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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

LISA FEDERICI et al.,
Plaintiffs and Respondents,
v.
GORDON GOFF et al.
Defendants and Appellants.

A141088 & A141415
(Marin County
Super. Ct. No. CIV 1203020)

Respondents Lisa Federici and Christy LaFaver (when referred to collectively, respondents) sued their former employer Padma Group LLC, also known as ORO Editions, a Limited Liability Company (Padma), and two individuals, Gordon Goff, a manager and principal of Padma, and Annick Dauphinais, Goff’s wife, and a paid director there (when referred to collectively, appellants). Respondents were represented by Attorney Steven Dillick. One court day before the court scheduled settlement conference, Goff’s and Dauphinais’s recent success on a motion led their attorney Stan Blyth to send an e-mail to Attorney Dillick threatening that, if the case did not settle, he would file the attached complaint for malicious prosecution.

Following a lengthy court supervised settlement conference, the case did in fact settle. It was “a complete settlement of all matters between the parties.” The settlement was fully performed.

Dauphinais thereafter filed a complaint for malicious prosecution. Federici and LaFaver filed a motion to enforce the settlement, which was opposed by all three appellants. The motion was granted, and the malicious prosecution action dismissed.

Respondents moved for attorney fees (and costs), which motion was also opposed by all three appellants. That motion was also granted, and respondents awarded \$40,349 in attorney fees. Appellants appeal both orders, that enforcing the settlement and that awarding attorney fees. We affirm.

BACKGROUND

The Lawsuit and The Settlement

Federici and LaFaver were employed at Padma. Federici's employment terminated in the summer of 2011, LaFaver's in the spring of 2012.

On June 29, 2012, respondents filed a complaint in Marin County Superior Court, action number CIV1203020, filed on their behalf by Attorney Dillick. The complaint named three defendants: Padma, Gordon Goff, a manager and principal of Padma, and Annick Dauphinais, Goff's wife and a paid director. It alleged nine causes of action: (1) constructive termination; (2) wrongful termination in violation of public policy; (3) failure to pay overtime wages; (4) failure to pay wages on termination of employment; (5) unfair competition; (6) failure to pay overtime wages; (7) unlawful retaliation; (8) intentional misrepresentation; and (9) negligent misrepresentation.

The case was assigned to the Honorable Lynn Duryee.

On August 30, 2012, represented by Attorney Stan Blyth, Dauphinais, Goff, and Padma filed answers to the complaint.

On April 30, 2013, the case was set for jury trial on September 6, 2013, with a mandatory settlement conference on August 26.

On June 14, attorney Blyth moved ex parte before Judge Duryee, to "set motion for summary judgment" (the motion) for August 30. Judge Duryee ordered the motion set for September 10, at the same time resetting the settlement conference to September 30 at 9:00 a.m. and trial to October 25.

The motion¹ was filed on behalf of Dauphinais and Goff. The motion came on as scheduled, prior to which Judge Duryee had issued a tentative ruling. Following a hearing, Judge Duryee entered her order, which began by noting she was treating the motion as one for judgment on the pleadings. The order then continued on, cause of action by cause of action, ultimately to grant the motion as to each cause of action, though sometimes only as against Federici and not against LaFaver, and sometimes differentiating between defendants themselves. The order ended with this: “Unless Plaintiffs can demonstrate a reasonable probability of alleging valid cause(s) of action, the motions are granted without leave to amend.”

The parties disagree as to the effect of Judge Duryee’s order, with defendants going so far as to assert this: “On September 10, 2013, weeks prior to the judicially supervised settlement conference and the parties’ alleged agreement to settle the case, the Honorable Lynn Duryee granted Dauphinais’s Motion for Summary Judgment as to each and every cause of action brought by Federici against Dauphinais.” That, of course, is not correct, as Judge Duryee treated the motion as one for judgment on the pleadings, obviously allowing the possibility of amendment. (See *People v. \$20,000 U.S. Currency* (1991) 235 Cal.App.3d 682, 692.) But whatever might have come from any attempt by Federici to allege a claim in the future, the case for both Federici and LaFaver remained against Padma, part of LaFaver’s case remained against both Goff and Dauphinais, and part of Federici’s case remained against Goff. And the settlement conference remained on calendar for September 30.

