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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 FIVE

STEPHEN P. ROBINSON, Plaintiff and Appellant, v. KEVIN YOUNG KEEN CHANG et al., Defendants and Respondents.	B270389, B272295 (Los Angeles County Super. Ct. No. EC056563)

APPEAL from judgment and orders of the Superior Court of Los Angeles County, Mary H. Strobel and Donna Fields Goldstein, Judges. Affirmed.

Stephen P. Robinson, in pro. per., for Plaintiff and Appellant.

Park & Lim, Heesok Park, Dennis McPhillips and Jessie Y. Kim for Defendant and Respondent Uniti Bank.

Law Offices of Torres & Brenner and Anita Susan Brenner for Defendants and Respondents Margaret and Rick Jesmok.

Donald E. Cooper, in pro. per., for Defendants and Respondents Kevin Young Keen Chang, Jayne Eun Mee Chang and Brandon Min Hyuk Chang.

I. INTRODUCTION

Plaintiff Stephen P. Robinson appeals from a judgment and costs orders. Named as defendants are: Donald E. Cooper; Kevin Chang, Jayne Eun Mee Chang, and Brandon Min Hyuk Chang (collectively the Changs); and Rick and Margaret Jesmok (the Jesmoks). Uniti Bank is also a respondent in this appeal. Plaintiff and Cooper are attorneys who represented the Changs in a lawsuit. Following a settlement of that lawsuit, a dispute occurred between plaintiff and Cooper and the Changs as to how much plaintiff was owed pursuant to a contingency fee agreement. Namely, there was a question as to which one of two contingency fee agreements controlled. There was also a dispute as to what percentage of the attorney fees were owed to plaintiff. The Jesmoks and Uniti Bank separately had judgment liens on the Changs' settlement amount. After a trial, the court found the agreement asserted by Cooper and the Changs controlled. The trial court in a subsequent order denied several costs requested by plaintiff and granted the Changs' requested costs. We affirm the judgment and orders. We also grant the Jesmoks' motions to dismiss the appeals as to them.

II. BACKGROUND

As a preliminary matter, we note that plaintiff has failed to comply with the California Rules of Court in the preparation of the briefs he submitted in these appeals. California Rules of Court, rule 8.204(a)(1) provides in pertinent part: "Each brief must: [¶] . . . [¶] (B) State each point under a separate heading or subheading summarizing the point, and support each point by argument and, if possible, by citation of authority . . . ." Here, plaintiff's opening brief of his merits appeal includes a section entitled "Elemental Defenses" in which he lists 17 purported elements (two of which have 10 and 64 additional sub-headings) that defendants were supposedly required to prove. Plaintiff however failed to present any argument regarding these elements. Plaintiff also listed 26 affirmative defenses (with 4 defenses having sub-headings ranging in number from 3 to 10) that plaintiff purportedly demonstrated.

Moreover, within the 240 pages he submits with respect to both appeals, there is very little information that is helpful to this court. In addition, he devotes several pages to cast aspersions on the integrity of parties involved in the case.[1] While

[1] Plaintiff's reply briefs, which very much duplicate each other, illustrate this point. He claims that respondents Cooper and Chang have resorted "to contextomy; fabrication; equivocation; red herring (straw man argument); conjecture; fact–inversion; presentism (extrajudicial *nunc pro tunc* fallacy); *fallacious* arguments–from–authority; double standard; begging the question; victimizing-the victim (the nuts-and-sluts defense); non-sequitur; false dichotomy, and ad hominem." Ironically, he follows this passage with the accusation that respondents' "strategy is to sow seeds of confusion."

we do have the authority to strike such briefs,[2] we nonetheless exercise our discretion in this instance to consider the appellant's legal claims that we are able to decipher from his papers and the respondents' briefs.

A. *Underlying Action*

Plaintiff and Cooper represented the Changs in their lawsuit against La Cañada Unified School District and four of its employees (the school defendants). The Changs asserted the school district used Brandon[3], the son of Kevin and Jayne, as a drug informant.

Plaintiff, Cooper, and the Changs entered into a contingency fee agreement for their services. Plaintiff drafted the first contingency fee agreement (first fee agreement) and sent it to Cooper on September 8, 2008. Section 8 of the first fee agreement provides: "COUNSEL's fee for prosecution of CLIENTS' claim will be a percentage of any amount recovered after deduction of unreimbursed costs advanced by COUNSEL."

On September 11, 2008, plaintiff sent via e-mail to Cooper a revised contingency fee agreement (second fee agreement). Plaintiff indicated the second fee agreement reflected the changes discussed between him and Cooper. Section 8 of the second fee

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[2] See, e.g., *People v. Freeman* (2013) 220 Cal.App.4th 607, 610-611 (court granted Attorney General's request to strike opening brief because it was unintelligible).

