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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

K. V. KUMAR,

Plaintiff and Respondent,

v.

GADSALLI RAVIKUMAR et al.,

Defendants, Cross-complainants and
Appellants.

D070449

(Super. Ct. No. 30-2013-00657199)

APPEAL from a judgment of the Superior Court of Orange County, Derek W. Hunt, Judge. Affirmed.

Irell & Manella, Joseph M. Lipner, Marc S. Maister and Michael D. Harbour for Defendants, Cross-complainants and Appellants.

Greenberg Gross, Alan A. Greenberg, Wayne R. Gross, Daniel R. Gutenplan and Frank Mickadeit for Plaintiff and Respondent.

Defendant Gadsalli Ravikumar appeals a judgment after the jury found in favor of plaintiff K.V. Kumar in Kumar's breach of contract action against him. On appeal, Ravikumar contends: (1) the trial court erred by overruling his demurrer to Kumar's first

amended complaint on the ground it was a sham pleading; (2) the 2010 written contract superseded the 2008 oral contract and he cannot be held personally liable under the 2010 written contract; (3) the jury's verdicts were inconsistent and require a new trial; and (4) the trial court erred by excluding evidence that would have shown Kumar did not fulfill his obligations under the 2010 written contract. We conclude the judgment must be affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

In 2008, Ravikumar contacted Kumar, whom he had known for over 25 years, for help in improving the financial condition of eight dialysis centers in which he (Ravikumar) had an ownership interest. Each dialysis center was owned by a separate limited liability company (LLC) and Ravikumar owned a majority interest in each LLC. Ravikumar also owned Dialysis Centers Network, LLC (DCN), which managed all of the centers. Ravikumar told Kumar that the eight centers were then worth about \$15 million and he wanted Kumar to help increase their value so they could be sold for between \$18 million and \$20 million.

In December 2008, Ravikumar offered Kumar the job of running the centers. Kumar asked for a salary of \$10,000 per month and 20 percent of the gross sale price of the centers, writing those terms in his diary notebook and showing them to Ravikumar. Ravikumar countered by crossing out "20 percent," writing "10 percent" in its place, and initialing the change. Ravikumar told Kumar that the 10 percent of the gross sale price would come solely from his (Ravikumar's) share of the sale price. Ravikumar told Kumar that he did not intend to tell the minority owners of the centers about their

agreement because Kumar's payment would come from Ravikumar's share, and asked Kumar not to inform them of the agreement. Kumar accepted Ravikumar's offer. When Kumar asked Ravikumar to put their agreement in a formal written contract, Ravikumar responded that they did not need one because they were old friends.

In January 2009, Kumar began working full time and found the centers had severe problems. He agreed to defer \$2,000 of his \$10,000 per month salary until the centers became profitable. In early 2009, Kumar showed Raghbir Bagga, the centers' finance director, the page in his notebook diary on which Ravikumar had written "10 percent." Bagga recognized the initials adjacent to the writing as Ravikumar's.

In April 2009, Ravikumar recognized Kumar's effort, promoted him to chief operating officer of DCN, and increased his salary to \$200,000 per year. Kumar agreed to defer the increased amount of his salary until the centers were financially stable. Kumar's efforts resulted in the successful opening of the Fountain Valley and Downey centers and the completion of construction of the new Nephron center. He was also able to obtain \$2 million in MediCal/Medicare payments that were due the Moreno Valley center. In December 2009, the new Nephron center opened. During a walk-through on completion of that center, Ravikumar told Janet Frazier, its architect, that Kumar was a 10 percent owner of the company. On another occasion, Ravikumar told Gajanan Bhat, a consultant, that he had promised Kumar 10 percent of the centers.

In the spring of 2010, Kumar asked Ravikumar to sign a written contract because he had not yet been paid his full monthly salary despite the profitability of the centers, and his notebook diary bearing the "10 percent" figure with Ravikumar's initials had

disappeared from his desk. Ravikumar agreed to enter into a written contract and asked Cliff Smith, the human resources manager, to draft the agreement. On two prior occasions, Smith heard Ravikumar orally affirm his agreement to pay Kumar 10 percent of the gross sale price of the centers. The contract drafted by Smith provided that Kumar's salary would be \$200,000 per year for five years with 3-percent annual increases. It also provided Kumar would receive 10 percent of the value of the centers if his employment was terminated or "if the company is sold . . . 10 [percent] of the gross sale price of all the dialysis centers."

On June 23, 2010, Kumar signed the contract and then went to a restaurant with Ravikumar and Smith. During dinner, Kumar asked Ravikumar to sign the contract. Ravikumar told him he would "take care of it" and then asked him to leave the table so he could talk privately with Smith. While Kumar was away, Ravikumar looked at the contract and then told Smith to sign the contract, explaining he (Ravikumar) did not need to sign it. Smith signed the contract and put it in a file folder. When Kumar returned to the table, he asked Ravikumar whether he had signed the contract. Ravikumar replied: "I have taken care of it. Don't worry." On their way back to the office, Kumar again asked Ravikumar whether he had signed the contract and Ravikumar replied, "I have taken care of it."

At the office, Smith privately asked Ravikumar whether he (Smith) should complete the paperwork to reflect Kumar's \$200,000 salary. Ravikumar told him not to do so. Smith then placed the contract in his "ignore" file, where he maintained documents on which Ravikumar had instructed him not to take action. Thereafter,

Kumar repeatedly asked Ravikumar for a copy of the contract. Ravikumar replied to his first request by telling Kumar he would give it to him. Ravikumar replied "later" to Kumar's second or third requests thereafter. Ravikumar replied to his final request by telling Kumar it was not his policy to give copies of contracts to employees.

In March 2012, Ravikumar told Kumar that he was going to be selling the centers to DaVita Healthcare (DaVita) and asked him to lead their response to DaVita's due diligence requests. During the extended due diligence period, Ravikumar told Kumar several times that his (Kumar's) share of the sale proceeds would be paid to him through escrow. Krystle Respicio, DCN's new human resources manager, heard Kumar ask Ravikumar about "receiving 10 percent" and Ravikumar respond by stating, "Don't worry, KV, I will take care of you."

However, as the closing date for the sale approached, Ravikumar told Kumar that 10 percent of the sale proceeds was "too much" and that he (Kumar) didn't "have anything with my signature." That was the first time Kumar learned that Ravikumar had not, in fact, signed the 2010 contract. He told Kumar: "You don't have any documentation with my signature." Ravikumar asked Kumar to accept only five percent of the sale proceeds. Because he did not have documentation and believed Ravikumar would deny they had an agreement, Kumar agreed to accept five percent of the sale proceeds.

Kumar subsequently learned his share of the sale proceeds was not included in the escrow instructions. When confronted, Ravikumar explained to Kumar it was too complicated to put him in the escrow and told him not to worry, assuring him, "I'll give it

to you." Ravikumar told Kumar he would pay him in February or March of 2013. In a series of closings during November 2012 through January 2013, the centers were sold to DaVita.

On March 11, 2013, Ravikumar and Kumar met at a coffee shop where Kumar expected to receive his share of the sale proceeds from Ravikumar. Bhat accompanied Kumar. When Kumar asked Ravikumar for his money, Ravikumar initially did not respond and instead told Kumar he wanted him to sue certain investors in one of Ravikumar's business ventures in India. Kumar told him there were no grounds on which to sue those investors and again requested his money. Ravikumar replied: "I'm not going to give you any money. I'm going to kill you." As Ravikumar left the shop, Kumar followed him and begged him to reconsider. In the parking lot, Ravikumar told him: "You don't have any proof. You can't do anything to me. You cannot get any money. I'll kill you."