On September 27—the Friday before the Monday settlement conference—Attorney Blyth sent an e-mail to Attorney Dillick that read in its entirety as follows: “Steve: Attached to this email you will find a courtesy copy of a complaint for malicious prosecution that my clients have instructed me to file and serve on Monday if this matter is not successfully resolved at the settlement conference. [¶] Regards[.]” Accompanying

¹ The motion itself is not in the record, so what we know of it we piece together from the register of actions and other papers in the record.

the e-mail was the threatened complaint, a one-count complaint for malicious prosecution, with Dauphinais and Goff the named plaintiffs and Federici, LaFaver, and Dillick the named defendants.

The settlement conference came on as scheduled before Judge Duryee, assisted by two “pro tems,” apparently volunteers assisting in the settlement program. The conference was lengthy, lasting until well after noon. And the conference was fruitful, as the reporter’s transcript for the day reflects. That transcript provides in its entirety as follows:

“MR. GOFF (via telephone): Hello?”

“THE CLERK: Hi, Mr. Goff?”

“MR. GOFF: Speaking.”

“THE CLERK: Hi, you’re being broadcast throughout the courtroom, this is the courtroom clerk speaking.”

“THE COURT: All right, everyone, we’re on the record in the matter of Lisa Federici and Gordon Goff. The matter comes on today for a judicially supervised settlement conference. The parties have reached a settlement in this case.”

“Let’s start with stating appearances, and Mr. Dillick, let me start with you.”

“MR. DILLICK: Steven Dillick, your Honor, on behalf of the Plaintiffs, Christy LaFaver and Lisa Federici, who are present.”

“THE COURT: Thank you.”

“MR. BLYTH: Good afternoon, your Honor. Stan Blyth on behalf of all the Defendants.”

“THE COURT: All right. And Mr. Goff is appearing telephonically, and Miss Dauphinais is also appearing telephonically, correct?”

“MS. DAUPHINAIS (via telephone): Yes.”

“MR. GOFF: That’s correct.”

“THE COURT: Excellent.”

“In this case, the parties have agreed to settle the case. The Defendants have agreed to pay, and the Plaintiffs have agreed to accept, the sum of \$60,000.”

“Also, the parties agree the Defendants will give to Plaintiffs the pink slip and the key to Miss LaFaver’s vehicle.

“This will be a complete settlement of all matters between the parties. Plaintiffs to give a 1542 release and a dismissal with prejudice.

“The parties agree that the funds and the vehicle identification will be delivered within 45 days.

“The settlement will be enforceable by a motion under 664.6 in the event either side needs to make that motion. Either side would be entitled to request attorney’s fees in connection with the making of the motion, to the extent that it is provided for by one of the causes of action.

“Have I correctly stated the terms of the agreement?

“MR. DILLICK: Yes, your Honor, but my understanding with respect to the delivery of the pink slip, it includes release of the lien. Mr. Goff—I believe he’s listed as a lienholder, so he would have to deliver the slip physically, but also a release of the lien.

“THE COURT: Deliver the pink—yes, okay.

“All right. Have the terms of the settlement been correctly stated?

“MR. BLYTH: Yes, they have, your Honor.

“THE COURT: All right. Miss Federici, are the terms of the settlement acceptable to you?

“MS. FEDERICI: Yes, they are.

“THE COURT: Thank you.

“Miss LaFaver, are the terms of the settlement acceptable to you?

“MS. LaFAVER: Yes, they are.

“THE COURT: Mr. Goff, are the terms of the settlement acceptable to you?

“MR. GOFF: Yes, they are, your Honor.

“THE COURT: Miss Dauphinais, are the terms of the settlement acceptable to you?

“MS. DAUPHINAIS: Yes, they are.

“THE COURT: Excellent. The Court then does approve the agreement, orders each side to comply with the terms thereof, including the performance of any monies—the performance of any conditions or the payments of any monies.

“This is a judicially supervised settlement, it is enforceable under 664.6 of the Code of Civil Procedure.

“The trial date will be vacated, I will put the matter over to December 19 at 9:00 a.m. for confirmation of dismissal. Neither side need—

“THE CLERK: Okay.

“THE COURT: Is that okay?

“THE CLERK: Yes.

“THE COURT: Neither side need appear if all the—if the dismissal has been filed.

“I want to thank everyone for their hard work today. And I especially want to acknowledge Mr. Cox and Mr. Malone, the pro tems who have been—who have given us their brilliance and their experience and their time here this morning to help the parties achieve settlement. Thank you very much for all appearing here.

