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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 SEVEN

YUNHWAN PARK, Plaintiff and Respondent, v. JOONG-ANG DAILY NEWS CALIFORNIA, INC. et al., Defendants and Appellants.	B268678 (Los Angeles County Super. Ct. No. BC508362)

APPEAL from a judgment and order of the Superior Court of Los Angeles County, Yvette M. Palazuelos, Judge. Affirmed in part, reversed in part.

Lee Law Offices and W. Dan Lee for Defendants and Appellants.

Law Offices of Barry G. Florence, Barry G. Florence; Lee Law Offices and Thomas M. Lee for Plaintiff and Respondent.

Yunhwan Park sued his former employer Joong-Ang Daily News California, Inc. doing business as Korea Daily (Korea Daily) and its parent company Joong-Ang Media Network USA, Inc. (Media Network) asserting causes of action for various wage-and-hour Labor Code violations, as well as for fraud and unfair business practices. Following a bench trial, the court entered judgment in favor of Park for $119,088.29 plus attorney fees and costs. On appeal Korea Daily and Media Network contend the court's ruling was not supported by substantial evidence and challenge the award of attorney fees. We reverse the findings on Park's causes of action for violation of Labor Code section 970,[1] inducing him to move to California based on false representations, and fraud and otherwise affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Park's Claims*

Park filed this lawsuit against Korea Daily and Media Network in May 2013 alleging causes of action for failure to pay overtime compensation (§§ 510, 1194), waiting time penalties (§ 203), failure to furnish itemized wage statements (§ 226), failure to provide meal and rest periods (§ 226.7), failure to reimburse for work expenses (§ 2802), making false representations to induce an employee to move to California (§ 970), fraud and unfair business practices (Bus. & Prof. Code, § 17200 et seq.). The court held a four-day nonjury trial in December 2014.

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[1] Statutory references are to the Labor Code unless otherwise stated.

2. *Evidence at Trial*

a. *Relationship between Korea Daily and Media Network*

Joong-Ang Ilbo, Co. Ltd. is a newspaper corporation based in the Republic of Korea with subsidiaries within and outside the country. Joong-Ang Ilbo is the 100-percent owner of Media Network, a holding company headquartered in Los Angeles. Media Network, in turn, has six subsidiaries in the United States, including Korea Daily, which publishes newspapers for Korean communities. Media Network is the 100-percent owner of Korea Daily. Korea Daily is also headquartered in Los Angeles and has the same business address as Media Network.

A-Printing Co., Ltd. is a Korean subsidiary of Joong-Ang Ilbo and is responsible for printing newspapers for the parent company throughout Korea. A-Printing's and Joong-Ang Ilbo's headquarters are located at the same address in Seoul, Korea.

b. *Park's transfer to the United States*

Park worked at A-Printing in Korea from 2000 to May 2009 as an assistant manager responsible for running and maintaining printing press machines. In 2008 Park saw a job-posting on an internal A-Printing job board advertising a printing technician position in Los Angeles. He applied for and was offered the job.

Park was required to obtain a Nonimmigrant Treaty Trader/Investor Visa (E-2 visa)[2] to work in the United States.

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[2] An E-2 visa may be available to employees of certain foreign corporations that have invested "a substantial amount of capital in bona fide enterprise in the United States" when the employee "is coming to the United States to engage in duties of an executive or supervisory character, or, if employed in a lesser capacity, the employee has special qualifications that make the

His visa application was prepared by the legal and travel departments of Joong-Ang Ilbo in Korea. The application included a form signed by the general manager of Korea Daily as well as letters from the chief executive officers of Joong-Ang Ilbo and A-Printing explaining Park's transfer, job duties and salary. These documents were submitted to the United States government under penalty of perjury.

c. *Park's employment*

Park received his E-2 visa from the United States government in May or June 2008 and moved to Los Angeles in May 2009. He immediately began working at the Korea Daily offices in Cerritos. Park testified he worked six days per week and oversaw the printing of four to six newspaper editions each day. He stated each edition took approximately two hours to print. Park said he was required to arrive 30 minutes before his shift started and to stay 15 to 30 minutes after it ended, all without pay. He also stated he never took meal breaks.

