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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

CHRISTOPHER M. ADAMS, Plaintiff and Respondent, v. DAVID TOPOLEWSKI et al., Defendants and Appellants; CIRRUS EDUCATION, INC., et al., Specially Appearing Parties and Appellants.	B278395 (Los Angeles County Super. Ct. No. BC382058)

APPEALS from a judgment of the Superior Court of Los Angeles County, Michelle Rosenblatt and David Sotelo, Judges. Affirmed as modified.

Zuber Lawler & Del Duca, Jeffrey J. Zuber and Agnes M. Sullivan for Defendants and Appellants.

Orrick, Herrington & Sutcliffe, Michael C. Tu, Sherry D. Hartel Haus and Kevin M. Askew for Specially Appearing Parties and Appellants.

Baker, Keener & Nahra, Robert C. Baker and Laurence C. Osborn for Plaintiff and Respondent.

Defendants Hong Mu (Mu) and David Topolewski (Topolewski) appeal from paragraph 2 of an amended judgment that awarded more than $62 million against them and in favor of their former partner, plaintiff Christopher Adams (Adams), for wrongfully depriving Adams of his share of various companies. Specially appearing parties Cirrus Education, Inc. (CEI), Cirrus (Beijing) Corp. (Cirrus Beijing), Cirrus Ltd., and iQ-Hub Pte Ltd. (iQ-Hub) (collectively, the Specially Appearing Parties) separately appeal from paragraph 2 of the judgment, for which they are jointly and severally liable.[1]

Topolewski and Mu contend the $62 million award (1) exceeded the scope of this court's remand following an earlier appeal, (2) the trial court abused its discretion by excluding evidence of the relationship between defendant English Xchange Pte Ltd. (EXPL), on the one hand, and the Specially Appearing

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[1] Paragraph 1 of the judgment awarded damages against two companies that are not parties to this appeal. Paragraphs 3-8 of the judgment awarded damages against Mu, Topolewski, and various entities for monetary sanctions (par. 3), unpaid salary (par. 4), costs (par. 5), and unpaid promissory notes (pars. 6-8); those portions of the judgment are not at issue in this appeal.

Parties and three additional companies[2] (collectively, the New Companies) on the other; and (3) the valuation on which the damages award was based was not supported by substantial evidence. Separately, the Specially Appearing Parties, all foreign entities not named as defendants in this action, contend the court lacked personal jurisdiction over them and violated their rights to due process by adding them to the judgment.

We address just one issue: the sufficiency of the evidence to support the $62 million damages award. As we discuss, the award is not supported by substantial evidence because Adams was not qualified to opine on the value of the New Companies, his valuation opinion was not based on competent evidence, and he did not employ an accepted valuation methodology. We therefore strike paragraph 2 of the judgment.

I.

Background[3]

A. The Companies

In 2000, Adams invested in a business venture with Mu and Topolewski to develop and market English language educational technology in China. Initially, Adams, Mu, and Topolewski formed two companies (Educational Resources Acquisitions (ERA) and C–Interchange, Inc. (C-Interchange)) for

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[2] The additional companies, Qooco, Inc., Qooco Entities, and Acquire Mobile, are not parties to this appeal.

[3] The facts recited in this section are taken from the prior opinion of another panel of this Division, *Adams v. Topolewski* (Nov. 19, 2012, No. B230364) (nonpub. opn.).

this purpose. Subsequently, in 2001, the partners formed a new company, English Xchange, Inc. (EXI), which absorbed ERA and C–Interchange. According to Adams, the partners agreed that Adams would own 19.7 percent, and Mu and Topolewski would own 80.3 percent, of EXI and "every entity and ongoing enterprise."

In 2001, Mu and Topolewski raised venture capital through a newly formed entity, EXPL. Despite the partners' agreement, Adams was not listed as an EXPL shareholder. When Adams discovered the omission, Topolewski assured him that he held 260,000 preferred non-dilutable shares in EXPL. However, despite numerous requests, Adams never received confirmation of his shares of EXPL.

Adams also learned through other sources that EXPL was the sole shareholder of another entity, English Exchange Hong Kong Limited (EXHK), which owned 80 percent of Wen He Education Technology Co. Ltd. (Wen He).

B. Operative Complaint

Adams and others filed the present action against Mu, Topolewski, and five entities—ERA, C–Interchange, EXI, EXPL, and Wen He. The operative first amended complaint alleged that Adams was a joint venturer with Topolewski and Mu in EXI, EXPL, C-Interchange, and ERA. In exchange for Adams's financial contribution to these ventures, Topolewski and Mu represented that "[Adams] will have approximately 19.[7]% interest in the companies . . . among others thereafter created," and that Adams would "receive and/or be issued certain Warrants

for stock in the Defendant Companies." Notwithstanding these representations, Adams was never issued shares of EXPL.[4]

C. Uncontested Bench Trial

About a month after the court set a trial date, it granted Mu's and Topolewski's attorney's request to be relieved as counsel. Thereafter, Mu and Topolewski did not appear at trial.