“And congratulations to the parties on reaching a resolution. Thank you.

“MR. DILLICK: Thank you.

“MR. BLYTH: Thank you, your Honor.

“THE COURT: All right. Thank you.

“MR. GOFF: Thank you, your Honor.

“THE COURT: All right. Everyone did a great job. Good luck to you.

“All right. And, Mr. Blyth, I’m going to take you down the back hall to see if we can’t get your license back.

“And, Mr. Dillick, you didn’t get—

“MR. DILLICK: I did not.

“THE COURT: Okay.”

The terms of the settlement were carried out.

The Motion to Enforce the Settlement

On November 7, attorney Blyth filed a complaint for malicious prosecution. The complaint was slightly different than the one threatened, as it had only one plaintiff, Dauphinais, and did not include one threatened defendant, LaFaver.

On November 22, respondents filed a motion to enforce the terms of the settlement (Code of Civ. Proc., § 664.6),² set for hearing on December 17. The motion was accompanied by a memorandum of points and authorities and declarations of Federici, LaFaver, and their attorney Dillick, which attached various exhibits. The essence of the Federici and LaFaver declarations was illustrated by these two paragraphs in Federici's declaration:

"4. At the settlement conference on September 30, I understood that the parties had reached a complete settlement of all matters between the parties, including any claim of malicious prosecution that might be asserted against Ms. LaFaver, me, or Mr. Dillick. My understanding was based on the settlement term that "This will be a complete settlement of all matters between the parties" as well as the email from Mr. Blyth, attached hereto as well as the defendants' consent to this term and the balance of the settlement agreement. My understanding has not changed.

"5. I consented to the terms of the settlement recited in open court in reliance on defendants' waiver of all claims for malicious prosecution against us and our counsel. My understanding and intent has not changed at any time to the present. My understanding was based on the email from defendants, the plain language of the settlement terms and the consent of the defendants to the terms of the settlement."

On December 4, appellants filed opposition to the motion to enforce the settlement. The "Introduction" to the opposition said it was filed on behalf of "defendants Goff, Dauphinais, and Padma," which defendants "have fully performed the terms of their settlement agreement." The opposition continued on with its version of

² Unless otherwise indicated, all subsequent code references are to the Code of Civil Procedure.

“Facts,” and then to its legal argument, which made two contentions: (1) “Plaintiffs Did Not Request or Obtain a Release of Claims from Defendants as Part of the Terms of the September 30 Settlement”; and (2) “Assuming Arguendo That Dauphinais Waived Her Malicious Prosecution Claim Against Dillick And Federici, Because the Settlement Terms Have Been Fully Performed by Defendants, the Proper Procedure for Federici and Dillick to Challenge the Pending Malicious Prosecution Action Is to File and Prosecute a Motion for Summary Judgment in that Action.”

On December 10, respondents filed their reply.

Prior to the December 17 hearing date, Judge Duryee had issued a tentative ruling adverse to appellants. Their attorney Blyth did not appear to contest the tentative ruling, but attorney Dillick did appear, seeking a clarification. The register of actions for December 17 states this: “It is ordered: Regarding the dismissal of CIV 1304582, the court instructs Mr. Dillick to submit an order in this action, consistent with the court’s tentative ruling, and to include the ordered dismissal of [the malicious prosecution action]. [¶] The matter is not heard or reported. The tentative ruling is final. [¶] It is ordered: tentative ruling: plaintiff’s motion to enforce the settlement is granted. The settlement reached at a judicially supervised settlement conference was a complete settlement of all matters, including any claim for malicious prosecution. There were no claims reserved by the defendant in the settlement.”

An “Order Granting Motion to Enforce Terms of Settlement. CCP § 664.6,” was filed on December 23. The order provides in its entirety as follows:

“Plaintiffs’ Motion to Enforce Settlement pursuant to Code of Civil Procedure § 664.6 was set for hearing on December 17, 2013. The court issued a tentative ruling which was unopposed. The court hereby adopts that ruling, modified as follows:

“Plaintiff’s motion to enforce the settlement is granted. The settlement reached at the judicially supervised settlement conference was a complete settlement of all matters, including any claim for malicious prosecution. There were no claims reserved by the defendants in the settlement.

“Therefore, the complaint for malicious prosecution filed in the matter of Dauphinais v. Federici et al, now pending in Marin County Superior [C]ourt, and bearing case number 1304582 is hereby dismissed with prejudice.