During Park's employment printing department personnel were expected to fill out a form each day showing their hours worked, including any overtime. Each worker submitted the form to his or her manager daily. A monthly summary of the hours worked by each department employee was prepared by someone in the printing department and signed by the employee whose hours were reflected, the team leader and the director. The form was then sent to the human resources department, which calculated the overtime pay due to each employee for that month. Although Korea Daily had installed fingerprint machines

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services to be rendered essential to the efficient operation of the enterprise." (22 C.F.R. § 41.51(b).)

in late 2011 on which workers could record their arrival and departure times, paper forms prepared by employees were still used for the printing department because many workers forgot or did not know how to use the scanner. For this reason, human resources personnel continued to rely on the paper forms to calculate printing department employees' pay. Data from the scanning machines were checked only when there was a discrepancy or question raised.

Park testified that during 2009 and 2010 he was not asked to sign the monthly summary time sheets showing his overtime hours worked for each month. However, beginning in late 2011, Park's manager brought him a document each month while he was working on the printing press and told him to sign it. The document purportedly listed Park's overtime for the month, but Park testified the hours were never reflected accurately. Park would complain to the manager, but he signed the form because he was told he had to. He could not stop working to protest further.

Park stated he complained to his superiors each month that his overtime pay was incorrect. Management repeatedly responded by saying they would not pay any missing overtime. Park estimated he was not paid for 20 to 30 hours of overtime per month from 2009 to 2011 and for approximately 20 hours per month in 2012. He did not retain any personal records showing his time worked. Korea Daily's former chief financial officer, Jong Yook Bae, and its human resources manager, Jay Hur, testified they were unaware Park ever disputed his pay.

Park resigned from his position in October 2012.

3. *The Statement of Decision and Judgment*

On May 7, 2015 the trial court issued a tentative decision finding in favor of Park on all causes of action and awarded damages of $110,437.09 and waiting time penalties of $8,651.20, plus interest, attorney fees and costs. The tentative decision also indicated an injunction would issue prohibiting Korea Daily and Media Network from violating section 204 (requiring overtime pay to be paid not less than twice monthly) and section 226 (requiring all pay stubs to reflect overtime hours worked each pay period). Korea Daily and Media Network filed a timely request for a statement of decision. At the court's direction Park filed a proposed statement of decision to which Korea Daily and Media Network objected.

On October 22, 2015 the trial court adopted the proposed statement of decision as its final decision and entered judgment against Korea Daily and Media Network in accordance with the terms of the tentative decision. In the 11-page statement of decision the court found credible Park's testimony regarding his unpaid overtime hours, lack of meal and rest breaks and unreimbursed expenses. The court further found Korea Daily and Media Network were Park's joint employers, based primarily on statements in letters submitted with Park's visa application that Media Network would be Park's employer. Korea Daily and Media Network filed a timely notice of appeal from the judgment.

4. *Park's Motion for Attorney Fees*

On November 4, 2015 Park moved for an award of attorney fees of "at least $254,130" pursuant to Labor Code sections 1194 and 226 and Code of Civil Procedure section 1021.5. Park's counsel explained they had calculated a lodestar amount of $254,130 based on a total of 456.30 hours expended by two

attorneys, whose hourly rates were $575 and $500. An additional $4,025 in fees was estimated for the time to respond to an opposition and attend the hearing on the fee motion. A multiplier of 1.5 to 2.0 was requested.

Korea Daily and Media Network opposed the motion, arguing Park was entitled to fees only on his claims for unpaid overtime and failure to reimburse expenses. They further argued the fees requested were excessive. Following a hearing on January 7, 2016 the trial court awarded Park $258,155 in attorney fees.

On January 20, 2016 Korea Daily and Media Network filed a second notice of appeal from the order awarding attorney fees. We consolidated the two appeals.

