

## TENTATIVE RULINGS

### DEPARTMENT C44

#### Judge Walter Schwarm

May 20, 2024

These are the Court's tentative rulings. They may become an order if the parties do not appear at the hearing. The Court also might make a different order at the hearing. (*Lewis v. Fletcher Jones Motor Cars, Inc.* (2012) 205 Cal.App.4th 436, 442, fn. 1.)

If the parties agree to submit on the Court's tentative ruling, please call the Court Clerk to inform the court that **all** parties submit on the Court's tentative ruling. The tentative ruling will then become the order of the Court upon a party or parties informing the Court that **all** parties submit to the Court's tentative ruling.

**APPEARANCES:** Department C44 conducts non-evidentiary proceedings, such as law and motion, remotely, by Zoom videoconference. All counsel and self-represented parties appearing for such hearings must check-in online through the Court's civil video appearance website at <https://www.occourts.org/media-relations/civil.html> prior to the commencement of their hearing. Once the online check-in is completed, participants will be prompted to join the courtroom's Zoom hearing session. Check-in instructions and instructional video are available at <https://www.occourts.org/media-relations/aci.html>. The Court's "Appearance Procedures and Information--Civil Unlimited and Complex" ("Appearance Procedures") and "Guidelines for Remote Appearances" ("Guidelines") are also available at <https://www.occourts.org/media-relations/aci.html>. Parties preferring to appear in-person for law and motion hearings may do so by providing notice of in-person appearance to the court and all other parties five (5) days in advance of the hearing. (see Appearance Procedures, section 3(c)(1).).

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**COURT REPORTERS:** Official court reporters (i.e. court reporters employed by the Court) are **NOT** typically provided for law and motion matters in this department. If a party desires a record of a law and motion proceeding, it will be the party's responsibility to provide a court reporter. Parties must comply with the Court's policy on the use of privately retained court reporters which can be found at:

- [Civil Court Reporter Pooling](#); and

- For additional information, please see the court’s website at [Court Reporter Interpreter Services](#) for additional information regarding the availability of court reporters.

#	Case Name	Tentative
	30-2017-00941390 Zheng v. Zheng 8:30 a.m.	<p><b><u>MOTION NO. 1:</u></b></p> <p><b>Defendant’s (Gene Zheng) Motion for New Trial, or Partial New Trial (Motion), filed on 4-11-24 under ROA No. 1172, is DENIED. Defendant’s Notice of Intent to Move for a New Trial (Notice) was filed on 3-26-24 under ROA No. 1150.</b></p> <p>Code of Civil Procedure section 659, subdivision (a), states, “The party intending to move for a new trial shall file with the clerk and serve upon each adverse party a notice of his or her intention to move for a new trial, designating the grounds upon which the motion will be made and whether the same will be made upon affidavits or the minutes of the court. . . .” The Notice designates the following grounds as the basis for Plaintiff’s Motion: (1) Irregularity in the proceedings of the court, or adverse party, or any order of the court or abuse of discretion by which either party was prevented from having a fair trial (<u>California Code of Civil Procedure § 657(1)</u>) . . . .”; 2:3-5); (2) “Accident or surprise, which ordinary prudence could not have guarded against. (<u>California Code of Civil Procedure § 657(3)</u>) . . . .”; (3) “Newly discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial. (<u>California Code of Civil Procedure § 657(4)</u>) . . . .”; (4) “Excessive damages (<u>California Code of Civil Procedure § 657(5)</u>) . . . .”; (5) “Insufficiency of the evidence to justify the verdict or other decision, or the verdict or other decision is against law (<u>California Code of Civil Procedure § 657(6)</u>) . . . .”; and (6) “Error in law, occurring at the trial and excepted to by the party making the application (<u>California Code of Civil Procedure § 657(7)</u>) . . . .” (Notice; 2:1-15 (Underscore in Notice).)</p> <p>Code of Civil Procedure section 662 states, “In ruling on such motion, in a cause tried without a jury, the court may, on such terms as may be just, change or add to the statement of decision, modify the judgment, in whole or in part, vacate the judgment, in whole or in part, and grant a new trial on all or part of the issues, or, in lieu of granting a new trial, may vacate and set aside the statement of decision and judgment and reopen the case for further proceedings and the introduction of additional</p>

evidence with the same effect as if the case had been reopened after the submission thereof and before a decision had been filed or judgment rendered. Any judgment thereafter entered shall be subject to the provisions of sections 657 and 659.”