In June 2013, Kumar filed a complaint against Ravikumar, DCN, and each of the LLC's, alleging nine causes of action, including for breaches of the 2008 and 2010 contracts and fraudulent inducement. He attached a copy of the alleged 2010 written contract to his complaint.¹ The trial court sustained the defendants' demurrer to the complaint with leave to amend certain causes of action.

¹ For purposes of clarity, we attach a copy of the alleged 2010 written contract to our opinion.

Kumar filed a first amended complaint, omitting the LLC's as defendants and adding certain factual allegations. He attached a copy of the same alleged 2010 written contract to his first amended complaint. The court overruled the defendants' demurrer to the first amended complaint. Ravikumar then filed a cross-complaint against Kumar alleging causes of action for fraud, theft, and intentional infliction of emotional distress.

At trial, the liability issues and damages issues were bifurcated and tried separately. During the liability phase, Kumar presented evidence substantially as described above, including the supporting testimony of percipient witnesses (e.g., Bagga, Frazier, Bhat, Smith, and Respicio). In his defense, Ravikumar presented his own testimony contradicting Kumar's version of events, claiming that he and Kumar had never discussed the topic of Kumar's receiving any share of the proceeds from the sale of the centers. Ravikumar testified the 2010 written contract was "a fake . . . a fraud . . . a forgery" that was created three years later and that Smith had conspired with Kumar to create it. He also testified that Frazier, Bhat, Bagga, and Smith had perjured themselves at trial. Ravikumar stated it was not until October 2012 that Kumar asked for a share of the sale proceeds and he (Ravikumar) rejected that request. When Kumar asked him for \$2.5 million at the coffee shop meeting, Ravikumar was shocked and simply walked out.

Following the liability phase, the jury found Ravikumar had fraudulently induced Kumar to enter into the 2008 oral contract and had breached the 2008 oral contract and 2010 written contract. It also found in favor of Kumar on Ravikumar's cross-complaint. Following the damages phase, the jury awarded Kumar \$2,150,000 in damages for breach of the 2008 contract and \$2,284,000 in damages for breach of the 2010 contract. The

parties subsequently stipulated the total amount of compensatory damages would be no more than \$2,284,000. The trial court entered an amended judgment awarding Kumar damages of \$2,284,000, plus amounts for prejudgment interest and costs, for a total award of \$2,544,704.53. Ravikumar timely filed a notice of appeal.

DISCUSSION

I

Sham Pleading

Ravikumar contends the trial court erred by overruling his demurrer to Kumar's first amended complaint (FAC) on the ground it was a sham pleading. Ravikumar argues the allegations in the FAC contradicted those in the original complaint. He further argues those contradictions were not the result of a mistake or inadvertence and, even if they were, Kumar did not provide an explanation for that mistake or inadvertence. Because, as we explain below, the allegations of the FAC did not contradict the allegations in original complaint, the trial court correctly denied Ravikumar's demurrer on the ground of a sham pleading.

A

Demurrers generally. A demurrer tests the legal sufficiency of a complaint. (*Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497.) On appeal, complaints generally are reviewed de novo in determining the question of law whether they "allege[] facts sufficient to state a cause of action under any legal theory, such facts being assumed true for this purpose." (*McCall v. PacifiCare of Cal., Inc.* (2001) 25 Cal.4th 412, 415.) "In reviewing the sufficiency of a complaint against a general

demurrer, we are guided by long-settled rules. 'We treat the demurrer as admitting all material facts properly pleaded, but not contentions, deductions or conclusions of fact or law. [Citation.] We also consider matters which may be judicially noticed.' [Citation.] Further, we give the complaint a reasonable interpretation, reading it as a whole and its parts in their context." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) The California Supreme Court stated:

"If the complaint states a cause of action under any theory, regardless of the title under which the factual basis for relief is stated, that aspect of the complaint is good against a demurrer. '[W]e are not limited to plaintiffs' theory of recovery in testing the sufficiency of their complaint against a demurrer, but instead must determine if the *factual* allegations of the complaint are adequate to state a cause of action under any legal theory. The courts of this state have . . . long since departed from holding a plaintiff strictly to the "form of action" he has pleaded and instead have adopted the more flexible approach of examining the facts alleged to determine if a demurrer should be sustained.'" (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 38-39.)

We "look past the form of a pleading to its substance. Erroneous or confusing labels attached by the inept pleader are to be ignored if the complaint pleads facts [that] would entitle the plaintiff to relief." (*Saunders v. Cariss* (1990) 224 Cal.App.3d 905, 908.) "[I]t is error for a trial court to sustain a demurrer when the plaintiff has stated a cause of action under any possible legal theory." (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 967.)

Sham pleading doctrine. "Under the sham pleading doctrine, plaintiffs are precluded from amending complaints to omit harmful allegations, without explanation, from previous complaints to avoid attacks raised in demurrers or motions for summary

judgment. [Citations.] A noted commentator has explained, 'Allegations in the original pleading that rendered it vulnerable to demurrer or other attack cannot simply be omitted without explanation in the amended pleading. The policy against sham pleadings requires the pleader to *explain* satisfactorily any such omission.' " (*Deveny v. Entropin, Inc.* (2006) 139 Cal.App.4th 408, 425-426 (*Deveny*), fn. omitted, quoting Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2005) [¶] 6.708, p. 6-142.1.) The sham pleading doctrine enables courts to prevent abuses of process, but does not prevent plaintiffs from correcting ambiguous facts. (*Deveny*, at p. 426.) If a plaintiff corrects a pleading by omitting a harmful allegation, the plaintiff must explain how that allegation was the result of mistake or inadvertence. (*Hendy v. Losse* (1991) 54 Cal.3d 723, 743 (*Hendy*).

However, "[a] complaint may plead inconsistent causes of action [citations] . . . if there are no contradictory or antagonistic facts [citation]." (*Steiner v. Rowley* (1950) 35 Cal.2d 713, 718-719 (*Steiner*)). Therefore, "unless the alternate pleadings contain antagonistic statements, the statement of facts sufficient to constitute a cause of action in one count is not a bar to the maintenance of a separately stated count in the same pleading based upon inconsistent allegations." (*Id.* at p. 719.) "In the absence of inconsistent factual allegations any inconsistency between plaintiff's legal theories is immaterial." (*Thompson v. County of Fresno* (1963) 59 Cal.2d 686, 690 (*Thompson*)). Furthermore, "unnecessary allegations will be treated as surplusage unless the opposing party would be prejudiced." (*Ibid.*)