[3] We will refer to members of the Chang family by their first name when necessary to distinguish them. No offense is intended.

agreement provides: "COUNSEL'S fee for prosecution of CLIENTS' claim will be a percentage of any amount recovered, except, if required by the court as to the minor, Brandon Chang, COUNSEL's fee will be a percentage of any amount recovered after deduction of unreimbursed costs advanced by COUNSEL."[4] Thus, under the first fee agreement, the contingency fee was a percentage of any amount recovered *after* deduction of unreimbursed advanced costs. For the second fee agreement, the contingency fee was a percentage of any amount recovered *prior* to any deduction of unreimbursed advanced costs.

On March 14, 2009, Cooper sent the signature page of the contingency fee agreement to plaintiff, which contained Cooper, Kevin, and Jayne's signatures. Plaintiff signed and faxed his signature back to Cooper on April 15, 2009. Plaintiff conceded he had signed the first fee agreement, though plaintiff would argue he did not know it was the first fee agreement.

Following a settlement conference, the school defendants agreed to pay $350,000 to the Changs as settlement in exchange for dismissal of all claims by all parties with prejudice. Plaintiff stated he was a "spectator" during the oral recording of the settlement before the court. The settlement funds were supposed to be deposited in Cooper's trust account. The settlement was judicially noticed pursuant to Code of Civil Procedure section 664.6 before Judge Mary Strobel.

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[4] The exception was not applicable.

B. *Uniti Bank and Jesmoks' Judgment Liens*

The Jesmoks sued the Changs and obtained a judgment against them on January 25, 2008. The Jesmoks later obtained a restitution order on January 27, 2010, and they recorded an abstract of judgment on April 8, 2010. On May 6, 2010, they filed a notice of lien on the underlying action and later filed an amended notice of lien claiming an amount of $112,290.40 plus interest relating to their judgment entered against the Changs.

On February 27, 2009, Uniti Bank filed a complaint against several defendants, including Jayne and Kevin Chang, for an unpaid loan. On May 14, 2009, Uniti Bank and Jayne and Kevin stipulated to a settlement pursuant to Code of Civil Procedure section 664.6. The defendants agreed to pay Uniti Bank $189,685.65 plus interest. On September 26, 2011, Uniti Bank filed a notice of lien in the Changs' lawsuit against the school district claiming the amount of $233,422.53.

C. *Interpleader and Bifurcation of Instant Action*

On May 9, 2011, plaintiff filed a notice of attorney's lien requesting $764,707.50 in attorney fees. On August 22, 2011, plaintiff filed his complaint in the instant action. A week later, he filed his first amended complaint in the same action. Attached as an exhibit to the first amended complaint was the first fee agreement, signed by plaintiff, the Changs, and Cooper. Plaintiff also alleged the $350,000 settlement should be interplead. The Jesmoks also asserted the settlement should be interplead.

On November 21, 2011, Judge Donna Fields Goldstein heard the Jesmoks' ex parte application for an order requiring

the school district to deposit the funds with the superior court instead of Cooper's trust account. On November 22, 2011, Uniti Bank notified the trial court in the instant action of its perfected lien and argued it was a claimant. On December 14, 2011, Judge Goldstein issued an order directing the school district to cancel its current settlement check and reissue a new check in the amount of $350,000 made payable to the clerk of the Los Angeles County Superior Court. Kevin, Jayne, Brandon, Cooper, the Jesmoks, plaintiff, and "all other duly perfected lienholders" were the claimants.

On December 14, 2011, Judge Goldstein also ordered the trial bifurcated. Plaintiff's claims regarding the attorney fees would be tried first, in Phase I. Uniti Bank and the Jesmoks' lien priority issues would be tried afterwards in Phase II. The school district deposited the check in interpleader with the court on February 24, 2012.

D. *Operative Pleading*

Plaintiff filed the second amended complaint, the operative pleading, on April 17, 2012. The first cause of action, for declaratory relief, asserted lien priority over all other liens and entitlement to fees and costs under sections 7, 12, and 13 of the contingency fee agreement. Sections, 7, 12, and 13 are the same in both the first and second fee agreements.[5]

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[5] Section 7 concerns the counsel's right to contractual or statutory attorney fees. Section 12 provides for payment to counsel if he withdraws as the client's attorney. Section 13 provides for payment to counsel if the client discharges him.

For the second cause of action, plaintiff asserted the settlement amount should be interplead. For the third cause of action, plaintiff sought contract reformation to change section 8 of the first fee agreement to the second fee agreement. Plaintiff alleged he and Cooper had discussed changing section 8 of the fee agreement to require advanced costs be reimbursed after calculation of the attorney fees. Plaintiff alleged that when he submitted the signed fee agreement in his first amended complaint as an exhibit, he did not realize it was a copy of an earlier version of the fee agreement. Plaintiff alleged Cooper switched the second fee agreement with the first fee agreement. Plaintiff also asserted Cooper should not recover any attorney fees because of alleged conflicts of interest in representing the Changs.