Plaintiff’s Motion seeks a new trial based on Code of Civil Procedure sections 657, subdivisions (5), (6), and (7). (Motion; 1:12-2:9.) Therefore, the court will address the Motion based on Code of Civil Procedure section 657, subdivisions (5), (6), and (7).

**Code of Civil Procedure section 657, subdivision (5):**

Defendant challenges the award of \$208,500.00 as damages as excessive. (Motion; 1:12-16 and 3:13-4:9.) The Motion states, “The burden should be on the Plaintiff to provide evidence of such damages, as that is part of his case. (Evid Code § 500) However, here the Court improperly interpreted the statements about the supposed income from the rental of Golden West to mean that this is the actual amount of damages Wen is entitled to. This is not only in error and not supported by substantial evidence but is directly contrary to what Wen’s own handwritten letter established in Trial Exhibit 008 . . . .” (Motion; 3:18-24 (Footnote 3 omitted).)

Code of Civil Procedure section 657 states in part, “. . . A new trial shall not be granted upon the ground of insufficiency of the evidence to justify the verdict or other decision, nor upon the ground of excessive or inadequate damages, unless after weighing the evidence the court is convinced from the entire record, including reasonable inferences therefrom, that the court or jury clearly should have reached a different verdict or decision. . . .” *Qadir v. Figueroa* (2021) 67 Cal.App.5th 790, 816 (*Qadir*), states, “`The amount of damages is a fact question, first committed to the discretion of the jury and next to the discretion of the trial judge on a motion for new trial. They see and hear the witnesses and frequently, as in this case, see the injury and the impairment that has resulted therefrom. As a result, all presumptions are in favor of the decision of the trial court [citation]. The power of the appellate court differs materially from that of the trial court in passing on this question. An appellate court can interfere on the ground that the judgment is excessive only on the ground that the verdict is so large that, at first blush, it shocks the conscience and suggests passion, prejudice or corruption on the part of the jury.” [Citations.]”

The court's Final Statement of Decision (FSOD) describes the facts that the court relied upon in reaching the amount of \$208,500.00 as restitution regarding the Goldenwest property. (Lee Decl., ¶ 2 and Exhibit A; (FSOD; 37:1-38:6; See also, the FSOD's discussion regarding Exhibit 8 at 33:7-34:2.) Exhibit 8 and Defendant's testimony supported the court's determination as to restitution in the amount of \$208,500.00.

The Motion also asserts that the court improperly allocated the burden of proof regarding the amount of restitution. *Meister v. Mensinger* (2014) 230 Cal.App.4th 381, 399 (*Meister*), states, "In measuring the amount of the defendant's unjust enrichment, the plaintiff may present evidence of the total or gross amount of the benefit, or a reasonable approximation thereof, and then the defendant may present evidence of costs, expenses, and other deductions to show the actual or net benefit the defendant received. The party seeking disgorgement "has the burden of producing evidence permitting at least a reasonable approximation of the amount of the wrongful gain," and the "[r]esidual risk of uncertainty in calculating net profit is assigned to the wrongdoer." [Citation.]"

Here, based on Exhibit 8 and Defendant's testimony, Plaintiff carried Plaintiff's burden of producing evidence that permitted a reasonable approximation of the amount of the unjust enrichment. Defendant then had the opportunity to present evidence of other deductions to show the actual or net benefit regarding the unjust enrichment. In Defendant's Closing Argument Brief (DCAB), filed on 2-17-23 under ROA No. 978, Defendant stated, "Plaintiff cannot sue Defendant for unjust enrichment because this is not a valid cause of action in California. As such, this cause of action must be dismissed by the Court." (DCAB; 21:11-12.) The DCAB did not direct the court to evidence of costs, expenses, or other deductions to show the actual or net benefit that Defendant received. Under *Meister*, the court did not improperly allocate the burden of proof.

Based on the above and after considering the entire record regarding the amount of \$208,500.00 as restitution, the court does not find that it clearly should have reached a different decision regarding the amount of restitution. Therefore, the court **DENIES** the Motion as brought under Code of Civil Procedure section 657, subdivision (5).