At the uncontested bench trial, economist Ted Vavoulis opined on Adams's behalf that the value of Adams's 19.7 percent interest in EXPL was $62,784,000. The trial court adopted Vavoulis's valuation and awarded judgment for Adams and against Mu, Topolewski, EXPL, and Wen He in that amount.[5]

D. Prior Appeal

Mu and Topolewski appealed. They sought to set aside the entire judgment on the ground that they did not receive notice of the trial; alternatively, they sought to reverse the portion of the judgment awarding Adams more than $62 million as his share of the value of EXPL.

We held that Mu and Topolewski received sufficient notice of the trial. However, we found that as a matter of law, the trial court had not properly valued Adams's 19.7 percent interest in EXPL. We explained that Vavoulis had calculated the value of Adams's interest in EXPL using a "price-earnings" method—i.e., by multiplying EXPL's projected 2010 revenues by the price to

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[4] The complaint also alleged that defendants had failed to repay loans to Adams, David Adams (trustee of the Christopher Adams Trust), DVA Inc., and Morgan Adams, Inc. Those claims and parties are not relevant to this appeal.

[5] Adams dismissed C–Interchange and EXI prior to trial; thus, these entities were not named in the judgment.

earnings ratio of similar publicly held companies. That methodology had been rejected in *In re Marriage of Hewitson* (1983) 142 Cal.App.3d 874 (*Hewitson*) as a sole basis for valuing a closely held corporation. Thus, because Vavoulis's valuation relied solely on a price-earnings method, the trial court erred as a matter of law in accepting his valuation of Adams's 19.7 percent interest in EXPL.

Based on the foregoing, we reversed and remanded for a new trial on only that portion of the judgment "awarding Adams damages in connection with the determination of the value of his 19.7 percent interest in EXPL and related entities." In all other respects, the judgment was affirmed.

In reversing, we noted as follows: "Although we resolve the valuation question on legal grounds, we realize, as the trial court did, that even using acceptable valuation methodology it is virtually impossible to determine the value of Adams's 19.7 percent interest in EXPL and related entities without financial data. Adams has represented in these appellate proceedings that he propounded discovery requests and issued subpoenas to obtain financial documents from Mu and Topolewski, and has yet to obtain the requested information. In concluding that the trial court relied on an improper valuation method, we follow the law even though it seems inequitable that Mu and Topolewski, who failed to abide by the judicial process and did not show up for trial, benefit from this legal error. Our legal conclusion is not a 'win' for Mu and Topolewski, and we do not intend to reward them for their litigation conduct, which inexplicably included the failure to inquire about the status of their case after their attorney had been relieved as counsel. If Mu and Topolewski do not comply with discovery requests on remand, or engage in any

conduct to further delay a resolution of this action, we are confident that the trial court will issue the necessary orders, and if appropriate, sanctions for noncompliance. Under no circumstance would it be equitable or just to conduct a second trial on the valuation of Adams's 19.7 percent interest without the financial documents to which Adams is entitled to obtain in discovery."

II.

Post-Remand Discovery Disputes

A. Adams's Discovery Requests, Motions to Compel, and Requests for Sanctions

On remand, Adams learned that EXPL had been placed in receivership in 2010 (before the first trial) and had no present value. He therefore sought discovery from Mu and Topolewski pertaining to the value of the New Companies, which Adams believed to be successors to EXPL. Mu and Topolewski opposed these discovery requests, contending that the requests exceeded the scope of the remand, the New Companies were not successors to EXPL, and Mu and Topolewski did not have authority to produce the documents requested.

In March 2015, the court granted Adams's motion to compel further responses to Adams's special interrogatories and requests for production of documents. Thereafter, Adams moved for issue and terminating sanctions against Mu and Topolewski, asserting they had "willfully ignored and violated" the court's orders.

In June 2015, the trial court referred the discovery disputes to a discovery referee. The referee concluded Mu and Topolewski had not complied with the court's discovery orders, there was good cause for Adams to obtain the "highly relevant and

necessary financial information that [defendants] have failed to turn over in this action," and defendants' discovery responses are "a continuation of the abuse of discovery by [defendants] since before the first trial." The referee therefore recommended that the trial court grant the motions to compel in their entirety, with responses due in 20 days. The trial court adopted the recommendations of the discovery referee.