On May 29, 2012, Cooper and the Changs filed their answer to the second amended complaint. They asserted, inter alia, that plaintiff had signed a contingency fee agreement with the Changs to receive one-third of any recovery by their clients after payment of all costs. Additionally, they argued an oral agreement between Cooper and plaintiff, ratified by the Changs, indicated the contingency fee would be split equally between Cooper and plaintiff.

Pursuant to either fee agreement, the contingency fee was "[t]hirty-three and one-third (33-1/3) percent if a settlement is reached before the day of trial." On June 19, 2012, plaintiff, Cooper, and the Jesmoks stipulated: "Under California law, the maximum recovery by the Changs' attorneys in the underlying case is capped by the one-third contingency fee in the Contingency Fee Agreement for Legal Services." Pursuant to a stipulation on June 19, 2012, the parties do not dispute that the

attorney fees dispute had priority over the Jesmoks' or Uniti Bank's liens.

The Changs and Cooper filed a cross-complaint against plaintiff on February 3, 2012. On February 21, 2013, the Changs filed their second amended cross-complaint against plaintiff for breach of fiduciary duty and intentional infliction of emotional distress.[6]

E. *Phase I Trial*

At the trial for Phase I in April 2014, with Judge Strobel presiding, plaintiff, Cooper, Kevin and Jayne all testified. The trial court issued its statement of decision as to Phase I on December 18, 2014 and found against plaintiff on his claims for declaratory relief and reformation. It determined the first agreement was the operative contingency fee agreement and the fee-splitting agreement between plaintiff and Cooper was 50 percent each. It then found against the Changs on their claims of breach of fiduciary duty and intentional infliction of emotional distress against plaintiff. It calculated that Cooper's unreimbursed expenses were $18,691.48, plus $22,300 as a fee to Dr. Marian Stephens, an expert witness for the school district case. Plaintiff's unreimbursed expenses were $734.89. The interpleaded fund of $350,000 minus the unreimbursed expenses was $308,273.63. One third of that amount was the attorney fees -- $102,655.12. Thus, plaintiff and Cooper were entitled to $51,327.56 each as attorney fees. Adding the unreimbursed

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[6] Cooper and the Changs' cause of action for breach of contract was dismissed.

expenses, the trial court calculated plaintiff's share of the interpleaded funds was $52,062.45 and Cooper's share was $92,319.04.

F. *September 22, 2015 Order*

Plaintiff served his memorandum of costs requesting $73,138.05 on September 22, 2014. On October 9, 2014, Cooper and the Changs filed a motion to tax costs as to plaintiff's memorandum. On March 19, 2015, plaintiff moved for costs and attorney fees pursuant to Code of Civil Procedure sections 386 and 386.6, pertaining to his assertion that he interpleaded the settlement funds. On April 16, 2015, he moved for costs pursuant to Code of Civil Procedure 2033.420, subdivision (a) regarding 54 requests for admission. Plaintiff purportedly proved the requests for admission were true despite being denied by the Changs and Cooper. On August 11, 2015, he filed a "supplemental" memorandum of costs, asserting an additional $1,580 in costs.

On September 22, 2015, the trial court ruled on the motions. It found that plaintiff was not the prevailing party pursuant to Code of Civil Procedure section 1032. However, it determined plaintiff was entitled to costs pursuant to Code of Civil Procedure section 998, subdivision (c)(1), with respect to certain costs claimed related to defendants' cross-complaint. Plaintiff had offered to settle the defendants' cross-complaint on March 21, 2013, but defendants did not accept. The trial court taxed other costs, including plaintiff's request for expert witness fees under Code of Civil Procedure section 998, subdivision (c)(1). It denied plaintiff's motion for costs and attorney fees pursuant to Code of Civil Procedure section 386.6. It also denied plaintiff's

motion for costs relating to the requests for admission. The trial court apparently did not rule on the August 11, 2015, supplemental memorandum of costs.

G. *Phase II Trial and Judgment*

On October 6, 2015, the trial court held trial on Phase II and issued its statement of decision on November 17, 2015. Of the remaining $205,618.51, it found that the Jesmoks were entitled to $78,999.16, and Uniti Bank was entitled to $126,619.35. The Changs were entitled to nothing. Additionally, because the interpleaded funds were deposited in an interest accruing account, the trial court distributed the interest as follows, pursuant to the recovering party's share: 15 percent to plaintiff; 26 percent to Cooper; 23 percent to the Jesmoks; and 36 percent to Uniti Bank. It awarded costs to plaintiff and against the Changs in the amount of $13,333.96. Additional costs, if authorized by law, were permitted by separate motion. The trial court issued its final judgment on December 15, 2015.

