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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 TWO

NANCY PEARCE, Plaintiff and Appellant, v. ALMA ALLEN, Defendant and Appellant.	B269744 (Los Angeles County Super. Ct. No. BC551086)

APPEAL from a judgment and orders of the Superior Court of Los Angeles County. Gregory Keosian, Judge. Affirmed.

Law Offices of David A. Erikson, David A. Erikson and Antoinette Waller for Plaintiff and Appellant.

Liner LLP, Steven D. Liner, Wendy S. Dowse and Ellyn S. Garofalo; DLP Piper, Delilah Vinzon for Defendant and Appellant.

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Back in 2001, a woman quit her corporate job so she could help her then-boyfriend with his fledging business as a sculptor. Over the next several years, they grew the business and had a child together. In 2013, the sculptor ended the romance; in 2014, he ended the business partnership. The woman sued for, among other things, (1) breach of contract based on the sculptor's promise to support her for life if she provided him her professional and household services, and (2) quantum meruit. The jury returned a special verdict finding that the parties had a contract that the sculptor had fulfilled *and* also awarding her $780,000 under quantum meruit for the same services that underlie the contract the jury found to exist and to be fulfilled. The trial court granted a new trial on the ground that the special verdict was inconsistent. Both parties appeal. We conclude the trial court's grant of a new trial was appropriate. We also address the woman's challenges to some of the court's evidentiary and legal rulings from the first trial that may be relevant during the retrial.

FACTS AND PROCEDURAL BACKGROUND

I. Facts

Nancy Pearce (Pearce) and Alma Allen (Allen) were high school sweethearts in the 1980's; in 2001, their paths again crossed, and they rekindled their romance.

Soon after resuming their romance, they moved in together, and Pearce quit her job at Universal Studios to help Allen start a business as a sculptor. For the first 18 months, they lived off of Allen's savings; by 2003, however, the business was profitable enough to cover their living expenses.

Pearce and Allen divided the tasks of running the business. Allen designed and built sculptures and furniture, and managed

the studio. Pearce handled most of the other aspects of the business, including overseeing the business's accounting, sales, billing, promotional materials (including a website), payroll, and legal paperwork. Pearce would spend anywhere from 30 to 50 hours a week on these tasks.

For the first few years, Allen had a studio in downtown Los Angeles (where he made the sculptures and furniture), and a storefront in Venice Beach (where Pearce sold them). Thereafter, they bought and built a home and studio in Joshua Tree.

In 2009, they had a daughter. Throughout their time together, Pearce managed the household tasks (such as grocery shopping, cleaning, and paying personal bills).

In 2013, Allen was invited to present three of his sculptures at a very prestigious art exhibition in New York City.

In July 2013, Allen broke off his romantic relationship with Pearce. In May 2014, he terminated their business partnership.

II. Procedural Background

A. *Pearce's Complaint*

In July 2014, Pearce sued Allen. Among other claims, she sued for: (1) breach of a contract, pursuant to *Marvin v. Marvin* (1976) 18 Cal.3d 660 (*Marvin*), claiming that Allen had promised to "provide for" Pearce's "monetary . . . support . . . for the rest of [her] li[fe]" if she "quit her job" and took "care of organizing and maintaining his affairs" (the "*Marvin* claim"); (2) the reasonable costs of the "services" she "performed . . . [that] benefit[ted]" Allen (the "quantum meruit claim"); (3) breach of a separate contract to be partners in the sculpture business and split its profits (the "breach of partnership agreement claim"); (4) breach of fiduciary duty, for wrongfully dissolving the partnership in 2014, not properly accounting for its assets upon dissolution, and

"misappropriating the Partnership's opportunities"; (5) unjust enrichment; and (6) an accounting.[1]

B. *Pearce's Pretrial Position*

In discovery and pretrial filings, Pearce clarified that the "consideration" underlying her *Marvin* claim was *both* the "domestic" "services" she provided (namely, "childcare and homemaking") and the "professional" "services" she provided (namely, "running the administrative and marketing aspects of the [sculpture] business"). Pearce explained that her quantum meruit claim sought compensation for "[m]aintaining the couple's home and business affairs." In light of this overlap, Pearce acknowledged that her quantum meruit claim was an "alternative" to her *Marvin* claim.