B. Imposition of Evidence Sanctions

In November 2015, Adams again moved for evidence and issue sanctions, contending Mu and Topolewski had continued to violate the court's discovery orders. Mu and Topolewski opposed the motions.

The discovery referee submitted a report to the trial court, which acknowledged that Topolewski and Mu had turned over "in excess of 6,000 pages of documents," but noted that more than 90 percent of those documents concerned EXPL and [EXHK], which "were both shut down in 2010." As to the New Companies, Topolewski and Mu either "failed to turn over any documents or turned over incomplete and unreliable documents with respect to financial data." The referee therefore recommended that the trial court impose issue or evidence sanctions on Topolewski and Mu.

During a lengthy hearing in February 2016, the trial court found there was no doubt Topolewski and Mu had violated numerous court orders, were "still putting up excuses they were ordered to abandon in March 2015 and again in August 2015," and had "engaged in gross misuse of the discovery process." The court thus concluded that evidence sanctions, but not issue sanctions, should be imposed. The court explained: "This is a [single] issue case. The valuation of the 19.7 percent interest. So as far as I'm concerned, the appropriate level of sanctions would

be that the defense can present no evidence of their own regarding the valuation of the companies, either the defendants [or] all of the entities that [he] is seeking the discovery on, they cannot provide their own evidence regarding the valuation of those entities." The court clarified, however, that it was "not making a ruling as to the *admissibility* of plaintiff's evidence at trial[.] [T]hat is not the purpose of this report, that was never the purpose of ruling on discovery motions." Instead, "I am making a ruling on the ability of the defense to present evidence . . . of their own regarding . . . valuation." (Italics added.)

Following the hearing, the court issued a written order precluding Topolewski and Mu "from presenting any evidence at trial regarding the valuations of" the New Companies.

III.
Trial

Judge Rosenblatt retired shortly before trial, and the case was transferred to Judge Sotelo for further proceedings.

A. Plaintiff's Case

Adams's theory at trial was that Mu and Topolewski had transferred all of EXPL's assets to the New Companies, and thus that his damages were equal to the value of a 19.7 percent interest in the New Companies. In support, he introduced the following evidence.

1. Percipient testimony

In his case-in-chief, Adams called Mu, Topolewski, and Peter Downs, CEI's chief financial officer, to testify pursuant to Evidence Code section 776. They testified that CEI, which was incorporated in March 2010, currently had about 180 million shares outstanding. In 2012, CEI had sold shares of its stock for $0.25 per share, but by December 2015, the price had dropped to

$0.14 per share. Both Downs and Topolewski had options to purchase shares of CEI at $0.25 per share, but neither had exercised those options. CEI was the parent company of Cirrus Beijing and iQ-Hub, which produced and sold educational software to schools and hotels. CEI, Cirrus Beijing, and iQ-Hub were not currently profitable, and were not publicly offered on a Chinese stock exchange.

Adams testified on his own behalf that Manuel Salvisberg, an investor in EXPL, had told him that Mu and Topolewski intended "just to change the name of the company and I'd never be able to collect."

2. Opinion testimony

Adams did not call an expert to testify about the value of the New Companies. Instead, over Topolewski and Mu's objections,[6] Adams testified that he had personally valued the New Companies in excess of $300 million, using two different methodologies, which are discussed more fully below. Adams testified that the value of his 19.7 percent interest therefore was $60,282,000.

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[6] Counsel repeatedly objected to Adams's testimony on the grounds that Adams was not a valuation expert, and most of the documents on which his testimony was based contained hearsay and lacked foundation. The trial court overruled these objections, stating that the evidence sanctions prevented defendants from challenging plaintiff's testimony. The court said: "Keep [in] mind you are precluded from presenting evidence of valuation[.] [C]hallenging by way of cross-examination both credibility, believability[,] . . . foundation is essentially presenting."

3. Stipulation regarding EXPL

Near the conclusion of plaintiff's case, the parties stipulated that EXPL had been valueless since at least March 29, 2010.

B. Defendants' Case

Defense counsel called Adams and Topolewski and attempted to elicit testimony concerning the relationship between EXPL and the six New Companies. Specifically, counsel sought to elicit testimony he said would show "that EXPL was properly foreclosed on and the assets were received in an appropriate manner and there is no reason to find any sort of continued relationship, that what happened was actually very normal in a very routine business relationship." Defense counsel argues this evidence was not precluded by the evidence sanctions because "the ruling by Judge Rosenblatt did not in any way affect our ability to offer evidence with regard to the relationship amongst the entities."