H. *March 16, 2016 Costs Order*

The Changs and Cooper requested $6,980 in their memorandum of costs, filed in December 2015. On January 19, 2016, plaintiff moved to tax or strike costs, asserting he was the prevailing party under Code of Civil Procedure section 1032. On March 16, 2016, Judge Daniel Murphy granted the Changs and Cooper's memorandum of costs.

I. *Jesmoks' Motions to Dismiss Appeal*

The Jesmoks filed motions to dismiss the appeals as to them. They argue plaintiff waived claims concerning the interpleaded funds because the funds were already distributed and plaintiff failed to provide an undertaking to stay enforcement under Code of Civil Procedure section 917.1.

III. DISCUSSION

A. *Standard of Review*

Plaintiff asserts numerous issues but fails to provide the applicable standard of review in his opening briefs.[7] (See *Sonic Manufacturing Technologies, Inc. v. AAE Systems, Inc.* (2011) 196 Cal.App.4th 456, 465 ["Failure to acknowledge the proper scope of review is a concession of a lack of merit."].) We review a trial court's resolution of disputed facts for substantial evidence. (*SFPP v. Burlington Northern & Santa Fe Ry. Co.* (2004) 121 Cal.App.4th 452, 461-462.) "For evidence to be substantial, it must be of ponderable legal significance, reasonable, credible, and of solid value. [Citation.] The 'focus is on the quality, not the quantity, of the evidence.' [Citation.]" (*Jorge v. Culinary Institute of America* (2016) 3 Cal.App.5th 382, 396.) We review questions of statutory interpretation de novo. (*Cuiellette v. City of Los Angeles* (2011) 194 Cal.App.4th 757, 765.) We review a

[7] Plaintiff makes mention of de novo review under the heading "Standard of Review" in his reply briefs but cites to no authority for this proposition.

trial court's discretionary rulings for abuse of discretion. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 331.) "A ruling that constitutes an abuse of discretion has been described as one that is 'so irrational or arbitrary that no reasonable person could agree with it.' [Citation.]" (*Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 773.)

B. *Sufficiency of Evidence*

Plaintiff asserts that the Changs and Cooper did not prevail on their "volunteerism" and "chimera [contingency fee agreement]" defenses. He appears to be challenging the sufficiency of the evidence supporting the trial court's rulings against him as to which contingency fee agreement controlled and what the fee-splitting agreement between Cooper and plaintiff was.

On appeal, the judgment of the trial court is presumed to be correct, and appellant has the burden of demonstrating reversible error by an adequate record. (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574; accord *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 58.) Moreover, any issue not adequately raised or supported is deemed forfeited. (*Reyes v. Kosha* (1998) 65 Cal.App.4th 451, 466, fn. 6; accord *Diamond Springs Lime Co. v. American River Constructors* (1971) 16 Cal.App.3d 581, 608; see also *Del Real v. City of Riverside* (2002) 95 Cal.App.4th 761, 768 ["The appellate court is not required to search the record on its own seeking error."].)

In addition, issues not supported by adequate argument or legal authority are waived. (*In re Marriage of Falcone & Fyke*

(2012) 203 Cal.App.4th 964, 1004.) "'We are not bound to develop appellants' arguments for them. [Citation.] The absence of cogent legal argument or citation to authority allows this court to treat the contention as waived.' [Citations.]" (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956.) Plaintiff in the discussion section of his brief incorporates by reference arguments raised below rather than discussing the issues anew. Such arguments will be disregarded. (See *Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260, 294, fn. 20 [supreme court briefs purporting to incorporate by reference arguments in other appellate briefs were disregarded]; *Serri v. Santa Clara University* (2014) 226 Cal.App.4th 830, 854 [opening brief's incorporation by reference to plaintiff's arguments before trial court disregarded].)

Even if we were to consider plaintiff's arguments concerning the sufficiency of the evidence, substantial evidence supports the trial court's factual findings that plaintiff did not demonstrate reformation occurred. Civil Code section 3399, governing contract reformation, provides in pertinent part: "When, through fraud or a mutual mistake of the parties, or a mistake of one party, which the other at the time knew or suspected, a written contract does not truly express the intention of the parties, it may be revised on the application of a party aggrieved, so as to express that intention . . . ."

Substantial evidence supported the trial court's findings that the first agreement controlled. Cooper testified that he discussed with the Changs the benefit of "costs-off-the-top" in the fee agreement. He said that the only change to the first agreement that he discussed with plaintiff was a change to the Changs' address. A letter from Cooper to plaintiff dated

September 23, 2008 indicated: "Lastly you were going to modify the retainer to reflect the new address of the Changs." As noted by the trial court, there was no mention by Cooper of any change to section 8 of the contingency fee agreement. Kevin testified that Cooper had told him under the contingency fee agreement, costs would be "off the top" prior to calculating attorney fees. He further testified that the contingency fee agreement that he signed was the first agreement, which included costs deducted prior to calculating attorney fees.