C. *Trial*

Because the parties stipulated that the breach of partnership agreement claim was subsumed in Pearce's separate accounting claim and that the court would conduct a bench trial on the accounting claim, the case proceeded to jury trial only on Pearce's (1) *Marvin* claim, (2) quantum meruit claim, (3) breach of fiduciary duty claim, and (4) unjust enrichment claim.

1. *Joint statement of the case*

During jury selection, the trial court read the prospective jurors an agreed-upon summary of the case. In pertinent part, that summary explained the basis for her *Marvin* claim—specifically, that Allen promised to "provide financial support" "in

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1 In the same complaint, Pearce also alleged claims for (1) the appointment of a receiver, and (2) conversion. Those claims were subsumed in her claim for an accounting.

In a separate action in family court, Pearce sought child support.

exchange for her quitting her job and . . . maintaining the couple's household *and* business affairs."

2. *Opening statements*

During her opening statement, Pearce argued that she and Allen were "life partners and . . . business partners" and explained the issue the jury was to decide—namely, "should [Pearce] be compensated for her 12 years that she labored to develop this business and develop [Allen's] name, and should she receive the benefits from that?"

3. *Testimony*

Pearce testified that she and Allen "had plans to be together and to be a team," that their "whole relationship has been business/personal," that her decision to "quit[] [her] job and . . . work[] with him and hav[e] a family" was based on his promise "to take care of [her] for the rest of [her] life," and was why Allen "is sitting in this great position right now." Pearce also called an accountant as an expert witness who calculated "a reasonable compensation for . . . Pearce's efforts at her duties within the partnership" based on the assumption that "Pearce would be supported for her life and a business partner." Specifically, the accountant calculated six different yearly salaries for Pearce's business services and then multiplied them by her remaining life expectancy (of 38 years), yielding amounts that (once discounted to present value) ranged from $1.1 million to $1.245 million. He also prepared a spreadsheet that set out the totals for each of the six yearly amounts for anywhere from 12 to 38 years.

Allen testified that the promise he made to Pearce was more modest—namely, that he would support her (using his savings) until the sculpture business could support them.

4. *Nonsuit motion*

Allen moved for a nonsuit on all of Pearce's claims. The trial court denied the motion as to the *Marvin* claim and the quantum meruit claim, but granted it as to the breach of fiduciary duty and unjust enrichment claims. The court reasoned that the breach of fiduciary duty claim was subsumed in Pearce's yet-to-be-tried accounting claim.

5. *Jury instructions*

The trial court instructed the jury on the remaining two claims. With respect to the *Marvin* claim, the court defined the pertinent contract as follows: "[Pearce] and [Allen] entered into an implied or oral agreement in which [Allen] would support [Pearce] for life in exchange for [Pearce] providing business and household services, including working in the couple's business partnership and maintaining the couple's business and household affairs." With respect to the quantum meruit claim, the court explained that Pearce "claims that [Allen] owes her money for services rendered." The court did not define those services, but did instruct the jury that they must be services for which Pearce "has not [been] paid."

6. *Closing argument*

In closing, Pearce asked the question, "What was the contract?" and then answered it: "Allen would take care of both of them monetarily" if Pearce "quit her job [and] . . . devote[d] her time, energy, and efforts to promoting . . . Allen's art career and taking care of [him] and the household." She asked the jury to award her "fair and reasonable" damages of somewhere between $629,182 to $1,245,449 for running the "business together and [ha]ving a household together."

7. *Verdict*

The parties submitted a special verdict form to the jury. As to the *Marvin* claim, the jury found that Pearce and Allen had a "contract for support," and that Allen had fulfilled it. As to the quantum meruit claim, the jury found that Pearce was "owed money by . . . Allen for the reasonable value of her household and/or business services" and awarded her $780,000.

