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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

SHAQUILLE O'NEAL, an individual, and JEROME CRAWFORD, an individual,

Plaintiffs,

vs.

DARON CAMPBELL, an individual; DARON CAMPBELL CAPITAL, LLC, a California limited liability company; VICEROY, LLC, a California limited liability company; and DOES 1-20,

Defendants.

Case No. 2:21-cv-09158-ODW-PLA

Hon. Otis D. Wright

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

[Filed Concurrently with Notice of Motion and Motion for Summary Judgment, Statement of Uncontroverted Facts and Conclusions of Law, Declaration of Eric Lauritsen, Declaration of Dennis Roach, Declaration of Shaquille O'Neal, and [Proposed] Judgment]

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Trial Date: April 4, 2023

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I. PRELIMINARY STATEMENT

In or around January of 2017, Plaintiffs Shaquille O'Neal ("O'Neal") and Jerome Crawford ("Crawford," and together with O'Neal, "Plaintiffs") purchased shares in Nominal Defendant Viceroy, LLC ("Viceroy") for a combined $150,000, with $100,000 coming from O'Neal and $50,000 coming from Crawford. The pretense through which Defendant Daron Campbell ("Campbell") secured these investments was that Viceroy was to pursue business opportunities related to legal cannabis. In reality, however, nobody has the faintest idea what, if any, business Viceroy ever in fact conducted. This is because Viceroy, like Campbell and Defendant Daron Campbell Capital, LLC ("Capital," and together with Campbell and Viceroy, "Defendants"), has asserted in this action that there are not, and never were, any documentary records reflecting any efforts by Viceroy to generate any revenues whatsoever. Similarly, Defendants all profess not to have any bank statements, general ledgers, or financial statements related to the Viceroy business. The company is a black hole.

Soon after making their investments, Plaintiffs began to sense that Viceroy might be *that* kind of a company and sought to audit the company's business and financial records. On July 20, 2018, with these efforts having been ignored for several months, their counsel wrote to Campbell, stating, "Unless you are prepared to pay 100% of the money back to Shaquille and Jerome next Friday, you must be prepared to give me up to date financial information requested below." Eager to stay out of court, Campbell responded by promising to personally repurchase Plaintiffs' units in Viceroy by paying each of O'Neal and Crawford, "on the first day of each quarter, a minimum of $10,000 until paid in full." Plaintiffs expressed their agreement to this plan to Campbell orally. On November 5, 2018, Campbell paid each of O'Neal and Crawford $10,000 pursuant to the contract. These would be the only buyout payments Campbell would ever make.

Plaintiffs filed this action in November 2021 to pursue the $130,000 that

remains due under the contract and to pursue Viceroy's own fiduciary duty claim against Campbell and Capital. The evidence is now in, and there is not a shred of it to support Defendants' grasping defenses to these claims. Summary judgment should thus be entered in Plaintiffs' favor.

II. FACTS

In the beginning of 2017, O'Neal invested $100,000 in Viceroy. SUF 1. Crawford invested $50,000 in Viceroy at the same time. SUF 2. By the end of 2017, Plaintiffs had grown concerned with the status of the company and requested detailed financial records to track their investments. SUF 3. Plaintiffs' concerns remained unresolved as of the summer of 2018, so on July 20, 2018, their attorney sent Campbell an email stating in relevant part, "Unless you are prepared to pay 100% of the money back to Shaquille and Jerome next Friday [*i.e.*, July 27, 2018], you must be prepared to give me up to date financial information requested below. If not, I will obtain it legally and you will be fully legally responsible." SUF 4. Campbell responded on the July 27, 2018 deadline with a letter wherein he stated in relevant part, "At this point, I am willing to agree to personally purchase the units over a period of time. If acceptable, I would pay Mr. Crawford and Mr. O'Neal on the first day of each quarter, a minimum of $10,000 until paid in full." SUF 5. Campbell's letter constituted an offer to repurchase Plaintiffs' shares at the same price at which they had purchased the shares themselves—*i.e.*, $150,000 total. SUF 6. Plaintiffs communicated their acceptance of this proposal to Campbell orally. SUF 7.

On or around November 5, 2018, Campbell delivered one cashier's check for $10,000 to O'Neal's representatives and another cashier's check for $10,000 to Crawford's representatives. SUF 8. Campbell had made no further payments as of September 30, 2019, but he reiterated his intent to do so on that date by stating in an email to O'Neal and his representatives, "We still fully intend to continue with the buyout of Shaq and Jerome. We should now be able to do so in a timely manner."

SUF 9-10. Nevertheless, Plaintiffs have still not received any further payments to date. SUF 9.

Defendants assert that no documents reflecting any efforts by Viceroy to generate revenues at any time from 2017 to the present have ever existed. SUF 11. Defendants also assert that no bank statements, general ledgers, or financial statements related to the Viceroy business have ever existed. SUF 12. Capital is the manager of Viceroy. SUF 13. Campbell is Viceroy's chief executive officer. SUF 14. Including Plaintiffs' investments, at least approximately $1.1 million was invested into Viceroy in total. SUF 15.

