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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 THREE

DENT MART INT'L, INC., Plaintiff and Respondent, v. iDEN DENTAL SUPPLY, INC., et al., Defendants and Appellants.	B253743 (Los Angeles County Super. Ct. No. BC468696)

APPEAL from a judgment of the Superior Court of Los Angeles County, J. Stephen Czuleger, Judge. Affirmed as modified.

Musick, Peeler & Garrett, Juan A. Torres, Cheryl A. Orr and Alex H. Aharonian for Defendants and Appellants.

Lyle R. Mink for Plaintiff and Respondent.

Sung Hyo Lee (Lee) sold his dental laboratory supply business, L&C Dental Supply, Inc. (L&C), to Dent Mart Int'l, Inc. (Dent Mart). Lee agreed not to compete with Dent Mart in California for ten years. However, Lee – together with Hyo Dong Kim (Kim) – then opened iDen Dental Supply Inc. (iDen). Kim's wife, Eun Kim (Eun),[1] was the owner and president of iDen. Eun's brother, Sung Yoo (Yoo), was iDen's manager. Dent Mart began losing business. It sued iDen, Lee, Kim, Eun, and Yoo for compensatory and punitive damages and injunctive relief.

The jury found Lee breached his covenant not to compete and that he, Kim, and iDen intentionally and negligently interfered with Dent Mart's prospective economic advantage. The jury awarded Dent Mart $1,221,547 in compensatory damages, as well as punitive damages of $800,000 against Lee and $1,154,000 against Kim. In a court trial, the trial court found in favor of Dent Mart on its unfair competition claim and enjoined Lee, iDen, Kim, Eun, and Yoo from opening or operating a dental laboratory supply business, soliciting any Dent Mart customers, and disclosing Dent Mart's confidential proprietary information.

iDen, Kim, Eun, and Yoo appeal from the first amended judgment.[2] iDen and Kim contend the evidence does not support the verdicts on Dent Mart's claims of intentional and negligent interference with prospective economic advantage.[3] They also

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[1] For clarity, we refer to Eun Kim as Eun. We mean no disrespect.

[2] Lee did not appeal from the judgment.

[3] They alternatively contend the trial court erred in denying their motion for nonsuit and later motion for judgment notwithstanding the verdict in the absence of evidence of any independently wrongful act on their part. As we shall demonstrate, substantial evidence supports the jury findings on the independent wrongful act element of the intentional and negligent interference with prospective economic advantage claims. We need not and therefore do not separately address this alternative attack on the sufficiency of that evidence. (See *Romo v. Ford Motor Co.* (2002) 99 Cal.App.4th 1115, 1138 (*Romo*); overruled on another ground in *People v. Ault* (2004) 33 Cal.4th 1250, 1272, fn. 15; disapproved in part as recognized in *Romo v. Ford Motor Co.* (2003) 113 Cal.App.4th 738, 743-744, fn. 1; *Edwards v. Centex Real Estate Corp.* (1997)

contend the trial court erred in instructing the jury on those claims. They challenge the compensatory damages award, claiming erroneous admission of expert testimony, insufficient evidence, and instructional error. Kim also contends there is insufficient evidence of his liabilities, net worth, and ability to pay to support the punitive damages award against him.

iDen and Kim -- joined by Eun and Yoo – also challenge the permanent injunction. They contend there is insufficient evidence that any of them violated the common law or the statute prohibiting unfair competition (Bus. & Prof. Code, § 17200 et. seq.), commonly known as the Unfair Competition Law (UCL). They also contend the injunction violates section 16600 of that code by enforcing a non-compete covenant against non-signatories, and the injunction is an unreasonable restraint, overly broad, and not limited in geographic scope. Eun and Yoo further contend no injunction should be imposed as to them in the absence of any liability findings against them.

We modify the judgment to limit the geographic scope of the injunction to California and, as modified, we affirm the judgment.[4]

BACKGROUND

1. *Factual Summary*

On May 18, 2006, Lee sold his dental lab supply business, L&C, to Dent Mart, owned by Jin Park (Park) and Kenny Lee. The non-compete provision in the sales agreement provided in pertinent part: " '[T]he Seller [Lee] does covenant to the Buyer [Dent Mart] that he will not engage, either directly or indirectly[,] in the [same type of] business. . . . 'WITHIN [THE] STATE OF CALIFORNIA' [as] the subject business being conveyed herein, for a term of 10 years from the date of Buyer's possession. . . . Seller will not open/operate [the] same type of business in individual [sic] names, relative[sic] names, etc. . . .' "

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53 Cal.App.4th 15, 28; *Campbell v. General Motors Corp.* (1982) 32 Cal.3d 112, 117-118.)

[4] We deny Dent Mart's Motion for Judicial Notice, as the documents Dent Mart seeks to submit are unnecessary for our disposition of this appeal.

Dent Mart began operating its new dental lab supply business under the same name, L&C, using the customer and vendor information it obtained by buying L&C. Dent Mart expended significant resources to grow its business and experienced an increase in customers and sales. But about a year later, sales began to decline.

Previously, Kim, who owned and operated various dental-related businesses, bought supplies from Lee. After Lee sold his business to Dent Mart, Kim became a customer of Dent Mart. However, in about October 2007, Lee and Kim opened iDen. Lee conceived of iDen as a way to recoup the losses he and Kim had suffered during a joint business venture in China. Lee told Kim he wanted to open and operate a dental lab supply business that then could be quickly sold. Kim -- who knew Lee had sold his business to Dent Mart and had agreed not to open or operate the same type of business - did not have any experience in the dental lab supply business. Lee offered to do all the work. Kim agreed to Lee's proposal and invested more than $100,000 to start the business.

Kim did not tell Park what he was doing. Neither Lee nor Kim used his own name in connection with iDen, and no document reflected their connection with iDen. They concealed their involvement by using Eun's name as iDen's owner. iDen's articles of incorporation list Eun as its sole director, president, secretary, and treasurer. Eun had no experience in opening or operating a dental lab supply business.

In the meantime, on May 16, 2007, Lee had formed "Good Deal" to sell dental supplies to dentists' offices. A dental office supply business is not the same as a dental lab supply business.[5] Kim had invested $100,000 in Good Deal. Douglas Choi (Choi) had worked for Lee before he sold L&C and for Dent Mart afterward. Lee hired Choi to work at Good Deal. At a meeting, Kim introduced Choi to Yoo. Kim explained that Yoo, who had no experience opening or operating a dental lab supply business, would be running a new dental lab supply business.

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[5] Dent Mart had no objection to Lee opening and operating Good Deal, against which it made no claim in this action.

Lee and Kim approached Choi about getting dealerships for the lab supply business. Obtaining dealerships is very important to a dental lab supply business. If a manufacturer approved a dealership application, the dealer could purchase supplies directly from that manufacturer at a lower price than elsewhere. Kim knew Choi had worked for Dent Mart. Choi knew the manufacturers and their key managers very well and he could get dealerships from the manufacturers. Choi agreed and subsequently secured at least 30 dealerships for iDen. At Kim's direction, Yoo arranged to deliver money to Choi for his efforts. iDen sold the supplies from the dealerships to dental lab supply businesses.

