jury by suggesting that one half of the partnership value was an appropriate measure of fraud damages. "When a party challenges a particular jury instruction as being incorrect or incomplete, 'we evaluate the instructions given as a whole, not in isolation.' [Citation.] '"For ambiguous instructions, the test is whether there is a reasonable likelihood that the jury misunderstood and misapplied the instruction."' [Citation.]" (*Cristler v. Express Messenger Systems, Inc.* (2009) 171 Cal.App.4th 72, 82.) In order to conclude that an instruction was prejudicially erroneous, there must be more than an abstract possibility that the jury was misled. (*Kinsman v. Unocal Corp.* (2005) 37 Cal.4th 659, 682.)

We cannot conclude it was reasonably likely the jury was misled here. The final paragraph of the instruction was plainly limited to damages for breach of fiduciary duty caused by Byrens's "wrongful repudiation of the partnership." The jury expressly found that appellant and Byrens did not enter into a partnership and, consequently, did not find

in appellant's favor on his claim for breach of fiduciary duty. Given that finding, the jury was necessarily guided by the balance of the instruction, which directed it to award damages according to the standard set forth in Civil Code sections 1709 and 3333 by reasonably compensating appellant for the harm caused by Byrens's fraudulent conduct. Again, absent some contrary indication, we presume the jury followed the instructions. (*Cassim v. Allstate Ins. Co.*, *supra*, 33 Cal.4th at pp. 803–804; *Saari v. Jongordon Corp.* (1992) 5 Cal.App.4th 797, 807, fn. 6.)

Nor are we persuaded that it was necessary to minimize any ambiguity by giving Byrens's proffered instructions on out-of-pocket and benefit-of-the-bargain damages.[5] In large part, her proposed instruction on fraud damages recoverable by a non-fiduciary mirrored the damages instruction the trial court gave; it explained that "[t]he amount of damages must include an award for all harm that Bambi Byrens was a substantial factor in causing, even if the particular harm could not have been anticipated." "A party is not entitled to have the jury instructed in any particular fashion or phraseology, and may not complain if the court correctly gives the substance of the applicable law. [Citation.]" (*Thompson Pacific Construction, Inc. v. City of Sunnyvale* (2007) 155 Cal.App.4th 525, 553; accord, *City of Pleasant Hill v. First Baptist Church* (1969) 1 Cal.App.3d 384, 408.) Because the trial court correctly instructed the jury on the substance of the law concerning fraud damages recoverable under Civil Code sections 1709 and 3333, it did not err in refusing Byrens's additional instructions.

***D. Byrens Failed to Show That Any Other Aspect of the Verdict Was Against the Law.***

In her motion for a new trial, Byrens contended that the verdict was against the law because there was insufficient evidence of a knowingly false promise and reasonable reliance, and the trial court committed an error in law by rejecting her statute of

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**5** Indeed, the proposed instructions as written would only have served to confuse the jurors, as they alternately directed the jury to apply the same standard if it found a fiduciary relationship in one instruction and if it did not find a fiduciary relationship in the other.

limitations and unclean hands defenses. We reiterate that, under the circumstances presented here, Byrens had the burden "to advance any grounds stated in the motion upon which the order should be affirmed, and a record and argument to support it." (*Sanchez-Corea v. Bank of America, supra*, 38 Cal.3d at p. 906.) By failing to advance or even mention any of these grounds in her combined respondent's and cross-appellant's opening brief, we conclude that Byrens did not meet her burden. (See Cal. Rules of Court, rule 8.204(a)(1)(B) [each point in appellate brief must be supported by argument and, if possible, by citation to authority]; *Osornio v. Weingarten* (2004) 124 Cal.App.4th 304, 316, fn. 7 [issue forfeited when raised below but not in appeal, because "'[i]ssues do not have a life of their own: if they are not raised or supported by argument or citation to authority, we consider the issues waived'"]; *Mansell v. Board of Administration* (1994) 30 Cal.App.4th 539, 545 ["it is established that '. . . an appellate brief "should contain a legal argument with citation of authorities on the points made. If none is furnished on a particular point, the court may treat it as waived, and pass it without consideration"'"].) We therefore need not address the other issues Byrens raised below in support of her motion for a new trial.

