UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	**CV 12-9069 FMO (JCGx)**	Date	**May 27, 2015**
Title	**Joseph Odish, et al. v. Cognitive Code Corp., et al.**		

Present: The Honorable	Fernando M. Olguin, U.S. District Judge	
Vanessa Figueroa	None	None
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	
None Present	None Present	

Proceedings: (In Chambers) Order Re: Pending Motions

Having reviewed all the briefing filed with respect to defendants' Motion for Summary Judgment and co-plaintiff Joseph Odish's Motion for Summary Judgment, the court concludes that oral argument is not necessary to resolve the Motions for Summary Judgment. See Fed. R. Civ. P. 78; Local Rule 7-15; Willis v. Pac. Mar. Ass'n, 244 F.3d 675, 684 n. 2 (9th Cir. 2001).

BACKGROUND

This case arises out of a failed business relationship between plaintiffs and defendants that ultimately resulted in, among other claims, an alleged breach of contract. (See First Amended Complaint ("FAC") at ¶¶ 40-58). While the litigation has been contentious, the underlying facts are largely undisputed. In early 2011, co-plaintiffs Joseph Odish, a Michigan attorney ("Odish"), and John Bourbeau ("Bourbeau") learned of an opportunity to invest in co-defendant Cognitive Code Corporation ("Cognitive Code"). (See id. at ¶¶ 4 & 16-18). Cognitive Code, which was founded by co-defendants Leslie Spring ("Spring"), Mimi Chen, and John Chen (collectively, "Cognitive Code principals" or "founders"), developed artificial intelligence software called SILVIA. (See id. at ¶¶ 1, 13 & 15). Spring and Mimi Chen live in California, and Cognitive Code's primary offices are located there as well. (See Bourbeau's Opposition to Defendants' Statement of Uncontroverted Facts ("Opp. to Defs.' SUF") at 5) (facts D10, D11 & D14).[1] Over the next several months, Odish and Bourbeau worked with Cognitive Code and its principals. (See FAC at ¶¶ 18-19). Their relationship led to the creation of four purported agreements that are the principal subject of this action. (See id. at ¶ 25).

For the first agreement, Cognitive Code's founders and Odish and Bourbeau, representing Cranbrook Capital Consulting Group, LLC ("Cranbrook"), signed a Letter of Intent ("LOI"), dated March 6, 2011, which set forth the "basic terms" of a "proposed transaction." (See Declaration of Howard S. Fredman ("Fredman Decl."), Exh. 8 at 1) ("LOI"). It is undisputed that Odish drafted

[1] Odish did not file an opposition to Defendants' Statement of Uncontroverted Facts. (See, generally, Odish's Opposition to Defendants' Motion for Summary Judgment ("Odish Opp."). Accordingly, the court may assume that the undisputed "material facts as claimed and adequately supported" by defendants are "admitted to exist without controversy." See Local Rule 56-3.

the LOI. (See Fredman Decl., Exh. E at 24) (Odish deposition testimony) (Q: "Okay. Did you draft that document?" A: "Yes. Yes, I did."); (see id., Exh. 49) (Odish March 5, 2011, email describing LOI as "the most gentle Letter of Intent I've ever drafted"). The LOI, which identifies Cranbrook as the "Investor Group," (id., Exh. 8 at 1), provides that the Investor Group "shall invest and pay to the Company [Cognitive Code]" $2.5 million for a "non-dilutable equity and stock purchase of twenty percent (20%)" of Cognitive Code. (See LOI at § 1(a)) (capitalization omitted). The LOI contemplates the "[e]xecution of a definitive and formal equity/stock purchase agreement (the 'Formal Agreement')," which would be in a "form satisfactory to Investor Group and [Cognitive Code's] Board of Directors." (Id. at § 2(a)). As for the time period of the investment, the LOI provides a 40-day due diligence period, and a 40-day "no shop" period. (See id. at §§ 6 & 9). The LOI further provides that if the Investor Group is unable to complete the due diligence within 40 days, it would have "an additional 50 calendar days ('Second Due Diligence Period') in which to continue its due diligence." (Id. at § 9). During the Second Due Diligence Period, the Investor Group "shall have" the right to purchase a "non-dilutable equity interest anywhere in the range from 2.5% - 7.5%" of Cognitive Code's stock based on a valuation of $12.5 million. (Id.). The LOI further explains that it "does not create any rights or obligations on the part of the parties, except as set forth in the paragraphs above. A binding commitment with respect to the other aspects fo the proposed transaction will result only from execution of a Formal Definitive Agreement[.]" (Id. at § 10) (emphasis in original omitted). The LOI's choice of law provision selects California law. (Id. at ¶ 11(a)).

Upon the execution of the LOI, Odish and Bourbeau began advising Cognitive Code and its founders. (See FAC at ¶¶ 18-19). For instance, Odish provided legal advice regarding Cognitive Code's potential litigation against a licensee, Intellitar. (See Fredman Decl., Exh. 55) (Odish March 14, 2011 email re: potential litigation against Intellitar).

On March 18, 2011, Odish, Bourbeau, and Spring executed an Addendum to the LOI ("Addendum"). (See Fredman Decl., Exh. 11). The Addendum, which was drafted by Odish, (see Fredman Decl., Exh. E at 110) (Odish deposition testimony confirming that Odish drafted the Addendum); (see Fredman Decl., Exh. 59) (Odish March 18, 2011 email transmitting draft Addendum), purports to give, "[a]s consideration and compensation for the enormous time, energy, and provision of legal services that Joseph Odish has already provided" and for Bourbeau's additional business services, a "non-dilutable ten percent (10%) equity interest and/or capital shares of the stock of the Company for services to be provided as part of the management team." (Addendum at § 3). The Addendum acknowledged that Odish was authorized "to act as in-house legal counsel and represent the Company in all legal matters," and that he would "exercise his experience and efforts in resolving the dispute with Intellitar and attempt to avoid litigation if possible." (Id. at § 5). Moreover, the Addendum provides a dual-signature requirement that would require the "review, approval and the written signatures of both Leslie Spring and Joseph Odish as officers of the Company on any contract." (Id. at § 3(c)). The Addendum further provides that Cognitive Code "shall grant two board seats, one immediately to Joseph Odish," and a second to Bourbeau upon funding of the $2.5 million investment described in the LOI. (Id. at §§ 7 & 9). In addition, the Addendum extends the "no shop" provision and due diligence period from

40 days to 70 days. (Id. at § 3(d)). Finally, the Addendum included a signature line for Spring, and below that signature line in typewritten text, provided that Spring had the "[a]uthority to sign on behalf of the Company and the other Board of Directors." (Id. at 3).