The trial court sustained Adams's counsel's objections, finding that all of Topolewski and Mu's evidence was precluded by the evidence sanctions and the parties' stipulation that EXPL had no current value.

IV.
Amended Judgment, Statement of Decision, and Appeal

The court issued an amended judgment on August 12, 2016. In relevant part, it awarded Adams damages in the amount of $62,282,000,[7] plus costs, against Topolewski, Mu, and the New Companies, jointly and severally.

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[7] The award of $62,282,000 appears to be a typographical error. In its statement of decision, the trial court stated that the

The court filed a "Corrected and Final Statement of Decision" on October 3, 2016. In its statement of decision, the court found that EXPL was related to the New Companies; the New Companies had a value of $306,000,000; and the value of Adams's 19.7 percent share was $60,282,000. The court explained as follows:

"[I]n the 2010 trial, Adams was found to be qualified to give opinion testimony on the earnings, performance and the infusion of venture capital into EXPL and its related companies, and to provide his own opinion of the market value of his 19.7 percent interest in EXPL. Adams based his 2010 opinion in part on actual revenue streams he believed increased EXPL's value—indeed, he was critical that the expert the trial judge chose to rely on, Ted Vavoulis, had based his valuation solely on financial comparisons, which as the Court of Appeal noted, was incorrect as a matter of law.

"In this trial, Adams again gave testimony, but now supported by and with the additional benefit of (1) email admissions from Topolewski to his CFO Downs, regarding the value of stock ($1.70/share); (2) Topolewski's own (albeit limited) testimony that CEI has 180,000,000 shares outstanding; (3) documents (likely mistakenly) produced by CFO Peter Downs; and (4) dozens of IPO financial documents found on the Internet, many of them requiring certified translation from Chinese into English.

"Based on all of these documents, Adams gave a valuation of the related entities of $306,000,000 total value.

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reasonable value of Adams's 19.7 percent equity interest in EXPL was $60,282,000.

"This Court finds that Adams is qualified to give such opinion, as an owner entitled to possess the property he has been denied so many years and as a long-time business person and investor.

"As the owner of a 19.7 percent interest in those related entities, Adams testified that he was entitled to $60,282,000. . . .

"In this (corrected) Statement of Decision requested by Defendants pursuant to [Code of Civil Procedure section] 632, the Court finds that the reasonable valuation amount of Adams' 19.7 percent equity related to each of EXPL's related entities to be $60,282.000.00."

Topolewski, Mu, and the Specially Appearing Parties timely appealed from the judgment.

DISCUSSION

Topolewski and Mu contend that the judgment exceeded the scope of this court's remand; the trial court abused its discretion by excluding evidence concerning the relationship between EXPL and the New Companies; and Adams's valuation of the New Companies was not supported by substantial evidence. The Specially Appearing Parties contend that the court lacked personal jurisdiction over them and violated their rights to due process by adding them to the amended judgment.

We have significant concerns about many of the issues raised on appeal, including the paucity of evidence introduced at trial on the relationship between EXPL and the New Companies, and the due process problems inherent in the trial court's entry of judgment against foreign companies that were never named as defendants and, therefore, have never appeared in this action. However, we need not reach these issues because our conclusion—that the evidence is insufficient to support the

damages award—is dispositive of the appeal. As we discuss, paragraph 2 of the judgment, which awards Adams damages against Topolewski, Mu, and the Specially Appearing Parties, is not supported by substantial evidence because Adams was not qualified to opine on the value of the New Companies, his valuation opinion was not based on competent evidence, and he did not employ an accepted valuation methodology.[8]

I.
Standard of Review

"Whether a plaintiff ' " ' "is entitled to a particular measure of damages is a question of law subject to de novo review." ' " ' " (*Pebley v. Santa Clara Organics, LLC* (2018) 22 Cal.App.5th 1266, 1273; *Markow v. Rosner* (2016) 3 Cal.App.5th 1027, 1050.) The amount of damages is a question of fact, and thus an award will not be disturbed on appeal if it is supported by substantial evidence. (*Pebley,* at p. 1273; *Markow*, at p. 1050.) The trial court's evidentiary rulings are reviewed for abuse of discretion. (*Pebley*, at p. 1273; *Moore v. Mercer* (2016) 4 Cal.App.5th 424, 444.)

II.
The Imposition of Evidence Sanctions Does Not Preclude Topolewski and Mu from Challenging the Absence of Substantial Evidence to Support the Judgment

Preliminarily, we address Adams's contention that because the trial court precluded Topolewski and Mu from introducing

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[8] Because our conclusion requires us to strike the challenged portion of the judgment, we do not reach any of the other issues raised by appellants.

evidence of valuation at trial, they should be precluded from challenging Adams's evidence on appeal.