Substantial evidence also supports the trial court's finding that the fee-splitting agreement was 50 percent each. Cooper testified that he and plaintiff agreed the attorney fees would be split equally. Cooper had told plaintiff that plaintiff would be doing the lion's share of the work because Cooper did not have the time to devote to the case. In exchange, Cooper would be advancing the costs. Kevin also testified that he was present for a meeting during which plaintiff and Cooper agreed the fee-splitting agreement between them was 50 percent each. A September 8, 2008 e-mail from plaintiff to Cooper indicated: "[Y]ou'll [Cooper] be advancing the costs (and I my time and energy) . . . ."

The trial court thus found there was no fraud, mutual mistake, or mistake by plaintiff that Cooper or the Changs knew or suspected. Additionally, substantial evidence supports the trial court's finding that the fee-splitting agreement between Cooper and plaintiff was 50 percent each. Plaintiff has not demonstrated error by the trial court. We decline to address any other arguments regarding these issues.

C. *Non-incurred Expenses*

Plaintiff asserts Cooper received expenses that he did not incur. He disputes Dr. Stephens' fees of $22,300 and claimed at trial that he negotiated an agreement whereby Dr. Stephens would accept $10,000 as payment in full. But plaintiff fails to present evidence on appeal demonstrating error as to Dr. Stephens' costs. As found by the trial court, Dr. Stephens continued to request $22,300 as her expert witness fees from Cooper even after plaintiff purportedly convinced Dr. Stephens to take $10,000. In this regard, the court cited to exhibits 1017-8 and 1017-9. Neither of those exhibits are in the record. As set forth in *Foust v. San Jose Construction Co., Inc.* (2011) 198 Cal.App.4th 181, 187, an appellant must affirmatively establish error by an adequate record. Because plaintiff has failed to do so, we presume the trial court's order as to Dr. Stephens's $22,300 fee was correct.

Plaintiff also contends Cooper's expenses of $5,351.05 were never incurred because they were "extracontractual." Plaintiff again fails to provide an adequate record for this assertion and thus has presented insufficient evidence to demonstrate error. The trial court's ruling as to Cooper's requested unreimbursed expenses is presumed correct.

D. *Interest on Plaintiff's Fees and Expenses*

Plaintiff asserts that under Civil Code section 3287, he is entitled to interest on his attorney fees and unreimbursed expenses from the date of the settlement. He appears to have raised this argument in relation to a motion for new trial, but he

never addressed the matter again after it was denied as irrelevant for purposes of plaintiff's new trial motion. Based on the record, plaintiff did receive interest on the fees and unreimbursed expenses. To the extent plaintiff is arguing he should have received more interest, plaintiff fails to support his contention with adequate argument. (*Cahill v. San Diego Gas & Electric Co., supra*, 194 Cal.App.4th at p. 956.)

E. *Interpleader Expenses and Interest*

Plaintiff asserts he is entitled to costs and attorney fees for interpleader under Code of Civil Procedure section 386.6, subdivision (a). He is wrong. Code of Civil Procedure section 386.6, subdivision (a) provides in pertinent part: "A party to an action who follows the procedure set forth in Section 386 or 386.5 may insert in his motion, petition, complaint, or cross complaint a request for allowance of his costs and reasonable attorney fees incurred in such action. In ordering the discharge of such party, the court may, in its discretion, award such party his costs and reasonable attorney fees from the amount in dispute which has been deposited with the court." Section 386, subdivision (b) provides in pertinent part: "Any person . . . against whom double or multiple claims are made, or may be made, by two or more persons which are such that they may give rise to double or multiple liability, may bring an action against the claimants to compel them to interplead and litigate their several claims."

Plaintiff was not subject to double liability as a stakeholder. (See *City of Morgan Hill v. Brown* (1999) 71 Cal.App.4th 1114, 1122.) As found by the trial court, plaintiff's initial goals were to acquire the entirety of the interpleaded

funds. Additionally, plaintiff fails to cite any evidence indicating he caused the funds to be interplead. While plaintiff contended he was in possession of the school district's first settlement check, he conceded that he never endorsed it because he needed the other payees to sign. As noted, Judge Goldstein ordered the school district to issue another check and deposit it with the court. Thus, plaintiff was not entitled to attorney fees under Code of Civil Procedure section 386.6, subdivision (a). Even assuming plaintiff can seek costs and attorney fees under Code of Civil Procedure section 386.6, subdivision (a), the trial court has discretion to award it. It declined to do so, finding the statute was not intended to reward an unsuccessful litigant. Plaintiff has not demonstrated the trial court abused its discretion.