In its first year, iDen's customers included more than 80 percent of Dent Mart's customers, who provided more than 90 percent of iDen's revenue. Dent Mart's customers and sales decreased significantly that same year.

Jun Heo (Heo) worked for Dent Mart, handling deliveries and sales. Heo became acquainted with Dent Mart customers and learned their supply preferences. iDen then hired Heo. Heo solicited Tony Kim, a Dent Mart customer. Tony Kim was surprised to hear Heo knew his customer information – for example, the kinds and amounts of supplies he purchased. He refused to buy from iDen, because he considered Heo's conduct to be "morally wrong."

The iDen catalog essentially displayed the same supplies that were in the Dent Mart catalog. Some of these supplies could be purchased only in Korea and only Lee knew the source for the supplies.

At some point, Lee and Kim had disagreements on the operation of iDen and then separated. Kim asked Lee to return his $100,000 investment. Lee paid back $20,000 and told Kim to get the rest in iDen supplies or to keep operating iDen.

In June 2011, Kim called Park to arrange a meeting at a Carl's Jr. At the meeting, Kim told Park how iDen came into being: Lee had wanted to open and operate another dental lab supply business to recoup his and Kim's business losses in China; he could guarantee a quick sale; and he would do all the work. After the meeting, Park -- who was upset -- called Lee. When Park asked Lee how iDen got started, Lee gave no direct answer. Instead he said he had "his feet out of it," meaning he got out of that business.

In July 2011, in a chance encounter at a Korean restaurant, Kim repeated to Park some of the information he had told him earlier at Carl's Jr.

2. *Procedural Summary*

Dent Mart's operative complaint pleaded six causes of action. The first three causes of action sought damages for, respectively, breach of the non-compete covenant (against Lee only); intentional interference with prospective economic advantage; and negligent interference with prospective economic advantage. Dent Mart sought punitive damages against iDen, Lee, and Kim on the claim for intentional interference with prospective economic advantage. The remaining causes of action were for, respectively, injunctive relief under the UCL, unjust enrichment, and an accounting.

iDen, Kim, Eun, and Yoo (collectively, the iDen defendants) answered by generally denying the complaint's material allegations and pleading various affirmative defenses.[6]

The iDen defendants moved for summary judgment or, alternatively, for summary adjudication of the second through sixth causes of action. In particular, they argued Dent Mart could not prevail on the second and third causes of action for intentional and negligent interference with prospective economic advantage in the absence of wrongdoing on their part independent of the interference itself, because breach of the non-compete covenant did not qualify as wrongdoing. The trial court denied the motion in its entirety. This court denied defendants' writ petition.

The case went to trial before a jury on the first through third causes of action. The fourth cause of action was tried before the trial court. During the jury trial, the trial court granted a motion for nonsuit by Eun and Yoo on the second and third causes of action. The jury returned a special verdict finding for Dent Mart on the breach of contract claim against Lee and on the claims for intentional and negligent interference

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[6] The record contains Lee's answer to the original complaint but not to the operative complaint.

with prospective economic advantage against Lee, Kim, and iDen. The jury assessed compensatory damages against these three, jointly and severally, in the amount of $1,225,295.16. It awarded punitive damages against Lee in the amount of $800,000 and against Kim in the amount of $1,154,000. The trial court found in favor of Dent Mart and against iDen, Lee, Kim, Eun, and Yoo on the unfair competition claim and issued a statement of decision.

After judgment was entered, the iDen defendants moved for judgment notwithstanding the verdict or in the alternative for a new trial. The trial court denied both motions. However, the court issued an amended judgment correcting mathematical errors in the original judgment.

The amended judgment reflects the jury's verdict and includes awards of post-verdict interest. The judgment also sets forth the injunctive relief the trial court granted on the unfair competition claim. The court issued a permanent injunction against iDen "and its owners, officers, directors, employees, agents, representatives and contractors of any kind," Lee, Kim, Eun, and Yoo, "and their employees, agents, contractors of any kind, representatives, and all persons acting under, in concert with, or for them from:" (a) "opening or operating, directly or indirectly through or under any other person(s) or entity(ies), or in any other way, a dental lab supply business until May 18, 2016"; (b) "soliciting any customers of Dent Mart, . . . or its purchasers, successors or assignees until May 18, 2016; and" (c) "using, directly or indirectly, or disclosing to any person, orally or in writing, any and all confidential proprietary information of Dent Mart, . . . including but not limited to customer lists, pricing, product needs of customers, and sales information of any kind." In the judgment, the trial court also "reserves jurisdiction to modify the foregoing injunction, and to make such other and further orders as may be necessary or appropriate to carrying out this judgment[.]"

DISCUSSION

1. *Substantial Evidence Supports the Jury's Verdict on the Interference Claims*

iDen and Kim challenge the sufficiency of the evidence to support the verdicts on the intentional and negligent interference with economic advantage claims. They contend there is no evidence of any independent wrongful act by them. We conclude the evidence is substantial.

"The difference between intentional interference and negligent interference with prospective economic advantage relates to the defendant's intent." (*Crown Imports, LLC v. Superior Court* (2014) 223 Cal.App.4th 1395, 1404, fn. 10 (*Crown Imports*).) The elements of an interference with prospective economic advantage claim essentially include: " ' " '(1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) intentional [or negligent] acts on the part of the defendant designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the acts of the defendant.' [Citations.]" [Citation.]' [Citation.]" (*Winchester Mystery House, LLC v. Global Asylum, Inc.* (2012) 210 Cal.App.4th 579, 596.)

An additional element is required: The interference must amount "to independently actionable conduct. [Citation.]" (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 1134, 1159 (*Korea Supply*).) For an act to be sufficiently independently wrongful, it must be "unlawful, that is, it is proscribed by some constitutional, statutory, regulatory, common law, or other determinable legal standard." (*Id*. at p. 1159.) Accordingly, the alleged interference must have been "wrongful by some legal measure other than the fact of the interference itself." (*Della Penna v. Toyota Motor Sales, U.S.A., Inc.* (1995)11 Cal.4th 376, 393 (*Della Penna*).) "It is the plaintiff's burden to plead and prove that the defendant's conduct is independently wrongful in order to recover. The fact that the defendant's conduct was independently wrongful is an element of the cause of action itself. [Citation.]" (*Crown Imports*, *supra*, 223 Cal.App.4th at pp. 1404-1405.)

" ' "Where findings of fact are challenged on a civil appeal, we are bound by the 'elementary, but often overlooked principle of law, that . . . the power of an appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted,' to support the findings below. [Citation.] We must therefore view the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference and resolving all conflicts in its favor in accordance with the standard of review so long adhered to by this court." [Citation.]' [Citation.]" (*Romo, supra,* 99 Cal.App.4th at pp. 1137-1138.)

Accordingly, "[i]n resolving the issue of the sufficiency of the evidence, we are bound by the established rules of appellate review that all factual matters will be viewed most favorably to the prevailing party [citations] and in support of the judgment [citation]. All issues of credibility are likewise within the province of the trier of fact. [Citation.] 'In brief, the appellate court ordinarily *looks only at the evidence supporting the successful party, and disregards the contrary showing*.' [Citation.] All conflicts, therefore, must be resolved in favor of the respondent. [Citation.]" (*Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 925-926, italics original.)