Adams cites two cases in support of this proposition; neither supports it.[9] In *Mike Davidov Co. v. Issod* (2000) 78 Cal.App.4th 597, 609, and *Corenbaum v. Lampkin* (2013) 215 Cal.App.4th 1308, 1337–1338, this court held that a defendant who fails to comply with a court order to produce records of his or her financial condition may be estopped from challenging a punitive damages award based on lack of evidence of financial condition if defendant's records are the only source of information available to the plaintiff. We explained that because in these cases the defendants' records were plaintiff's only sources of information regarding defendants' financial condition, the defendants' disobedience of court orders prevented the plaintiffs from meeting their burdens of proof. (*Mike Davidov Co.,* at p. 609; *Corenbaum,* at pp. 1337–1338.)

The cited cases are not dispositive of the present appeal because, among other things, Adams has not made a showing that Topolewski and Mu were the only sources of financial information about the New Companies. Indeed, it appears that Adams could have obtained the information he sought from other sources, including from the New Companies themselves. We

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[9] Plaintiff cites a third case, *McArthur v. Bockman* (1989) 208 Cal.App.3d 1076, but it does not assist him. *McArthur* holds that the trial court abused its discretion by entering defendants' default as a sanction for failing to attend a court-ordered deposition. Because the present case does not concern a default judgment or terminating sanctions, the *McArthur* case does not appear relevant to the issues before us.

therefore will consider Topolewski and Mu's substantial evidence challenge on the merits.

III.
Substantial Evidence Does Not Support the Trial Court's Damages Award

As we have said, Adams was the only witness who testified about the value of the New Companies. Over Topolewski and Mu's repeated objections, Adams opined that the New Companies had a value of either $306,000,000, based on one methodology, or $320,000,000, based on an alternative methodology. The trial court concluded that Adams was qualified to opine on the value of the entities "as an owner entitled to possess the property he has been denied for so many years and as a long-time business person and investor," and it awarded damages based solely on Adams's valuation.

As we discuss, Adams was not qualified to testify about the value of the New Companies, either as an expert or as an owner. Moreover, his opinion was not based on competent evidence or on a reliable valuation methodology. Accordingly, Adams's opinion is not substantial evidence of the value of the New Companies.

A. Adams Was Not Qualified to Opine on the Value of the New Companies

Assuming that Adams's damages were properly based on the values of the New Companies, determining Adams's damages required valuing stock in closely held corporations—that is, stock that is not actively traded and, therefore, has no established market value. (*Hewitson*, *supra*, 142 Cal.App.3d at p. 882.) As courts have recognized, "the determination of the value of infrequently sold, unlisted, closely held stock is a difficult legal problem. Most of the cases illustrate there is no one applicable

formula that may be properly applied to the myriad factual situations calling for a valuation of closely held stock. [Citation.] It is, therefore, incumbent upon a court faced with such a problem to review each factor that might have a bearing upon the worth of the corporation and hence upon the value of the shares." (*Id.* at p. 888.)

Typically, parties rely on expert testimony to assist courts in resolving the difficult valuation issues posed by closely held companies. (E.g., *Ronald v. 4-C's Electronic Packaging, Inc.* (1985) 168 Cal.App.3d 290, 293–295; *Hewitson*, *supra,* 142 Cal.App.3d at pp. 879–880; *In re Marriage of Lotz* (1981) 120 Cal.App.3d 379, 383–384.) A person is qualified to testify as an expert if he "has special knowledge, skill, experience, training, or education sufficient to qualify the person as an expert on the subject to which his testimony relates." (Evid. Code, § 720, subd. (a).) " 'A trial court's decision that a proposed witness qualifies as an expert under Evidence Code section 720 is a matter within the court's broad discretion and will not be disturbed on appeal unless the defendant demonstrates a manifest abuse of that discretion.' " (*People v. Townsel* (2016) 63 Cal.4th 25, 45.)

We conclude that the trial court abused its discretion in finding Adams qualified to give expert testimony on the value of closely held corporations because Adams did not establish that he had the requisite knowledge, skill, experience, training, or education to qualify as a valuation expert. It is undisputed that Adams does not have a college degree, worked for much of his career as a salesperson and later as a managing director, and at the time of trial was running a small biotech firm. Other than at the first trial of this action, where the trial court rejected his

opinion, Adams had never offered expert testimony with regard to the valuation of a business. And, while Adams testified to having invested in many limited partnerships, nothing in his education or experience qualified him to give expert testimony on the value of closely held foreign companies.