Plaintiff also contends Uniti Bank should not receive any interpleader interest because it was not an interpleader party or a check payee. Plaintiff is incorrect. Code of Civil Procedure section 386.1 provides: "Where a deposit has been made pursuant to Section 386, the court shall, upon the application of any party to the action, order such deposit to be invested in an insured interest-bearing account. Interest on such amount shall be allocated to the parties in the same proportion as the original funds are allocated." As noted, the trial court found "all other duly perfected lienholders" were claimants for the interpleaded funds. On March 21, 2012, the Jesmoks filed a second amended cross-complaint for declaratory relief as to the interpleaded funds, and named Uniti Bank as a cross-defendant. Uniti Bank filed an answer in response on June 12, 2012. Uniti Bank also had a judgment lien in the underlying action. Thus, Uniti Bank is an interpleader party and may recover interest under Code of Civil Procedure section 386.1.

F. *Regarding the Jesmoks' Motions to Dismiss*

The Jesmoks' counsel submitted a declaration stating that the $350,000 interpleaded funds were distributed by the superior court and that there was no bond or undertaking posted to stay execution of the judgment. Plaintiff fails to address this crucial point in his opposition to the motions.

"[A] case becomes moot when a court ruling can have no practical effect or cannot provide the parties with effective relief. [Citation.]" *Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 454.) The judgment here concerning the interpleaded funds is stayed on appeal only by posting an undertaking. (Code Civ. Proc., §§ 917.1, subd. (b), 917.2; *Southern California Gas Co. v. Flannery* (2016) 5 Cal.App.5th 476, 489-491.) The only issue on appeal concerning the Jesmoks involves the interpleaded funds. Because the judgment was not stayed, and the interpleaded funds were distributed, the appeal as to the Jesmoks is moot. The Jesmoks' motions to dismiss are granted.[8]

[8] At oral argument the Jesmoks requested that the appeals be deemed frivolous as filed against them and requested costs and fees. We need not determine whether the appeals were frivolous as to the Jesmoks. Neither the Jesmoks nor this court moved for appellate sanctions pursuant to rule 8.276 of the California Rules of Court. We decline to impose sanctions on plaintiff.

G. *Expert Fees Relating to Section 998, Subdivision (c)(1) Costs*

Plaintiff complains that the trial court denied him expert witness fees under Code of Civil Procedure section 998, subdivision (c)(1), which provides: "If an offer made by a defendant is not accepted and the plaintiff fails to obtain a more favorable judgment or award, the plaintiff shall not recover his or her postoffer costs and shall pay the defendant's costs from the time of the offer. In addition, in any action or proceeding other than an eminent domain action, the court or arbitrator, in its discretion, may require the plaintiff to pay a reasonable sum to cover postoffer costs of the services of expert witnesses, who are not regular employees of any party, actually incurred and reasonably necessary in either, or both, preparation for trial or arbitration, or during trial or arbitration, of the case by the defendant."

The trial court found that the testimony of plaintiff's first expert, Ronald Talmo, was relevant to plaintiff's complaint regarding quantum meruit fees; however, the court found plaintiff's hourly rate was not a central issue of the cross-complaint. Gregory Ogden was called to testify as to legal issues within the trial court's province, namely whether Cooper had violated the Rules of Professional Conduct. The court thus denied awarding plaintiff expert witness fees under Code of Civil Procedure section 998, subdivision (c)(1) as to Talmo and Ogden, finding their testimony was not reasonably necessary. Once again, plaintiff does not present an adequate argument as to why the trial court erred or how the trial court abused its discretion.

H. *Prevailing Party*

Plaintiff asserts the trial court erred by not finding he was the prevailing party under Code of Civil Procedure section 1032 against the Changs and Cooper. Code of Civil Procedure section 1032, subdivision (a)(4) provides in pertinent part: "'Prevailing party' includes the party with a net monetary recovery, a defendant in whose favor a dismissal is entered, a defendant where neither plaintiff nor defendant obtains any relief, and a defendant as against those plaintiffs who do not recover any relief against that defendant. When any party recovers other than monetary relief and in situations other than as specified, the 'prevailing party' shall be as determined by the court, and under those circumstances, the court, in its discretion, may allow costs or not and, if allowed may apportion costs . . . ." "Generally, a trial court's determination of costs is reviewed for abuse of discretion. [Citation.] However, where 'the determination of whether costs should be awarded is an issue of law on undisputed facts, we exercise de novo review.' [Citation.]" (*MacQuiddy v. Mercedes-Benz USA, LLC* (2015) 233 Cal.App.4th 1036, 1051; *City of Long Beach v. Stevedoring Services of America* (2007) 157 Cal.App.4th 672, 678.)

Plaintiff contends he is the prevailing party under at least two of the situations identified in the first prong, "a defendant in whose favor a dismissal was entered" and "a defendant as against those plaintiffs who do not recover any relief" against that defendant. It also appears plaintiff is asserting he is a prevailing party under the "net monetary recovery" theory. The trial court concluded that it would analyze the question of costs for the complaint and cross-complaint as a whole. No party has disputed

this. (See Code Civ. Proc., § 1032, subd. (b) ["Except as otherwise expressly provided by statute, a prevailing party is entitled as a matter of right to costs in any *action* or proceeding."] (emphasis added).)