The jury was instructed that, in addition to direct evidence, it was entitled to consider indirect, or circumstantial, evidence. "[T]he fact that evidence is 'circumstantial' does not mean that it cannot be 'substantial.' Relevant circumstantial evidence is admissible in California. [Citation.] Moreover, the jury is entitled to accept persuasive circumstantial evidence even where contradicted by direct testimony. [Citations.]" (*Hasson v. Ford Motor Co.* (1977) 19 Cal.3d 530, 548, overruled on other grounds in *Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 574, 580.)

The record contains substantial evidence that iDen and Kim committed wrongful conduct independent of their interference with Dent Mart's prospective economic advantage.

"[I]t has long been the public policy of our state that '[a] former employee has the right . . . to enter into competition with his former employer, even for the business of . . . his former employer, provided such competition is fairly and legally conducted.' [Citations.]" (*Reeves v. Hanlon* (2004) 33 Cal.4th 1140, 1149.) Moreover, " 'it is not ordinarily a tort to hire the employees of another for use in the hirer's business.' [Citation.]" (*Ibid*.) On the other hand, "this general rule is subject to one significant limitation: 'This immunity against liability is not retained . . . if unfair methods are used in interfering in such advantageous relations.' [Citation.]" (*Ibid*.)

Additionally, "[e]ven though the relationship between an employer and his employee is an advantageous one, no actionable wrong is committed by a competitor who solicits his competitor's employees or who hires away one or more of his competitor's employees who are not under contract, so long as the inducement to leave is not accompanied by unlawful action. [Citations.]" (*Diodes, Inc. v. Franzen* (1968) 260 Cal.App.2d 244, 255.) On the other hand, "if either the defecting employee or the competitor . . . is guilty of some concomitant, unconscionable conduct, the injured former employer has a cause of action to recover for the detriment he has thereby suffered. Neither the wrongdoing employee nor his new employer will be heard to say that his conduct was justifiable as a part of competitive strife." (*Ibid*.)

The record reflects iDen and Kim did not merely hire Choi and Heo, both of whom had been Dent Mart employees, employees of Good Deal (owned by Lee), and L&C before Lee sold it to Dent Mart. Choi and Heo were targeted because of their insider information about Dent Mart's customers and vendors. Park testified that Dent Mart kept its customer information in a password-protected computer program. Dent Mart never gave out the password or published a list of all its customers anywhere. Dent Mart's vendor information was in another computer program.

Kim asked Choi to obtain dealerships for iDen. After Choi did so, Kim arranged for Yoo to deliver money to Choi for his efforts. Heo solicited Tony Kim, a Dent Mart customer, on behalf of iDen. Tony Kim was surprised to learn Heo had information about what he bought and the prices he paid. He considered Heo's attempted solicitation of him to be "like stealing a customer" and "morally wrong." This evidence was substantial, and supports the jury's verdict.

2. *The Trial Court Did Not Abuse Its Discretion in Admitting the Testimony of Dent Mart's Damages Expert*

iDen and Kim challenge the general damages award. They contend the trial court committed prejudicial error in admitting the testimony of Dent Mart's expert on damages, because that testimony was based on speculation and the wrong standard regarding profits. Admission of this evidence was not an abuse of discretion.

"The rule is well settled that the admission or rejection of [expert] evidence . . . lies so largely within the discretion of the trial court that its action thereon will not be reviewed on appeal, in the absence of a clear showing of an abuse of that discretion. [Citations]." (*Davenport v. National Reserve Ins. Co.* (1928) 91 Cal.App. 460, 464.)

Scott Ervin, a certified public accountant, testified he was retained as an expert on the issue of Dent Mart's damages resulting from a competitor's conduct. In arriving at the damage figure for each year, Ervin calculated the average cost of sales and "then applied that cost of sales on the theory that the damages are not 100 percent of the sales, but the sales less the actual costs of sales." Ervin "applied the [resulting] 30.03 percent to the sales figure to come up with the damage figure for each year." For instance, $15,036 of sales at 30.03 percent gross profit is $4,596 for year 2006. Before the original trial date, Ervin had information about iDen's sales only through August 2012. Ervin later obtained updated information through September 30, 2013.

Ervin's total calculation for Dent Mart's lost profit was $1,221,547 through September 30, 2013. Ervin explained lost profit -- which he considered to be the damages -- is calculated by adding up all the gross sales and then applying the cost of sales. He testified what he meant by "damages" were the "profits that could have been earned by . . . Dent Mart, instead of iDen" if iDen had not been competing against Dent Mart in the face of a covenant not to compete. Ervin included in his calculations of gross sales every sale by iDen; he did not exclude any iDen customers, not even those who never had been Dent Mart customers. He also did not exclude Neo Dental Lab -- which Kim owned -- as a customer.

Ervin testified that, if he were to assume certain sales never would have been made to Dent Mart, he would remove those sales from his calculation. He also would not include sales to customers who would take their business from Dent Mart to iDen if a no-competition covenant applied. Otherwise he would retain those sales in his damages calculations, because iDen was not supposed to compete with Dent Mart. Ervin acknowledged he calculated damages based on all gross sales by iDen from the day iDen started to today. He explained he rejected Kim's testimony that Neo Dental Lab -- which Kim owned – never would have bought supplies from Dent Mart as "self-serving," because Neo Dental Lab had continued to buy supplies from Dent Mart for some time.

Ervin admitted his underlying assumption that all of iDen's customers would have been Dent Mart's customers was based on speculation. He pointed out it equally was speculation Dent Mart customers would have gone to someone else.

Ervin testified he had seen the documents in the binder for the year 2006 of Exhibit 53 in the form of a disc he had received. Ervin described the information as depicting the activity on the iDen Quickbooks. Ervin read virtually every one of the 3,000 pages of the documents on the disc. He identified Exhibit 41 as an accurate graphical representation of iDen's annual sales. Exhibit 42 was the initial schedule Ervin prepared from the sales reflected in iDen's Quickbooks. Exhibit 69 was the updated schedule. Exhibit 54 was a report of iDen's monthly sales for January through December of 2008. Exhibit 55 was the schedule Ervin prepared from the same source of iDen's customers for the year 2008. It accurately reflected iDen's customers for January through May of that year. Exhibit 56 is a chart of iDen sales by month for the year 2008.

Barbara Luna, the defense expert, testified about "the measuring stick to quantify damages" if the jury found liability. She explained she used "two approaches, one is lost incremental profits, and basing it upon the profitability of Dent Mart. And the second is unjust enrichment based upon the estimated profitability of iDen." Luna testified that, "[i]n unjust enrichment cases, only common customers are looked at. If there were ten customers . . . and seven . . . were serviced by this new company and they were never a customer of Dent Mart, they would not be included in potential damages." She testified in a lost profits case she would "say the same thing," because a Dent Mart customer dissatisfied with price, quality, or for whatever reason, could go to a third dental lab supplier without rendering iDen responsible for the loss of that customer.