DISCUSSION

On appeal Korea Daily and Media Network argue there was insufficient evidence to support the court's finding they were both liable as Park's joint employers. They also assert there was insufficient evidence to support the findings of unpaid overtime wages, failure to reimburse expenses, fraud and the imposition of statutory penalties.[3] Finally, Korea Daily and Media Network argue the amount of attorney fees awarded was unreasonable.

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[3] Korea Daily and Media Network do not appeal the finding they committed unfair business practices or the issuance of the injunction prohibiting Labor Code violations. In addition, while their opening brief states they seek reversal of the finding they failed to provide meal and rest breaks, the brief provides no legal argument or support for that position. As such, we decline to address that purported challenge. (See, e.g., *City of Monterey v. Carrnshimba* (2013) 215 Cal.App.4th 1068, 1099 [we need not consider undeveloped challenges to the trial court's ruling]; *Niko*

1. *Standard of Review*

"""In general, in reviewing a judgment based upon a statement of decision following a bench trial, 'any conflict in the evidence or reasonable inferences to be drawn from the facts will be resolved in support of the determination of the trial court decision. [Citations.]' [Citation.] In a substantial evidence challenge to a judgment, the appellate court will 'consider all of the evidence in the light most favorable to the prevailing party, giving it the benefit of every reasonable inference, and resolving conflicts in support of the [findings]. [Citations.]' [Citation.] We may not reweigh the evidence and are bound by the trial court's credibility determinations. [Citations.] Moreover, findings of fact are liberally construed to support the judgment."""" (*Tribeca Companies, LLC v. First American Title Ins. Co.* (2015)

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v. Foreman (2006) 144 Cal.App.4th 344, 368 [absence of legal argument and citation to authorities in support of contention results in its forfeiture].)

Park argues Korea Daily and Media Network have forfeited any claim of error in the judgment because they failed to properly summarize all relevant facts (see *Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881 [appellant challenging sufficiency of evidence must summarize all material evidence on point, not merely appellant's own evidence]) and to provide proper citations to the record (see Cal. Rules of Court, rule 8.204(a)(1)(C) [appellate briefs must "[s]upport any reference to a matter in the record by a citation to the volume and page number of the record where the matter appears"]). While we agree Korea Daily and Media Network have omitted relevant facts from their briefs and provided confusing or inaccurate citations to both the appendix and legal authority, we decline to deem the entirety of their contentions forfeited.

239 Cal.App.4th 1088, 1102; accord, *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 334 ["'questions as to the weight and sufficiency of the evidence, the construction to be put upon it, the inferences to be drawn therefrom, the credibility of witnesses . . . and the determination of [any] conflicts and inconsistencies in their testimony are matters for the trial court to resolve'"]; *Harry Carian Sales v. Agricultural Labor Relations Bd.* (1985) 39 Cal.3d 209, 220 ["findings based on the credibility of witnesses will not be disturbed unless the testimony is 'incredible or inherently improbable'"]; *Fuentes v. AutoZone, Inc.* (2011) 200 Cal.App.4th 1221, 1233 ["'testimony of a witness offered in support of a judgment may not be rejected on appeal unless it is physically impossible or inherently improbable and such inherent improbability plainly appears'"].)

2. *Substantial Evidence Supports the Finding Media Network Was Park's Joint Employer*

"'"[W]age and hour claims in are today governed by two complementary and occasionally overlapping sources of authority: the provisions of the Labor Code, enacted by the Legislature, and a series of 18 wage orders, adopted by the [Industrial Welfare Commission]."'" (*Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal.App.5th 98, 105-106.) The wage orders all define the term "employ" as "to engage, suffer, or permit to work," and the term "employer" as any person "who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person." (E.g., Cal. Code Regs., tit. 8, § 11040, subd. 2.) Relying on the wage order definition, which it has said is to be accorded the same weight as a statute, the Supreme Court has held, to be liable as an employer for wage and hour or

other Labor Code violations, an individual must meet one of "three alternative definitions. [Employ] means: (a) to exercise control over the wages, hours or working conditions, *or* (b) to suffer or permit to work, *or* (c) to engage, thereby creating a common law employment relationship."[4] (*Martinez v. Combs* (2010) 49 Cal.4th 35, 64.)[5]