**Code of Civil Procedure section 657, subdivision (6):**

Code of Civil Procedure section 657 states, "The verdict may be vacated and any other decision may be modified or vacated, in whole or in part, and a new or further trial granted on all or part of the issues, on the application of the party aggrieved, for any of the following causes, materially affecting the substantial rights of such party: . . . [¶] A new trial shall not be granted upon the ground of insufficiency of the evidence to justify the verdict or other decision . . . unless after weighing the evidence the court is convinced from the entire record, including reasonable inferences therefrom, that the court or jury clearly should have reached a different verdict or decision." *Barrese v. Murray* (2011) 198 Cal.App.4th 494, 503 (*Barrese*) explains, "The powers of a trial court in ruling on a motion for new trial are plenary. The California Supreme Court has held that the trial court, in ruling on a motion for new trial, has the power 'to disbelieve witnesses, reweigh the evidence, and draw reasonable inferences therefrom contrary to those of the trier of fact' [citation], that the court sits as 'an independent trier of fact' [citation] and that it must 'independently assess[ ] the evidence supporting the verdict' [citation]. The trial judge has 'to be satisfied that the evidence, as a whole, was sufficient to sustain the verdict; if he was not, it was not only the proper exercise of a legal discretion, but his duty, to grant a new trial.' [Citation.]"

*Fountain Valley Chateau Blanc Homeowner's Association v. Department of Veterans Affairs* (1998) 67 Cal.App.4th 743, 751-752 (*Fountain Valley*), states, "By contrast, the motion for a new trial has a different purpose. As the Supreme Court noted in the famous case of *Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 458-459, 20 Cal.Rptr. 321, 369 P.2d 937, the function of a new trial motion is to allow a *reexamination* of an issue of fact. [¶] The difference in purpose means a difference in standards. Unlike nonsuits, directed verdicts, and judgments notwithstanding the verdict—we will call these the 'dispositive' motions—granting a new trial does not entail a victory for one side or the other. It simply means the reenactment of a *process* which may eventually yield a winner. Accordingly, the judge has much wider latitude in deciding the motion [citation], which is reflected in an abuse of discretion standard when the ruling is reviewed by the appellate court. A new trial motion allows a judge to disbelieve witnesses, reweigh evidence and draw reasonable inferences contrary to that of the jury, and still, on appeal, retain a presumption of correctness that will be disturbed only upon a showing of manifest and unmistakable abuse. [Citation.] Hence, given the latitude afforded a judge in new trial motions, orders granting new trials are 'infrequently reversed.' [Citation.] [¶] Now here is the anomaly. The reason for the 'dispositive' motions is

that the plaintiff cannot win, because the plaintiff has presented insufficient evidence to support a favorable judgment. Yet a new trial motion may *itself* be based on insufficient evidence to support a favorable judgment. (Code Civ. Proc., § 657, clause 6 [‘for any of the following causes . . . :[¶] 6. Insufficiency of the evidence to justify the verdict or other decision, or the verdict or other decision is against law.’].) Moreover, even though there are some extra requirements on the judge before he or she may grant a new trial on insufficient evidence, the fact remains that the trial judge may, in granting such a motion, draw inferences and resolve conflicts in the evidence different from that of the jury. [Citation.] Accordingly, it is natural to ask, if a trial judge is convinced that a litigant has no substantial evidence to justify a favorable judgment, why take the hard and narrow road of granting one of the dispositive motions with the attendant stringent standard of review when he or she can take a much easier and wider path by granting a new trial? [¶] The answer is this: Inherent in the new trial statute is the following, but unstated, premise: When a trial judge grants a motion for new trial based on insufficiency of the evidence, it is *not* because the judge has concluded that the plaintiff *must* lose, but only because the evidence in the trial that actually took place did not justify the verdict. Evidence might exist to justify the verdict, but for some reason did not get admitted; perhaps the plaintiff’s attorney neglected to call a crucial witness or ask the right questions. *There is still the real possibility that the plaintiff has a meritorious case.* Indeed, such a conclusion is a simple corollary from the observation of our Supreme Court in the venerable *Auto Equity* decision that the essential function of the new trial is to *re-examine* the evidence. [Citation.] At the same time, misuse of a new trial motion as a *dispositive* motion renders surplusage the Legislature’s provisions for nonsuits, directed verdicts, and judgments notwithstanding the verdict. [Citation.]” (Italics in *Fountain Valley*; Footnotes 1 and 2 omitted.)