B

2010 Written Contract. Both the original complaint and FAC attached a copy of the alleged 2010 written contract as support for their allegations. That contract bears the heading, "EMPLOYMENT CONTRACT" and the date, July 1, 2010. Under the heading, there are a number of parties listed: DCN, La Palma Dialysis Center, Anaheim Hills Dialysis Center, Santa Fe Springs Regional Dialysis Center, Fountain Valley Regional Dialysis Center, Nephron Dialysis Center of Lakewood, Moreno Valley Regional Dialysis Center, and Downey Regional Dialysis Center. After the heading, "Position," it states: "Chief Operating Officer, Managing the Corporate Office & the eight Dialysis Centers [and] [f]uture one." After the heading, "Responsibilities," are eight line items, including: "1. Overall supervision of through [sic] Regional Administrators and Administrators and the chief of BioMed services (non financial)" and "8. COO is also entitled to 10% of the company (all the dialysis centers as was agreed in December 2008 with Dr. G.R. Ravikumar[])." After the heading, "Remuneration," it states: "The COO shall receive a salary of \$200,000.00 per year effective from June 01, 2010 with an annual increase of 3% plus a car purchase or lease allowance of \$1,000.00 per month." After the heading, "Term of Employment," it states: "The commencement of the contract is from June 01, 2010 to May 31, 2015." After the heading, "Termination," the contract states:

"The COO should be given 30 days['] notice of termination and a severance package to include: COO will be eligible for the severance package including the pre-employment agreement of 10% value of the company including all the Dialysis Centers at the time of termination to be appraised by a certified corporate attorney/analyst

approved by the COO and remainder of the term of remuneration.
Or if the company is sold, then COO will be entitled to 10% of the gross sale price of all the dialysis centers." (Italics added.)

The contract bears a signature above the typed name, "KV Kumar, COO," but does not bear a signature above the typed name, "Dr. G.R. Ravikumar, Chairman & CEO." A signature also appears above the typed name, "Cliff Smith, Human Resources." The copy of the alleged 2010 written contract attached to the original complaint and FAC also bears the following handwritten note below its signature lines: "* Dr. Ravikumar told me he didn't need to sign. Asked me to sign on behalf of company as HR, and then to file."

C

Ravikumar argues the trial court erred by overruling his demurrer because Kumar's FAC omitted harmful allegations from his original complaint and/or contained allegations contradictory to those in the original complaint and therefore the sham pleading doctrine should have been applied. Kumar responds by arguing the allegations of the FAC were not contradictory with his original complaint and the FAC did not omit any harmful allegations from his original complaint.

Omission of LLC's as defendants. Ravikumar argues the FAC's omission of the nine LLC's as defendants shows the FAC was a sham pleading. Kumar's original complaint included each individual LLC that operated a center, along with Ravikumar and DCN, as defendants. The original complaint alleged a breach of written contract cause of action against all the defendants, including the LLC's. It also alleged Ravikumar owned a majority interest in each of the LLC's. Ravikumar apparently argues the

inclusion of the LLC's as defendants in the original complaint was a harmful allegation and/or contradicted the allegations in the FAC, which omitted them as defendants.

However, as Kumar asserts, the inclusion of the LLC's as defendants in the original complaint was not a harmful allegation within the meaning of the sham pleading doctrine. Specifically, Kumar's omission of the LLC's as defendants was not harmful because he retained Ravikumar and DCN as defendants in the FAC. The LLC's inclusion in the original complaint appears to have been based on a legal theory that they were parties to the 2010 written contract. However, the trial court apparently sustained Ravikumar's demurrer to the complaint on the ground that Kumar could not have had an agreement with each of the eight LLC's to receive 10 percent of their sale proceeds because each had different owners and there was no allegation or evidence that the owners of each LLC had approved such an agreement. In filing his FAC, Kumar presumably made the strategic decision to abandon his legal theory that each of the LLC's were parties to the 2010 written contract, while maintaining his primary theory that Ravikumar and DCN were parties to that contract.

We conclude Kumar's abandonment of an alternative legal theory alleged in his original complaint (i.e., that the LLC's were parties to the contract) by omission of the LLC's as defendants in the FAC was not an omission of a harmful allegation and did not contradict the factual allegations in the original complaint. (Cf. *Deveny, supra*, 139 Cal.App.4th at pp. 425-426; *Steiner, supra*, 35 Cal.2d at pp. 718-719; *Thompson, supra*, 59 Cal.2d at p. 690; *Berman v. Bromberg* (1997) 56 Cal.App.4th 936, 948 (*Berman*) [abandonment of legal theory does not make amended complaint a sham pleading if both

pleadings are based on same general set of underlying material facts].) *American Advertising & Sales Co. v. Mid-Western Transport* (1984) 152 Cal.App.3d 875, cited by Ravikumar, is factually and legally inapposite to this case and does not persuade us to reach a contrary conclusion.

Ownership allegation. Ravikumar also argues that although Kumar's original complaint alleged he (Kumar) was one of the owners of the centers and "obtain[ed] ten percent of the centers," the FAC changed that harmful allegation by alleging Ravikumar promised to pay him 10 percent of the proceeds from the sale of the centers. However, by so arguing, Ravikumar does not accurately describe the allegations in the original complaint and FAC. Instead of Kumar stating he was one of the owners of the centers, Kumar's original complaint alleged *Ravikumar* "happily told visitors that . . . Kumar was one of the owners." That same allegation was retained in the FAC. To the extent the original complaint included a section heading or title that indicated Kumar became the COO of DCN and obtained 10 percent of the centers, that title's description of that section did not constitute a specific factual allegation that could contradict the allegations contained in the text of that section or those of the FAC (i.e., that Ravikumar and Kumar agreed Kumar would receive 10 percent of the proceeds from the sale of the centers). (Cf. *Larson v. UHS of Rancho Springs, Inc.* (2014) 230 Cal.App.4th 336, 347.)

Also, Ravikumar argues the 2010 written contract's varying descriptions of Kumar's interest as "10% of the company," "10% value of the company," and "10% of the gross sale price of all the dialysis centers," show Kumar's original complaint alleged he was a 10 percent owner of the centers and then contradicted that allegation in the FAC

by alleging Ravikumar personally promised to pay him 10 percent of the proceeds from the sale of the centers. However, by merely quoting from provisions of the 2010 written contract, which used various descriptions of Kumar's interest, Kumar did not allege he was an owner of 10 percent of each of the LLC's. Rather, based on all of the allegations, it is clear both the original complaint and the FAC alleged Kumar was entitled to 10 percent of the proceeds from the sale of the centers and the FAC did not omit those asserted harmful allegations from the original complaint. Furthermore, contrary to Ravikumar's assertion, neither the original complaint nor the FAC asserted Kumar was only an employee of DCN and had no contract(s) with Ravikumar personally. Rather, as discussed below, the FAC simply added further factual detail to the original complaint's allegations in support of Ravikumar's alleged personal liability. Therefore, the complaints' references to Kumar's ownership of 10 percent of the centers did not make the FAC a sham pleading.

Ravikumar's personal liability. Ravikumar also argues the FAC was a sham pleading because it, for the first time, alleged he promised to personally pay Kumar his 10 percent of the sale proceeds out of his (Ravikumar's) share. Although both the original complaint and the FAC included the allegations that in December 2008 Kumar and Ravikumar agreed that Kumar would receive 10 percent of the proceeds from the sale of the centers, the FAC added new allegations in paragraph 31, which states:

"31. Kumar asked Ravikumar if they needed to inform the other investors in the Centers of their agreement that Kumar would receive ten percent of the gross sales price of the Centers. Ravikumar told Kumar that the other investors did not have to be informed because Kumar's ten percent of the gross sales price would come out of

Ravikumar's share of the sales proceeds. For example, if the Centers sold for \$20,000,000, and Ravikumar's share was \$15,000,000 (after his partners were paid), Kumar would receive \$2,000,000 (ten percent of the gross sales proceeds) and Ravikumar would retain \$13,000,000."