The third purported agreement at issue is an April 10, 2011, email sent by Spring to Odish ("April 10, 2011, Email"). (See Fredman Decl., Exh. 14). The April 10, 2011, Email states, "Joseph, . . . you will be issued the 10% of stock shares this week, as described in our prior agreement. If we do not issue the 10% of shares this week, you will have the option to purchase 20% of non-dilutable shares at $10,000." (Id.). Odish dictated the substance of the email to Spring. (See Fredman Decl., Exh. E at 29) (Q: "Is it fair to say that all the language from the first word, 'Joseph,' up till '$10,000' was dictated by you?" A: "I believe so.").

On April 17, 2011, Spring signed an Agreement Between Corporation and Two of Its Shareholders Joseph Odish and John Bourbeau ("April 17, 2011, Agreement"). (See Fredman Decl., Exh. 17). Odish also drafted this document. (See Fredman Decl., Exh. E at 28) (Odish confirming that he drafted the agreement). In the April 17, 2011, Agreement, Spring, as Cognitive Code's CEO, purports to "agree[] that the additional 2.5-7.5% capital stock of the corporation that . . . Odish and Bourbeau[] have an option to buy shall be extended to a date of two weeks (14 calendar days) subsequent to final issuance of any and all patent(s) pending[.]" (Id.). The April 17, 2011, Agreement further states that if "Odish and Bourbeau spend their own funds to expedite the issuance of the patents" and the patents are "expedited, Odish and Bourbeau shall have 30 calendar days to purchase these additional 7.5% shares." (Id.).

During 2011, Odish and Bourbeau advised Cognitive Code. (See, e.g., Fredman Decl., Exh. 79; Bourbeau's Opposition to Defendants' Motion for Summary Judgment or Partial Summary Judgment ("Bourbeau Opp.") at Exh. 222). However, it is undisputed that plaintiffs never invested $2.5 million in Cognitive Code required by the LOI. (See Cognitive Code Counterclaims at ¶ 81) (alleging no $2.5 million payment); (see Odish Counterclaim Answer at ¶ 81; Bourbeau Counterclaim Answer at ¶ 81; Cranbrook Counterclaim Answer at ¶ 81 (admitting same). In January 2012, Cognitive Code hired Sal DiFazio ("DiFazio") as its General Counsel. (See Bourbeau Opp., Exh. 210). DiFazio advised Odish that he (Odish) was no longer authorized to hold himself out as counsel for, or as a representative of, Cognitive Code. (See id.).

By early 2012, a dispute arose regarding plaintiffs' purported ownership stake in Cognitive Code. On February 28, 2012, Bourbeau and Odish's attorney, Sean Walsh ("Walsh"), sent DiFazio a letter demanding access to the books and records of Cognitive Code, based on Odish's and Bourbeau's purported ownership of ten percent of Cognitive Code stock.[2] (See Bourbeau Opp., Exh. 163).

[2] The same day, a U.S. Patent issued to Spring. (See Bourbeau Opp., Exh. 233) (issuance of U.S. Patent No. 8,126,832 to Spring, identifying Cognitive Code as assignee).

On March 8, 2012, Walsh sent DiFazio and Mimi Chen a letter, purporting to exercise Cranbrook's option to purchase 7.5 percent of Cognitive Code for $937,500, based on the April 17, 2011, Agreement. (See id., Exh. 33). The letter includes a redacted account statement, which purports to provide proof of "the Option Holder's ability to consummate" the transaction. (See id., Exh. 33 & id., Exh. E). However, the account statement does not identify the account holder. (See, generally, id.).

As for the demand for records, DiFazio sent a response to Walsh, explaining that "all of the corporate records" were provided to plaintiffs in June 2011. (See Bourbeau Opp., Exh. 165). As for the option, DiFazio sent a letter to Walsh, "reject[ing] [his] clients' attempts at exercising the aforesaid option." (Bourbeau Opp., Exh. 164). DiFazio explained that the due diligence period under the LOI, 40 days plus an additional 90 days, expired in June 2011, so the option right also lapsed in June 2011. (See id.). DiFazio further stated that even if the Addendum extended the initial due diligence period from 40 to 70 days, the option lapsed in July 2011. (See id.). DiFazio stated that Cognitive Code did not ratify or approve by resolution the April 17, 2011, Agreement. (See id.).

Based on the above agreements, plaintiffs initiated this action, seeking a 37.5 percent share in Cognitive Code, Odish's "dual signature" rights under the Addendum, and a board seat. (See FAC at ¶¶ 1 & 22). Plaintiffs bring causes of action for: (1) breach of contract; (2) intentional interference with contract against Spring, Mimi Chen, John Chen, and DiFazio; (3) injunctive relief; (4) cancellation of additional stock and warrants; (5) breach of fiduciary duty; (6) oppression of minority shareholders; (7) breach of the implied covenant of good faith and fair dealing; (8) intentional misrepresentation against Spring; (9) negligent misrepresentation against Spring; and (10) suppression and concealment. (See id. at ¶¶ 40-132).

LEGAL STANDARD

Rule 56(a) of the Federal Rules of Civil Procedure authorizes the granting of summary judgment "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." The standard for granting a motion for summary judgment is essentially the same as for granting a directed verdict. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250, 106 S.Ct. 2505, 2511 (1986). Judgment must be entered "if, under the governing law, there can be but one reasonable conclusion as to the verdict." Id.

The moving party has the initial burden of identifying relevant portions of the record that demonstrate the absence of a fact or facts necessary for one or more essential elements of each cause of action upon which the moving party seeks judgment. See Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553 (1986). A factual dispute is material only if it "affects the outcome of the litigation and requires a trial to resolve the parties' differing versions of the truth." SEC v. Seaboard Corp., 677 F.2d 1301, 1306 (9th Cir. 1982).

If the moving party has sustained its burden, the burden then shifts to the nonmovant to

identify specific facts, drawn from materials in the file, that demonstrate that there is a dispute as to material facts on the elements that the moving party has contested. See Celotex, 477 U.S. at 324, 106 S.Ct. at 2553; Anderson, 477 U.S. at 256, 106 S.Ct. at 2514 (A party opposing a properly supported motion for summary judgment "must set forth specific facts showing that there is a genuine issue for trial.").[3] Summary judgment must be granted for the moving party if the nonmoving party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex, 477 U.S. at 322, 106 S.Ct. at 2552; see also Anderson, 477 U.S. at 252, 106 S.Ct. at 2512 (parties bear the same substantive burden of proof as would apply at a trial on the merits).