“The case management conference set for December 19, 2013 is moved to February 14, 2014 at 9:00 a.m. in Dept. L.

“SO ORDERED.

“Hon. Lynn Duryee

“By [Roy Chernus]

“Judge of the Superior Court.”

On February 14, Dauphinais filed a notice of appeal from that order, designated in this court (A141088).³

Meanwhile, the case was reassigned to Judge Mark A. Talamantes, Judge Duryee having retired.

The Motion for Attorney Fees

On February 21, 2014, respondents filed a motion for attorney fees and costs incurred in bringing the motion to enforce the settlement. The motion was accompanied by attorney Dillick’s declaration, and sought a total of \$53,828.02, comprised of the following: \$516 per hour for 68 hours on the motion, plus costs; 20 hours for preparing

³ We observe two things about the notice of appeal in case number A141088. The first is that it was filed on behalf of Dauphinais only. Despite this, the briefing purports to be on behalf of all three appellants. Because of the strong policy favoring review on the merits, the notice of appeal “must be liberally construed” in favor of its sufficiency (Cal. Rules of Court, rule 8.100(a)(2); *Walker v. Los Angeles County Metropolitan Transportation Authority* (2005) 35 Cal.4th 15, 20), especially where the respondents will not be misled or prejudiced.” (*Luz v. Lopes* (1960) 55 Cal.2d 54, 59.) Thus, we will treat the appeal as on behalf of all three appellants. (See *Toal v. Tradiff* (2009) 178 Cal.App.4th 1208, 1216–1217 [notice of appeal signed by one of two coparties was liberally construed to effect an appeal as to both coparties].)

The second point is that respondents argue, however perfunctorily in one paragraph, that an “order granting relief under Section 664.6” is not appealable. We find the argument puzzling, especially in light of their own brief, which later notes the standard of review for an order granting a section 664.6 motion.

the fee motion itself; “plus another ten hours anticipated for the reply brief, and five more hours for preparation and oral argument. . . . This brings the total to \$53,148 in fees and \$680.02 in costs.”

Attorney Blyth filed opposition on behalf of all three appellants, listing his clients as Goff, Dauphinais, and Padma. Appellants’ brief summed up their opposition this way: “The instant motion for fees *should be considered Federici’s alone*, as there was no justifiable basis for LaFaver’s purported participation in the Motion to Enforce Settlement. As a result of Judge Duryee’s granting of Defendants’ Summary Judgment Motion, Federici has no legal basis to recover fees from Dauphinais, and Goff and ORO were not parties to the malicious prosecution action that was the sole basis for the subject Motion to Enforce Settlement. Moreover, Goff and ORO fully performed on the settlement. Additionally, attorney Dillick should be considered a pro se litigant, as he obtained his own dismissal from Dauphinais’ malicious prosecution action by way of the Motion to Enforce Settlement and a fee award should be denied on this basis. Moreover, assuming arguendo that there remained some legal basis for Federici to recover fees after the granting of Defendants’ Summary Judgment motion, ‘Plaintiffs’ outrageously claim it is reasonable for their legal counsel to spend 88 hours and charge over \$53,000 to author less than a total of 30 pages of pleadings, which is patently unreasonable and excessive. For the reasons set forth above, Defendant Dauphinais and Goff respectfully request that this Court deny the motion for attorney’s fees.”

Respondents’ motion was set for hearing on March 25, prior to which Judge Talamantes had issued a tentative ruling. The tentative ruling was not contested, and on that date Judge Talamantes filed his order granting attorney fees and costs. The order reads in its entirety as follows:

“The court’s tentative ruling, which is unopposed, is adopted as the order of the court and is repeated verbatim as follows.

“Nature of Proceedings: Motion for Attorney Fees—and Costs to Enforce Settlement under CCP § 664.6 [PLTF] Lisa Federici [PLTF] Christy LaFaver.

“Plaintiff’s motion for Attorney’s Fees and Costs is **granted** in the amount of \$41,029.52, consisting of reasonable attorney’s fees in the amount of \$40,349.50 and costs in the amount of \$680.02.