Ravikumar argues those FAC allegations added a new and different contract term that did not appear in the original complaint (or the 2010 written contract) and therefore the FAC was a sham pleading. However, rather than being contradictory, the new allegations in the FAC merely expanded on the allegations in the original complaint, explaining how the 10 percent of the sale proceeds were to be paid to Kumar (i.e., out of Ravikumar's personal share) and why the other LLC owners did not need to know about that agreement. Those new allegations did not make the FAC a sham pleading because they did not change the nature or substance of the agreement between Ravikumar and Kumar as described in the original complaint. (Cf. *Deveny, supra*, 139 Cal.App.4th at pp. 425-426; *Steiner, supra*, 35 Cal.2d at pp. 718-719; *Thompson, supra*, 59 Cal.2d at p. 690.) *Amid v. Hawthorne Community Medical Group, Inc.* (1989) 212 Cal.App.3d 1383, cited by Ravikumar, is factually and legally inapposite to this case and does not persuade us to reach a contrary conclusion.

Fraudulent transfer cause of action. Ravikumar also argues the FAC was a sham pleading because it omitted a fraudulent transfer cause of action included in Kumar's original complaint. He notes the original complaint included a cause of action for fraudulent transfer that alleged a portion of the proceeds from the sale of the centers had been transferred to Ravikumar with the intent to defraud Kumar and other creditors of the defendants and sought recovery of such proceeds as necessary to satisfy Kumar's claims.

That cause of action was omitted in the FAC. However, the omission of an alternative legal theory or cause of action in an amended complaint does not make that complaint a sham pleading if the underlying factual allegations do not contradict the allegations in a prior complaint. If the centers were liable as alleged in the original complaint, Ravikumar's taking of a majority of the sale proceeds potentially could have provided a basis for a fraudulent transfer claim against Ravikumar and the LLC's. However, as with the omission of the individual LLC's as defendants, the omission of related allegations involving the potential liability of those LLC's for a fraudulent transfer merely omitted an alternative legal theory and therefore, contrary to Ravikumar's assertion, did not make the FAC a sham pleading. (Cf. *Deveny*, *supra*, 139 Cal.App.4th at pp. 425-426; *Steiner*, *supra*, 35 Cal.2d at pp. 718-719; *Thompson*, *supra*, 59 Cal.2d at p. 690.) That prior allegation did not contradict the allegations in the original complaint and the FAC that Ravikumar was personally liable for paying Kumar 10 percent of the proceeds from the sale of the centers. Because the trial court correctly concluded the FAC did not omit contradictory or harmful allegations, Kumar did not have a duty to explain how the omitted allegations were the result of mistake or inadvertence and the FAC was not a sham pleading. (*Deveny*, at pp. 425-426; *Hendy*, *supra*, 54 Cal.3d at p. 743.)

II

Integration of the 2010 Written Contract and Parol Evidence

Ravikumar contends the 2010 written contract was fully integrated and therefore superseded the 2008 oral contract in its entirety, precluding admission and consideration of parol evidence regarding the 2008 contract. He further contends that he cannot be held

personally liable under the express terms of the purported fully integrated 2010 written contract.

A

"The basic goal of contract interpretation is to give effect to the parties' mutual intent at the time of contracting. [Citations.] When a contract is reduced to writing, the parties' intention is determined from the writing alone, if possible. [Citation.]" (*Cedars-Sinai Medical Center v. Shewry* (2006) 137 Cal.App.4th 964, 979.)

"When the parties to a written contract have agreed to it as an 'integration'—a complete and final embodiment of the terms of an agreement—parol evidence cannot be used to add to or vary its terms. [Citations.] *When only part of the agreement is integrated, the same rule applies to that part, but parol evidence may be used to prove elements of the agreement not reduced to writing.*" (*Masterson v. Sine* (1968) 68 Cal.2d 222, 225, italics added (*Masterson*).) "An integration may be partial rather than complete: The parties may intend that a writing finally and completely express only certain terms of their agreement rather than the agreement in its entirety." (*Founding Members of the Newport Beach Country Club v. Newport Beach Country Club, Inc.* (2003) 109 Cal.App.4th 944, 953 (*Founding Members*).) "The crucial issue in determining whether there has been an integration is whether the parties intended their writing to serve as the exclusive embodiment of their agreement." (*Masterson*, at p. 225.) "Whether a contract is integrated is a question of law when the evidence of integration is not in dispute." (*Founding Members*, at p. 954.)

"The parol evidence rule is codified in Civil Code section 1625 and Code of Civil Procedure section 1856. [Citation.] It 'generally prohibits the introduction of any extrinsic evidence, whether oral or written, to vary, alter or add to the terms of an integrated written instrument.' [Citation.] The rule does not, however, prohibit the introduction of extrinsic evidence 'to explain the meaning of a written contract . . . [if] the meaning urged is one to which the written contract terms are reasonably susceptible.' [Citation.] [¶] Although the rule results in the exclusion of evidence, it 'is not a rule of evidence *but is one of substantive law.*' " (*Casa Herrera, Inc. v. Beydoun* (2004) 32 Cal.4th 336, 343, fns. omitted (*Casa Herrera*)). "The parol evidence rule therefore establishes that the terms contained in an integrated written agreement may not be contradicted by prior or contemporaneous agreements. In doing so, the rule necessarily bars consideration of extrinsic evidence of prior or contemporaneous negotiations or agreements at variance with the written agreement." (*Id.* at p. 344.)

Civil Code section 1625 provides: "The execution of a contract in writing . . . supersedes all the negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument." Code of Civil Procedure section 1856 provides: "(a) Terms set forth in a writing intended by the parties as a final expression of their agreement with respect to the terms included therein may not be contradicted by evidence of a prior agreement or of a contemporaneous oral agreement. [¶] (b) The terms set forth in a writing described in subdivision (a) may be explained or supplemented by evidence of consistent additional terms unless the writing is intended also as a complete and exclusive statement of the terms of the agreement. [¶] . . . [¶] (d) The court shall

determine whether the writing is intended by the parties as a final expression of their agreement with respect to the terms included therein and whether the writing is intended also as a complete and exclusive statement of the terms of the agreement. . . ."

In general, the question whether a writing is intended to be a final expression of the parties' agreement may be determined from the writing itself. (*Pollyanna Homes, Inc. v. Berney* (1961) 56 Cal.2d 676, 679-680.) "The existence of an integration clause is a key factor in divining that intent." (*Grey v. American Management Services* (2012) 204 Cal.App.4th 803, 807 (*Grey*)). "A writing may, but need not, expressly state that it is intended as an integration." (*Singh v. Southland Stone, U.S.A., Inc.* (2010) 186 Cal.App.4th 338, 353 (*Singh*)). "Evidence of surrounding circumstances and prior negotiations *may* be admitted for the limited purpose of assisting the trial court in determining whether a document was intended to be the final agreement of the parties superseding all other transactions." (*Alling v. Universal Manufacturing Corp.* (1992) 5 Cal.App.4th 1412, 1434 (*Alling*)). In deciding the question of law whether a contract is integrated, a court may consider: "(1) whether the written agreement appears to state a complete agreement; (2) whether the alleged oral agreement directly contradicts the writing; (3) whether the oral agreement might naturally be made as a separate agreement; [and] (4) whether the jury might be misled by the introduction of the parol testimony." (*Brawthen v. H & R Block, Inc.* (1975) 52 Cal.App.3d 139, 146 (*Brawthen*)).