This "broad definition of an employer includes ""any person . . . who directly *or indirectly, or through an agent or any other person,* employs *or exercises control* over the wages, hours, or working conditions of [an employee]."""" (*Castaneda v. Ensign Group, Inc.* (2014) 229 Cal.App.4th 1015, 1019.) The definition also includes "[a] proprietor who knows that persons are working in his or her business without having been formally hired, or while being paid less than the minimum wage, [and] clearly suffers or permits that work by failing to prevent it, while having the power to do so." (*Martinez v. Combs*, *supra*, 49 Cal.4th at p. 69.) "An entity that controls the business enterprise may be an

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[4] Although none of the parties identifies the specific wage order that governs this case, all agree the definition of "employer" set forth in *Martinez* applies here.

[5] While not dispositive of the issues presented here, the question of how broadly *Martinez* should apply is currently under review in the Supreme Court. (See *Dynamex Operations West, Inc. v. Superior Court* (2014) 230 Cal.App.4th 718, review granted January 18, 2015, S222732 [whether IWC definition of "employer" as set forth in *Martinez* applies to class certification of claims within scope of wage orders].) The Supreme Court is also considering the related issue of whether a third party payroll company may be liable to a corporation's employee for breach of contract or tort. (See *Goonewardene v. ADP, LLC* (2016) 5 Cal.App.5th 154, review granted February 15, 2017, S238941.)

employer even if it did not 'directly hire, fire or supervise' the employees." (*Castaneda,* at p. 1019.) Multiple entities may be employers where they "control different aspects of the employment relationship. This occurs, for example, when one entity (such as a temporary employment agency) hires and pays a worker, and another entity supervises the work." (*Martinez,* at p. 76.) Thus, the definition of "employer" is "broad enough to reach through straw men and other sham arrangements to impose liability for wages on the actual employer." (*Id.* at p. 71.)

In considering whether one entity exercises the requisite control over another to be considered an employer, courts assess a variety of factors, including whether the entity at issue has ownership or financial control, and whether the two entities share corporate headquarters, recruit employees for one another, issue paychecks to one another's employees, or provide support services such as training, human resources or technology infrastructure. (See, e.g., *Martinez v. Combs*, *supra*, 49 Cal.4th at pp. 70-77; *Castaneda v. Ensign Group, Inc., supra*, 229 Cal.App.4th at pp. 1020-1023.) The corporations' and the employee's understanding and statements about the employer-employee relationship are also relevant. (See *Martinez,* at p. 76; *Castaneda,* at pp. 1020-1022.) "Whether the right to control existed and was exercised is generally a question of fact to be resolved from the reasonable inferences drawn from the circumstances shown." (*Service Employees Internat. Union v. County of Los Angeles* (1990) 225 Cal.App.3d 761, 773.)

Media Network contends the documents relied upon by the trial court do not support the finding it had any control over the operations of Korea Daily and, therefore, there was not sufficient evidence to support the finding it was Park's joint employer. The

trial court relied primarily on letters prepared as part of Park's visa application and renewal. One letter, dated July 24, 2008 and signed by the chief executive officer of A-Printing, stated Park was being "transferred to the JoongAng Media Network USA Inc." A second letter, dated June 23, 2010 and signed by the then-chief financial officer of Korea Daily, Jong Yook Bae, stated Park "is employed by our company, Joong Ang Media Network USA and Joong Ang Daily News California, Inc. DBA the Korea Daily." Bae testified the letter was prepared as part of Park's visa renewal in 2010.