“There were two sides to the settlement, Plaintiffs and Defendants. The terms of the settlement allowed ‘either side’ to bring a motion to enforce the settlement and ‘[e]ither side’ to request attorney’s fees in connection with that motion. Thus, LaFaver was a proper party to the motion despite the fact that Dauphinais only filed her malicious prosecution action against Federici. Even looking at Dauphinais separately and not as a ‘side’ with Oro Editions and Goff, causes of action remained by LaFaver which provided for attorney’s fees. Plaintiffs’ attorney was not a party in this action or to the settlement, and therefore this is not a situation where he is seeking to recover for representing himself.

“The court finds that it is appropriate to reduce the total number of hours by 15% to account for billing judgment by counsel. This reduction will address inefficiencies and duplicative work. The court started its calculation with 94 total hours, representing 68 hours claimed for the motion to enforce settlement, 20 hours claimed for preparing this motion, and six hours anticipated for the reply. [Plaintiffs offer no evidence with their reply to support an increase and the request for hearing fees is premature.]

“The court sets counsel’s compensatory rate at \$505 as the reasonable rate in consideration of counsel’s experience and skill.”

On March 26, “appellants” filed a notice of appeal from the attorney fee order, designated in this court A141415. On July 3, we ordered the appeals consolidated.

DISCUSSION

The Law and the Standard Of Review

Section 664.6 provides in its entirety as follows: “If parties to pending litigation stipulate, in a writing signed by the parties outside the presence of the court or orally before the court, for settlement of the case, or part thereof, the court, upon motion, may enter judgment pursuant to the terms of the settlement. If requested by the parties, the court may retain jurisdiction over the parties to enforce the settlement until performance

in full of the terms of the settlement.” So, an oral stipulation for settlement “before the court” is enforceable.

The section 664.6 procedure empowers the trial judge hearing the motion, here, Judge Duryee, to determine disputed factual issues that have arisen regarding the settlement agreement. Indeed, as our colleagues in Division Five put it, “Section 664.6’s express authorization for trial courts to determine whether a settlement has occurred is an implicit authorization for the trial court to interpret the terms and conditions to settlement.” (*Fiore v. Alvord* (1985) 182 Cal.App.3d 561, 566.) Thus, for example, the judge may determine whether the settlement reached in court was authorized, e.g., whether the attorney exceeded authority from his or her client. (*Haldeman v. Boise Cascade* (1985) 176 Cal.App.3d 230, 234, disapproved on other grounds in *Levy v. Superior Court* (1995) 10 Cal.4th 578, 586, fn. 4.)

This law, and much more, was well set forth in *Osumi v. Sutton* (2007) 151 Cal.App.4th 1355, 1360:

“It is, of course, the strong public policy of this state to encourage the voluntary settlement of litigation. [Citations.] To that end, the law treats as confidential statements made during settlement negotiations [citation], provides financial incentives for settlement [citations], and provides, in section 664.6, an expedited procedure for enforcing a settlement once it has been agreed upon. [Citation.]

“Section 664.6 permits the trial court judge to enter judgment on a settlement agreement without the need for a new lawsuit. [Citation.] It is for the trial court to determine in the first instance whether the parties have entered into an enforceable settlement. [Citation.] In making that determination, ‘the trial court acts as the trier of fact, determining whether the parties entered into a valid and binding settlement. [Citation.] Trial judges may consider oral testimony or may determine the motion upon declarations alone. [Citation.] When the same judge hears the settlement and the motion to enter judgment on the settlement, he or she may consult his [or her] memory. [Citation.]’ [Citation.] The trial court’s factual findings on a motion to enforce a settlement pursuant to section 664.6 ‘are subject to limited appellate review and will not

be disturbed if supported by substantial evidence.’ [Citation.] [¶] . . . Consistent with the venerable substantial evidence standard of review, and with our policy favoring settlements, we resolve all evidentiary conflicts and draw all reasonable inferences to support the trial court’s finding that these parties entered into an enforceable settlement agreement and its order enforcing that agreement.”

The Motion to Enforce the Settlement Was Properly Granted

Dauphinais makes two arguments as to why Judge Duryee’s ruling must be reversed: (1) Padma did not stipulate on the record, and (2) the “term parties as used in the purported settlement was used in a technical sense and did not include” Dillick, respondents’ attorney. Both arguments fail, for several reasons.

To begin with, and as is apparent from our quotation of the two arguments appellants made below in opposition to the motion, they did not make the “no-agreement-by-Padma” argument below. They cannot complain of it here.