After considering Dent Mart's profitability, Luna came up with "a 12.3 percent profit margin as opposed to [] Ervin's 30.3 percent profit margin, a difference of 18 percent. That is the lost profit part of the analysis." However, "using the tax returns, the profit margin was about ten points lower than that figure, basically 26.6 percent profit margin[.]" Luna used the "26.6 percent, which is based on industry-wide figures from prime industry reports," against "the $644,933 of affected sales of iDen, . . . [which] comes out to be $171,544[.]" She explained it was "appropriate to use industry-wide figures . . . when you are not quite sure of the figures . . . you need to look at. . . . [W]e looked at the tax returns and we looked at the Quickbooks. From the Quickbooks, there was about 39 percent profit margin. From the tax returns, there was roughly around 20 percent profit margin. So . . . the industry-wide information came out to be 26.6 percent, . . . in essence, in the middle."

Luna testified under the second scenario, if Dent Mart continued to do business in 2012 with the common customers, the "net figure" would be $313,724.

Luna was asked her opinion about this testimony of Ervin: Ervin said if there were a covenant not to compete, "the sales gross profit, if you will, of iDen should have been Dent Mart's every customer." He acknowledged he was speculating based on the assumption every customer would have gone to Dent Mart but added it also was speculation the customers would have gone elsewhere. Luna opined Ervin was "completely overestimating what damages would be," because not all of these customers were common customers of Dent Mart and iDen and they could have gone alternatively to one of the over 18,000 dental lab businesses in the United States. She opined there would be “zero damages” if iDen had done nothing wrong. Luna acknowledged she had seen “discrepancies” in certain “financial information” and she “could not make sense of it. [The] Quickbooks and the tax returns did not match on profitability.”

Luna testified she was familiar with Ervin’s qualifications. When asked if he were qualified to do the work he did, she responded “[h]e is an average expert.” She found incredible that Ervin would say something like all sales, including those not serviced by Dent Mart, could be a loss. She opined he was “overreaching” rather than “making up this stuff[.]”

In short, the issue of compensatory damages became a “battle of experts.” The jury chose to believe Ervin’s testimony over Luna’s on the calculation of damages. It is not for this court to reweigh credibility. Moreover, although an expert’s opinion may not be based on speculation or conjecture rather than evidence (*Jones v. Ortho Pharmaceutical Corp.* (1985) 163 Cal.App.3d 396, 401-402), Ervin’s assumption that every customer would have gone to Dent Mart was not merely speculation or conjecture. A reasonable inference is that he meant only that no one could pinpoint with any degree of certainty that a dissatisfied Dent Mart customer would have gone to any particular supplier. In view of the totality of the circumstances, Ervin’s assumption finds ample support in the evidence presented. iDen specifically sought out and solicited Dent Mart customers using Dent Mart’s confidential customer and vendor information to lure them to leave Dent Mart and come over to iDen.

3. *The Trial Court Did Not Err in Instructing the Jury on “Wrongful Conduct”*

iDen and Kim contend the trial court erred in failing specifically to identify the precise “wrongful conduct” underlying the intentional and negligent interference with prospective economic advantage claims. They also contend the court’s reference to misappropriation of customer information was improper, because the court and Dent Mart’s counsel had acknowledged this was not a lawsuit for misappropriation of trade secrets. They further contend the court erred in refusing to give their proposed special instruction that iDen's or Kim's mere assistance in Lee's breach of the non-compete covenant does not constitute wrongful conduct. Their contentions fail.

a. *The Trial Court's Failure To Instruct on the Elements of Underlying Tortious Conduct Was Not Prejudicial*

The trial court instructed the jury on the torts of intentional and negligent interference with prospective economic advantage using California Civil Jury Instructions (CACI) 2202 and 2204, respectively. With respect to the underlying wrongful conduct element, the jury was instructed that Lee, Kim,and iDen "engaged in wrongful conduct through unfair, unlawful, or fraudulent means, and *by misappropriating Dent Mart's customer information*." (Italics added.)

The use directive for CACI 2202 reads: "Whether the conduct alleged qualifies as wrongful if proven or falls within the privilege of fair competition is resolved by the court as a matter of law. If the court lets the case go to trial, the jury's role is not to determine wrongfulness, but simply to find whether or not the defendant engaged in the conduct. If the conduct is tortious, the judge *should* instruct on the elements of the tort." [Emphasis added.] Similarly, the directive for CACI 2204 reads: "[T]he judge must specifically state for the jury the conduct that the judge has determined as a matter of law would satisfy the 'wrongful conduct' standard. . . . The jury must then decide whether the defendant engaged in the conduct as defined by the judge. If the conduct is tortious, judge *should* instruct on the elements of the tort." [Emphasis added.]

Here, the trial court determined, as a matter of law, the underlying wrongful conduct was conduct engaged in both through "unfair, unlawful, or fraudulent means" and "by misappropriating Dent Mart's customer information." That conduct was unlawful under the broad, sweeping scope of the UCL.[7] (Bus. & Prof. Code § 17200 et seq.; *Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 181-183, & fn. 9 (*Cel-Tech*).) In addition, misappropriation of trade secrets -- which includes confidential consumer and vendor information -- under

[7] A claim based on unfair competition sounds in equity and is tried to the court, not the jury. That is what happened here.

the California Uniform Trade Secrets Act (Civ. Code, § 3426.1 et seq.) is a tort independent from unfair competition.

The use directives for CACI 2202 and 2204 merely suggest the trial court "should" instruct on the elements of the underlying tortious wrongful conduct. The court thus did not have a mandatory duty to do so. The jury was instructed to consider all of the instructions together. The jury also was instructed to use "common sense" and not to use "dictionaries, the Internet, or other reference materials." In other instructions, the jury was advised it was "unfair" for a business seller to engage in competition that diminishes the value of the sold asset; Lee acted wrongfully if he "did something that the contract prohibited him from doing"; and " '[f]raud' means that the defendant intentionally misrepresented or concealed a material fact and did so intending to harm . . . plaintiff."

In any event, iDen and Kim have not demonstrated prejudice by the absence of instruction on the elements of unfair competition and misappropriation of trade secrets. The trial court's failure to instruct on the elements of unfair competition and misappropriation of trade secrets (see CACI 4400, 4401, 4409) was not prejudicial. (*Gemini Aluminum Corp. v. California Custom Shapes, Inc.* (2002) 95 Cal.App.4th 1249, 1256-1257; *Staples v. Hoefke* (1987) 189 Cal.App.3d 1397, 1408.)

b. *The Trial Court's Reference to iDen's Misappropriation of Dent Mart's Customer Information Was Not Improper*

iDen and Kim contend the trial court erred in instructing the jury that the underlying wrongful conduct included "misappropriating Dent Mart's customer information." Dent Mart had proposed three special instructions regarding customer information as trade secrets (Special Instruction Nos. 7 through 9). The trial court rejected these instructions, because this was not a trade secrets case. iDen and Kim claim Dent Mart's trial counsel conceded no instruction on misappropriation of customer information was proper. The record refutes their claim.