The Motion states, “A second basis for this Court to review the basis for its decision that Wen, using his own funds, provided any monies whatsoever to Defendant which were used to pay the consideration for the Golden West property or that Jack’s money, loaned or advanced to Defendant to purchase Terry in a totally unnecessary transaction in 2011, allowed Wen to claim the purchase was a sham which was adopted by the Court. [¶] This finding lacks any substantial and credible evidence as to the source of Wen’s funds, which he could not even identify except to claim it was an amount **in the range of** ‘\$120,000- \$150,000’ . . . .” (Motion; 6:17-24; Emphasis in Motion.)

The court's FSOD described the evidence it relied upon in finding that Plaintiff and Defendant jointly purchased the Goldenwest property. (Lee Decl., ¶ 2 and Exhibit A; (FSOD; 27:6-30:25).) Based on this description in the FSOD and after considering the entire record regarding whether Plaintiff and Defendant jointly purchased the Goldenwest property, the court does not find that it clearly should have reached a different decision as to its finding that Plaintiff and Defendant jointly purchased the Goldenwest property.

Therefore, the court **DENIES** the Motion as brought under Code of Civil Procedure section 657, subdivision (6).

**Code of Civil Procedure section 657, subdivision (7):**

The Motion states, "The Court held that Gene's actions in allegedly coming up with the 'scheme' to defraud the U.S. Government by Wen applying for SSI after giving all his property to others requires the court in balancing equities to find Gene's actions more blameworthy than Wen's is not supported by substantial evidence. The Court's determination completely ignores the fact it was Wen who actually did the actions, and then continued to ignore the extent of Wen's knowing continued unlawful actions and attempts to continue defrauding the US Government for over 18 years, which should have prevented the Court from awarding Wen any equitable relief." (Motion; 11:21-27.) The Motion further states, "The Court's attempt to blame Gene for Wen's knowing and continuing illegal behavior is error and must be corrected to find that Wen's actions require he forfeit any right to the Court's equitable relief as found in its statement of decision and Judgment." (Motion; 12:14-16.)

The Motion relies on the doctrine of unclean hands to support this argument. (Motion; 12:1-7.) *Kendall-Jackson Winery, Ltd. v. Superior Ct.*, (1999) 76 Cal.App.4th 970, 985 (*Kendall-Jackson*), states, "Moreover, the unclean hands doctrine is not a legal or technical defense to be used as a shield against a particular element of a cause of action. Rather, it is an equitable rationale for refusing a plaintiff relief where principles of fairness dictate that the plaintiff should not recover, regardless of the merits of his claim. It is available to protect the court from having its powers used to bring about an inequitable result in the litigation before it. [Citation.] Thus, any evidence of a plaintiff's unclean hands in relation to the transaction before the court or which affects the equitable relations between the litigants in the matter before the court should be available to

enable the court to effect a fair result in the litigation. The equitable principles underlying the doctrine militate against limiting the unclean hands defense in a malicious prosecution claim to misconduct that bears on the defendant's decision to file the prior action." "The misconduct that brings the clean hands doctrine into play must relate directly to the cause at issue. Past improper conduct or prior misconduct that only indirectly affects the problem before the court does not suffice. The determination of the unclean hands defense cannot be distorted into a proceeding to try the general morals of the parties. [Citation.] Courts have expressed this relationship requirement in various ways. The misconduct 'must relate directly to the transaction concerning which the complaint is made, i.e., it must pertain to the very subject matter involved and affect the equitable relations between the litigants.' [Citation.] '[T]here must be a direct relationship between the misconduct and the claimed injuries . . . so that it would be inequitable to grant [the requested] relief.' " ' [Citation.] 'The issue is not that the plaintiff's hands are dirty, but rather " "that the manner of dirtying renders inequitable the assertion of such rights against the defendant." ' " ' [Citation.] The misconduct must " "prejudicially affect the rights of the person against whom the relief is sought so that it would be inequitable to grant such relief.' " ' [Citation.]" (*Id.*, at p. 979.)