D. *Posttrial Motions*

Allen moved for judgment notwithstanding the verdict and for a new trial, in part because the special verdict was inconsistent.

The trial court granted the motion for a new trial. The court ruled that the special verdict was inconsistent because it ran afoul of the legal principle that a plaintiff may not recover on a quantum meruit claim when there is a contract covering the same subject matter. After examining Pearce's complaint, the evidence at trial, the jury instructions, and the litigation heretofore, the court ruled that Pearce's *Marvin* claim and her quantum meruit claim both sought to provide compensation for Pearce's provision of "business *and* household services" to Allen and thus involved the same subject matter.

The court denied Allen's motion for judgment notwithstanding the verdict as moot.

E. *Appeal*

Allen filed a timely notice of appeal challenging the trial court's denial of his motion for judgment notwithstanding the verdict. Pearce filed a timely notice of appeal challenging the court's grant of a new trial as well as some of its pretrial and trial rulings.

DISCUSSION

In the dueling appeals before us, Allen urges that his motion for judgment notwithstanding the verdict should have been granted, while Pearce urges that Allen's new trial motion should have been denied. These arguments boil down to two questions: (1) was the jury's special verdict inconsistent? and if so, (2) what is the proper remedy? If we conclude a new trial is warranted, we must also address Pearce's additional challenges to some of the trial court's rulings that will likely come up again during the retrial.

I. Validity of the Special Verdict

A. *Is the Special Verdict Inconsistent?*

A verdict is inconsistent if it is "*internally* inconsistent." (*Keener v. Jeld-Wen, Inc.* (2009) 46 Cal.4th 247, 268, fn. 27.) Among other ways, "'"[a]n inconsistent verdict may arise from an inconsistency between or among answers within a special verdict."'" (*Trejo v. Johnson & Johnson* (2017) 13 Cal.App.5th 110, 124 (*Trejo*), quoting *Oxford v. Foster Wheeler LLC* (2009) 177 Cal.App.4th 700, 716.) Answers are inconsistent "if there is no possibility of reconciling" them "with each other." (*Singh v. Southland Stone, U.S.A., Inc.* (2010) 186 Cal.App.4th 338, 357 (*Singh*).) Where, as here, the trial court did not ask the jury to clarify its special verdict, it falls to the trial court—and, on appeal, to us conducting an independent review—to evaluate the jury's answers through the lens of "'the pleadings, evidence and instructions'" to ascertain whether they are irreconcilable and hence inconsistent. (*Woodcock v. Fontana Scaffolding & Equip. Co.* (1968) 69 Cal.2d 452, 456-457 (*Woodcock*); *Trejo*, at p. 124.) In undertaking this task, we may not "infer findings in favor of the prevailing party" because "there is no presumption in favor of

upholding a special verdict." (*Zagami, Inc. v. James A. Crone, Inc.* (2008) 160 Cal.App.4th 1083, 1092 (*Zagami*); *Trejo*, at p. 124.)

The special verdict in this case involved Pearce's *Marvin* claim and her quantum meruit claim. A *Marvin* claim is a claim to enforce a contract that is either express (that is, written or oral) or implied in fact (that is, "manifested by [the parties'] conduct"). (*Marvin*, *supra*, 18 Cal.3d at pp. 665, 674, 684; Civ. Code, § 1621.) A quantum meruit claim asks a court to fashion an implied in law contract for the reasonable value of services that were not gratuitously rendered. (*Huskinson & Brown v. Wolf* (2004) 32 Cal.4th 453, 458; *Chodos v. Borman* (2014) 227 Cal.App.4th 76, 96 (*Chodos*); *Maglica v. Maglica* (1998) 66 Cal.App.4th 442, 449 (*Maglica*).) "A plaintiff may not, however, . . . recover on a [quantum meruit] claim if the parties have an enforceable agreement regarding" "the same subject matter." (*Klein v. Chevron U.S.A., Inc.* (2012) 202 Cal.App.4th 1342, 1388-1389; *Wal-Noon Corp. v. Hill* (1975) 45 Cal.App.3d 605, 613; *Hedging Concepts, Inc. v. First Alliance Mortgage Co.* (1996) 41 Cal.App.4th 1410, 1419.) The reason for this limitation is twofold: (1) awarding quantum meruit damages for services when there is already a contract between the parties covering those same services effectively rewrites that contract and allows the recovering plaintiff to "end run" around the terms of the contract to which she agreed (*Wal-Noon Corp.*, at p. 613; *Hedging Concepts, Inc.*, at p. 1419); and (2) allowing recovery under quantum meruit and contract for the same services runs afoul of the long-standing rule that a plaintiff must elect between the remedies of suing under quantum meruit (thereby treating a contract as rescinded) and suing for breach of contract (thereby