III. ARGUMENT

A. Legal Standard

Summary judgment should be granted if there is "no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). When the moving party satisfies its burden of demonstrating the absence of a genuine issue of fact for trial, the opposing party must "do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Instead, it must "come forward with enough evidence to support a jury verdict in its favor." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

B. There Is No Genuine Dispute As To Plaintiffs' Entitlement to Summary Judgment On Their Contract Claim

Under California law, to prevail on a claim for breach of contract, a plaintiff must prove that a contract existed, that they performed all significant terms required of themselves under the contract (or were excused from doing so), that the defendant failed to do something that the contract required them to do, and that that failure was a substantial factor in causing harm to the plaintiff. *Richman v. Hartley*, 224 Cal. App. 4th 1182, 1186 (2014). "In order for acceptance of a proposal to result in the formation of a contract, the proposal must be sufficiently definite, or must call for

such definite terms in the acceptance, that the performance promised is reasonably certain." *Weddington Productions, Inc. v. Flick*, 60 Cal. App. 4th 793, 811 (1998) (quotation marks omitted). "Whether a contract is sufficiently definite to be enforceable is a question of law for the court." *Ladas v. Cal. State Auto. Assn.*, 19 Cal. App. 4th 761, 770 n. 2 (1993).

Here, Campbell responded to Plaintiffs' counsel's demand that Campbell "pay 100% of the money back to Shaquille and Jerome" by stating, "At this point, I am willing to agree to personally purchase the units over a period of time. If acceptable, I would pay Mr. Crawford and Mr. O'Neal of the first day of each quarter, a minimum of $10,000 until paid in full." Plaintiffs timely communicated their acceptance of this proposal. In light of these facts, no reasonable juror could question the formation of a contract whereby Campbell was to pay O'Neal $100,000 and Crawford $50,000 via quarterly installments of at least $10,000 in exchange for the tendering of their shares. Defendants have sought to do so in earlier filings in this case by challenging Plaintiffs' position that the agreed upon purchase price was in fact $150,000. But like all others associated with the contract formation, that fact is beyond reasonable dispute in light of (a) Plaintiffs' counsel's demand for "100% of the money," (b) Campbell's failure to designate a different amount in the proposal he submitted in response to this demand, wherein he promised to pay them "in full," and (c) Campbell's reference in an email sent on September 30, 2019—almost a year after he had paid the first installment to each of O'Neal and Crawford—to the fact that further amounts then remained due. In fact, Campbell *admitted* that he committed to pay Plaintiffs $150,000 for their shares in his deposition, apparently abandoning his earlier arguments to the contrary. Plaintiffs have thus proven the formation and terms of the applicable contract as a matter of law.

Plaintiffs' satisfaction of the other elements associated with Plaintiffs' breach of contract claim is similarly indisputable. With respect to Plaintiffs' performance,

all that was required of them was their tendering of their shares to Defendants upon the payment of the agreed upon price, which they remain ready, willing, and able (eager, in fact) to do. With respect to Defendants' breach and the damages it has caused, Defendants cannot reasonably dispute that they paid only $20,000, and that the difference between this amount and the agreed upon price constitutes damages. All elements of Plaintiffs' contract claim are thus plainly satisfied.

Defendants asserted a shotgun list of affirmative defenses in their answer, but none of them apply on the facts of this case. The least frivolous might be the statute of limitations, as Defendants' first missed payment was in the beginning of 2019 and this case was not filed until November 2021—*i.e.*, beyond the two year limitations period that applies to breaches of oral contracts. Cal. Code Civ. Proc. § 339. However, the California Supreme Court case of *Amen v. Merced Cnty. Title Co.*, 58 Cal. 2d 528, 532 (1962) makes clear that Plaintiffs' claim should be treated as a breach of *written* contract for statute of limitations purposes and thereby be afforded a *four* year limitations period. Cal. Code Civ. Proc. § 337. In *Amen*, the plaintiff, who had purchased a tavern from a third party, pursued a contract claim against the escrow company rendering services in connection with the sale based on the company's failure to inform the plaintiff of certain tax issues in accordance with written instructions provided to the escrow company by the parties to the transaction. *Amen*, 58 Cal.2d at 530-31. The escrow company argued that it had never signed or otherwise agreed to be bound by the instructions in writing, so any contract to which it was bound was oral at best. As a result, the company argued that the plaintiff's claim was untimely insofar as it was brought more than two years after the alleged breach. The court rejected the argument on the grounds that the instructions themselves were in writing, stating, "The contract may be 'in writing' for purposes of the statute of limitations even though it was accepted orally or by an act other than signing." *Id.* at 532. Applying this rule in this case compels conclusion that, here too, the four year limitations period should apply. Indeed, as

in *Amen*, the details of the contract were provided in writing, via Campbell's own letter. The fact that Plaintiffs accepted the proposal orally is irrelevant under *Amen*.

In light of these considerations, there is no genuine dispute of material fact in relation to Plaintiffs' contract claim. Summary judgment should be entered in their favor.