In determining whether a triable issue of material fact exists, the evidence must be considered in the light most favorable to the nonmoving party. See Barlow v. Ground, 943 F.2d 1132, 1134 (9th Cir. 1991), cert. denied, 505 U.S. 1206 (1992). However, summary judgment cannot be avoided by relying solely on "conclusory allegations [in] an affidavit." Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 888, 110 S.Ct. 3177, 3188 (1990); see also Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586, 106 S.Ct. 1348, 1356 (1986) (more than a "metaphysical doubt" is required to establish a genuine issue of material fact). "The mere existence of a scintilla of evidence in support of the plaintiff's position" is insufficient to survive summary judgment; "there must be evidence on which the [fact finder] could reasonably find for the plaintiff." Anderson, 477 U.S. at 252, 106 S.Ct. at 2512.

DISCUSSION

Defendants move for summary judgment on the ground that the four subject agreements are voidable, because Odish did not comply with his ethical duties for business transactions between an attorney and client. (See Defendants' Motion for Summary Judgment ("Defs.' MSJ") at 1-2). As for plaintiffs, Odish moves for summary judgment on the ground that defendants' claims and defenses are time-barred. (See Motion for Summary Judgment of Plaintiff Joseph Odish ("Odish MSJ") at 14).

I. CHOICE OF LAW.

This is a diversity case, (see FAC at ¶ 2), so the court follows the choice of laws rules of California, the forum state. See Patton v. Cox, 276 F.3d 493, 495 (9th Cir. 2002) ("When a federal court sits in diversity, it must look to the forum state's choice of law rules to determine the controlling substantive law."); Hatfield v. Halifax PLC, 564 F.3d 1177, 1182 (9th Cir. 2009). "If the

[3] "In determining any motion for summary judgment or partial summary judgment, the Court may assume that the material facts as claimed and adequately supported by the moving party are admitted to exist without controversy except to the extent that such material facts are (a) included in the 'Statement of Genuine Disputes' and (b) controverted by declaration or other written evidence filed in opposition to the motion." Local Rule 56-3.

parties state their intention in an express choice-of-law clause, California courts ordinarily will enforce the parties' stated intention." Hatfield, 564 F.3d at 1182 (citations omitted).

Here, two of the four purported agreements, the LOI and the Addendum, are subject to a choice of law provision. (See LOI and Addendum). The LOI states that "[t]his letter will be governed by and construed in accordance with the laws of California." (LOI at § 11(a).) The Addendum incorporates the LOI by reference. (See Addendum at §§ 1 & 4). The parties do not dispute that the California choice of law provision was included as a convenience to Spring. (See Opp. to Defs.' SUF at 5) (fact D9); (see Fredman Decl., Exh. E at 118). Thus, the court finds that the parties intended that California law apply. See Hatfield, 564 F.3d at 1182.

Once the court has determined the parties' intention, it must analyze whether "(1) the chosen jurisdiction has a substantial relationship to the parties or their transaction; or (2) any other reasonable basis for the choice of law provision exists." Hatfield, 564 F.3d at 1182. If one of these tests is satisfied, the court will "enforce the provision unless the chosen jurisdiction's law is contrary to California public policy." Id. That is, the court may "decline to enforce a law contrary to this state's fundamental policy." Id.

Here, the parties do not dispute that Cognitive Code's principal offices are in California, and that Spring, the inventor and developer of the SILVIA technology, is based in California. (See Opp. to Defs.' SUF at 5) (facts D10, D11, D12 & D14). Thus, in addition to being the parties' chosen jurisdiction, California has a "substantial relationship" to the parties.

As for the other two agreements, the April 10, 2011, Email and the April 17, 2011, Agreement do not include choice of law provisions. (See, generally, April 10, 2011, Email & April 17, 2011, Agreement). In such a context, the court performs the "governmental interests" analysis. See Pokorny v. Quixtar, Inc., 601 F.3d 987, 994-95 (9th Cir. 2010). Under this inquiry, the court first "determines whether the relevant law of each of the potentially affected jurisdictions with regard to the particular issue in question is the same or different"; (2), "if there is a difference, the court examines each jurisdiction's interest in the application of its own law under the circumstances of the particular case to determine whether a true conflict exists"; (3) then "if the court finds that there is a true conflict, it carefully evaluates and compares the nature and strength of the interest of each jurisdiction in the application of its own law to determine which state's interest would be more impaired if its policy were subordinated to the policy of the other state[,] and then ultimately applies the law of the state whose interest would be the more impaired if its law were not applied." Id. (quotation marks omitted) (quoting Kearney v. Salomon Smith Barney, Inc., 39 Cal.4th 95, 107-08 (2006)). The party seeking to apply the law of a foreign state "bears the burden of identifying the conflict between that state's law and California's law on the issue, and establishing that the foreign state has an interest in having its law applied." Id. If that party "fails to meet either of these burdens, the court may properly find California law applicable without proceeding to the third step in the analysis." Id. (citation omitted).

Plaintiffs have not identified a conflict between Michigan law and California law. (See,

generally, Odish Opp.; Bourbeau Opp.). By contrast, defendants have supplied a declaration that the relevant law in Michigan and California are consistent. (See Fredman Decl., Exh. 173 at 21-23) (supporting declarations of Robert Kehr re: applicable California and Michigan law). Based on the foregoing, the court finds that California law applies to the remaining two agreements. See Pokorny, 601 F.3d at 995.

In short, the court will apply California law to the four agreements.

II. ENFORCEABILITY OF SUBJECT AGREEMENTS.

Defendants argue that the four subject agreements are voidable and unenforceable, because Odish, who served as Cognitive Code's in-house counsel, violated California Rule of Professional Conduct 3-300 and its statutory counterpart, California Probate Code § 16004.[4] (See Defs.' MSJ at 1-2).

Rule 1-100(D) of the California Rules of Professional Conduct states that the Rules of Professional Conduct apply to the activities of "lawyers from other jurisdictions who are not members," while they are "engaged in the performance of lawyer functions in this state." Cal. R. Prof. Conduct 1-100(D)(2). Here, Odish, a Michigan attorney, provided legal services to Cognitive Code, whose principal offices are in California. (See Opp. to Defs.' SUF at 5) (fact D10). Moreover, two of Cognitive Code's founders, including Spring, are based in California. (See id. at 5) (D11-D15). Accordingly, Odish was required to comply with California's rules of professional conduct during the time he was providing legal services for Cognitive Code and Spring.[5]

Rule 3-300, which governs avoiding interests that are adverse to a client, provides as follows:

> A member shall not enter into a business transaction with a client; or knowingly acquire an ownership, possessory, security, or other pecuniary

[4] Unless otherwise indicated, all statutory references are to the California Probate Code. Similarly, all "Rule" references are to the California Rules of Professional Conduct unless otherwise indicated.