Even if a written contract is found to be integrated and intended by the parties to be the final expression of their agreement, those contract terms may nevertheless be explained or supplemented by evidence of consistent additional terms unless the writing

is intended to also be a complete and exclusive statement of the terms of their agreement. (Code Civ. Proc., § 1856, subd. (b); *Alling, supra*, 5 Cal.App.4th at pp. 1434-1435.)

Therefore, a prior or contemporaneous collateral oral agreement on the same subject matter may be admitted in evidence if it is not inconsistent with the integrated terms of a written contract. (*Alling*, at p. 1435.)

B

The 2010 written contract was not fully integrated. Assuming *arguendo* Ravikumar is not estopped from arguing, and did not waive or forfeit his argument, by not raising the issue below that the 2010 written contract was fully integrated and therefore superseded the 2008 oral agreement, we nevertheless conclude that the 2010 written contract was *not* intended by the parties to be a complete and exclusive statement of the terms of their agreement.² First, the 2010 written contract did not include an integration clause or other provision expressly stating the parties intended the writing to be a complete and exclusive statement of the terms of their agreement. (Cf. *Grey, supra*, 204 Cal.App.4th at p. 807; *Singh, supra*, 186 Cal.App.4th at p. 353.) Second, although the absence of an integration clause is not conclusive, the surrounding circumstances of the 2010 written contract and the parties' prior negotiations and agreements do not show the parties intended it to be a complete and exclusive statement of the terms of their

² Although, as Kumar asserts, there may be a good argument that Ravikumar cannot raise his integration and parol evidence arguments on appeal because they are new legal theories based on conflicting evidence (see, e.g., *Richmond v. Dart Industries, Inc.* (1987) 196 Cal.App.3d 869, 874; *Curcio v. Svanevik* (1984) 155 Cal.App.3d 955, 960-961), we elect to address those substantive issues in disposing of this appeal.

agreement. In so concluding, we note that the 2010 written contract was poorly drafted, contains many ambiguous terms, and does not appear to state a complete agreement; the evidence regarding the 2008 oral contract did not directly contradict the 2010 written contract; the 2008 oral contract could naturally have been made as a separate agreement; and it is highly improbable that the jury was misled by the introduction of parol testimony on the 2008 oral contract. (*Brawthen, supra*, 52 Cal.App.3d at p. 146.)

Furthermore, although Kumar and his supporting witnesses testified in support of the 2008 oral contract and 2010 written contract, Ravikumar testified that he and Kumar had never discussed the topic of Kumar receiving any share of the proceeds from the sale of the centers. Ravikumar also testified the 2010 written contract was "a fake . . . a fraud . . . a forgery" created three years later and that Smith had conspired with Kumar to create it. Based on that conflicting evidence, it is difficult to conclude, as a matter of law, *Ravikumar*, along with Kumar, intended the 2010 written contract to be a complete and exclusive statement of the terms of their agreement.

Partially integrated. At most, the 2010 written contract was *partially* integrated and finally and completely expressed only certain terms contained therein, including the parties' agreement regarding Kumar's entitlement to 10 percent of the proceeds from the sale of the centers, and *not all* of their agreement. (*Masterson, supra*, 68 Cal.2d at p. 225; *Founding Members, supra*, 109 Cal.App.4th at p. 953.) The 2010 written contract stated: "[I]f the company is sold, then COO will be entitled to 10% of the gross sale price of all the dialysis centers." Therefore, to the extent that provision finally and completely expressed the parties' agreement on that term, parol or extrinsic evidence that varies,

alters or adds to that term of the 2010 written contract cannot be considered in its interpretation. (*Casa Herrera, supra*, 32 Cal.4th at pp. 343-344.)

However, parol or extrinsic evidence may nevertheless be considered to the extent it does not contradict that term and helps to explain a meaning of the term to which it is reasonably susceptible. (*Casa Herrera, supra*, 32 Cal.4th at pp. 343-344.) Contrary to Ravikumar's apparent assertion, the parol or extrinsic evidence presented by Kumar regarding the parties' 2008 oral agreement entitling Kumar to 10 percent of the proceeds from the sale of the centers did not contradict, vary, alter, or add to that term as it was included in the 2010 written contract. Rather, that parol or extrinsic evidence was consistent with that term in the 2010 written contract. Kumar testified that in December 2008 Ravikumar offered him the job of running the centers. Kumar asked for a salary of \$10,000 per month and 20 percent of the gross sale price of the centers, writing those terms in his diary notebook and showing them to Ravikumar. Ravikumar countered by crossing out "20 percent," writing "10 percent" in its place, and initialing the change. Ravikumar told Kumar that the 10 percent of the gross sale price would come solely from his (Ravikumar's) share of the sale price. Therefore, according to Kumar's testimony, corroborated by the testimony of supporting witnesses, Ravikumar induced Kumar to work for him and turn the centers around by agreeing to give Kumar a salary and 10 percent of the sale price of the centers. That evidence regarding the 2008 agreement and, in particular, Kumar's entitlement to 10 percent of the gross sale price of the centers was entirely consistent with the 2010 written contract's term that Kumar was entitled to 10 percent of the gross sale price of the centers. Therefore, that parol or extrinsic evidence

was properly considered by the jury and the trial court in determining the meaning of the 2010 written contract.

Personal liability. Ravikumar also argues that he cannot be held personally liable under the express terms of the 2010 written contract because he did not sign it and his signature line on that contract showed that he would have signed it in a representative capacity. However, we conclude he forfeited that argument on appeal by consenting to the trial court's special jury instruction that allowed the jury to find, in certain circumstances, that he, individually, was a party to the 2010 written contract regardless of whether he signed it.³

During its deliberations, the jury sent a note to the trial court in which it asked: "Does a written contract have to be signed by both (all) parties to be valid?" Following an extensive discussion with counsel regarding applicable case law and consideration of proposed language by both counsel, the trial court decided to instruct the jury based on language proposed by Ravikumar's counsel. The court then instructed the jury as follows:

"The proponent of a written contract must prove by a preponderance of the evidence that it was signed by the parties to be bound, unless the party who denies signing voluntarily accepted the benefits of the writing and misled the other party that he had signed."

³ We further note that Ravikumar did not testify at trial that had he signed the 2010 written contract, his signature would have been only in a representative capacity and not in his individual capacity.

Ravikumar's counsel expressly consented to that instruction, stating: "I agree with your Honor. I think you condensed it in a way that I think . . . [¶] . . . it captures what should be there." By expressly consenting to that special jury instruction, Ravikumar agreed, in effect, that he could be found personally liable as an individual party to the 2010 written contract regardless of whether he signed it or whether, if he had signed it, his signature would have been in a representative capacity (e.g., as "Chairman & CEO"). By so doing, we conclude Ravikumar forfeited or waived any argument on appeal that he cannot be held personally liable under the 2010 written contract because he did not sign it and the signature line on that contract showed that had he signed the document it would have been in his representative capacity.⁴ (Cf. *Nevada County Office of Education v. Riles* (1983) 149 Cal.App.3d 767, 779; *Sperber v. Robinson* (1994) 26 Cal.App.4th 736, 742-743; *Electronic Equipment Express, Inc. v. Donald H. Seiler & Co.* (1981) 122 Cal.App.3d 834, 856-857; Eisenberg et al., *Cal. Practice Guide: Civil Appeals and Writs* (The Rutter Group 2015) ¶¶ 8:250 to 8:261.1, p. 8-179.)