As the leading treatise puts it, citing numerous cases: “As a general rule, theories not raised in the trial court cannot be asserted for the first time on appeal; appealing parties must adhere to the theory (or theories) on which their cases were tried. This rule is based on fairness—it would be unfair, both to the trial court and the opposing litigants, to permit a change of theory on appeal; and it also reflects principals of *estoppel* and *waiver* (¶8.244 ff.). (*Greenwich S.F., LLC v. Wong* (2010) 190 Cal.App.4th 739, 767; *Giraldo v. California Department of Corrections & Rehabilitation* (2008) 168 Cal.App.4th 231, 251; *People ex rel. Dept. of Transportation v. Superior Court (Isenhower)* (2003) 105 Cal.App.4th 39, 46; *Brown v. Boren* (1999) 74 Cal.App.4th 1303, 1316.” (Eisenberg et al., *Cal. Practice Guide: Civil Appeals and Writs* (The Rutter Group 2014) ¶ 8.229, p. 8-167.)

As to the aspect of “fairness,” had appellants raised the issue below, Judge Duryee could have addressed it, including from her memory. (See *Terry v. Conlan* (2005) 131 Cal.App.4th 1445, 1454; *Kohn v. Jaymar-Ruby, Inc.* (1994) 23 Cal.App.4th 1530, 1533 [“If the same judge presides over both the settlement and the section 664.6 hearing, he may avail himself of the benefit of his own recollection.”].)

Second, as quoted above, Attorney Blyth appeared at the settlement conference on behalf of “defendants,” necessarily including Padma. Indeed, Padma’s presence was required at the conference, as a person with authority to settle. (Cal. Rules of Court, rule 3.1380(b); see *Sigala v. Anaheim City School Dist.* (1993) 15 Cal.App.4th 661, 670.)

Beyond that, we glean from Dauphinais’s own malicious prosecution complaint that Goff was a manager and principal at Padma, and Dauphinais a paid director. Unlike individuals, corporations and limited liability companies like Padma can only appear through representatives. (*Black v. Bank of America* (1994) 30 Cal.App.4th 1, 6 [corporations are a “legal fiction” and can only appear through agents and representatives].) Where, as here, there are representatives who appear and confirm what is agreed to, it is a question of fact whether that person was speaking for the company. And the record here at least impliedly supports that Goff (and/or Dauphinais) was speaking for Padma as well as personally when they confirmed the settlement terms, and that it was a “complete settlement of all matters between the parties.”

Attorney Blyth would later describe the settlement-related events in appellants’ opposition to the attorney fee motion this way: “On November 17, 2013, Stan D. Blyth, counsel for Goff, [Padma] and Dauphinais, sent to Plaintiffs’ counsel, Steven Dillick, via First Class U.S. Mail, a settlement check in the amount of \$60,000 payable to Plaintiffs, along with the pink slip and an extra set of keys for Ms. LaFaver’s vehicle as required under the terms of the settlement. As a result, all material terms of the settlement *were fully performed* by Dauphinais, [Padma] and” While the record is silent on this, we would surmise that the settlement check Blyth sent was from Padma, respondents’ former employer.

Fiege v. Cooke (2004) 125 Cal.App.4th 1350 arose in a setting where all drivers named as defendants in a lawsuit were insured under policies that gave their insurers the right to settle without their consent, and bind them to a settlement. At a mandatory settlement conference, the insurers agreed to settle. The drivers were not present. The trial court secured the plaintiffs’ oral consent to the settlement, but plaintiffs later argued that the settlement was unenforceable because not all parties had agreed to it. The trial

court rejected the argument, and the Court of Appeal affirmed, ending its opinion with this: “Fiege argues even if *Robertson*[v. *Chen* (1996) 44 Cal.App.4t 1290] is good law, the settlement is unenforceable because the record fails to reveal that the insurers’ representatives (as opposed to their counsel) agreed to the settlement. We find their presence while their counsel pledged to pay \$160,000 persuasive evidence that they agreed to the settlement ‘orally before the court’ during the settlement conference. After the court put the terms on the record, it asked, ‘All right, is there anybody that disagrees or has any addendums to the court’s stated settlement?’ The insurer’s representatives did not object. . . . A reading of the ‘reporter’s transcript of settlement’ makes it plain that the insurers’ representatives and counsel had discussions with the court before going on the record with counsel stating their appearances and relating the terms of the settlement. No more was necessary.” (*Fiege v. Cooke, supra*, 125 Cal.App.4th at pp. 1355–1356.)