[5] Moreover, Michigan law is consistent with California law for the purposes of this analysis. See, e.g., Walters v. Pierson, 359 Mich. 161, 166 (1960) ("Situations wherein lawyers engage in business dealings with clients whom they also represent legally are not favored. In such matters, the lawyer has the burden of proving perfect fairness on his part."); Palmer v. Arnett, 352 Mich. 22, 29 (1958) (once plaintiff has shown the business transaction "arose out of" or "pertained to" the attorney-client relationship, the burden is on the "attorney to show the fairness of his dealings with his client and his own good faith"). Thus, Michigan attorneys are bound by similar professional conduct requirements.

> interest adverse to a client, unless each of the following requirements has been satisfied:
> (A) The transaction or acquisition and its terms are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which should reasonably have been understood by the client; and
> (B) The client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek that advice; and
> (C) The client thereafter consents in writing to the terms of the transaction or the terms of the acquisition.

Cal. R. Prof. Conduct 3-300. "A violation of the Rules of Professional Conduct subjects an attorney to disciplinary proceedings, but does not in itself provide a basis for civil liability. But the rules, together with statutes and general principles relating to other fiduciary relationships, all help define the duty component of the fiduciary duty which the attorney owes to his or her client." BGJ Assocs. v. Wilson, 113 Cal.App.4th 1217, 1227 (2003) (citations and internal quotation marks omitted).

["California] Probate Code § 16004 is a statutory complement to rule 3-300." BGJ Assocs., 113 Cal.App.4th at 1227. It creates "a presumption that transactions between an attorney and client by which the attorney obtains an advantage are a breach of the attorney's fiduciary duty and are the product of undue influence." Ferguson v. Yaspan, 233 Cal.App.4th 676, 684 (2014) (quotation marks and citations omitted). In particular, § 16004(c) states that "[a] transaction between the trustee and a beneficiary which occurs during the existence of the trust . . . and by which the trustee obtains an advantage from the beneficiary is presumed to be a violation of the trustee's fiduciary duties." The presumption of "undue influence" is rebuttable by showing that the client was "fully advised" regarding the contract. See BGJ Assocs., 113 Cal.App.4th at 1227-28. The attorney's inability to rebut the presumption renders the "transaction voidable at the client's option." Ferguson, 233 Cal.App.4th at 685.

A. March 6, 2011, Letter of Intent and April 17, 2011, Agreement.

The relevant provision of the March 6, 2011, LOI [6] is the purported option to purchase a 2.5 to 7.5 percent of Cognitive Code based on a $12.5 million company valuation.[7] (See LOI at § 9).

[6] The LOI describes a 40-day due diligence period, along with a second 50-day due diligence and option period. The 90-day option period described in the LOI expired on June 5, 2011.

[7] It is undisputed that plaintiffs did not pay $2.5 million for a 20-percent share of Cognitive Code. (See Cognitive Code Counterclaims at ¶ 81) (alleging no $2.5 million payment); (see Odish Counterclaim Answer at ¶ 81; Bourbeau Counterclaim Answer at ¶ 81; Cranbrook Counterclaim Answer at ¶ 81 (admitting same). Thus, the anticipated $2.5 million transaction from the LOI is

According to plaintiffs, the option was extended by the April 17, 2011 Agreement "until 14 days after the final issuance of pending [Cognitive Code] patents." (See Opp. to Defs.' SUF at 16) (fact D50); (April 17, 2011 Agreement). On March 8, 2012, plaintiffs sought to exercise the option based on the extended period. (See Fredman Decl., Exh. 33).

Defendants assert that the relevant portions of the LOI are invalid, because Odish, who represented Cognitive Code in mid-March and April 2011, (see Defs.' MSJ at 3-4), failed to comply with the requirements of Rule 3-300 and § 16004. (See id. at 9-13 & 15-21).

While plaintiffs generally argue that Odish provided verbal notice about the right to counsel for some agreements, plaintiffs concede that Odish did not give defendants written notice to seek independent counsel for the April 17, 2011, Agreement. (See Opp. to Defs.' SUF at 7) (fact D23). As such, it is undisputed that Odish violated Rule 3-300 by failing to advise defendants "in writing that [they] may seek the advice of an independent lawyer of the client's choice[.]" Cal. R. Prof. Conduct 3-300(B). Similarly, it is undisputed that Cognitive Code never "consent[ed] in writing to the terms of the" April 17, 2011, Agreement. See id. at 3-300(C). Odish's failure to comply with Rule 3-300 is sufficient to void the agreements. See Fletcher v. Davis, 33 Cal.4th 61, 71-72 (2004) (voiding lien for failure to comply with Rule 3-300).

Moreover, Odish's "[n]oncompliance with rule 3-300 triggers section 16004's presumption" that Odish breached his fiduciary duty and that the subject agreements are the product of undue influence. See Ferguson, 233 Cal.App.4th at 688; Lewin v. Anselmo, 56 Cal.App.4th 694, 701 (1997) ("A transaction between an attorney and client which occurs during the relationship and which is advantageous to the attorney is presumed to violate that fiduciary duty and to have been entered into without sufficient consideration and under undue influence."). "The burden of proof is always upon the attorney to show that the dealing was fair and just, and that the client was fully advised." BGJ Assocs, LLC., 113 Cal.App.4th at 1228; see Ferguson, 233 Cal.App.4th at 685.

Odish asserts that in mid-April 2011, the "behavior of Defendants became bizarre," and that Mimi Chen informed him that Spring planned to resign. (See Odish Opp. at 8). Odish further asserts that on April 10, 2011, there was "mutual agreement for Odish to no longer be in-house counsel," (id. at 15; see Sworn Declaration by Joseph Odish ("Odish Decl.") at ¶ 13), and that "[d]efendants had legal representation at all relevant times." (Odish Opp. at 16). Moreover, Bourbeau asserts that a determination whether the terms of the agreement are "fair and reasonable" is a jury question. (See Bourbeau Opp. at 19). Plaintiffs' assertions are unpersuasive.

First, there is no admissible evidence as to the nature and extent of defendants' purported "bizarre" behavior. (See, generally, Odish Opp. at 8). Nor is it clear which defendant was suffering from "bizarre" behavior. (See, generally, id.). Moreover, to the extent any defendant was

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not at issue. (See, generally, LOI at § 1).

exhibiting any bizarre behavior, Odish arguably had a heightened obligation to ensure that defendants – his clients – were "fully advised" regarding the subject agreements. See BGJ Assocs, LLC., 113 Cal.App.4th at 1228. In short, Odish's assertions with respect to defendants' purportedly "bizarre" behavior are conclusory and plainly insufficient to rebut the presumption of undue influence.

Second, contrary to Odish's argument that he was no longer in-house counsel as of April 10, 2011, the evidence is undisputed that Odish continued providing legal services to Cognitive Code after that date. (See, e.g., Fredman Decl., Exh. 78) (Odish email to Mimi Chen, Apr. 11, 2011, re: Intellitar dispute, including Odish's plan to draft "the response and counterclaims" in the Alabama litigation). Third, as for defendants' other attorneys, the evidence is undisputed that those attorneys represented Cognitive Code in unrelated matters such as patent prosecution. (See, e.g., Fredman Decl., Exhs. I, J & K). Plaintiffs have not put forth any evidence that defendants retained or consulted independent counsel to personally advise them of the pros and cons of the subject agreements. (See, generally, Odish Opp.; Bourbeau Opp.).