In response to the defense motion for nonsuit, Dent Mart argued the possession of Dent Mart's customers' names was an independent wrong. The trial court responded "[t]his is not a trade secrets case, though." Counsel for Dent Mart replied he "understand[s] that is the court's view . . . that . . . we don't have a separate . . . cause of action for trade secrets, but under the cause of action for intentional interference of prospective advantage, you have to have an independent wrong. That could be one of the wrongs because we have evidence of that."

During a discussion on final instructions, counsel for Dent Mart told the court he "reviewed the court's rejection of [Dent Mart's proposed] instructions" and "I understand . . . . I don't think it is necessary for me to argue them now because – I mean, at one point during the trial the court said this is not a trade secret case. I understand why the court did that. I don't need to argue it." When viewed in context, counsel was simply acknowledging that the court refused the proposed trade secret instructions, because Dent Mark was not making a trade secret claim. This acknowledgement does not constitute a concession that, in instructing on the interference claims, the trial court could not instruct that "misappropriating Dent Mart's customer information" qualified as the requisite wrongful conduct.

c. *The Trial Court's Refusal to Give Defense Special Instruction Two Was Not Error*

The trial court refused to give proposed Special Instruction Two by iDen and Kim as unnecessary. That refusal was not error.

"Where instructions are cumulative or merely amplifications of other instructions, . . . they should not be given. [Citations.] A judgment will not be reversed because of the refusal to give cumulative instructions. [Citation.]" (*Hicks v. Ocean Shore Railroad, Inc.* (1941) 18 Cal.2d 773, 783.)

Special Instruction Two would have instructed the jury: "If you find that [iDen and Kim] assisted [Lee] in breaching [Lee's] covenant not to compete with [Dent Mart], such assistance alone does not constitute the 'wrongful conduct.' I will explain in a separate instruction what constitutes the 'wrongful conduct.' "

That instruction was cumulative and merely amplified other instructions. As discussed above, the trial court instructed on what constituted "wrongful conduct" in the context of the two interference with prospective economic advantage claims. The jury also was instructed that "[m]erely opening or operating [iDen] independently by [Kim] is not in itself a wrongful conduct." In his non-compete covenant, Lee agreed not to engage in a business in competition with Dent Mart. Lee breached that covenant by opening and operating iDen. Kim assisted him in doing so by investing $100,000 and actively participating in iDen's operations. iDen assisted Lee and Kim simply by being in business.

4. *The Trial Court Properly Refused the Defense "Competition Privilege" Instruction*

iDen and Kim contend the trial court erred in rejecting their proposed Special Instruction One on the competition privilege. We disagree.

"California law has long recognized a 'competition privilege' which protects one from liability for inducing a third person not to enter into a prospective contractual relation with a business competitor. The privilege applies where ' "(a) the relation [between the competitor and third person] concerns a matter involved in the competition between the actor and the competitor, and (b) the actor does not employ improper means, and (c) the actor does not intend thereby to create or continue an illegal restraint of competition, and (d) the actor's purpose is at least in part to advance his interest in his competition with the other." . . . . ' [Citation.] In short, the competition privilege furthers free enterprise by protecting the right to compete *fairly* in the marketplace. One may compete for an advantageous economic relationship with a third party as long as one does not act improperly or illegally." (*Bed, Bath & Beyond of La Jolla, Inc. v. La Jolla Village Square Venture Partners* (1997) 52 Cal.App.4th 867, 880, italics in original.)

This competition privilege is not an affirmative defense. Rather, " 'a plaintiff seeking to recover for an alleged interference with prospective contractual or economic relations must plead and prove as part of its case-in-chief that the defendant not only knowingly interfered with the plaintiff's expectancy, but engaged in conduct that was wrongful *by some legal measure other than the fact of interference itself.*' [Citation.]"

(*Westside Center Associates v. Safeway Stores 23, Inc.* (1996) 42 Cal.App.4th 507, 521 fn. 16, italics added, quoting *Della Penna, supra*, 11 Cal.4th at p. 393.)

Special Instruction One read: "The competition privilege provides that one can interfere with a competitor's prospective economic relationship with a third party as long as the interfering conduct is not independently wrongful (i.e., wrongful apart from the fact of interference itself)."

"Parties have the 'right to have the jury instructed as to the law applicable to all their theories of the case which were supported by the pleadings and the evidence, whether or not that evidence was considered persuasive by the trial court.' [Citation.] 'A reviewing court must review the evidence most favorable to the contention that the requested instruction is applicable since the parties are entitled to an instruction thereon if the evidence so viewed could establish the elements of the theory presented.' [Citation.]" (*Maxwell v. Powers* (1994) 22 Cal.App.4th 1596, 1607.)

Here, Dent Mart established -- in the first instance -- that the alleged wrongdoing was not privileged. Lee, Kim, and iDen obtained confidential customer and vendor information from former Dent Mart employees by hiring them for iDen. They used this information to compete with Dent Mart and thereby successfully usurped Dent Mart's prospective business opportunities. Lee, Kim, and iDen failed to present any evidence that their conduct was within the competition privilege. Accordingly, no instruction on that privilege was warranted, and the court's refusal of that instruction was not error.

5. *The Trial Court's Instructions on Compensatory Damages Were Not Erroneous*

iDen and Kim contend the trial court committed prejudicial instructional error by failing to instruct that the damages award must be based on net profits and not gross profits and that damages could be calculated based only on sales to customers who already had an economic relationship with Dent Mart. They contend the court's refusal to give the proposed defense CACI 353 instruction also was prejudicial error. We find no error.

In pertinent part, the jury was instructed that "[t]he amount of Dent Mart's damages is measured by [iDen's] *profits*. The amount of these damages are not required to be determined with mathematical precision, but there must be a reasonable basis for computing them." (Italics added.)

This instruction was not erroneous. It simply referred to "profits" rather than gross profits as contrasted with net profits. The nature of those profits was defined by the evidence the experts presented at trial.

By failing to cite applicable supporting authority, iDen and Kim forfeit their claim of error arising from the absence of an instruction that damages are limited to sales to already existing Dent Mart customers. (*Amato v. Mercury Casualty Co.* (1993) 18 Cal.App.4th 1784, 1794.) Similarly, they fail to set forth any authority supporting their claim the trial court erred in refusing to give their proposed CACI 353 instruction.

6. *Substantial Evidence Supported the Compensatory Damages Award*

iDen and Kim contend the award of general damages is excessive, because the amount was based on gross, not net, profits and on all of iDen's customers, even those with no prior relationship with Dent Mart. Substantial evidence supports the jury's award.

"Ordinarily, the plaintiff may recover only the defendant's net profits attributable to the wrongful conduct. [Citation.] Nonetheless, '[t]he defendant bears the burden of proving any costs or expenses to be deducted from gross income in calculating net profit.' [Citation.]" (*Los Defensores, Inc. v. Gomez* (2014) 223 Cal.App.4th 377, 402; see also *Xum Speegle, Inc. v. Fields* (1963) 216 Cal.App.2d 546, 556 [whether gross profits also constitute net profits at times a factual issue].)