The court notes that the DCAB did not raise unclean hands as an issue for the court to decide. The Motion does not direct the court to the portion of the FSOD that found that Defendant came up with a scheme to defraud the U.S. government. Further, the court did not make any findings regarding whether Plaintiff was ineligible to receive SSI benefits. The FSOD states, "The court is not finding that disclosure of Plaintiff's assets would have made Plaintiff ineligible to receive SSI benefits. The parties did not present evidence as to the eligibility criteria required to qualify for SSI benefits. . . ." (Lee Decl., ¶ 2 and Exhibit A; (FSOD; 22:17-19 and footnote 6).) The court did not have an evidentiary basis to find that Plaintiff or Defendant acted illegally as to the SSI benefits. As to unclean hands, assuming that Plaintiff committed misconduct against the government regarding the SSI benefits, this misconduct pertains to Plaintiff's relationship with the government. Plaintiff did not direct this misconduct towards Defendant. Plaintiff's alleged misconduct toward the government did not directly relate to the transactions between Plaintiff and Defendant regarding the Terry and Goldenwest properties.

Defendant's Supplemental Brief (DSupp.), filed on 5-15-24 under ROA No. 1223, directs the court to *Hainey v.*



*Narigon* (1966) 247 Cal.App.2d 528 (*Hainey*). (DSupp.; 9:23-26.) *Hainey* states, "The foregoing agreement between the parties, and the financing documents referred to, demonstrate unmistakably that this was simply an attempt to circumvent the federal statutes and regulations which prohibit assignment of the benefits conferred upon a veteran in connection with the Veterans Administration guaranty of long-term, low interest rate loans for the acquisition of a home by a veteran. It is as much against public policy as would be an outright assignment which is not permitted." (*Id.*, at p. 531.) *Hainey* is distinguishable because it is undisputed that Plaintiff did not access a government program that conferred benefits upon him to purchase the Terry or Goldenwest properties. That is, there is no dispute that Plaintiff legitimately owned the Terry property before the transfers to Ge Dong and Defendant.

Based on the above and after considering the entire record regarding whether Plaintiff and Defendant jointly purchased the Goldenwest property, the court does not find that it clearly should have concluded that Plaintiff acted with unclean hands toward Defendant.

Next, the Motion states, "The Defendant filed a pre-trial motion in which he asserted that his wife, to whom he owed a statutory fiduciary duty as a matter of law, was required to be joined by the Plaintiff in this matter in order to provide her with the opportunity to defend Wen's claims. Her interest as a holder of legal title, assumed to be with equitable title pursuant to C.C.P. §662, required that she be allowed to defend her interests in this matter. Further, the Court impliedly found that it was HER responsibility to join herself in the litigation, not the Plaintiff's obligation to do so, again improperly placing the burden of acting on the innocent party." (Motion; 12:20-26 (Uppercase in Motion).) The Motion further asserts, "These are not minor errors, WIFE is an indispensable party as established by the Supreme Court in *Bank of California, Nat'l Asso. v. Superior Court of San Francisco* (1940) 16 Cal.2d 516 where it held that an indispensable party in actions where a person seeks to establish their interest in property, all persons with similar interests and claims are indispensable parties." (Motion: 13:6-10 (Uppercase in Motion).)

Plaintiff's (Wen Yu Zheng) Supplemental Brief Per Court's May 10, 2024 Order (PSupp. Brief), filed on 5-15-24 under ROA No. 1221, asserts, "These cases and law, when coupled with the Court's finding that Wen always held beneficial title to the Properties, conclusively establish that Gene and his wife never actually held the Properties

as community property – regardless of what the deeds might have said.” (PSupp. Brief; 7:20-22.)

Code of Civil Procedure section 389 states in part, “(a) A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. [¶] (b) If a person as described in paragraph (1) or (2) of subdivision (a) cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed without prejudice, the absent person being thus regarded as indispensable. The factors to be considered by the court include: (1) to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; (2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; (3) whether a judgment rendered in the person's absence will be adequate; (4) whether the plaintiff or cross-complainant will have an adequate remedy if the action is dismissed for nonjoinder.”