treating the contract as valid) (*Alder v. Drudis* (1947) 30 Cal.2d 372, 381-382; *B. C. Richter Contracting Co. v. Continental Casualty Co.* (1964) 230 Cal.App.2d 491, 499-500).

We agree with the trial court that the special verdict in this case was inconsistent. The pleadings, evidence, and instructions indicate that Pearce's *Marvin* claim was based on her provision of *both* household *and* business services. That is the position Pearce took prior to trial; it was what the jury was told at the outset of the case; it was what Pearce testified to when describing her agreement with Allen; it was what the court instructed the jury regarding the *Marvin* claim; and it was what Pearce argued in closing. The pleadings, evidence, and instructions do not explicitly specify whether Pearce's quantum meruit claim is based on her household services, her business services, or both; but, as the special verdict form indicted by its reference to "household *and/or* business services," the claim rests on *some* combination of those services. As a result, Pearce's *Marvin* claim and her quantum meruit claim seek recovery for at least some of the same services. As a result, the jury's special verdict finding that there *was* a *Marvin* contract for these services and that Pearce got what she bargained for is irreconcilably inconsistent with a finding that she is nevertheless still entitled to the reasonable value of those same services under quantum meruit.

Pearce resists this conclusion with five sets of arguments.

First, she argues that the trial court was powerless to evaluate the inconsistency of the special verdict because Allen either (1) invited the error, or (2) forfeited the error by not asking the court to have the jury clarify its special verdict. To be sure, the doctrine of invited error can bar a party from complaining of an error (including an error in a special verdict) that it induced

with its own conduct. (*Saxena v. Goffney* (2008) 159 Cal.App.4th 316, 328-329.) But that doctrine is inapplicable here. To begin, the inconsistency in the verdict stems from the nature of Pearce's claims, not from Allen's conduct in agreeing to jury instructions and a special verdict form that accurately reflect those claims. Further, the doctrine of invited error typically applies when the party's conduct is part of a "tactical decision" (*Mesecher v. County of San Diego* (1992) 9 Cal.App.4th 1677, 1686); there is nothing tactical about Allen's conduct in allowing Pearce to define her own claims.

As alluded to above, courts have the power to ask a jury to clarify potential inconsistencies in its special verdict (*Singh*, *supra*, 186 Cal.App.4th at p. 357; Code Civ. Proc., § 619), and a party's failure to request such clarification can sometimes constitute a forfeiture of the right to object to any uncorrected inconsistency (*Zagami*, *supra*, 160 Cal.App.4th at p. 1092, fn. 5; *Woodcock*, *supra*, 69 Cal.2d at p. 456, fn. 2; *Behr v. Redmond* (2011) 193 Cal.App.4th 517, 530; *Little v. Amber Hotel Co.* (2011) 202 Cal.App.4th 280, 299-300). Although one case Pearce cites, *Henrioulle v. Marin Ventures, Inc.* (1978) 20 Cal.3d 512, 521, could be read to suggest that the failure to request clarification *always* constitutes a forfeiture, no case has inferred such an absolute rule. Instead, the subsequent decisions have recognized a trial court's (and, by extension, an appellate court's) power to evaluate the inconsistency of a verdict even when there is no request for clarification, and have limited forfeitures to those situations in which the party's silence in the face of a seemingly inconsistent verdict was designed to "reap a "'technical advantage."'" (*Zagami*, p. 1092, fn. 5; *Woodcock*, at pp. 456-457 & fn. 2; *Behr*, at p. 530; *Little*, at p. 299.) Allen's silence was not

tactical because, as discussed below, he gained nothing by remaining silent.