Ervin calculated gross profits by first determining the amount of gross sales based on iDen's own financial records and then subtracting iDen's average cost of sales. iDen and Kim failed to carry their burden to present evidence of any other costs or expenses that should have been deducted. Their claim of error therefore fails.

7. *Substantial Evidence Supports the Punitive Damages Award Against Kim*

Kim challenges the $1,154,000 award of punitive damages against him, claiming the evidence was insufficient to establish his liabilities, net worth, or ability to pay the award at time of trial. Substantial evidence supports the award.

"Evidence of the defendant's financial condition is a prerequisite for an award of punitive damages" (*Green v. Laibco, LLC* (2011) 192 Cal.App.4th 441, 452 (*Green*)) and "an award of punitive damages cannot be sustained on appeal unless the trial record contains meaningful evidence of the defendant's financial condition." (*Adams v. Murakami* (1991) 54 Cal.3d 105, 108–109 (*Adams*).) "Without such evidence, a reviewing court can only speculate as to whether the award is appropriate or excessive." (*Id.* at p. 112.) The plaintiff has the burden of proof. (*Id.* at p. 119.)

In *Green, supra,* 192 Cal.App.4th 441, the court noted the absence of a bright line test for calculating a defendant's financial condition in this context, explaining: *Adams* "decline[d] . . . to prescribe any rigid standard for measuring a defendant's ability to pay." (*Adams, supra,* 54 Cal.3d at p. 116, fn. 7; ["[w]e cannot conclude on the record before us that any particular measure of ability to pay is superior to all others or that a single standard is appropriate in all cases"].) In *Baxter v. Peterson* (2007) 150 Cal.App.4th 673, the court summarized the pertinent court of appeal authorities on the point: " 'Net worth is the most common measure, but not the exclusive measure. (*Rufo v. Simpson* (2001) 86 Cal.App.4th 573, 621, 624–625 [evidence that defendant was "a wealthy man, with prospects to gain more wealth in the future"]; see *Zaxis Wireless Communications, Inc. v. Motor Sound Corp.* (2001) 89 Cal.App.4th 577, 582-583 ["Net worth is too easily subject to manipulation to be the sole standard for measuring a defendant's ability to pay"].) In most cases, evidence of earnings or profit alone are not sufficient "without examining the liabilities side of the balance sheet." [Citations.] "What is required is evidence of the defendant's ability to pay the damage award." [Citation.] Thus, there should be some evidence of the defendant's actual wealth. Normally, evidence of liabilities should accompany evidence of assets, and evidence of expenses should accompany evidence of income.' (*Baxter v. Peterson, supra,* 150 Cal.App.4th at p. 680.)" (*Green, supra,* 192 Cal.App.4th at p. 452.)

Nonetheless, where – as here -- the defendant is an experienced businessman, the burden falls on him to produce evidence of his assets and liabilities so that a calculation of his net worth can be made. Despite a court order for production of that evidence and reminders from the trial court before the trial on punitive damages, Kim refused to produce that evidence. He engaged in stonewalling tactics during that trial: for example, claiming he was not sure what "assets" meant and he did not have a balance sheet. Accordingly, the absence of the requisite evidence to calculate his net worth must be laid at the feet of Kim himself. (*Green, supra,* 192 Cal.App.4th at pp. 453-454.)

Moreover, aside from other evidence of his wealth, the evidence that Kim owned businesses -- Neo Dental Labs and Neo Milling Center – that generated $400,000 a month in revenue was ample evidence of his ability to pay the $1,154,000 punitive damage award. (See *Green, supra,* 192 Cal.App.4th at p. 453 [award of about $1.237 million "not quite twice the most recent annual profit of a company whose assets exceed its liabilities"].) Although Kim's 2012 W-2 form reflected his own wages from Neo Dental Labs was $126,000, the jury was entitled to reject Kim's self-serving, uncorroborated testimony that his net monthly *profit* for both businesses was only $40,000. (*Kelly-Zurian v. Wohl Shoe Co.* (1994) 22 Cal.App.4th 397, 409 ["trier of fact is entitled to accept or reject all or any part of the testimony of any witness" and "a reviewing court will not reweigh the evidence or pass upon the credibility of witnesses"].)

8. *The Injunction Is Not Infirm Except for the Absence of a Geographic Restriction*

iDen, Kim, Eun, and Yoo challenge the injunction against them for unfair competition. They contend the evidence is insufficient to establish any unlawful competition by any of them at common law or under the UCL. They further contend the injunction violates section 16600 of the Business and Professions Code by enforcing a non-compete covenant against non-signatories. Also, the injunction covers Eun and Yoo as well although the trial court granted a motion for directed verdict in their favor and made no liability findings against them. The iDen defendants further contend the injunction is an unreasonable restraint, is overly broad, and is not limited in geographic scope. These claims are without merit, except for the last. We modify the injunction to restrict its geographic scope to California and, as so modified, we shall affirm the judgment.

a. *There Is Substantial Evidence of the Requisite Wrongful Conduct*

Contrary to the claims of the iDen defendants, substantial evidence supports the trial court's determination they committed unfair competition against Dent Mart by misappropriating its customer and vendor information -- a trade secret.

In relevant part, "unfair competition . . . mean[s] and include[s] any unlawful, unfair or fraudulent business act or practice[.]" (Bus. & Prof. Code, § 17200.) "An 'unlawful' business practice or act within the meaning of the UCL 'is an act or practice, committed pursuant to business activity, that is at the same time *forbidden by law.* [Citation.]' [Citation.]"[8] (*Bernardo v. Planned Parenthood Federation of America* (2004) 115 Cal.App.4th 322, 351; italics in original.) "By proscribing 'any unlawful' business practice, 'section 17200 "borrows" violations of other laws and treats them as unlawful practices' that the unfair competition law makes independently actionable. [Citations.]" (*Cel–Tech, supra,* 20 Cal.4th at p. 180; accord, *Korea Supply, supra,* 29 Cal.4th at p. 1144.) However, "to state a claim under [the UCL] one need not plead and prove the elements of a tort. . . . [Citations.]" (*Bank of the West, supra,* 2 Cal.4th at p. 1267.) A "UCL violation is established by the usual preponderance of the evidence"

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[8] This is not an unfair competition case under the common law. "The common law tort of unfair competition is generally thought to be synonymous with the act of 'passing off' one's goods as those of another. The tort developed as an equitable remedy against the wrongful exploitation of trade names and common law trademarks that were not otherwise entitled to legal protection. [Citation.]" (*Bank of the West v. Superior Court* (1992) 2 Cal.4th 1254, 1263 *(Bank of the West)*.)

standard. (*People v. First Federal Credit Corp.* (2002) 104 Cal.App.4th 721, 732 (*First Federal*).)

"By enacting the [Uniform Trade Secrets Act (Civ. Code, § 3426 et seq.)] in 1984, our Legislature added California to the long list of states[] which have determined that the right of free competition does not include the right to use confidential work product of others."[9] (*Morlife, supra,* 56 Cal.App.4th at p. 1520, fn. omitted.) Under certain circumstances, a customer list may qualify as such work product.