Finally, because Odish's violations of Rule 3-300 and § 16004 renders the subject agreements voidable, it is unnecessary to evaluate the evaluate the fairness and reasonableness of the agreements. Thus, Bourbeau's argument that the fairness and reasonableness of the agreement may not be resolved on summary judgment, (see Bourbeau Opp. at 19-20), is irrelevant and, in any event, incorrect because the court can evaluate the reasonableness of the agreements. See, e.g., Taylor v. Kane, 2005 WL 3078991, *4-5 (N.D. Cal. 2005) (affirming bankruptcy court's summary judgment order regarding Cal. R. Prof. Conduct 3-300). Here, even assuming it was necessary to address the fairness of the subject agreements, there is little, if any, doubt that the agreements drafted by Odish were plainly unfair to defendants. For example, extending the option period based on the issuance of "any and all patent(s) pending" is unfair, because Cognitive Code's valuation would increase based on the patent issuance, while plaintiffs' option would still be based on a lower $12.5 million valuation. (See, e.g., Fredman Decl., Exh. 174 at 12-13).

In short, the evidence is undisputed that Odish violated his fiduciary duties under Rule 3-300 and § 16004 with respect to the subject agreements. Not only did Odish violate the clear mandate of Rule 3-300, he did not put forth sufficient evidence to rebut the presumption under § 16004. Odish's failure to comply with Rule 3-300 or rebut the presumption under § 16004 renders the "transaction voidable at the client's option." Ferguson, 233 Cal.App.4th at 685; see Fletcher, 33 Cal.4th at 71-72. The court therefore grants defendants' motion for summary judgment in defendants' favor with respect to the LOI and the April 17, 2011, Agreement.

B. March 18, 2011, Addendum.

The Addendum memorialized the retention of Odish as in-house counsel and provided a non-dilutable ten-percent stock ownership interest in Cognitive Code to Odish and Bourbeau, a board seat to Odish, and a dual-signature requirement, such that Odish's signature would be

required for any contract. (See Addendum). Defendants contend that the Addendum is voidable, because Odish represented Cognitive Code by March 18, 2011, and he failed to comply with his ethical duties. (See Defs.' MSJ at 4). Bourbeau – not Odish, (see, generally, Odish Opp.) – disputes that Cognitive Code and Odish formed an attorney-client relationship prior to the execution of the Addendum. (See Bourbeau Opp. at 5).

1. **Attorney-Client Relationship**.

"Except for those situations where an attorney is appointed by the court, the attorney-client relationship is created by some form of contract, express or implied, formal or informal." Responsible Citizens v. Super. Ct., 16 Cal.App.4th 1717, 1732 (1993). The relationship may be "implied from the circumstances." Id. The court considers factors such as "the nature and scope of the attorney's engagement[,]" and the "kind and extent of contacts." Id. (considering whether attorney-client relationship arose between attorney and partnership's member).

The evidence is undisputed that Odish provided legal services to Cognitive Code before March 18, 2011. (See, e.g., Fredman Decl., Exhs. 51 & 55) (March 12, 2011 & March 14, 2011, Odish emails advising Cognitive Code regarding Intellitar dispute, e.g., recommending sending a "notice of breach and default and declare the contract legally null and void," and stating "[p]lease take my free legal advice") (capitalization omitted); (see also Fredman Decl., Exh. 56) (on March 17, 2011, discussing potential litigation with Intellitar and noting that "[y]ou have given me authorization to act as legal counsel"); (Fredman Decl., Exh. E at 78-79) (Odish deposition testimony stating it was "fair to say" that Odish was "providing legal services to Cognitive Code" on March 13, 2011); (Fredman Decl., Exh. B at 101) (Leslie Spring testimony confirming that Odish served as Cognitive Code's counsel prior to March 18, 2011 Addendum). Odish admits that he performed legal services for Cognitive Code during the interim time period. (See Fredman Decl., Exh. E at 33). While Bourbeau contends that no formal engagement was made, (see Bourbeau Opp. at 7), he concedes that Odish advised Cognitive Code regarding the Intellitar dispute by March 14, 2011. (See id. at 8 & 13-14). Moreover, the Addendum describes services that Odish "already provided." (See Addendum at ¶ 3). Based on the foregoing, the court finds that Odish had an attorney-client relationship with Cognitive Code before March 18, 2011. See Responsible Citizens, 16 Cal.App.4th at 1732.

2. **Compliance with Rule 3-300 and Section 16004**.

Again, there is no dispute that defendants were not given written notice – as required by Rule 3-300 – to seek independent counsel for the March 18, 2011, Addendum. (See, generally, Odish Opp.; Bourbeau Opp.). Again, it is undisputed that Odish violated Rule 3-300 by failing to advise defendants "in writing that [they] may seek the advice of an independent lawyer of the client's choice[.]" Cal. R. Prof. Conduct 3-300(B). Odish's failure to comply with Rule 3-300 is sufficient to void the Addendum. See Fletcher, 33 Cal.4th at 71-72 (voiding lien for failure to comply with Rule 3-300).

Moreover, Odish's "[n]oncompliance with rule 3-300 triggers section 16004's presumption" that Odish breached his fiduciary duty and that the Addendum was the product of undue influence. See Ferguson, 233 Cal.App.4th at 688; Lewin, 56 Cal.App.4th at 701. As noted earlier, "[t]he burden of proof is always upon the attorney to show that the dealing was fair and just, and that the client was fully advised." BGJ Assocs, LLC., 113 Cal.App.4th at 1228; see Ferguson, 233 Cal.App.4th at 685.

Bourbeau asserts that defendants had from March 14, 2011 to March 18, 2011, to review the Addendum, so they had "more than enough time to obtain the advice of their attorneys." (Bourbeau Opp. at 16). In addition, plaintiffs contend that there was no undue duress on defendants. (See Odish Decl. at ¶ 9; Bourbeau Opp. at 17-19). Finally, Bourbeau asserts that the fairness and reasonableness of the Addendum should not be resolved on summary judgment. (See id. at 19-20). Plaintiffs' assertions are unpersuasive.

First, Bourbeau's argument that defendants had a "reasonable time" to review the Addendum does not address the other deficiencies in Odish's conduct. For example, it is undisputed that Odish never advised defendants in writing that they could seek the advice of an independent lawyer to review the Addendum. Further, Odish was still required – and there is no evidence that he did – to provide defendants the "reasonable advice against himself that he would have given him against a third person." BGJ Assocs., LLC, 113 Cal. App. 4th at 1229. Likewise, the argument that Odish did not exert duress, (see Odish Decl. at ¶ 9; Bourbeau Opp. at 17-19), is insufficient to rebut the presumption of undue influence.