Nor was Adams qualified to testify about the value of the New Companies as "the owner of 19.7 percent." Adams is correct that the value of property[10] may be established by "[t]he owner . . . of the property or property interest being valued" or "[a] person entitled to possession of the property." (Evid. Code, § 813, subds. (a)(2), (c)(1); see also *Fragale v. Faulkner* (2003) 110 Cal.App.4th 229, 240–241; *Contra Costa Water Dist. v. Bar-C Properties* (1992) 5 Cal.App.4th 652, 661.) But this principle does not apply in the present case because plaintiff unquestionably was *not* an owner of any of the New Companies. Nor was plaintiff a person "entitled to possession of the property" (Evid. Code, § 813, subd. (c)(1)): His claim in this litigation has always been to a share of the *value* of the companies, not a share of the companies themselves. Accordingly, Adams was not qualified to testify about the value of the New Companies pursuant to Evidence Code section 813.

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[10] Because we conclude that plaintiff is not an "owner," we need not decide whether Evidence Code section 813 applies only to real property, as Topolewski and Mu assert, or instead applies to all forms of ownership, including ownership of a company.

B. Adams's Valuation Testimony Was Not Based on Competent Evidence

Adams's testimony does not support the damages award for a second, independent reason: It was not based on competent evidence of the New Companies' values.

Even if a witness has the necessary expertise to offer expert testimony, his or her opinion " ' "has no value if its basis is unsound. . . . Evidence Code section 801, subdivision (b), states that a court must determine whether the matter that the expert relies on is of a type that an expert reasonably can rely on 'in forming an opinion upon the subject to which his testimony relates.' . . . We construe this to mean that the matter relied on must provide *a reasonable basis for the particular opinion offered*, and that an expert opinion based on speculation or conjecture is inadmissible." ' [Citation.] In other words, assumptions which are not grounded in fact cannot serve as the basis for an expert's opinion: ' "[T]he expert's opinion may not be based 'on assumptions of fact without evidentiary support [citation], or on speculative or conjectural factors . . . .' " ' " (*People v. Wright* (2016) 4 Cal.App.5th 537, 545–546 (*Wright*).)

" '[A]n expert's opinion based on assumptions of fact without evidentiary support [citation], or on speculative or conjectural factors [citation], has no evidentiary value [citation] and may be excluded from evidence. [Citations.] Similarly, when an expert's opinion is purely conclusory because unaccompanied by a reasoned explanation connecting the factual predicates to the ultimate conclusion, that opinion has no evidentiary value because an "expert opinion is worth no more than the reasons upon which it rests." ' [Citation.] 'An expert who gives only a conclusory opinion does not *assist* the [trier of fact] to determine

what occurred.' " (*Sanchez v. Kern Emergency Medical Transportation Corp*. (2017) 8 Cal.App.5th 146, 155; see also *Wright, supra,* 4 Cal.App.5th at p. 545 [" 'even when the witness qualifies as an expert, he or she does not possess a carte blanche to express any opinion within the area of expertise. [Citation.] For example, an expert's opinion based on assumptions of fact without evidentiary support [citation], or on speculative or conjectural factors [citation], has no evidentiary value [citation] and may be excluded from evidence.' "]; *Bushling v. Fremont Medical Center* (2004) 117 Cal.App.4th 493, 510.)

Applying these standards, courts have held that testimony was not substantial evidence of a business's value where a witness applied a defective valuation method or made factually unfounded assumptions. (See, e.g., *Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 776–778 [in assessing a small business's lost profits, an expert improperly assumed a future market share far greater than actual market share, and compared the relevant business to significantly larger businesses]; *Pacific Gas & Electric Co. v. Zimmerman* (1987) 189 Cal.App.3d 1113, 1128–1137 [in assessing value of land taken through eminent domain, expert erred in relying on temporally remote sales and giving no consideration to more comparable transactions]; *Hewitson*, *supra*, 142 Cal.App.3d at pp. 884–886 [expert erred in valuing a closely held corporation by reference to sales of large publicly traded corporations, in view of differences between the two types of corporations and the scarcity of comparable companies]; *In re Marriage of Rives* (1982) 130 Cal.App.3d 138, 150–151 [in valuing a business, expert improperly assumed future production levels far greater than any

actually achieved, and improperly considered husband's postmarital contribution to business].)

In the present case, Adams testified that he valued the entities using two separate methodologies—(1) multiplying the number of shares of CEI by a purported share price, and (2) deriving the purported income of CEI's subsidiaries, Cirrus Beijing and iQ-Hub, and then multiplying their income by a "revenue multiplier." As we now discuss, Adams's testimony does not support the judgment because it was based on factually unfounded assumptions, unauthenticated documents, and an unproven valuation methodology.