*Citizens Association for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 161-162 (*Citizens*), states, “Although the owner of the subject property would have been a proper real party in interest, such owner was not a necessary party because as a practical matter his ability to protect his interest was not impaired or impeded. Instead, that interest was ably argued by Crumpler and Kruger, Inc., as a real party in interest. Moreover, because Crumpler and Kruger, Inc. had an option to purchase the subject property from the owner and was in escrow, its interests were essentially the same as if it had been the owner for the purposes of this litigation. Thus, pursuant to the analogous reasoning of *Hollister Co. v. Cal-L Exploration Corp.* (1972) 26 Cal.App.3d 713, 721, 102 Cal.Rptr. 919, and Code of Civil Procedure section 369, which allow the nonjoinder of interested parties where their interests are adequately represented, we hold that the owner of the subject property was not a necessary party. [Citation.] The case cited by real parties in interest, *Sierra Club, Inc. v.*

*California Coastal Com.* (1979) 95 Cal.App.3d 495, 501, 157 Cal.Rptr. 190, is inapposite because there the real party in interest's legal right to a permit was not represented by any party in a similar position." (See also, *Deltakeeper v. Oakdale Irrigation District* (2001) 94 Cal.App.4th 1092, 1102.)

*Dreher v. Rohrmoser* (1955) 134 Cal.App.2d 196, 198-199 (*Dreher*), provides, "Following sections 162 and 163 of the Civil Code which define separate property of the spouses, section 164 of the same code reads: 'All other property acquired after marriage by either husband or wife, or both, including real property situated in this State \* \* \* is community property'. [¶] This does not, however, include property held in trust by a spouse for a third person. 10 Cal.Jur.2d 670, section 7, citing *Anderson v. Broadwell*, 119 Cal.App. 130, 6 P.2d 260. See, also, 41 C.J.S., Husband and Wife, § 471, subd. i, p. 1006; and 54 Am.Jur. 152." (See also, *Anderson v. Broadwell* (1931) 119 Cal.App. 130, 141.)

*Fidelity National Title Insurance Company v. Schroeder* (2009) 179 Cal.App.4th 834, 847-848 (*Fidelity*), explains, " 'A resulting trust arises by operation of law from a transfer of property under circumstances showing that the transferee was not intended to take the beneficial interest. [Citations.] Such a resulting trust carries out and enforces the inferred intent of the parties. [Citations.].' [Citation.] 'It has been termed an "intention-enforcing" trust, to distinguish it from the other type of implied trust, the constructive or "fraud-rectifying" trust. The resulting trust carries out the inferred intent of the parties; the constructive trust defeats or prevents the wrongful act of one of them.' [Citations.] It differs from an express trust in that it arises by operation of law, from the particular facts and circumstances, and thus it is not essential to prove an express or written agreement to enforce such a trust. [Citation.] The trustee has no duties to perform, no trust to administer and no purpose to carry out except the single task of holding onto or conveying the property to the beneficiary. [Citations.]"

The court finds that Defendant's spouse was not an indispensable party. First, the court found that the legal relationship between Plaintiff and Defendant was a resulting trust. This resulting trust arose by operation of law. The arrangement between Plaintiff and Defendant was that Defendant would hold the Terry property and the Goldenwest property for the benefit of Plaintiff. The court reached this conclusion based on evidence described in the FSOD. (FSOD; 17:21-30:25.) Defendant held Plaintiff's beneficial interests in the Terry and Goldenwest properties in trust for Plaintiff. Since Defendant held

Plaintiff's beneficial interests the Terry and Goldenwest properties in trust, they did not become community property under *Dreher*.

Second, as a practical matter, the ability of Defendant's spouse to protect her interest was not impaired or impeded. As to the Goldenwest property, the DCAB stated, "For Plaintiff to prevail on the first issue, he must prove that he gave defendant money to purchase the Golden West property. Plain and simple. If Plaintiff cannot show by clear and convincing evidence that he provided the \$150,000 that went into the purchase price of the Golden West, then he does not have any ownership interest in Golden West and none of the causes of action in this lawsuit pertaining to the Golden West property apply." (DCAB; 2:1-6.) As to the Terry property, the DCAB stated, "Similarly, for Plaintiff to prevail on the second issue, he must prove that he had an ownership interest in Terry when he allegedly entered into an oral agreement with Defendant where he would keep equitable title while Defendant and his wife would only take bare legal title to the Terry property. If Plaintiff cannot show that he was the equitable owner of Terry when the alleged agreement was made, then Plaintiff would have no standing to sue for any of the causes of action pertaining to the Terry property." (DCAB; 2:15-21.)