At oral argument, Ravikumar asserted he did not waive or forfeit his argument that he could not be personally liable based on the executive capacities (i.e., "Chairman &

⁴ Although Ravikumar does not challenge on appeal the correctness of the trial court's special jury instruction, we conclude that he invited any instructional error by proposing its language and then consenting to the court's instruction and therefore cannot challenge it on appeal. (Cf. *Scott v. C. R. Bard, Inc.* (2014) 231 Cal.App.4th 763, 787; *Stevens v. Owens-Corning Fiberglas Corp.* (1996) 49 Cal.App.4th 1645, 1653-1655.) Furthermore, we note that Ravikumar does not challenge on appeal the sufficiency of the evidence to support the jury's finding that he, individually, was a party to the 2010 written contract based on the court's special jury instruction.

CEO") reflected in his signature line in the 2010 written contract, arguing that he raised that assertion in the trial court. However, although he initially raised that assertion in support of his demurrer to the FAC, he later effectively abandoned, and forfeited, that assertion when he proposed language for, and agreed with, the court's special jury instruction as discussed above. Furthermore, his subsequent attempt to renew that assertion in his motion for new trial was not effective in reviving, and/or retroactively avoiding forfeiture or waiver of, that assertion.

Assuming arguendo Ravikumar did not forfeit or waive his argument that he cannot be held personally liable for breach of the 2010 written contract, we nevertheless conclude the parol evidence regarding Ravikumar's personal liability as a party to the 2010 written contract and the 2008 oral contract was properly considered by the jury and trial court in determining his liability for breaches of those contracts. As discussed above, Kumar testified that in December 2008 Ravikumar agreed to pay him 10 percent of the proceeds from the sale of the centers out of his personal share of those proceeds. That testimony supports the jury's finding that Ravikumar was a party to the 2008 oral contract. It also supports an inference, along with Kumar's and Smith's testimony regarding the 2010 written contract, that Ravikumar was a party to the 2010 written contract. Furthermore, based on our independent review of the 2010 written contract, we conclude it did not finally and completely set forth the capacities of the parties to that contract and therefore it was not partially integrated regarding the parties to the contract. (Cf. *Masterson*, *supra*, 68 Cal.2d at p. 225; *Founding Members*, *supra*, 109 Cal.App.4th

at p. 953.) Accordingly, parol or extrinsic evidence was admissible to clarify the ambiguity of the identities and capacities of the parties to the 2010 written contract.

The parol evidence showed that the 2010 contract was reasonably susceptible to an interpretation that Ravikumar was a party to it. Specifically, the 2010 written contract stated Kumar was "entitled to 10% of the company (all the dialysis centers as was agreed in December 2008 with Dr. G. R. Ravikumar[])," supporting an inference that Kumar's 2010 contract, like his 2008 contract, was with Ravikumar individually. Kumar testified regarding the negotiation and drafting of the 2010 written contract and that Ravikumar repeatedly assured him that he had "taken care of it" and "[d]on't worry," and Smith testified that Ravikumar told him to sign the contract, explaining he (Ravikumar) did not need to sign it. That testimony and the other evidence of the circumstances surrounding the negotiation and execution of the 2010 written contract, together with the trial court's special jury instruction discussed above, support an inference that Ravikumar, individually, was a party to the 2010 written contract, regardless of whether he personally signed it or whether his signature line bore his corporate title.

Contrary to Ravikumar's assertion, the fact that the 2010 written contract did not bear a signature line for his signature personally (as opposed to the representative capacity of "Chairman & CEO") did not preclude the jury from reasonably inferring Ravikumar was personally a party to that contract. The cases cited by Ravikumar (e.g., *Software Design & Application, Ltd. v. Price Waterhouse* (1996) 49 Cal.App.4th 464; *Benasra v. Marciano* (2001) 92 Cal.App.4th 987) are factually and legally inapposite to this case and do not persuade us to reach a contrary conclusion. Rather, those cases stand

for the unremarkable general principle that when a contract is integrated and unambiguous, the signature by an officer of a corporation on behalf of that corporation does not make that officer personally liable as a party to the contract. Those cases do not hold a corporate officer can never be held personally liable as a party to a contract when the contract is not integrated and there is evidence (as in this case) that the officer would have signed the contract as an officer but also accepted, individually, the benefits of the contract and misled the other party that he signed it.⁵ (Cf. *Sebastian International, Inc. v. Peck* (1987) 195 Cal.App.3d 803, 807-809 [officer was personally liable on contract even though words "Vice President" were on his signature line].)

Alternative theories of breach of contract. Ravikumar also asserts the trial court erred by submitting to the jury the questions whether he had breached both the 2008 oral contract and 2010 written contract, arguing he could not have breached both contracts and been held liable for separate damages for both breaches. However, as Kumar asserts, his action for damages was based on the alternative theories that Ravikumar had breached the 2008 oral contract and/or that he had breached the 2010 written contract by not paying him 10 percent of the proceeds from the sale of the centers. Because the facts alleged for breach of each contract were not contradictory, Kumar properly alleged those

⁵ Contrary to Ravikumar's assertion, the 2010 written contract and extrinsic evidence thereon did not unambiguously show he signed, or was to sign, that contract only in his representative capacity as the chairman and chief executive officer of DCN and was not personally a party to that contract. In particular, DCN is not named in Ravikumar's signature line and Kumar's testimony supports an inference that Ravikumar, individually, was a party to that contract.

alternative theories for recovery of primarily the same damages (i.e., 10 percent of the proceeds from the sale of the centers) and the court properly allowed the jury to decide both of those alternative grounds for recovery of damages.⁶ (Cf. *Berman, supra*, 56 Cal.App.4th at p. 945; *Steiner, supra*, 35 Cal.2d at pp. 718-719, 721; *Perry v. Robertson* (1988) 201 Cal.App.3d 333, 339.)

III

Inconsistent Verdicts

Ravikumar contends the jury's verdicts were inconsistent and therefore require a new trial. He asserts the jury could not have both found he breached the 2010 written contract while also finding he did not commit fraud. He also asserts the jury improperly returned a compromise verdict by awarding Kumar only five percent, and not 10 percent, of the proceeds from the sale of the centers.

A

Following the liability phase of the trial, the jury answered "yes" to the question: "Has [Kumar] proved by a preponderance of the evidence that [Ravikumar] entered into a written agreement with him in 2010?" It then answered "yes" to the question: "Did [Kumar] prove by a preponderance of the evidence that [Ravikumar] breached [Kumar's]

⁶ To the extent Ravikumar argues Kumar could not recover damages for breaches of both the 2008 oral contract and the 2010 written contract, his argument is moot. After the jury returned its verdict, the parties stipulated the total amount of compensatory damages would be no more than \$2,284,000. The trial court entered an amended judgment awarding Kumar damages of \$2,284,000, plus amounts for prejudgment interest and costs, for a total award of \$2,544,704.53. Therefore, Kumar was not, in fact, awarded duplicate damages.

2010 written agreement?" It then answered "no" to the question: "Did [Kumar] prove by a preponderance of the evidence that [Ravikumar] fraudulently induced him to enter into the 2010 written agreement?" Following the damages phase of the trial, the jury awarded Kumar \$2,150,000 in damages for breach of the 2008 contract and \$2,284,000 in damages for breach of the 2010 contract. The parties subsequently stipulated the total amount of compensatory damages would be no more than \$2,284,000.