Finally, Odish's violations of Rule 3-300 and § 16004 render the Addendum voidable and thus Bourbeau's argument that the fairness and reasonableness of the agreement may not be resolved on summary judgment, (see Bourbeau Opp. at 19-20), is irrelevant and, in any event, incorrect because the court can evaluate the reasonableness of the agreements. See, e.g., Taylor, 2005 WL 3078991, at *4-5 (affirming bankruptcy court's summary judgment order regarding Cal. R. Prof. Conduct 3-300). Here, even assuming it was necessary to address the fairness of the subject agreements, there is little, if any, doubt that the Addendum, which was drafted by Odish, (see Fredman Decl., Exh. E at 110-11; Fredman Decl., Exh. 59), was plainly unfair to defendants. For example, the Addendum provided for ten-percent non-dilutable ownership of Cognitive Code, based on Odish and Bourbeau's work with Cognitive Code and its founders for about one month, and dual signature rights. The non-dilutable interest would impair Cognitive Code's ability to attract further investment. Likewise, the dual-signature requirement would impede Cognitive Code's ability to conduct its affairs, since it would require Odish's approval for all contracts.

In short, the evidence is undisputed that Odish violated his fiduciary duties under Rule 3-300 and § 16004 with respect to the Addendum. Not only did Odish violate the clear mandate of Rule 3-300, he did not put forth sufficient evidence to rebut the presumption under § 16004. Odish's failure to comply with Rule 3-300 or rebut the presumption under § 16004 renders the "transaction voidable at the client's option." Ferguson, 233 Cal.App.4th at 685; see Fletcher, 33

Cal.4th at 71-72. The court therefore grants defendants' motion for summary judgment in defendants' favor with respect to the Addendum.

C. April 10, 2011, Email.

Defendants assert that the April 10, 2011, Email is invalid, because Odish represented Cognitive Code during the relevant time period. (See Defs.' MSJ at 4). It is undisputed that Odish was Cognitive Code's in-house counsel by April 10, 2011. (See Opp. to Defs.' SUF at 4) (fact D4); (see, e.g., Fredman Decl., Exh. E at 78-79) (Odish confirming that he provided "legal services" in mid-March 2011); (Fredman Decl., Exhs. 80 & 81) (coordinating with Cognitive Code's outside counsel in April 2011; Leslie Spring email introducing Joseph Odish as "our in-house counsel").

Odish argues that on April 10, 2011, the "behavior of Defendants became bizarre," and that Mimi Chen informed him that Spring planned to resign. (See Odish Opp. at 8). According to Odish, there was, as of April 10, 2011, a "mutual agreement for Odish to no longer be in-house counsel." (Id. at 15; Odish Decl. at ¶ 13). Odish also asserts that "defendants had legal representation at all relevant times." (Odish Opp. at 16). As for Bourbeau, he contends that the April 10, 2011, Email constitutes a "promise," not an agreement. (See Bourbeau Opp. at 9).[8]

With the exception of Bourbeau's argument that the April 10, 2011, Email constitutes a promise, all of plaintiffs' arguments were previously addressed and rejected by the court. See supra at §§ II.A. & II.B. With respect to Bourbeau's argument, he essentially concedes that the April 10, 2011, Email is not an enforceable contract. In short, the court grants summary judgment in defendants' favor with respect to the April 10, 2011, Email for the reasons set forth above.

III. ODISH'S MOTION FOR SUMMARY JUDGMENT.

Odish moves for summary judgment,[9] on the ground that defendants' counterclaims and

[8] Bourbeau then argues that Cognitive Code issued the ten-percent interest in Cognitive Code. (See Bourbeau Opp. at 9). If, as Bourbeau contends, Cognitive Code timely issued the shares, then Odish does not have the right to purchase 20 percent of Cognitive Code for $10,000. (See id.).

[9] Odish sometimes refers to the motion as being on behalf of "Plaintiffs Odish and Cranbrook Capital Consulting Group." (See Notice of Motion at 1). Odish is proceeding pro se and he has not been authorized to represent Cranbrook, which may only appear through counsel. See Local Rule 83-2.2.2 ("Only individuals may represent themselves pro se. No organization or entity of any other kind (including corporations, limited liability corporations, partnerships, limited liability partnerships, unincorporated associations, trusts) may appear in any action or proceeding unless represented by an attorney permitted to practice before this Court under L.R. 83-2.1."). Thus, Odish's motion may only be brought on his own behalf.

affirmative defenses are purportedly subject to a one-year statute of limitations. (See Odish MSJ at 2-3 & 13-14).[10] Odish argues that defendants' counterclaim is "predicated [on] the professional duties of an attorney," which is "essentially a legal malpractice" claim and "therefore is time-barred by the one-year statute of limitations recited in California Code [of Civil Procedure] § 340.6." (Id. at 14). Odish asserts that defendants' claims and defenses are time barred, because the Complaint was filed in October 2012, more than one year after he purportedly stopped serving as Cognitive Code's in-house counsel in April 2011. (Id. at 13-14). Odish's assertions are unpersuasive.

Defendants' defenses and counterclaim are directed to the rescission of the four subject agreements. Under California law, the statute of limitations for rescission of contracts is four years, not one year. See Cal. Code Civ. Proc. § 337 (providing a four-year statute of limitations for "[a]n action based upon the rescission of a contract in writing."); Ferguson, 233 Cal.App.4th at 682-83 ("Although the validity of the Agreement is germane as a defense to Yaspan's competing petition, it is also a central component of Joline's petition – which seeks not only a declaration of rescission, but also general damages. Joline is accordingly seeking affirmative relief, and the four-year limitations period applies. (Code Civ. Proc., § 337.)"). Moreover, the statute of limitations is not applicable to defendants' affirmative defenses. See Styne v. Stevens, 26 Cal.4th 42, 51-52 (2001) ("Under well-established authority, a defense may be raised at any time, even if the matter alleged would be barred by a statute of limitations if asserted as the basis for affirmative relief. The rule applies in particular to contract actions. One sued on a contract may urge defenses that render the contract unenforceable, even if the same matters, alleged as grounds for restitution after rescission, would be untimely."). In short, Odish's motion for summary judgment is denied.

IV. BOURBEAU'S DEFENSES.

Bourbeau argues that defendants' motion should be denied, based on the doctrines of waiver, laches, and estoppel.