C. There Is No Genuine Dispute As To Plaintiffs' Entitlement to Summary Judgment On Their Breach Of Fiduciary Duty Claim

To establish a claim for breach of fiduciary duty, a plaintiff first must prove the existence of a fiduciary duty. *Stanley v. Richmond*, 35 Cal. App. 4th 1070, 1086-87 (1995). Where this can be shown, the defendant must prove that its charged conduct was in keeping with these duties. *Credit Managers Assn. v. Superior Ct.*, 51 Cal. App. 3d 352, 361 (1975) ("[W]here breach of fiduciary duty is charged the fiduciary has the burden of justifying his conduct."). The manager of a limited liability company owes fiduciary duties to the company. Cal. Corp. Code § 17704.09. So does the chief executive officer. *Bancroft-Whitney Co. v. Glen*, 64 Cal.2d 327, 345 (1966) (en banc).

Here, the undisputed evidence shows that Campbell and Capital owed fiduciary duties to Viceroy as the company's chief executive officer and manager, respectively. And Defendants' admission that there are not now, and that there never were, any documents reflecting any efforts whatsoever by Viceroy to generate revenues leaves Defendants with no possible path for proving that they did not breach these duties. Indeed, this admission, which is corroborated by Defendants' additional admissions as to the company's financial recordkeeping practices, compels the inference that Campbell and Capital absconded with what Campbell himself claims is $1.1 million in investments collected from Plaintiffs and several others. This is a quintessential breach of fiduciary duties. *See Calpop.Com, Inc. v. Hoover*, 2015 WL 4760061 at *1 (Cal. Ct. App. Aug. 6, 2015) ("Defendant breached his duties to the corporation by diverting corporate resources for his own

personal benefit."). And it is a brazen one, at that, as the notion that Viceroy *never even sought* to generate revenues indicates that Campbell and Capital blatantly—not merely carelessly or ignorantly—pilfered Viceroy's assets and made them their own. Punitive damages are therefore warranted. *See American Airlines, Inc. v. Sheppard, Mullin, Richter & Hampton*, 96 Cal. App. 4th 1017, 1050-51 (2002) ("Punitive damages are appropriate if the defendant's acts are reprehensible, fraudulent or in blatant violation of law or policy.").

In light of the foregoing, this Court should enter summary judgment on Plaintiffs' derivative claim for breach of fiduciary duty in the amount of the $1.1 million in Viceroy investments that Campbell and Capital usurped. The Court should further order the assessment of punitive damages, reserving for trial the question of the extent thereof.

D. Defendants' Remaining Affirmative Defenses Lack Merit

As noted above, Defendants asserted a grab bag of affirmative defenses in their answer—no fewer than *29*—but none of them have an application in this case. Defendants' statute of limitations theory is disposed of hereinabove. Their only other defense meriting discussion is the theory that Viceroy's activities violated the federal Controlled Substances Act (the "CSA") such that Campbell's agreement to repurchase shares in it from Plaintiffs is illegal and thus unenforceable. Defendants pressed this theory in opposition to Plaintiffs' application for a writ of attachment, and Plaintiffs disposed of it in that setting. To reiterate, identical arguments have been thoughtfully and convincingly rejected by courts across the Ninth Circuit. Most significantly, a highly analogous question was examined in *Mann v. Gullickson*, No. 15-cv-03630-MEJ, 2016 WL 6473215 (N.D. Cal. Nov. 2, 2016), which, like this case, involved a stock purchase agreement for a California company engaged in cannabis activities that were authorized under state law but allegedly violated the CSA. The court stated, "[E]ven where contracts concern illegal objects, where it is possible for a court to enforce a contract in a way that

does not require illegal conduct, the court is not barred from according such relief. " *Id.* at *7. It further noted, "Mann's suit seeks Gullickson's full payment for the businesses he sold to her. Mandating that payment does not require Gullickson to possess, cultivate, or distribute marijuana, or to in any other way require her to violate the CSA." *Id.* *See also Silva Enter. v. Ott*, No. 2:18-cv-06881-CAS, 2018 WL 6844714 at *5 (C.D. Cal. Nov. 5, 2018) (rejecting similar argument by defendant because "the dispute in this case does not involve the actual production or sale of cannabis").

Notably, this case is much easier than the ones just cited because Defendants have admitted that Viceroy never in fact took any steps towards generating revenues, so Viceroy may not have ever violated the CSA in the first place. Even if it had, however, because Plaintiffs merely seek to enforce a stock purchase agreement—an exchange that involves money on one side and shares in a company on the other side—there is no reason for the Court to recuse itself; it is entirely possible for the transaction contemplated by the parties' agreement to occur without anyone ever possessing, cultivating, or distributing marijuana or otherwise violating the CSA.

IV. CONCLUSION

For the reasons set forth above, the Court should enter summary judgment in Plaintiff's favor as to all claims and reserve for trial only the issue of the punitive damages to be awarded in relation to the derivative claim for breach of fiduciary duties.

DATED: December 19, 2022

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