1. party with net monetary recovery

"In the statute, 'monetary relief' is synonymous with 'net monetary recovery' since a plaintiff is a prevailing party as a matter of right if he or she obtains 'monetary relief' but will be considered a prevailing party at the court's discretion if she 'recovers other than monetary relief.'" (*DeSaulles v. Community Hospital of Monterey Peninsula* (2016) 62 Cal.4th 1140, 1153.) Plaintiff asserts he prevailed on the interpleader cause of action. As discussed above, plaintiff did not succeed on interpleader. Plaintiff also failed to demonstrate the trial court erred regarding his contract reformation cause of action. Thus, defendants prevailed against plaintiff on these causes of action. As to the declaratory relief sought by plaintiff, as we will discuss below, it is unclear whether plaintiff actually prevailed. Additionally, declaratory relief is nonmonetary in nature and thus an award of costs is discretionary under Code of Civil of Procedure section 1032, subdivision (a)(4). (See *Wolf v. Walt Disney Pictures & Television* (2008) 162 Cal.App.4th 1107, 1142 [cross-complainant prevailed on declaratory relief, and thus prevailing party determination was in discretion of trial court]; *Texas Commerce Bank v. Garamendi* (1994) 28 Cal.App.4th 1234, 1248-1249 [declaratory relief as nonmonetary recovery].)

As for the Changs' cross-complaint against plaintiff, it is undisputed plaintiff prevailed. Thus, when the complaint and

cross-complaint are viewed jointly, as found by the trial court, plaintiff was not the prevailing party on this ground.

2. defendant in whose favor a dismissal is entered

Plaintiff was never dismissed from the action, so the second situation in the first prong, a "defendant in whose favor a dismissal is entered," does not apply. (See Code Civ. Proc., § 581 [discussing dismissal of action]; *Santisas v. Goodin* (1998) 17 Cal.4th 599, 606 [because plaintiffs voluntarily dismissed action with prejudice, prevailing party were defendants].)

3. defendant as against plaintiffs who do not recover any relief against that defendant

For the fourth situation, "a defendant as against those plaintiffs who do not recover any relief against that defendant," plaintiff's argument is unavailing. Again, plaintiff prevailed on the cross-complaint, but defendants prevailed against plaintiff on his complaint. Based on the court's findings, we find the trial court did not err by finding none of the express provisions for mandatory awarding of costs applied to plaintiff. (Code Civ. Proc., § 1032, subd. (a)(4).)

4. discretionary award of costs

Plaintiff asserts on appeal he prevailed on declaratory relief as to: the attorney lien priority over other judgment lienholders; entitlement to attorney fees; and entitlement to unreimbursed expenses. The court, in exercising its discretion

under Code of Civil Procedure section 1032, subdivision (a)(4), found plaintiff was not the prevailing party on declaratory relief. We find no abuse of discretion.

Substantial evidence supports the trial court's findings. The trial court found, "[A]s reflected in the [Phase I statement of decision], the primary dispute before the Court was the allocation of attorney fees from the $350,000 settlement. . . . The priority of lien issue was not adjudicated in Phase I of the trial; the lien priority issue was decided by stipulation, including by the parties to Phase 2 of trial." The parties stipulated well before trial that the attorney lien had priority over other liens. In plaintiff's demand for relief in his second amended complaint, plaintiff requested that he be entitled to a judgment in the amount equal to or greater than his lien. As noted, plaintiff's initial attorney's lien was for the amount of $764,707.50. Plaintiff subsequently stipulated his recovery was capped at thirty-three and one-third percent of the $350,000 settlement under the contingency fee agreement. As to section 7, attorney's right to contractual fees, plaintiff's theory of the case was to recover all the attorney fees, leaving Cooper with nothing. Plaintiff also sought to have the second contingency fee agreement be deemed the controlling agreement. As found by the trial court, "Plaintiff did not prevail on any of his arguments for obtaining more than 50% of 33 1/3% of the settlement proceeds. Plaintiff did not prevail on his argument that the parties agreed to [the second contingency fee agreement]." Plaintiff has failed to demonstrate the trial court erred by finding he was not the prevailing party under Code of Civil Procedure section 1032, subdivision (a)(4).