A. Waiver.

Bourbeau asserts that defendants waived their right to rescind the subject agreements, because they were on inquiry notice of Cognitive Code's right to rescind the agreements in June 2011 when Spring began investigating the validity of the agreements. (See Bourbeau Opp. at 20-

[10] Odish's motion includes numerous miscellaneous arguments unrelated to the claims and defenses in this case, including that: (1) he is a "[w]histleblower and [c]ooperating with the Federal Bureau of Investigation;" (2) various companies were "listed in Nuance 2012 and 2013 SEC filings," suggesting that there was the "commission of federal crimes," such as "[i]nsider [t]rading"; and (3) defendants made "false filings" with the United States Patent and Trademark Office. (Odish Motion at 2-4 & 15). The court will disregard these irrelevant arguments.

22).

"Waiver is the intentional relinquishment of a known right after full knowledge of the facts and depends upon the intention of one party only." Oakland Raiders v. Oakland-Alameda Cnty. Coliseum, Inc., 144 Cal.App.4th 1175, 1189 (2006). The focus of the inquiry is the "intention of the party who allegedly relinquished the known legal right." Id. As discussed above, the statute of limitations for rescission of a written agreement is four years. See Cal. Code Civ. Proc. § 337; Ferguson, 233 Cal.App.4th at 682-83.

Here, plaintiffs filed suit in October 2012, approximately 16 months after defendants allegedly were on inquiry notice that the subject agreements might be voidable. In December 2012, defendants filed their answer and counterclaims, requesting the rescission of the subject agreements. (See Counterclaims at ¶¶ 56-87). Given the four-year statute of limitations, the court is not persuaded that defendants "intentionally relinquished a right" or that their conduct was "inconsistent with an intention to enforce the right." Oakland Raiders, 144 Cal.App.4th at 1190. Moreover, defendants' affirmative defense that the subject agreements are voidable, (see Answer to FAC at ¶ 54), "may be raised at any time, even if the matter alleged would be barred by a statute of limitations if asserted as the basis for affirmative relief." Styne, 26 Cal.4th at 51-52. In short, the court rejects plaintiffs' argument that defendants' request for rescission is barred under the doctrine of waiver.

B. Laches.

Bourbeau further argues that defendants' request for rescission is equitably barred by the doctrine of laches. (See Bourbeau Opp. at 22-24). In order to prevail on a laches defense, the party must demonstrate "(1) delay in asserting a right or a claim; (2) the delay was not reasonable or excusable; and (3) prejudice to the party against whom laches is asserted." Magic Kitchen LLC v. Good Things Int'l, Ltd., 153 Cal.App.4th 1144, 1157 (2007). The relevant statute of limitations is typically taken into account. See id. (If the claim is filed "within the analogous statute of limitations period . . . the strong presumption is that laches is inapplicable.").

Again, the relevant statute of limitations is four years. See Cal. Code Civ. Proc. § 337. Here, defendants filed their counterclaims approximately 18 months after they purportedly were on inquiry notice that the agreements should be rescinded. Moreover, as for the affirmative defense, laches does not bar defendants' defense regarding the validity of the agreements. See Board of Tr. of Leland Stanford Univ. v. Roche, 583 F.3d 832, 840 (Fed. Cir. 2009) ("Stanford's assertion of laches and equitable estoppel also fail. Under California law, laches does not bar affirmatively defenses."). In short, defendants' affirmative defenses are not barred by laches.

C. Estoppel.

Finally, Bourbeau asserts that "defendants are estopped from rescinding the addendum because they affirmed or ratified it." (See Bourbeau Opp. at 24) (capitalization omitted). The doctrine of "equitable estoppel requires: (a) a representation or concealment of material facts; (b) made with knowledge, actual or virtual, of the facts; (c) to a party ignorant, actually and permissibly, of the truth; (d) with the intention, actual or virtual, that the ignorant party act on it; and (e) that party was induced to act on it." Simmons v. Ghaderi, 44 Cal.4th 570, 584 (2008).

Here, defendants' purported representations regarding Bourbeau's ownership share were not "made with knowledge, actual or virtual, of the facts." See Simmons, 44 Cal.4th at 584. While defendants may have been on inquiry notice that the subject agreements might be invalid, they did not have full knowledge of the "facts," warranting the application of equitable estoppel. Thus, Bourbeau's estoppel argument also fails.[11]

V. SEVERANCE OF BOURBEAU'S CLAIMS.

Bourbeau argues that even if Odish's claims are dismissed, Bourbeau's rights are severable, so his claims should survive. (See Bourbeau Opp. at 27-29). If a "contract is capable of severance, the decision whether to sever the illegal portions and enforce the remainder is a discretionary decision for the trial court to make based on equitable considerations." Fair v. Bakhtiari, 195 Cal.App.4th 1135, 1157 (2011). However, "the doctrine of severance does not apply as there is no lawful portion of the agreements themselves that can be severed." Id. at 1158.

Here, Bourbeau's purported rights arise from (1) the LOI's option term, which was purportedly extended by the April 17, 2011, Agreement, and (2) the Addendum, which purportedly granted Bourbeau and Odish a ten-percent ownership stake in Cognitive Code. The court previously found that both provisions are voidable. See supra at §§ II.A. & II.B.

As for (1) the option term, Bourbeau's rights arise entirely from Odish's extension of the

[11] Likewise, Bourbeau's ratification argument is unpersuasive. Bourbeau concedes, (see Bourbeau Opp. at 25), that ratification requires "full knowledge of the material facts permitting rescission[,]" and that the defendant "has engaged in some unequivocal conduct giving rise to a reasonable inference that he or she intended the conduct to amount to a ratification." Aikins v. Tosco Refining Co., Inc., 1999 WL 179686, *4 (N.D. Cal. 1999). Here, defendants' conduct, (see Bourbeau Opp., Exhs. 6, 15 & 16), did not take place with the "full knowledge of the material facts" regarding Odish's breaches of fiduciary duty. Cf. 8 Del. Code § 144 (interested transactions voidable for failure to disclose material facts). For instance, Odish was still advising Cognitive Code when it purportedly ratified the Addendum through shareholder resolution, (see Bourbeau Opp., Exh. 15 & 16), thereby limiting defendants' access to additional material facts.

option term, which was the product of undue influence, insufficient consideration, and Odish's breach of his fiduciary duties. Accordingly, Bourbeau's purported rights do not arise from a "lawful portion" of the agreement that can be severed. See Fair, 195 Cal.App.4th at 1157.

As for (2) Bourbeau's purported ownership stake arising from the Addendum, the ten-percent ownership stake for Odish and Bourbeau was also the "product of undue influence" and Odish's breach of his fiduciary duties. See BGJ Assocs., LLC, 113 Cal.App.4th at 1231.[12] The Addendum includes numerous provisions that were the product of Odish's undue influence and breach of his fiduciary duties, including the provisions for non-dilutable shares, board seats, and dual-signature rights. Under the circumstances, the court is not persuaded that Bourbeau's purported ownership rights are severable from the other voidable provisions.