Second, Pearce asserts that a special verdict is not inconsistent unless its answers are "beyond possibility of reconciliation" and "absolutely irreconcilable" (*Hasson v. Ford Motor Co.* (1977) 19 Cal.3d 530, 540 (*Hasson*), overruled in part on other grounds in *Soule v. General Motors Corp.* (1994) 8 Cal.4th 548; *Weisenburg v. Molina* (1976) 58 Cal.App.3d 478, 487 (*Weisenburg*)), and that the special verdict answers in this case do not satisfy this difficult-to-meet standard because Pearce can hypothesize a number of ways in which the jury's answers could be reconciled—perhaps the *Marvin* claim only reached household services, in part because the jurors intuited (although they were never instructed) that *Marvin* claims can *only* cover household services; perhaps the jury recognized that she and Allen did not have a "single, static agreement"; perhaps the jury accepted Allen's position that he only promised to care for Pearce for one year (leaving 12 years of their time as business partners to be compensated through quantum meruit); perhaps the jury heeded the wording of the jury instruction that a quantum meruit award was only appropriate when Allen still "owes her money for services rendered" and thus found that Allen *must* have still owed her money over and above what Pearce received under the *Marvin* claim?

We reject Pearce's argument because its central premise—that a special verdict is not inconsistent unless its answers are "absolutely irreconcilable"—is false. That premise is only true for cases in which the court is tasked with reconciling a jury's special verdict with its general verdict; in such cases, Code of Civil Procedure section 625 dictates that "[w]here a special finding of

facts is inconsistent with the general verdict, the former controls the latter." (Code Civ. Proc., § 625; *Hasson*, *supra*, 19 Cal.3d at pp. 540-541; *Weisenburg*, *supra*, 58 Cal.App.3d at p. 487.) This law does not apply where a court is tasked with reconciling answers on a single special verdict form. (*Mendoza v. Club Car, Inc.* (2000) 81 Cal.App.4th 287, 301-303 [noting that ""possibility of reconciliation"" standard "applies only to inconsistencies between general and special verdicts"]; *Trejo*, *supra*, 13 Cal.App.5th at p. 124, fn. 5 [same].) As a result, Pearce's various theories of what the jury might have done are not only at odds with the argument, evidence, and instructions actually presented in this case (as well as with the law to the extent Pearce suggests *Marvin* claims are limited to household services (*Whorton v. Dillingham* (1988) 202 Cal.App.3d 447, 452-453 [*Marvin* claims are not so limited]), but are also legally irrelevant.

Third, Pearce argues that, even if one focuses on what the jury in this case actually did rather than hypothesize what it could have possibly done, the jury's monetary award of $780,000 on her quantum meruit claim reflects compensation solely for her services to the sculpting business because $780,000 is the product of one of her accountant-expert's yearly amounts multiplied by the 12 years she worked for the business. Even if we accept this inference, it does not render the special verdict consistent because Pearce's *Marvin* claim, as explained above, *also* rested in part upon Pearce's provision of business services. There is still an impermissible overlap, and still an inconsistency with the jury's finding that Pearce was fully compensated for those services by the contract underlying the *Marvin* claim.

Fourth, Pearce contends that the judicial act of assessing whether the special verdict in this case is inconsistent interferes with the jury's right to determine the terms of an implied contact (*Cotran v. Rollins Hudig Hall Internat., Inc.* (1998) 17 Cal.4th 93, 112 (conc. & dis. opn. of Kennard, J.)), such that any posttrial assessment that does not indulge every presumption in favor of the verdict violates her right to a jury trial (see *Gallick v. Baltimore & Ohio R. Co.* (1963) 372 U.S. 108, 119). Pearce is asking us to construe a jury's right to define the terms of an oral or implied in fact contract as a mandate that we must let a special verdict stand no matter how much that verdict is internally inconsistent when viewed in light of the instructions, the evidence, and the argument that produced that verdict—as long as it is *possible* to theorize around the inconsistency. This is not the law, and it would invite plaintiffs to keep their contract claims as vague as possible, a result that is inimical to the litigation of such claims.