B

Verdicts are inconsistent when they are beyond the possibility of reconciliation under any possible application of the evidence and instructions. (*Oxford v. Foster Wheeler LLC* (2009) 177 Cal.App.4th 700, 716 (*Oxford*)). However, "[i]f any conclusions could be drawn thereunder which would explain the apparent conflict, the jury will be deemed to have drawn them." (*Hasson v. Ford Motor Co.* (1977) 19 Cal.3d 530, 540-541 (*Hasson*)). "Where the jury's findings are so inconsistent that they are incapable of being reconciled and it is impossible to tell how a material issue is determined, the decision is ' "against law" ' within the meaning of Code of Civil Procedure section 657." (*Oxford*, at p. 716.) If a jury returns an inconsistent verdict that is against the law, the proper remedy is a new trial. (*Shaw v. Hughes Aircraft Co.* (2000) 83 Cal.App.4th 1336, 1344 (*Shaw*); *City of San Diego v. D.R. Horton San Diego Holding Co., Inc.* (2005) 126 Cal.App.4th 668, 682.)

C

Contrary to Ravikumar's assertion, the jury's verdicts were not necessarily inconsistent regarding the 2010 written contract. As discussed above, the trial court

instructed the jury regarding Kumar's cause of action for breach of the 2010 written contract, stating:

"The proponent of a written contract must prove by a preponderance of the evidence that it was signed by the parties to be bound, unless the party who denies signing voluntarily accepted the benefits of the writing and misled the other party that he had signed."

Regarding Kumar's cause of action for fraud regarding the 2010 written contract, the court instructed the jury in part:

"[Kumar] asserts that he was induced by fraud to enter into . . . the mid-2010 agreement with [Ravikumar and DCN][;] [and] [¶] . . . [¶]

"A fraud can be committed in several ways, including (i) a concealment or (ii) a false promise. [¶] . . . [¶]

"A party claiming concealment must prove that at the time of the fraud, he and the party whom he is suing were already in an existing confidential relationship and that the party whom he is suing intentionally failed to disclose an important fact to him. [¶] . . . [¶]

"A party claiming false promise must prove all of the following: [¶]
1. That the party whom he is suing made a promise to him; [¶] 2. That the promise was important to the transaction; [¶] 3. That at the time he made it, the party whom he is suing did not intend to perform this promise; [¶] 4. That the party claiming fraud reasonably relied on the promise; [¶] 5. That the party whom he is suing did not perform the promise; [¶] [and] 6. That the reliance was a substantial factor in causing harm to the party who claims false promise."

By finding Ravikumar did not fraudulently induce Kumar to enter into the 2010 written contract, the jury possibly could have reasoned that although he did not fraudulently induce Kumar into signing the 2010 written contract, Ravikumar nevertheless became a party to the 2010 written contract when he thereafter misled Kumar by telling him he had, in fact, signed it and then accepted the benefits of that

contract. Therefore, the jury could have reasoned that at least one of the elements for fraudulent inducement was not proven by Kumar by a preponderance of the evidence (e.g., the jury may have instead found at the time Ravikumar told Kumar he had signed the contract that he intended to perform it), but nevertheless found Ravikumar was a party to that contract and thereafter breached it by not paying Kumar 10 percent of the proceeds from the sale of the centers. Although Kumar apparently did not argue that theory at trial, the jury nevertheless is not bound by a plaintiff's view of the evidence and can make its own findings based on the evidence and instructions. (Cf. *Lambert v. General Motors* (1998) 67 Cal.App.4th 1179, 1184-1186 [negligent design theory was not advanced by plaintiff at trial; jury findings of negligent design, but not defective design, were inconsistent verdicts].) Accordingly, contrary to Ravikumar's assertion, there is a possibility of reconciliation of the jury's special verdicts under possible applications of the evidence and instructions. (*Oxford, supra*, 177 Cal.App.4th at p. 716.) Alternatively stated, we deem the jury to have drawn conclusions that would explain the apparent conflict in its special verdicts. (*Hasson, supra*, 19 Cal.3d at pp. 540-541.)

D

Ravikumar also argues that because the jury awarded Kumar compensatory damages equal to only one-half of the 10 percent of the proceeds from the sale of the centers that he sought, the jury necessarily returned an improper compromise verdict. We requested, received, and have considered the parties' supplemental letter briefs on the issues of whether: (1) Ravikumar waived or forfeited any compromise verdict contention on appeal by his August 5, 2014, stipulation that the award of compensatory damages

would be no more than \$2,284,000; and (2) if not, how his compromise verdict contention is affected by the fact the trial was bifurcated into a liability phase and a damages phase.⁷

"Witkin addresses the topic of compromise verdicts as follows: 'Verdicts are sometimes rendered in personal injury or death actions that, in view of the evidence of injuries, suffering, and medical and other expenses, are clearly inadequate. Common experience suggests that these are the *result of compromise, some jurors believing that the evidence fails to establish liability, but yielding to the extent of agreement on a small recovery*. It would be unfair to the defendant to ignore this unmistakable evidence of compromise and to accept the verdict for the plaintiff at face value as a determination of liability. Accordingly, it is well settled that the error calls for a general new trial' "*(Lauren H. v. Kannappan (2002) 96 Cal.App.4th 834, 840, italics added (Lauren H.).)*

"Other indicators of a compromise verdict are (1) a close verdict; (2) jury requests for readback; (3) jury indecision whether the plaintiff should recover a certain amount or nothing; (4) a subsequent jury election to straddle and award a compromise recovery in a lesser amount than that to which plaintiff would be entitled if plaintiff prevailed; and (5) a short trial." (*Id.* at p. 841.)

⁷ At oral argument, Ravikumar argued that Kumar's supplemental brief improperly included a discussion on parol evidence that was not within the scope of our request for supplemental briefing. We agree with Ravikumar, disregard the first paragraph on page three of Kumar's supplemental brief, and do not rely on that discussion in disposing of this appeal.

On June 30, 2014, following the damages phase of the trial, the jury returned a verdict awarding Kumar \$2,150,000 in damages for Ravikumar's breach of the 2008 oral contract and \$2,284,000 in damages for Ravikumar's breach of the 2010 written contract. After the jury was discharged, Ravikumar's counsel stated on the record that he had spoken with two of the jurors regarding the amounts awarded for each breach of contract. The trial court instructed his counsel to raise any problems involving the damages awarded by the jury in a posttrial motion. On August 5, the court accepted the parties' mutual stipulation that "notwithstanding the foregoing phase 2 verdict, the compensatory amount of damages would be no more than \$2,284,000 and that the court should not include in the judgment the jury award of \$2,159,000 [sic] based on the 2008 breach." The court then entered judgment for Kumar, awarding him damages in the amount of \$2,284,000, plus prejudgment interest thereon and costs of suit, for a total award of \$2,544,704.53 against Ravikumar.