The Motion states, "The issue of indispensable party is more important here due to the fact Yan Ping's interest has always been known to the Plaintiff. She was deposed and testified that she owned these properties and used her money to purchase these properties, including the money she contributed to the Zheng family during the time she was married to Gene. She was not aware of any of the claimed oral agreements but would not have agreed to them nor allowed them to be in effect." (Motion; 14:18-22.) Although Defendant was aware of this evidence, Defendant did not present this evidence at trial.

Based on the DCAB, Defendant asserted that Plaintiff did not have any interest in the Terry and Goldenwest properties. As a practical matter, Defendant's interests were the same as the interests of Defendant's spouse. Defendant sought to demonstrate that Plaintiff did not have any ownership interest in the Terry and Goldenwest properties. Defendant's spouse had the same interest as Defendant in contending that Plaintiff did not have any ownership interest in the Terry and Goldenwest properties. The Motion does not explain that Defendant's spouse would have conceded Plaintiff had an ownership interest in the Terry and Goldenwest properties in terms of the litigation against Plaintiff. Therefore, the court finds that Defendant capably represented and protected the

interests of Defendant's spouse because those interests were essentially the same as to asserting that Plaintiff did not have any ownership interests in the Terry and Goldenwest properties.

Third, the declaration from Defendant's counsel (filed on 4-11-23 under ROA No. 1170) attaches a declaration from Defendant's spouse as Exhibit P. It is unclear if Defendant is asserting that this declaration constitutes newly discovered evidence because the Motion does not directly assert newly discovered evidence as a basis for a new trial. *Sherman v. Kinetic Concepts, Inc.* (1998) 67 Cal.App.4th 1152, 1161 (*Sherman*), states, "The Shermans moved for a new trial on the ground of newly discovered evidence. (3) Section 657, subdivision 4 authorizes the court to grant the motion where the moving party has discovered new, material evidence which could not, with reasonable diligence, have been discovered and produced at trial. 'The essential elements which must be established are (1) . . . the evidence is newly discovered; (2) . . . reasonable diligence has been exercised in its discovery and production; and (3) . . . the evidence is material to the movant's case.' [Citation.]"

The Motion concedes that Defendant's spouse was deposed regarding her interests in the Terry and Goldenwest properties. Thus, the court finds that the evidence from Defendant's spouse regarding her interests in the Terry and Goldenwest properties is not newly discovered because Defendant was aware of this evidence before trial by way of the deposition.

Therefore, the court **DENIES** the Motion as brought under Code of Civil Procedure section 657, subdivision (7).

**Remaining Issues:**

The Motion states, "Reliance on 'doctored' documents is analogous to perjured testimony and these exhibits fail the clear and convincing standard Plaintiff needed to meet to overcome the validity of the Terry and Golden West grant deeds." (Motion; 11:11-13.) This issue pertains to Exhibits 13, 14, 15, and 16. The FSOD described the evidence the court relied upon in authenticating Exhibits 13.2, 14.1, 14.2, 15.2, and 16.1. (FSOD; 27;11-28:6.)

The Motion also asserts that the court committed an error of law in admitting Exhibits 35, 36, 37, and 38 because they are settlement communications. (Motion; 15:1-16.) The Motion does not direct the court to any legal authority for this assertion. The FSOD addressed the court's analysis as the admissibility of Exhibits 35, 36, 37, and 38.

Based on the above, the court **DENIES** Defendant's (Gene Zheng) Motion for New Trial, or Partial New Trial (Motion), filed on 4-11-24 under ROA No. 1172.

Plaintiff is to give notice.

**MOTION NO. 2:**

**Defendant's Motion to Vacate Judgment and Enter a Different Judgment (Motion), filed on 4-5-24 under ROA No. 1162, is DENIED.**

Code of Civil Procedure section 663 states in part, "A judgment or decree, when based upon a decision by the court, or the special verdict of a jury, may, upon motion of the party aggrieved, be set aside and vacated by the same court, and another and different judgment entered, for either of the following causes, materially affecting the substantial rights of the party and entitling the party to a different judgment: [¶] 1. Incorrect or erroneous legal basis for the decision, not consistent with or not supported by the facts; and in such case when the judgment is set aside, the statement of decision shall be amended and corrected. . . ."