"[W]here the employer has expended time and effort identifying customers with particular needs or characteristics, courts will prohibit former employees from using this information to capture a share of the market. Such lists are to be distinguished from mere identities and locations of customers where anyone could easily identify the entities as potential customers. [Citations.] As a general principle, the more difficult information is to obtain, and the more time and resources expended by an employer in gathering it, the more likely a court will find such information constitutes a trade secret. [Citation.]" (*Morlife, supra,* 56 Cal.App.4th at pp. 1521-1522.)

Moreover, "[t]he requirement that a customer list must have economic value to qualify as a trade secret has been interpreted to mean that the secrecy of this information provides a business with a 'substantial business advantage.' [Citation.] In this respect, a customer list can be found to have economic value because its disclosure would allow a competitor to direct its sales efforts to those customers who have already shown a willingness to use a unique type of service or product as opposed to a list of people who only might be interested. [Citation.] Its use enables the former employee 'to solicit both more selectively and more effectively.' [Citation.]" (*Morlife, supra,* 56 Cal.App.4th at p. 1522.)

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[9] Although the UTSA expressly provides for injunctive relief for trade secret misappropriation (Civ. Code, § 3426.2), a plaintiff need not proceed under the UTSA and may, instead -- as in this case -- seek injunctive relief under the unfair competition law. (Cf. *Morlife, Inc. v. Perry* (1997) 56 Cal.App.4th 1514, 1519, fn. 2 (*Morlife*).)

In addition, "[w]hile labeling information 'trade secret' or 'confidential information' does not conclusively establish that the information fits this description [citations], it is nonetheless an important factor in establishing the value which was placed on the information and that it could not be readily derived from publicly available sources. Furthermore, 'to afford protection to the employer, the information need not be in writing but may be in the employee's memory. [Citation.]' [Citation.]"[10] (*Morlife, supra,* 56 Cal.App.4th at p. 1522-1523.)

The record contains substantial evidence to support the trial court's determinations that Dent Mart's customer and vendor information was confidential and of substantial value to iDen, i.e., trade secrets. The court found: After Dent Mart bought L&C from Lee, Park and Kenny Lee, the owners of Dent Mart, "spent significant amounts of time and money to increase their business and customer base"[11] and Dent Mart "experienced increased sales and customers in 2006 and 2007." iDen began to do business at the end of 2007 or the beginning of 2008. In its first year of business, iDen had immediate success. More than 80 percent of its customers were Dent Mart customers, which meant [Lee] knew what supplies those customers would buy, how much they would pay for them, and how much they would spend in any given year. In its first year of business, those Dent Mart customers provided more than 90 percent of iDen's revenue. Meanwhile, during that same year, Dent Mart's customers and sales decreased significantly.

Also "in iDen's first year in business, defendants had the dealerships it wanted and needed to sell supplies. These were the same dealerships that Dent Mart had." "By securing dealerships from the same manufacturers that Dent Mart had, and by matching

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[10] In other words, the information "[i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy." (Civ. Code, § 3426.1, subd. (d)(2).)

[11] In view of the evidence that Dent Mart's customer information was password-protected on its computer system and that its vendor information was in a separate computer program as well as Park's testimony he considered that information confidential, the trial court impliedly found such information to be confidential within the meaning of the UTSA.

them up with Dent Mart customers, iDen could show immediate sales, which were needed for []Lee to make good on his guarantee of a quick sale to recover the losses in the China business." Moreover, "[t]he iDen catalog showed the same supplies as the Dent Mart catalog. The evidence showed that some of the supplies in the iDen catalog were supplies that could only be purchased in Korea, and that only [Mr.] Lee (and not the other defendants) knew where to purchase them."

The record also contains substantial evidence the iDen defendants misappropriated Dent Mart's trade secrets.[12] The trial court found: Kim knew Lee had sold his dental lab supply business to Dent Mart and that "Lee had agreed not to open or operate the same business." While the two were involved with Good Deal, Lee told "Kim that he wanted to open and operate another dental lab supply business" for "a quick sale to recover their losses from the China business venture." Kim agreed to open and operate the new business with Lee and invested over "$100,000 to start the business."

"While at Good Deal, [] Lee and [] Kim asked [] Choi if he could get them dealerships for the new business." "Kim knew that [] Choi had worked for Dent Mart, knew that [] Choi knew these manufacturers and their key managers very well, and knew that [] Choi knew whom to contact to obtain dealerships." "Choi had worked for [] Lee before he sold his business to [Dent Mart], and [] Choi worked for [] Park and Kenny Lee after the sale to Dent Mart. [Mr.] Lee later hired [Mr.] Choi to work at Good Deal."

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[12] Under the UTSA, "misappropriation" means, among other things: "(1) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or [¶] (2) Disclosure or use of a trade secret of another without express or implied consent by a person who: [¶] (A) Used improper means to acquire knowledge of the trade secret; or [¶] (B) At the time of disclosure or use, knew or had reason to know that his or her knowledge of the trade secret was: [¶] (i) Derived from or through a person who had utilized improper means to acquire it; [¶] (ii) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or [¶] (iii) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use[.]" (Civ. Code, § 3426.1, subd. (b)(1)&(2)(A)(B).)

"Choi said he could get the dealerships. He agreed to do so and ultimately secured at least 30 dealerships for the new business. [Choi] thus helped to set up the new business which he later learned was named iDen[.]" "Defendants were then able to buy supplies from these manufacturers and to sell those supplies to dental labs." Yoo sent Choi money for his services.

The trial court further found iDen hired Heo, another former Dent Mart employee. "Heo made deliveries and knew the Dent Mart customers. [He] solicited Tony Kim, one of Dent Mart's customers, to sell him dental lab supplies. Tony Kim was surprised to hear [] Heo knew his customer information (e.g., the kinds of supplies he had purchased, and the amounts)."

b. *The Injunction Against the iDen Defendants Is Not Based on the Non-Compete Covenant*

The iDen defendants contend the injunction the trial court issued violates section 16600 of the Business and Professions Code by enforcing a non-compete covenant against non-signatories. Their contention is based on misapprehension.

First, on its face, section 16600 does not expressly prohibit enforcement of a non-compete covenant against a non-signatory. It simply says: "Except as provided in this chapter, every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void." (Bus. & Prof. Code, § 16600.)

Moreover, the injunction issued against the iDen defendants is not based directly on the non-compete covenant Lee signed. Rather, the injunction against Kim arises from his own tortious wrongful conduct in helping Lee open and operate iDen; that wrongdoing supports the torts of intentional inducement of breach of the non-compete covenant and intentional interference with contract (*Little v. Amber Hotel Co.* (2011) 202 Cal.App.4th 280, 291-292 (*Little*) [distinguishing torts of intentionally inducing a breach of contract and intentionally interfering with the performance of a contract]) as well as the misappropriation of Dent Mart's trade secrets. iDen is simply the alter ego of Kim.[13] The injunction against Eun and Yoo is grounded in the trial court's implied finding that each aided and abetted Kim in his wrongdoing.[14] (*Schulz v. Neovi Data Corp.* (2007) 152 Cal.App.4th 86, 93 [aiding and abetting in commission of intentional tort]; *Berg & Berg Enterprises, LLC v. Sherwood Partners, Inc.* (2005) 131 Cal.App.4th 802, 823-824, fn. 10 ["The aider and abettor's conduct need not, as 'separately considered,' constitute a breach of duty"]; *Howard v. Superior Court* (1992) 2 Cal.App.4th 745, 749 [aiding and abetting does "not require a defendant to agree to join the wrongful conduct" but "necessarily requires a defendant to reach a conscious decision to participate in tortious activity for the purpose of assisting another in performing a wrongful act"].)