In short, the services provided by Bourbeau were part and parcel of the voidable agreements and cannot be separated from them. See Fair, 195 Cal. App. 4th at 1158 (services were "part and parcel of . . . unenforceable business transactions" and could not be separated from them); see also BGJ Assocs., LLC, 113 Cal.App.4th at 1231 ("The problem is that any rights Goldman seeks to assert arise from the alleged November 9 joint venture, which was the product of undue influence and therefore voidable by Brittan. The agreement was premised on the participation of all three men. . . . The unfairness in the alleged agreement favored Goldman as well as Janger, and for that reason, Goldman's rights against Brittan are not severable from Janger's."). Accordingly, the court denies Bourbeau's request to sever his rights.

VI. QUANTUM MERUIT.

Bourbeau asserts that he is entitled to recover under quantum meruit, because he rendered services for Cognitive Code. (See Bourbeau Opp. at 29). Bourbeau's assertion is unpersuasive.

As an initial matter, plaintiffs' First Amended Complaint does not include a cause of action for quantum meruit.[13] Further, where, as here, there has been a serious breach of fiduciary duty, the court may find that the attorney's conduct that breached the ethical requirements "infected the entire relationship," such that the breach of fiduciary duty was "sufficiently serious as to warrant the denial of quantum meruit recovery." Fair, 195 Cal.App.4th at 1169. Odish, by continually

[12] Bourbeau attempts to distinguish BGJ Associates and Fair, on the grounds that an attorney-client relationship did not exist between Odish and Cognitive Code when the Addendum was executed. (See Bourbeau Opp. at 27-28). The court has rejected Bourbeau's arguments, and found that an attorney-client relationship between Odish and Cognitive Code existed when the Addendum was executed.

[13] At this late stage in the case, the court would not grant any motion to amend. See Fair, 195 Cal.App.4th at 1169 (no abuse of discretion to deny leave to amend complaint to assert claim for quantum meruit).

applying undue influence on Cognitive Code's principals in order to obtain a large ownership stake in the company, tainted the entire relationship between plaintiffs and defendants. While the relationship was initially designed so that Cognitive Code would raise $2.5 million in capital, plaintiffs, especially Odish, overreached in order to obtain significant ownership, and plaintiffs did so without even giving Cognitive Code the $2.5 million in funding they had agreed to provide. Odish's numerous breaches of his fiduciary duty are serious enough to warrant the denial of quantum meruit for Odish's former business partner, Bourbeau. Finally, while Bourbeau has generally argued that he performed business services for Cognitive Code, (see Bourbeau Opp. at 9-10), he has not demonstrated that his efforts led to licensing or revenue generation for Cognitive Code. In short, the court denies Bourbeau's request for quantum meruit.

VII. REMAINING CLAIMS.

In general, plaintiffs' claims arise from their purported rights as shareholders and managers. (See, generally, FAC). For instance, plaintiffs' first cause of action, breach of contract, is based on defendants' failure to "perform the Agreements and to honor and enforce the provisions of each Agreement." (See id. at ¶ 41). The relevant provisions of the subject agreements are voidable, so plaintiffs' cause of action is dismissed.

Plaintiffs' second cause of action, intentional interference with the agreements, is likewise predicated on defendants' purported "intentional[] interfer[ence] with the Company performing its obligations under the Agreements." (See FAC at ¶ 63). Because the agreements are voidable, plaintiffs' cause of action for intentional interference with contract also fails.

The third cause of action, for injunctive relief, (see FAC at ¶¶ 76-84), is also based on enforcement of the subject agreements. For instance, plaintiffs seek enforcement of the "contract provisions as to the Board Seat, the Dual Signature Requirement and/or the Non-Dilution Requirement." (See id. at ¶ 77). The agreements are voidable, so the cause of action for injunctive relief also fails.

The fourth cause of action, cancellation of stock and warrants, is also based on the theory that Odish had signature rights for contracts, and that plaintiffs' shares could not be diluted. (See FAC at ¶ 87). Plaintiffs do not have shareholder rights because the agreements are voidable. Thus, this claim also fails.

Plaintiffs' fifth cause of action, breach of fiduciary duty, is also based on plaintiffs' purported contractual rights and rights as shareholders. (See FAC at ¶¶ 88-91). As the agreements are voidable, plaintiffs' claim fails.

The sixth claim, oppression of minority shareholders, is also predicated on plaintiffs' alleged shareholder rights. (See FAC at ¶¶ 92-96). This claim fails because the agreements for Cognitive Code stock are voidable.

The seventh claim, breach of the implied covenant of good faith and fair dealing, is also based on plaintiffs' rights to "benefits of the contract." (See FAC at ¶ 98). The agreements are voidable, so this claim fails.

Plaintiffs' remaining causes of action, (8) intentional misrepresentation, (9) negligent misrepresentation, and (10) suppression and concealment of the fact that Spring lacked authority to enter into the contracts, are also fatally defective. (See FAC at ¶¶ 102-32). First, plaintiffs have not put forth any evidence to raise a genuine issue of material fact as to any of these claims. Second, "if the conduct of the plaintiff in the light of his own intelligence and information was manifestly unreasonable, however, he will be denied a recovery." Thrifty Payless, Inc., v. The Americana at Brand, LLC, 218 Cal.App.4th 1230, 1239 (2013). Here, Odish drafted each of the subject agreements. (See Opp. to Defs.' SUF at 21) (facts D68, D69, D70); (see Fredman Decl., Exh. E at 29) (Odish testimony admitting that he recited the substance of the April 10, 2011 Email to Spring). As discussed above, Odish's numerous serious breaches of his fiduciary duty resulted in the voiding of the agreements that are the subject of this lawsuit. Plaintiffs' conduct, especially that of Odish, who provided legal services to Cognitive Code during most of the relevant time period, was manifestly unreasonable. Therefore, the court will deny relief as to plaintiffs' eighth, ninth, and tenth causes of action.

This Order is not intended for publication. Nor is it intended to be included in or submitted to any online service such as Westlaw or Lexis.

Based on the foregoing, IT IS ORDERED THAT:

1. Defendants' Motion for Summary Judgment **(Document No. 189)** is **granted**.

2. Co-plaintiff Joseph Odish's Motion for Summary Judgment **(Document No. 192)** is **denied.**

3. Defendants' Motion for Order Declaring Plaintiff Odish to be a Vexatious Litigant **(Document No. 234)** is **denied as moot.**

4. The Orders to Show Cause Regarding Potential Terminating Sanctions **(Document Nos. 112** and **154)** are **discharged as moot**.

5. Judgment shall be entered accordingly. The parties shall bear their own fees and costs.

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