## III. The Trial Court Properly Denied Byrens's Motion for Judgment Notwithstanding the Verdict.

In a cross-appeal that reiterates—literally, word for word—the arguments made in response to appellant's opening brief, Byrens claims that substantial evidence did not support the denial of her motion for judgment notwithstanding the verdict (JNOV) to the extent it was addressed to the damages award.[6] At the hearing on the motion, the trial

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[6] We note that a "'cross-appeal from the judgment is only operative if the order granting the new trial is reversed thus reinstating the judgment.' [Citation.]" (*Grobeson v. City of Los Angeles* (2010) 190 Cal.App.4th 778, 798.) "A cross-appeal is a precautionary appeal taken by the party whose motion for a new trial has been granted. The cross-appeal is 'protective' because it ensures the right to obtain appellate review of the judgment if the order granting a new trial is reversed. [Citation.]" (*Ibid*.) Though Byrens's notice of appeal indicated she was appealing both from the judgment and

court ruled that "the record is replete and there's substantial evidence to support each of the jury's verdicts with respect to quantum meruit and fraud." "When a trial court considers a motion for judgment notwithstanding the verdict, it applies the substantial evidence test. [Citation.]" (*Saari v. Jongordon Corp., supra,* 5 Cal.App.4th at p. 806.) On appeal from the denial of a motion for JNOV, we independently review the record to determine de novo whether there was substantial evidence to support the verdict and whether the moving party was entitled to judgment in its favor as a matter of law. (*Linear Technology Corp. v. Tokyo Electron, Ltd.* (2011) 200 Cal.App.4th 1527, 1532; *Paykar Construction, Inc. v. Spilat Construction Corp.* (2001) 92 Cal.App.4th 488, 494.) "'"The scope of appellate review of a trial court's denial of a motion for judgment notwithstanding the verdict is to determine whether there is any substantial evidence, contradicted or uncontradicted, supporting the jury's conclusion and where so found, to uphold the trial court's denial of the motion."'" (*Shapiro v. Prudential Property & Casualty Co.* (1997) 52 Cal.App.4th 722, 730.) We do not weigh the evidence or evaluate the credibility of witnesses. (*Linear Technology Corp. v. Tokyo Electron Ltd., supra,* at p. 1532.)

Without repeating our earlier discussion concerning the sufficiency of evidence of damages demonstrating that the verdict was not against the law, we conclude that substantial evidence supported the jury's damages verdict and thus the trial court properly denied Byrens's JNOV motion. (*Pelligrini v. Weiss, supra,* 165 Cal.App.4th at p. 532 [jury's award may be affirmed if within the reasonable range shown by the evidence].) Moreover, the precise amount of damage appellant suffered need not have been proven with the same degree of certainty as the fact of damage and is subject to "reasonable approximation or inference." (*Johnson v. Cayman Development Co.* (1980) 108 Cal.App.3d 977, 983.)

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postjudgment orders, her arguments on appeal are confined to the denial of her motion for judgment notwithstanding the verdict. Though we could decline to address her arguments on this basis alone, we briefly examine her claims.

We have already acknowledged there were multiple ways in which the jury could have calculated its $1.5 million award. To avoid redundancy, we summarize the evidence supporting just one of those theories—quantum meruit based on comparable compensation. Appellant testified that he earned up to $150,000 per year at WDR while performing tasks that included securing contractor bids, retaining and overseeing subcontractors and acting as a property manager. The evidence showed that appellant performed comparable tasks throughout his relationship with Byrens. (See *Valentine v. Read* (1996) 50 Cal.App.4th 787, 795–796 [evidence that the plaintiff had been compensated for services as a trustee over family assets relevant to evaluate quantum meruit recovery for his services as an investment advisor to a third party].) He supervised the one to two-year renovation of the Doheny property. For several years he acted as the construction manager for the renovation of the Loma Vista property. He supervised minor and later more extensive renovations at 8623 Santa Monica. And he worked for more than one year on the renovation of 8631 Santa Monica and thereafter worked with Mara to lease the property. On the basis of this evidence, the jury could reasonably conclude that he was entitled to $1.5 million as the reasonable value of his services. Accordingly, we find no basis to reverse the trial court's denial of Byrens's motion for JNOV.

## DISPOSITION

The order granting Byrens's motion for a new trial is reversed and the order denying Byrens's motion for JNOV is affirmed. The trial court is directed to reinstate the judgment. Appellant is entitled to his costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.

DOI TODD

We concur:

_____, J.

ASHMANN-GERST

_____, J.

CHAVEZ