A third, and independent, reason why appellants’ first argument fails is that the settlement was fully performed. Appellants thus cannot challenge it. (*Casa de Valley View v. Stevenson* (1985) 167 Cal.App.3d 1182, 1191 [a party who accepts consideration due them on a settlement containing the promise of mutual releases cannot thereafter complain that the release is too broad and seek an exception].)

Appellants’ second argument is that the term “parties” as used in the settlement must be given a “technical” meaning, that the scope of the release should be narrowly construed and not to include attorney Dillick. The law is otherwise.

In *Jefferson v. Department of Youth Authority* (2002) 28 Cal.4th 299—a case, not incidentally, relied on by respondents and ignored in appellants’ reply brief—the Supreme Court talked in general terms about the construction of a release of “all claims,” there in the context of a release in a worker’s compensation case: “At the same time, courts have continued to adhere to the long-established general rule that—in the absence of fraud, deception, or similar abuse—a release of ‘ “[a]ll [c]laims” ’ [citations] covers claims that are not expressly enumerated in the release. . . . But, here, Jefferson did not present any extrinsic evidence, and absent such evidence, ‘ “[t]he law imputes to a person an intention corresponding to the reasonable meaning of his words and acts.’ ” ’

[Citations.] This rule applies to releases in civil actions [citation], and a less rigorous rule for workers' compensation releases would make no sense considering the protections afforded by WCAB oversight. [Citation.]” (*Jefferson v. Department of Youth Authority, supra*, 28 Cal.4th at p. 305.) The language here—a “settlement of all matters between the parties”—is as broad. And it benefits Dillick, especially in light of the threatened malicious prosecution action.

Provost v. Regents of the University of California (2011) 201 Cal.App.4th 1289, is persuasive. There, a stipulated settlement was reached during a mediation of a suit for wrongful termination and other claims. The settlement stated that it was subject to the employers' approval, and an authorized representative of the employers, who was not an officer, signed the stipulated settlement. Some individual defendants did not sign. Thereafter, the employers approved the stipulated settlement, but the plaintiff refused to sign the final settlement agreement. The employers filed a motion to enforce the settlement. The trial court granted the motion, and the Court of Appeal affirmed, in language applicable here:

“Plaintiff contends that even if the stipulated settlement is enforceable by Regents, the individual defendants may not enforce it because they did not sign the document. It is true the individual defendants did not sign but they are not seeking to enforce the stipulated settlement as parties to it; they did not make the motion. Rather, they are third party beneficiaries of the stipulated settlement and the judgment in their favor is valid as well.

“As discussed above, a settlement agreement may be enforced under section 664.6 by the parties who signed it. But the statute does not require that the agreement be executed by every party to the action who benefits from it, even if indirectly, such as a third party beneficiary.

“ “The test for determining whether a contract was made for the benefit of a third person is whether an intent to benefit a third person appears from the terms of the contract. [Citation.] If the terms of the contract necessarily require the promisor to confer a benefit on a third person, then the contract, and hence the parties thereto,

contemplate a benefit to the third person. The parties are presumed to intend the consequences of a performance of the contract.” [Citations.] In other words, “the doctrine presupposes that the defendant made a promise which, if performed, would have benefited the third party.” [Citation.]’ (*Spinks v. Equity Residential Briarwood Apartments* (2009) 171 Cal.App.4th 1004, 1022.) ‘It is not necessary that the contract identify the third party by name as long as such third party can show that it is one of a class of persons for whose benefit it was made. [Citation.]’ (*General Motors Corp. v. Superior Court* (1993) 12 Cal.App.4th 435, 444 [agreement that clearly released every party from liability arising out of automobile accident applied even to parties not named in document].) These rules apply to settlement agreements. (*Weddington Productions, Inc. v. Flick* (1998) 60 Cal.App.4th 793, 810–811 [‘legal principles which apply to contracts generally apply to settlement contracts’].)

“In this case the language of the stipulated settlement demonstrates it was made for the benefit of the individual defendants. It stated, ‘[t]he case is settled as to *all* claims . . .’ and the ‘*entire action* [is] dismissed [with] prejudice.’ (Italics added.) Performance of those acts disposes of the case against all parties, even without the signatures of the individual defendants on the stipulated settlement.” (*Provost v. Regents of University of California, supra*, 201 Cal.App.4th at pp. 1298–1299.)