I. *Second Memorandum of Costs*

Plaintiff asserts he is entitled to all the costs listed in the second memorandum of costs. Because plaintiff was not the prevailing party, a trial court's award of costs are discretionary. (Code Civ. Proc., § 1032, subd. (a)(4).) The judgment and September 22, 2015 order were silent as to the second memorandum of costs. However, the doctrine of implied findings requires this court to infer the trial court made all factual findings necessary to support the judgment. (*Oceguera v. Cohen* (2009) 172 Cal.App.4th 783, 794; *Fladeboe v. American Isuzu Motors Inc., supra*, 150 Cal.App.4th at p. 58.) "A judgment or order of a lower court is presumed to be correct on appeal, and all intendments and presumptions are indulged in favor of its correctness. [Citations.]" (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133; *Denham v. Superior Court, supra*, 2 Cal.3d at p. 564; see *Mathew Zaheri Corp. v. New Motor Vehicle Bd.* (1997) 55 Cal.App.4th 1305, 1313 ["[W]e presume that the judgment is correct. As to factual matters not actually and unequivocally determined in the opinion of the trial court, we imply any necessary findings in support of the judgment which are supported by the evidence."].) Under the doctrine of implied findings, the trial court implicitly found the costs in the second memorandum should not be awarded.

Plaintiff has failed to demonstrate the trial court erred by abusing its discretion.

J. *Requests for Admissions Expenses*

Plaintiff asserts he is entitled to costs under Code of Civil Procedure section 2033.420, subdivision (a), which provides: "If a party fails to admit the genuineness of any document or the truth of any matter when requested to do so under this chapter, and if the party requesting that admission thereafter proves the genuineness of that document or the truth of that matter, the party requesting the admission may move the court for an order requiring the party to whom the request was directed to pay the reasonable expenses incurred in making that proof, including reasonable attorney[] fees." Plaintiff claims expenses for 54 requests for admission that he purportedly proved. The trial court denied plaintiff's motion for expenses for all of the requests for admission. The trial court found plaintiff had either: failed to demonstrate the truth of the requested admission; the admission was of no substantial importance; or the defendants had reasonable grounds to believe they would prevail on the matter. The exception enumerated in Code of Civil Procedure section 2033.420, subdivision (b) provides: "The court shall make this order unless it finds any of the following: [¶] (1) An objection to the request was sustained or a response to it was waived under Section 2033.290. [¶] (2) The admission sought was of no substantial importance. [¶] (3) The party failing to make the admission had reasonable ground to believe that that party would prevail on the matter. [¶] (4) There was other good reason for the failure to admit."

Plaintiff asserts without argument the trial court erred. Plaintiff fails to support his contention with adequate argument

and the argument is deemed waived. (*Cahill v. San Diego Gas & Electric Co., supra*, 194 Cal.App.4th at p. 956.)

K. *The Changs' Memorandum of Costs*

Plaintiff makes a technical argument concerning the judgment and the award of costs to Cooper and the Changs. Namely, plaintiff asserts Judge Strobel in the judgment required further costs to be determined by "motion." The judgment provided: "Additional costs, if authorized by law, to be determined per separate motion." Plaintiff contends a memorandum of costs is not a motion and thus Judge Murphy lacked jurisdiction to award costs.

Plaintiff is incorrect. Code of Civil Procedure section 1003 provides: "Every direction of a court or judge, made or entered in writing, and not included in a judgment, is denominated an order. An application for an order is a motion." A party seeks an order awarding costs by filing a memorandum of costs. The memorandum of costs here is thus a motion. Additionally, the memorandum of costs was timely filed after the judgment. (Cal. Rules of Court, rule 3.1700 (a)(1) [within 15 days after mailing of notice of entry of judgment].) Judge Murphy clearly could rule on Cooper and the Changs' memorandum of costs.

Plaintiff also argues the Changs could not recover costs under Code of Civil Procedure section 1032, subdivision (a)(4). As discussed above, plaintiff was not a prevailing party. The trial court, when considering the complaint and cross-complaint as a whole, could find that none of the four enumerated situations for a mandatory award of costs apply. In such an instance, the trial

court has discretion to award costs. (Code Civ. Proc., § 1032, subd. (a)(4).)

Plaintiff also asserts the Changs cannot recover costs because Code of Civil Procedure section 998, subdivision (c)(1) applies. Plaintiff failed to raise this argument in his motion to tax or strike the costs. Arguments not raised before the trial court are deemed waived. (*Doers v. Golden Gate Bridge etc. Dist.* (1979) 23 Cal.3d 180, 184-185, fn. 1.) Additionally, plaintiff failed to demonstrate the Changs' costs were prohibited. Code of Civil Procedure section 998, subdivision (c)(1) would proscribe the Changs from recovering *postoffer* costs. Plaintiff has not shown any of the Changs' awarded costs were postoffer costs. We therefore need not discuss any of the parties' additional arguments on this point.

IV. DISPOSITION

The judgment and orders are affirmed. The Jesmoks' motions to dismiss the appeals as to them are granted. Defendants Kevin Chang, Jayne Chang, Brandon Chang, Donald Cooper, Rick Jesmok, Margaret Jesmok, and Uniti Bank may recover their costs on appeal from plaintiff Stephen P. Robinson.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

LANDIN, J.*

We concur:

KRIEGLER, Acting P.J.

BAKER, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.