*Garbiotti v. Hinkle* (2015) 243 Cal.App.4th 470, 477 (*Garbiotti*), states, "[A] motion to vacate lies only where a "different judgment" is compelled by the facts found. [Citation.] A motion to vacate under section 663 may only be brought when "the trial judge draws an incorrect legal conclusion or renders an erroneous judgment upon the facts found by it to exist." [Citation.] "In ruling on a motion to vacate the judgment the court cannot "in any way change any finding of fact." [Citation.] "The motion to vacate under section 663 is speedier and less expensive than an appeal, and is distinguished from a motion for a new trial, to be used when, e.g., the evidence is insufficient to support the findings or verdict." [Citation.]" *Glen Hill Farm, LLC v. California Horse Racing Board* (2010) 189 Cal.App.4th 1296, 1302, states, "Code of Civil Procedure section 663 permits the court to vacate its judgment if it determines the judgment is 'incorrect or erroneous' as a matter of law or inconsistent with or unsupported by the facts. In ruling on a motion to vacate the judgment the court cannot "in any way change any finding of fact." [Citation.]"

The Motion states, "Yan Ping is an indispensable party because she is the legal owner of and presumptive equitable owner pursuant to C.C.P. § 662 of the two real properties in a case in which the Plaintiff is seeking to quiet title in his name. There is no legal or factual basis to

hold that she is not required to be joined as an indispensable party.” (Motion; 5:17-20.) The Motion further states, “This is a situation where complete relief cannot be accorded among those already parties because the Court cannot order titles to the Terry and Golden West properties be put in Plaintiff’s name because Family Code § 1102 and the *Andrade* case prohibit this type of specific performance in disposing of community real property without Wife’s written consent.” (Motion; 9:12-15.) The Motion also states, “This Court found that Yan Ping did not need to be in this lawsuit because the Court held that California law does not require joinder of both spouses to bind the community estate. However, that analysis simply looked at debt and enforcement of judgments, not title to property.” (Motion; 11:19-21.) The court **DENIES** the Motion to extent it raises the indispensable party issue as to Defendant’s spouse for the same reasons as stated in Motion No. 1.

The Motion states, “. . . based on the Court’s finding, Gene breached his fiduciary duty to his Wife by agreeing to share \$1,500 a month with Wen but not getting the written consent as required by Family Code § 1100 (b).” (Motion; 11:10-12.) The court’s Final Statement of Decision (FSOD) did not make any finding that Defendant breached his fiduciary duty to his spouse.

The Motion states, “The Court in this matter in its Statement of Decision of March 8, 2024, specifically found that Wen’s alleged actions in acting on Gene’s recommendations that he transfer all his and his wife’s properties and assets to others in order to start cheating the Government by then actually transferring all his property to qualify for SSI benefits were less blameless than Gene’s for thinking up this idea fails as a matter of law. The direct testimony of literally every witness was that Wen made the decisions for the family, which were then complied with. Further, Wen did not have to act upon these suggestions by Defendant, and there is no testimony that Gene in any manner forced Wen to do these acts which Wen acknowledged were illegal at the time of trial. [¶] The Court’s decision distorts the parties’ actions and ignores the true extent to which Wen thereafter cheated the Government, and how he manipulated numerous other financial transactions to allow him, without Gene’s alleged suggestions, to further cheat the Government.” (Motion; 13:4-14.) The court’s FSOD did not specifically find that Plaintiff cheated the government. As discussed in Motion No. 1, the FSOD states, “The court is not finding that disclosure of Plaintiff’s assets would have made Plaintiff ineligible to receive SSI benefits. The parties did not present evidence as to the eligibility criteria required to qualify for SSI

		<p>benefits. . . ." (Lee Decl., ¶ 2 and Exhibit A; (FSOD; 22:17-19 and footnote 6).) The court did not have an evidentiary basis to find that Plaintiff or Defendant acted illegally as to the SSI benefits. To the extent the Motion is asserting unclean hands as basis to vacate the judgment, the court <b>DENIES</b> the Motion for the same reasons as stated in Motion No. 1 in the court's discussion of unclean hands.</p> <p>Based on the above, the court <b>DENIES</b> Defendant's Motion to Vacate Judgment and Enter a Different Judgment filed on 4-5-24 under ROA No. 1162.</p> <p>Plaintiff is to give notice.</p>
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