The trial court's conclusion these letters established Media Network as Park's joint employer was supported by substantial evidence. The letters unequivocally state Park would be/was working for Media Network. Media Network has posited no alternative explanation for the statements or suggested any other inference that could be drawn from them. Although neither letter was authored by a representative of Media Network, Park testified his visa application was prepared by personnel at Joong-Ang Ilbo, the parent company of both Media Network and A-Printing (and indirectly, Korea Daily). It was thus reasonable to infer from this evidence that Joong-Ang Ilbo was fully aware of the statements regarding Park's employment. In addition, because Joong-Ang Ilbo is the 100-percent owner of Media Network, it was also reasonable to infer that the two entities were in agreement regarding employment decisions, especially a decision to "transfer" an employee from one subsidiary to another.

In addition to the unambiguous statements in the letters, additional evidence supports the finding Park was a Media Network employee. Media Network is the founder and 100-

percent owner of Korea Daily, which permits an inference Media Network had financial control over its subsidiary, including the ability to control employment matters. (See *Castaneda v. Ensign Group, Inc., supra,* 229 Cal.App.4th at p. 1020 [where holding company owned all stock of corporation, a "trier of fact could infer this evidence refutes [holding company's] claims of lack of control and responsibility"]; see also *Martinez v. Combs, supra,* 49 Cal.4th at p. 70 ["'*[t]he basis of liability is the owner's failure to perform the duty of seeing to it that the prohibited condition does not exist*'"].) Further, the two entities share the same corporate address, and Media Network's parent company, Joong-Ang Ilbo, assisted in recruiting Park to work for Korea Daily and facilitating his transfer within the corporate family. Indeed the record reflects the companies repeatedly acted on one another's behalf and referred to themselves interchangeably. For example, Media Network's chief financial officer Chan Sik Cho referred during his testimony to the family of companies as "Joong-Ang, the entity." There was also evidence of a flow of executives among the Joong-Ang family of companies. Cho testified, prior to his position at Media Network, he worked at Joong-Ang Media Marketing in Korea. Cho also testified that another employee, Moon Park, worked at A-Printing and then transferred to Media Network. Bae, Korea Daily's former chief financial officer, testified he now works for another Media Network subsidiary in New York and previously worked for a different Joong-Ang company in Korea. Taken together this evidence amply supported the trial court's finding Media Network was Park's joint employer.

On appeal Media Network essentially argues other evidence in the record contradicts a finding it was Park's

employer. For example, it emphasizes Park's testimony he did not think he was employed by Media Network, as well as statements in the visa renewal letters that Park would be working for Korea Daily.[6] Media Network's arguments fundamentally misapprehend the deferential standard of review that governs its appeal. It was the trial court's responsibility to evaluate the credibility of the witnesses and to weigh conflicting evidence. (See *Tribeca Companies, LLC v. First American Title Ins. Co.*, *supra*, 239 Cal.App.4th at p. 1102 [""[w]e may not reweigh the evidence and are bound by the trial court's credibility determinations""].) While Park's testimony of his understanding of the employment relationship and contradictory statements by the employer were certainly relevant in determining employment status, the trial court was well within its discretion to weigh these statements and ultimately make the contrary factual finding, as it did here.

3. *Substantial Evidence Supports the Award of Unpaid Overtime Wages*

Section 1194 provides, in part, "[A]ny employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover" the balance of the unpaid wage in a civil action. The wage orders

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[6] Media Network attempts to minimize the significance of the documents relied upon by the trial court by arguing there was no evidence they were submitted to the United States government under penalty of perjury as part of Park's visa application. Whether or not they were submitted as part of the visa application, however, there is no dispute as to the letters' authorship or authenticity. As such, the representations made in the letters were properly considered by the trial court.

place the burden of keeping accurate overtime records on the employer. (See, e.g., Cal. Code Regs., tit. 8, § 11040, subd. 7(A) ["Every employer shall keep accurate information with respect to each employee including the following: [¶] . . . [¶] . . . Total hours worked in the payroll period and applicable rates of pay."].)