In addition, it does not matter that none of the iDen defendants are signatories to the non-compete covenant. " ' "In matters of injunction, . . . it has been a common practice to make the injunction run also to classes of persons through whom the enjoined party may act, such as agents, servants, employees, aiders, abettors, etc., though not parties to the action, and this practice has always been upheld by the courts . . . . " ' [Citation.] 'We recognize that the direction of injunctive orders to persons "in active concert or in participation with" specifically named parties defendant is approved by long-standing custom and practice, and we agree that an ascertainable

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[13] The trial court specifically found: "[] Lee and [] Kim did not open and operate iDen[] in their own names, and no documents show their involvement in that business. Instead, they used the name of [] Kim's wife, [Eun] Kim, to conceal their involvement. [] Lee, [] Kim, and Eun Kim agreed that Eun Kim would be the president, secretary and treasurer, the sole director, and the sole owner of iDen[.] . . . [Eun] Kim had no experience in opening or operating a dental lab supply business." At a meeting with Choi at Good Deal, Kim introduced Yoo to him as the one who "would be running the new business." Yoo, however, "had no experience opening or operating a dental lab supply business."

[14] In any event, Eun Kim was the owner, sole director, president, secretary, and treasurer of iDen. Yoo was iDen's manager. A corporation acts solely through its officers, agents, and employees. The injunction therefore was appropriate as to these two individuals -- at a minimum -- in their capacities as officers or employees of iDen.

class of persons is described by such language.' [Citation.]"[15] (*NewLife Sciences, LLC v. Weinstock* (2011) 197 Cal.App.4th 676, 690.)

c. *The Trial Court's Grant of the Nonsuit Motion Does Not Affect the Validity of the Injunction*

Eun and Yoo contend the injunction must be vacated as to them, because the trial court had granted a motion for directed verdict in their favor and made no liability findings against them. We disagree.

First, the motion the trial court granted in favor of Eun and Yoo was for nonsuit, not a directed verdict, and it affected only the claims for intentional and negligent interference with prospective advantage. In so doing, the trial court essentially found Dent Mart had failed to establish either Eun or Yoo had engaged in conduct that was wrongful by some legal measure, independent of the prospective advantage. This element does not apply to the torts of inducing a breach of contract or intentional

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15 In *H. G. Fenton Mat. Co. v. Challet* (1942) 49 Cal.App.2d 410, the court noted: "The authorities of the various states are not uniform on the subject but it is the general rule that injunction will ordinarily issue only against parties to the agreement or those in privity with them. One who is in no sense a party to the covenant cannot properly be restrained from carrying on such competing business although he may properly be restrained from *aiding* the covenanter in violating the covenant or from employing the covenanter in such a way as would involve a breach of the covenant or from engaging in a competing business, in partnership with, or as an agent or employee of the seller. The court may, where the contract is valid, enjoin the party complained of not only from violating its terms but also from employing or combining with others to accomplish the same result. The rule that a stranger to a restrictive covenant can properly be enjoined from engaging in business with a covenanter so as to result in a breach of the covenant applies to corporations. Ordinarily, however, the corporation should not be enjoined from conducting a business independently of the covenanter, unless the circumstances are such that the corporation is to be regarded as the alter ego of the covenanter or a mere instrumentality by means of which the covenanter seeks to evade the agreement. (28 Am. Jur. 298, sec. 104.)

"[I]n California an action will lie for unjustifiably inducing a breach of contract [citation], and that a contracting party may enjoin a stranger to the contract from unlawfully interfering with his business or his rights under the contract where the acts complained of would result in irreparable damage for which he has no adequate remedy at law. [Citation.]" (*Id*. at pp. 415-416.)

interference with the performance of a contract. (*Little, supra,* 202 Cal.App.4th at p. 292, fn. 7.) The trial court properly enjoined Eun and Yoo under the UCL.

d. *The Geographic Scope of Injunctive Relief Must Be Restricted to California*

The iDen defendants contend the injunction is invalid, because it is an unreasonable restraint, is overly broad, and is not limited in geographic scope. We agree the trial court did not specify any geographic parameters and modify the injunction to apply only in California.

"California's public policy affirms a person's right to pursue the lawful occupation of his or her choice. [Citation.] Our Legislature has codified this public policy in [Business and Professions Code] section 16600. It provides, 'Except as provided in this chapter, every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void.' [Citation.]" (*Strategix, Ltd. v. Infocrossing West, Inc.* (2006) 142 Cal.App.4th 1068, 1072 (*Strategix*).) An exception exists for a noncompetition covenant in connection with the sale of a business, under Business & Professions Code section 16601. It provides in part: "Any person who sells the goodwill of a business, or any owner of a business entity selling or otherwise disposing of all of his or her ownership interest in the business entity, . . . may agree with the buyer to refrain from carrying on a similar business within *a specified geographic area in which the business so sold . . . has been carried on,* so long as the buyer, or any person deriving title to the goodwill or ownership interest from the buyer, carries on a like business therein." (Italics added.)

"The reason for this exception to the general rule against noncompetition covenants is to prevent the seller from depriving the buyer of the full value of its acquisition, including the sold company's goodwill. [Citation.] 'It was the policy of the [common] law, within reasonable limits, to protect the purchaser in the enjoyment of the good will which he had purchased and paid for.' [Citation.] The sold business's goodwill is the ' " 'expectation of . . . that patronage which has become an asset of the business.' " ' (*Strategix, supra,* 142 Cal.App.4th at p. 1073.) The geographic scope of a noncompetition covenant must be limited to the area where the sold company carried on business because ‘[o]therwise, a seller could be barred from engaging in its business in places where it poses little threat of undercutting the company it sold to the buyer.’ [Citation.]” (*Alliant Ins. Services, Inc. v. Gaddy* (2008) 159 Cal.App.4th 1292, 1301.)

Here, Lee’s non-compete covenant was limited to California. The injunction therefore should be modified to restrict its geographic scope to California.

In all other respects, as issued, the injunction is not infirm. “[W]e are mindful a court’s power to grant injunctive relief to prevent future unfair business practices is ‘ “extraordinarily broad.” ’ [Citation.]” (*First Federal, supra,* 104 Cal.App.4th at pp. 735-736.) As discussed above, the injunction is restricted to enjoin only those activities that the trial court found wrongful. It applies to each defendant based on his or her own wrongful conduct, and the 10-year time limitation is reasonable.

DISPOSITION

The judgment is modified to limit the scope of the injunction geographically to California. As modified, the judgment is affirmed. Dent Mart shall recover its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EGERTON, J.*

WE CONCUR:

EDMON, P. J.

ALDRICH, J.

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.