The facts here included attorney Blyth’s September 27 e-mail, expressly threatening to file the malicious prosecution case against respondents and Dillick in the event the case was not settled. But it was settled, with a release of “all claims,” an unlimited settlement of all matters up to the date of settlement, including the malicious prosecution claims.

Judge Duryee also had before her the declarations of Federici and LaFaver, not to mention her own recollection of the three and one-half hours of discussions at the settlement conference, culminating with the affirmative representations of Goff and Dauphinais confirming the settlement—and not asserting that they were reserving claims against Dillick. (See *Edwards v. Comstock Ins. Co.* (1988) 205 Cal.App.3d 1164 [parol evidence of an undisclosed intention to retain a right to sue the insurer was inappropriate

to contradict a release of “all claims”].) Likewise here, attorney Blyth’s declaration that his client did not intend to release the malicious prosecution claim must fail.

The Attorney Fee Award Was Proper

As indicated, Judge Talamantes awarded respondents \$41,029.52 in attorney fees and costs, somewhat less than requested. Appellants attack that award, asserting four arguments as to why that order must be reversed, the first of which is identical to their first argument in the consolidated appeal, which argument we have rejected.

Appellants next argue that “If attorney Dillick was property [*sic*] dismissed from Dauphinais’ malicious prosecution [*sic*], then Dillick should be viewed as a pro se litigant and the fee award should be reversed on that basis.”

As to this, Judge Talamantes found as a matter of fact that attorney Dillick was not a party to the suit: “Plaintiffs’ attorney was not a party in this action or to the settlement” Appellants point to no evidence showing that Dillick was seeking fees for representing himself.

But even assuming otherwise, we would still uphold Judge Talamantes’s award of fees under the many cases holding that there need be no apportionment if the claims were so intertwined as to make it impracticable, if not impossible, to separate the attorney’s time. (See, for example, *Maxim Crane Works, L.P. v. Tilbury Constructors* (2012) 208 Cal.App.4th 286.) Clearly the fees incurred by Dillick were for his clients, representing his clients. And to the extent they also helped him—which appellants do not demonstrate—any such fees were inextricably intertwined. (See *Reynolds Metals Co. v. Alperson* (1979) 25 Cal.3d 124, 129–130; *Abdallah v. United Savings Bank* (1996) 43 Cal.App.4th 1101, 1111.)

Appellants’ second argument is that “As a result of the lower court’s earlier order granting summary judgment, Federici had no remaining right to recover attorney’s fees.” As to this, it is enough to note that Judge Duryee had not granted summary judgment.

Appellants’ third argument, set forth in one paragraph, is that there is no provision in the stipulation that supports a joint and several fee award against Goff and Padma. The entire argument is this: “Joint and several liability is a doctrine of tort liability, not

contract law. (See *Armstrong World Industries, Inc. v. Aetna Casualty & Surety Co.* (1996) 45 Cal.App.4th 1, fn. 20.) Dauphinais alone filed the Malicious Prosecution Action [citation] that was the basis for Respondent's [sic] Motion to Enforce Settlement. There is no provision in the oral stipulation for the alleged settlement that supports a joint and several Fee Award against Appellants Goff and Padma. [Citation.] Moreover, Padma was not a party to the oral stipulation. [Citation.]" (Fn. omitted.) The paragraph is unpersuasive, again for several reasons.

First, as noted above, all three appellants opposed the motion to enforce the settlement. And all three appellants opposed the motion for attorney fees.

Second, and as also noted above (see fn. 2, *ante*), appellants themselves do not discriminate among themselves, using Dauphinais's notice of appeal in case no. A141088 as a basis for all appellants to appeal.

Third, the record before Judge Talamantes supports his order. Padma, Goff, and Dauphinais received the benefit of the dismissal of plaintiffs' claims against them in exchange for their payment of money and return of LaFaver's car keys and pink slip. The settlement obligations proposed by them were not divided between or among themselves, nor were there separate settlements with each respondent. Similarly, the breach by any appellant should be treated as a breach of the whole agreement for which they are jointly responsible. (Civ. Code, § 1660 ["A promise, made in the singular number, but executed by several persons, is presumed to be joint and several."].)

DISPOSITION

The orders are affirmed. Federici and LaFaver shall recover their costs on appeal.

Richman, J.

We concur:

Kline, P.J.

Miller, J.