Kumar sought compensatory damages for breach of each contract in the amount of 10 percent of the proceeds from the sale of the centers. There was evidence presented supporting a finding by the jury that the total sale price of the centers was \$43 million and, therefore, Kumar arguably was entitled to 10 percent thereof, or \$4,300,000. Yet, the jury returned a verdict awarding Kumar only one-half of that amount for breach of the 2008 oral contract and slightly more than that amount for breach of the 2010 written contract. It is unclear from the record on appeal how the jury arrived at the amount of compensatory damages for breach of each contract. In an apparent attempt to clarify any confusion regarding those amounts, the parties stipulated that the judgment would include

an award of compensatory damages not to exceed \$2,284,000 (presumably for breach of the 2010 contract) and would exclude any award for the breach of the 2008 contract.

Based on our review of the record, we conclude that the jury's verdict in this case was *not* the result of an improper compromise. In general, "[w]hen the issue of liability is sharply contested, and the jury awards inadequate damages, the only reasonable conclusion is the *jury compromised the issue of liability*, and a new trial is required." (*Shaw, supra*, 83 Cal.App.4th at p. 1346, italics added.) Alternatively stated, when verdicts award damages that are clearly inadequate in view of the evidence, "[c]ommon experience suggests that these are the result of compromise, *some jurors believing that the evidence fails to establish liability, but yielding to the extent of agreement on a small recovery*. It would be unfair to the defendant to ignore this unmistakable evidence of compromise and to accept the verdict for the plaintiff at face value as a determination of liability.'" (*Lauren H., supra*, 96 Cal.App.4th at p. 840, italics added.)

Unlike cases in which improper compromise verdicts were found, the trial in this case was bifurcated into two separate phases—a liability phase and a damages phase. On June 27, 2014, the jury returned a verdict in the liability phase, finding, by votes of 9 to 3, that Ravikumar was liable for breaches of the 2008 oral contract and the 2010 written contract. The second phase on damages was then tried. On June 30, the jury returned a verdict in the damages phase, finding, by votes of 9 to 3, the amount of damages for breach of the 2008 contract was \$2,150,000 and the amount of damages for breach of the 2010 contract was \$2,284,000. Because the trial of the liability issues was tried before, and separately from, the trial of the damages issues, the jury could not possibly have

returned a compromise verdict. In particular, because the jury had yet to consider the amount of damages to be awarded, none of the jurors could have compromised their vote by finding Ravikumar liable for breaches of the two contracts when they believed the evidence did not establish his liability. The jury's consideration of Ravikumar's liability was separate from its subsequent consideration of the amounts of damages to be awarded against him. Furthermore, applying the *Lauren H.* factors listed above to the circumstances in this case, we conclude the jury did not return an improper compromise verdict. Although the jury's special verdicts finding Ravikumar liable for breaches of the 2008 and 2010 contracts were close (i.e., votes of 9 to 3), there is nothing in the record indicating the jury requested readbacks of trial testimony or was indecisive whether Kumar should recover a certain amount or nothing, or that this was a short trial. Rather, this was about an eight-day trial and jury deliberations for both the liability and damages phases were not unusually long. We also conclude the award of \$2,284,000 as compensatory damages was not inadequate based on the evidence in this case. We presume the jury properly applied the trial court's instruction that it must decide "how much money will reasonably compensate plaintiff for the harm caused by the breach [of contract]" and that the "purpose of such damages is to put plaintiff in as good a position as he would have been if defendant had performed as promised." Therefore, the jury in this case did not return an improper compromise verdict. *Shaw, supra*, 83 Cal.App.4th 1336, cited by Ravikumar, is factually inapposite to this case and does not persuade us to reach a contrary conclusion.

IV

Exclusion of Evidence

Ravikumar contends the trial court erred by excluding evidence that would have shown Kumar did not fulfill his obligations under the 2010 written contract. He argues the court should not have excluded evidence of Kumar's allegedly poor performance as an employee (e.g., harassment of and retaliation against other employees).

A

Before trial, Kumar filed an in limine motion to exclude evidence of his alleged workplace harassment and discrimination. He argued that evidence was both irrelevant on the issue of Ravikumar's agreement to pay him 10 percent of the proceeds from the sale of the centers and was unduly prejudicial under Evidence Code section 352.

Ravikumar opposed the motion, arguing that evidence was relevant to show it was unlikely he (Ravikumar) would have entered into the 2010 contract with Kumar and, even if there was a contract, Kumar did not perform his obligations under that contract. At the hearing on Kumar's motion, the trial court stated that "we're not going to try those lawsuits," presumably referring to the collateral claims arising out of Kumar's alleged harassment and discrimination. The court concluded that evidence was not probative of an issue "we need to put before the jury in this case" and also ruled it would not "let this case degenerate into a secondary case on bad behavior by Mr. Kumar before the summer of 2010" The court stated that evidence would not prove, "except in a prejudicial way," the issues in this case. Accordingly, the court granted Kumar's motion to exclude the evidence without prejudice to Ravikumar's subsequent showing that the evidence

"really does help the jury decide this case." It commented: "I'm not going to let this [evidence] turn [this] into a case on death threats or EEOC claims or things of that nature."

B

Based on our review of the record, we conclude the trial court did not abuse its discretion by excluding evidence of Kumar's alleged workplace harassment and discrimination. Although the court did not expressly state its ruling was based on the alternative grounds of irrelevancy of the evidence and Evidence Code section 352 undue prejudice or undue consumption of time, its statements during the hearing on that motion show its ruling was implicitly based on those grounds. A court "need not expressly say it is [excluding evidence under Evidence Code section 352,] as long as the record demonstrates that the court in fact weighed the prejudice against the probative value of the testimony." (*People v. Singh* (1995) 37 Cal.App.4th 1343, 1381; *People v. Malone* (1988) 47 Cal.3d 1, 21 ["Although the court did not expressly weigh the prejudicial effect of the [evidence] against its probative value, the record is clear the court understood its duty to make such a determination and impliedly did so."].)

Assuming arguendo the evidence excluded in this case had some relevance to the issues at trial, the trial court nevertheless could reasonably conclude that evidence should be excluded under Evidence Code section 352. That statute provides:

"The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury."

Here, the court could reasonably conclude that the presentation of the evidence on Kumar's alleged workplace harassment and discrimination could confuse the issues and/or would require an undue consumption of trial time in comparison to its probative value. Based on our review of the record in this case, we cannot conclude the court abused its discretion by so concluding and exercising its discretion to exclude that evidence under Evidence Code section 352.⁸ (Cf. *People v. Jones* (2003) 30 Cal.4th 1084, 1108-1109; *Heiner v. Kmart Corp.* (2000) 84 Cal.App.4th 335, 345.) Contrary to Ravikumar's assertion, the record affirmatively shows the trial court considered and balanced the Evidence Code section 352 factors in excluding evidence of Kumar's workplace harassment and discrimination. For example, the court stated: "[W]e're not going to try those lawsuits," presumably concluding the consumption of time to present evidence on the collateral claims arising out of Kumar's alleged harassment and discrimination was undue in relation to, and outweighed, its probative value. None of the cases cited, or arguments made, by Ravikumar persuades us either that the court abused its discretion under Evidence Code section 352 or did not exercise that discretion.

DISPOSITION

The judgment is affirmed.

⁸ Even had we concluded the trial court abused its discretion by excluding that evidence, we nevertheless conclude Ravikumar did not carry his burden on appeal to show that error was prejudicial (i.e., he probably would have obtained a more favorable result had that evidence been admitted). (*Smalley v. Baty* (2005) 128 Cal.App.4th 977, 987.)

IRION, J.

WE CONCUR:

McCONNELL, P. J.

AARON, J.