Lastly, Pearce asserts that Allen's "story" regarding his promises has changed over time, while hers has remained consistent. This is irrelevant to the consistency of the special verdict.

We accordingly conclude that special verdict is inconsistent.

B. *What is the Appropriate Remedy?*

The "proper remedy" for inconsistent verdicts is a new trial. (*Shaw v. Hughes Aircraft Co.* (2000) 83 Cal.App.4th 1336, 1344; *City of San Diego v. D.R. Horton San Diego Holding Co., Inc.* (2005) 126 Cal.App.4th 668, 682; *Trejo*, *supra*, 13 Cal.App.5th at p. 124.) This is the remedy called for by the statute authorizing a new trial (Code Civ. Proc., § 657, subd. 7), and is the remedy consistent with the general principle that "[w]here

there is an inconsistency between or among answers within a special verdict, both or all the questions are equally against the law." (*City of San Diego*, at p. 682; *Trejo*, at p. 124.) Allen's argument that the trial court erred in not granting judgment notwithstanding the verdict on the *Marvin* claim would require us to accept as definitive the jury's answer to the *Marvin* claim and to disregard its answers on the quantum meruit claim. For the reasons noted above, this we may not do. (*Stillwell v. The Salvation Army* (2008) 167 Cal.App.4th 360, 376 ["the remedy for such inconsistent verdicts is not to grant judgment as a matter of law"].)[2] On remand, however, Pearce should define the consideration for her *Marvin* claim and the specific services for which she seeks recompense under her quantum meruit claim; this will avoid any overlap and thus reduce the danger of another inconsistent verdict.

II. Issues During Retrial

A. *Goodwill*

Prior to trial, Allen moved to exclude evidence that the sculpture business had any goodwill value. Although the trial court initially ruled that Pearce was entitled to the value of the business's goodwill "at the time of dissolution" but "not entitled to . . . future profits as a result of the dissolution of the partnership," the court subsequently modified its ruling and ruled that Pearce "would not be entitled to 'goodwill' of the [sculpture] business after dissolution" because the value of the business came solely from Allen's "unique talent."

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2 In light of this conclusion, we have no occasion to comment on Pearce's argument that judgment notwithstanding the verdict is not appropriate because the jury's special verdict is supported by substantial evidence.

Pearce argues that the trial court erred in excluding evidence of goodwill, and thus in precluding her from collecting any damages for the loss of goodwill. We review evidentiary rulings for an abuse of discretion (*People v. Clark* (2016) 63 Cal.4th 522, 597), although a trial court abuses its discretion when it applies the wrong legal principles (*People v. Patterson* (2017) 2 Cal.5th 885, 894).

Whether the trial court erred in excluding goodwill—and whether it will do so again on remand—depends on how Pearce defines her *Marvin* claim. A business's goodwill is "'"the advantage . . . which is acquired by [that business] beyond the mere value of the capital stock, funds or property employed therein"'" and reflects "'"the general public patronage . . . it receives from constant or habitual customers . . . ."'" (*In re Marriage of Foster* (1974) 42 Cal.App.3d 577, 581-582 (*Foster*); Bus. & Prof. Code, § 14100 ["The 'good will' of a business is the expectation of continued public patronage"].) Goodwill exists for professional businesses that rely on the special skill and talent of their principals or employees, just as it does for businesses that do not. (*Foster*, at p. 582, fn. 2; *Smith v. Bull* (1958) 50 Cal.2d 294, 302-303.)