1. Valuation Based on Purported Share Price

Adams testified that he valued the New Companies using a share price ($1.70) described in a September 29, 2015 email between Topolewski and Downs, and a total share number (180,000,000) to which Topolewski had testified at trial. Adams multiplied these two numbers to conclude that the entities had a total value of $306,000,000. ($1.70 x 180,000,000 = $306,000,000.) He then multiplied 306,000,000 by 19.7 percent to derive his claimed damages of $60,282,000. The trial court adopted this valuation in awarding Adams damages.

There are many problems with Adams's analysis, the most fundamental of which is that it is based on two numbers that appear to have nothing to do with one another. It is true, as Adams says, that Topolewski testified that CEI had 180 million shares of stock outstanding at the time of trial. It is also true that on September 29, 2015, Downs sent Topolewski an email captioned, "Revision for Series A," in which he asked, "how was the $1.70 per share price derived?" But the September 29, 2015

email does not refer to CEI, and Adams suggests no reason to infer that the "$1.70 per share price" referred to stock in CEI.[11]

Moreover, nothing in the email or the attachment suggests that any buyer ever actually purchased shares at $1.70 per share. While it is true that a closely held corporation can be valued by using "recent sales of the unlisted stock, which were made in good faith and at arm's length, within a reasonable period either before or after the valuation date" (*Hewitson*, *supra*, 142 Cal.App.3d at p. 882), the email on which Adams relies describes a stock *offering*, not completed stock *purchases*. As such, it is not evidence of actual sales on which a company valuation may be based.

For all of these reasons, Adams's testimony that CEI had a value of $306 million is wholly without foundation. It therefore does not constitute substantial evidence to support the judgment. (*Wright, supra,* 4 Cal.App.5th at p. 545 [" 'Although it is true that the testimony of a single witness, including the testimony of an expert, may be sufficient to constitute substantial evidence [citation], when an expert bases his or her conclusion on factors that are "speculative, remote or conjectural," or on "assumptions . . . not supported by the record," the . . . opinion "cannot rise to

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[11] Indeed, the document Adams testified was attached to the September 29 email makes clear that the stock being discussed was not stock in a $300 million company. To the contrary, the attachment describes an offer to sell stock in a company, Qooco, with projected 2015 revenues of only $6 million, and it describes a limited sale of $10 million worth of preferred ("Series A") shares, *not* a sale of hundreds of millions of shares of common stock.

the dignity of substantial evidence" and a judgment based solely on that opinion "must be reversed for lack of substantial evidence." ' "].)

2. Valuation Based on Income Streams Enhanced by a "Revenue Multiplier"

As an alternative to the valuation method just discussed, Adams valued CEI at $320 million by assuming annual income streams for its subsidiaries, Cirrus Beijing and iQ-Hub, and then multiplying these income streams by a "revenue multiplier." Specifically, Adams testified that he assumed Cirrus Beijing had 400 or 500 partner schools, each school had 450 students, and each student paid $30 per month for 12 months. He therefore assumed that Cirrus Beijing had annual income of between $64,800,000 and $81,000,000, which he multiplied by a "revenue multiplier" of three, to project a market value of between $194,400,000 and $243,000,000. (400 schools x 450 students x $30/month x 12 months x 3 = $194,400,000; 500 schools x 450 students x $30/month x 12 months x 3 = $243,000,000.)

Adams valued iQ-Hub using a similar method. He testified that he assumed iQ-Hub had more than 1,020 partner hotels, each hotel had 200 employees, and each employee paid $15 per month for 12 months. He therefore assumed that iQ-Hub had annual income of $36,720,000, which he multiplied by the same "revenue multiplier" of three, to project a market value of $110,160,000. (1,020 hotels x 200 employees x $15/month x 12 months x 3 = $110,160,000.)

Adams provided scant evidentiary support for any of the factual assumptions on which he based his calculations. With regard to Cirrus Beijing, Adams testified that his estimate of the number of partner schools was based on an article he found

online in which Mu's husband, Peishing Gao, was quoted as saying he believed the company would have more than 500 partner schools by the end of 2016. The number of students per school was based on "other discovery documents," none of which were identified, and the price per student was based on "my own experience with the company what we were selling the product for initially." With regard to iQ-Hub, Adams testified that his estimate of the number of partner hotels was based on "Downs['s] confirm[ation] yesterday that they had 1,200";[12] Adams did not explain the basis for any of his other assumptions. Adams also gave no explanation of his use of a revenue multiplier or of his choice of a multiplier of three.

Moreover, almost all of the documents on which Adams relied to calculate value had, by his own admission, been obtained from the Internet, and were admitted at trial, over defendants' objection, without proper authentication. "To be relevant, and thus admissible, a writing must be authenticated as being what it is claimed to be. (Evid. Code, §§ 1400, 1401; *People v. Lindberg* (2008) 45 Cal.4th 1, 52–53.)" (*People v. Melendez* (2016) 2 Cal.5th 1, 23.) Adams made no effort to authenticate any of the documents he introduced into evidence, and thus his opinion regarding the value of the New Companies was based on assumptions of fact that had no reliable evidentiary support.

Further, Adams did not explain why his valuation methodology was sound—that is, why, even if the underlying income numbers were accurate, using annual income (without

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[12] On appeal, Adams has not provided a citation for this testimony.

accounting for expenses) and a "multiplier" of three would yield the companies' fair market values. While it is true that courts have recognized a number of different methodologies to value closely held businesses, we are not aware of *any* authority for the proposition—nor does Adams cite us to any—that income times a multiplier yields an accurate estimate of a company's value. (Compare *Ronald v. 4-C's Electronic Packaging, Inc., supra,* 168 Cal.App.3d at p. 300, fn. 4 [discussing five valuation methods: adjusted net worth, capitalization of income stream, capitalization of earnings before interest and tax, discounted cash flow, and market comparables]; *Hewitson*, *supra*, 142 Cal.App.3d at pp. 881–887 [discussing price-earnings ratio method, as modified by consideration of eight factors identified in Internal Revenue Service Ruling 59–60].)

Finally, Adams's valuation method appears to closely resemble that used by his expert in the first trial of this matter, which we have already rejected as unsound. At the first trial, Adams's expert, Vavoulis, assumed that EXPL's 2010 revenues were $121 million based on the company's 2006 business prospectus, and he derived "a multiple" of 2.6 "by comparing the financial statements of similar publicly held corporations and multiplied EXPL's projected revenue by that multiple to value EXPL." We held this valuation was erroneous as a matter of law because it was based solely on financial comparisons of publicly held corporations. Adams's analysis is, on its face, very similar to Vavoulis's: Adams assumed an income stream and then enhanced it with a multiplier similar to the one Vavoulis used. His bare assertion that in making this calculation he considered

"all of" the *Hewitson* factors is not substantial evidence that he did so.[13]

C. Conclusion

We find ourselves, once again, in the position of striking portions of a judgment against Topolewski and Mu notwithstanding their failure to participate appropriately in this litigation. We recognize, moreover, that Topolewski's and Mu's failures to respond to discovery, even after being ordered to do so, seriously complicated Adams's ability to marshal the evidence he needed to prove his case. Nonetheless, the evidentiary sanctions against Topolewski and Mu did not relieve Adams of his burden of proof, including his obligation to support his claims with admissible, reliable evidence.

Because the evidence was insufficient to support the damages award against Topolewski, Mu, and the Specially Appearing Parties, we strike paragraph 2 of the judgment. We do so, moreover, without granting a retrial on the issue. "When the plaintiff has had full and fair opportunity to present the case, and the evidence is insufficient as a matter of law to support plaintiff's cause of action, a judgment for defendant is required and no new trial is ordinarily allowed, save for newly discovered evidence." (*McCoy v. Hearst Corp.* (1991) 227 Cal.App.3d 1657, 1661; see also *Cardinal Health 301, Inc. v. Tyco Electronics Corp.* (2008) 169 Cal.App.4th 116, 153–154 ["If the plaintiff had a 'full and fair opportunity' to present the supporting evidence, and the

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[13] Of course, because Adams has not explained the source of his "revenue multiplier," we cannot know whether he based it on the value of publicly held corporations or on something else. But Adams cannot camouflage an unsound methodology by failing to articulate the assumptions on which it is based.

evidence was insufficient as a matter of law to support a damages award, a reviewing court may strike the award without ordering a retrial."]; see also *Baxter v. Peterson* (2007) 150 Cal.App.4th 673, 681 [when damages award is reversed based on the insufficiency of the evidence, no retrial of the issue is required].)

DISPOSITION

We modify the judgment by striking paragraph 2, which awarded judgment in favor of Adams and against Mu, Topolewski, Cirrus Education, Inc., Qooco, Inc., Qooco Entities, Cirrus Ltd., Cirrus (Beijing) Co. Ltd., iQ-Hub Pte Ltd., and Acquire Mobile, jointly and severally, in the amount of $62,282,000, plus costs. In all other respects, the judgment is affirmed. Each party shall bear its own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

EDMON, P. J.

We concur:

EGERTON, J. DHANIDINA, J.