Whether a plaintiff is entitled to a share of that goodwill depends on who she is and why she is suing: If the plaintiff is a partner in a professional business suing for a share of the professional business's goodwill upon dissolution of that business, she is not entitled to that share (*Lyon v. Lyon* (1966) 246 Cal.App.2d 519, 525-526); but if the plaintiff is a spouse or cohabitant of a partner in a professional business suing for a share of the partner's goodwill in that business, she is entitled to that share as part of the dissolution of their marital (or

nonmarital) union (*Foster*, *supra*, 42 Cal.App.3d at p. 582; *In re Marriage of Lopez* (1974) 38 Cal.App.3d 93, 108-109; *Golden v. Golden* (1969) 270 Cal.App.2d 401, 404-405).

In light of these principles, whether Pearce is entitled to goodwill depends upon the nature of her *Marvin* claim. To the extent she is seeking a share of the goodwill of the sculpting business as a partner in that business and as part of Allen's dissolution of that business, she is not entitled to goodwill; to the extent she is seeking a share of the goodwill of that business as part of the dissolution of her cohabitation relationship with Allen, she may be entitled to a share of the sculpting business's goodwill.

B. *Unjust Enrichment*

Pearce argues that the trial court erred in granting nonsuit on her unjust enrichment claim. We review the grant of a nonsuit de novo. (*Legendary Investors Group No. 1, LLC v. Niemann* (2014) 224 Cal.App.4th 1407, 1412.) We conclude that the court properly granted nonsuit on this claim for two reasons. First, unjust enrichment is not a valid, independent cause of action. (E.g., *Durell v. Sharp Healthcare* (2010) 183 Cal.App.4th 1350, 1370; *Melchior v. New Line Productions, Inc.* (2003) 106 Cal.App.4th 779, 793.) Second, Pearce's claim for unjust enrichment is entirely duplicative of her quantum meruit claim. (*Chodos*, *supra*, 227 Cal.App.4th at pp. 96-97 ["'The underlying idea behind quantum meruit is the law's distaste for unjust enrichment'"]; *Maglica*, *supra*, 66 Cal.App.4th at p. 449 [same]; *Federal Deposit Ins. Corp. v. Dintino* (2008) 167 Cal.App.4th 333, 346 [equating "unjust enrichment, . . . quantum meruit [and] . . . restitution" as contracts implied by law and seeking recompense for services rendered].)

C. *Breach of Fiduciary Duty*

Pearce lastly argues that the trial court erred in granting nonsuit on her breach of fiduciary duty claim after finding it to be subsumed in her claim for an accounting. We independently agree with this ruling.

Pearce's breach of fiduciary duty claim rested on allegations that Allen "wrongfully terminat[ed]" the partnership and subsequently diverted partnership income, misappropriated partnership opportunities, directly competed with the dissolved partnership, and refused to account for the partnership's assets upon dissolution.

The first part of Pearce's claim is without merit because partners have an absolute right to dissolve a partnership. (*Page v. Page* (1961) 55 Cal.2d 192, 197 (*Page*); Corp. Code, §§ 16601, subd. (1), 16602, subd. (b) [defining "wrongful" dissolution as involving conditions not present here].)

The remaining parts of Pearce's claim do state a viable claim for breach of fiduciary duty insofar as partners owe one another a fiduciary duty in handling a partnership's assets during the dissolution process. (*Dickson, Carlson & Campillo v. Pole* (2000) 83 Cal.App.4th 436, 445 (*Dickson*); *Laux v. Freed* (1960) 53 Cal.2d 512, 522; *Page*, *supra*, 55 Cal.2d at p. 197.) However, "[t]he remedy for breach of that duty ordinarily is money damages, which can be credited in an accounting." (*Dickson*, at p. 445.) Pearce's pending claim for an accounting is therefore sufficient to equalize any misuse of the partnership's resources stemming from any breach of fiduciary duty; a separate claim for breach of fiduciary duty is duplicative and hence unnecessary. Pearce insists that she should be able to present her grievances "in the context" of a breach of fiduciary duty

claim, but nowhere explains why the atmospherics matter where the end result will be the same.

DISPOSITION

The judgment and orders are affirmed. Each party is to bear its own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
HOFFSTADT

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
CHAVEZ