An employee claiming unpaid overtime wages has the burden of proving the performance of overtime work for which he or she was not compensated. (*Eicher v. Advanced Business Integrators, Inc.* (2007) 151 Cal.App.4th 1363, 1377; *Hernandez v. Mendoza* (1988) 199 Cal.App.3d 721, 726.) Once an employee has carried this burden, "the *fact* of damage is certain; the only uncertainty is the *amount* of damage." (*Hernandez*, at p. 726.)

While the employee has the burden to prove the amount of uncompensated work, "public policy prohibits making that burden an impossible hurdle for the employee." (*Hernandez v. Mendoza*, *supra,* 199 Cal.App.3d at p. 727.) ""[W]here the employer's records are inaccurate or inadequate and the employee cannot offer convincing substitutes a . . . difficult problem arises. The solution, however, is not to penalize the employee by denying him any recovery on the ground that he is unable to prove the precise extent of uncompensated work. Such a result would place a premium on an employer's failure to keep proper records in conformity with his statutory duty; it would allow the employer to keep the benefits of an employee's labors without paying due compensation. . . . In such a situation we hold that an employee has carried out his burden if he proves that he has in fact performed work for which he was improperly compensated and if he produces sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference. The burden then shifts to the employer to

come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the employee's evidence. If the employer fails to produce such evidence, the court may then award damages to the employee, even though the result be only approximate.'"' (*Eicher v. Advanced Business Integrators, Inc., supra*, 151 Cal.App.4th at p. 1377; see *Hernandez v. Mendoza, supra,* 199 Cal.App.3d at p. 727; cf. *Anderson v. Mt. Clemens Pottery Co.* (1946) 328 U.S. 680, 688 [66 S.Ct. 1187, 90 L.Ed. 1515] ["The employer cannot be heard to complain that the damages lack the exactness and precision of measurement that would be possible had he kept records in accordance with the requirements of [the Fair Labor Standards Act]. . . . It is enough under these circumstances if there is a basis for a reasonable inference as to the extent of the damages."].)

Here, Korea Daily and Media Network submitted payroll summaries showing overtime compensation paid to Park from June 2009 through October 2012. They also submitted monthly time records purportedly showing Park's hours worked and duties performed each day. There was conflicting testimony regarding who prepared these time records. Bae testified he believed Park prepared and signed the records. Hur corroborated that, according to practice, Park would have prepared and signed the time records. However, Park stated his manager prepared the records. During trial, when he was shown signed records for October 2009, January 2010 and February 2011, Park said the signatures were not his. He further testified he was never asked to sign any time sheets until October 2011. Park said his signature did appear on the record for January 2012 and that the form was already completed when it was presented to him for

signature. Park also testified the duties listed on the time sheets could not have been performed in the amount of time listed. For example the time sheet for January 2012 listed six newspaper editions printed on January 1 and showed six hours worked. Park testified it would have taken approximately eight hours to print all the editions listed and, thus, he could not have worked only six hours that day.

The trial court evaluated the witnesses' credibility and resolved the conflicts in testimony in favor of Park's testimony that the time records were inaccurate and he was not paid for all the overtime he worked. At that point, Park had carried his burden of proving he performed overtime work for which he was not compensated and was only required to produce "sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference." (*Eicher v. Advanced Business Integrators, Inc., supra,* 151 Cal.App.4th at p. 1377.)

To that end, Park testified he worked six days per week, arrived 30 minutes before his shift started and stayed 15 to 30 minutes after it ended, for which he was not compensated. He testified he occasionally was forced to take "comp time" instead of recording overtime hours. He also testified he printed four to six newspaper editions per day and each edition took approximately two hours to print. He estimated he failed to receive overtime pay for 20 to 30 hours per month from 2009 to 2011 and for 20 hours per month in 2012. His overtime hours were less in 2012 because he no longer stayed late. Based on this testimony, the inference Park worked approximately one additional hour of overtime per day (that is, 20 to 30 hours per month divided by 24 days worked per month) is not unreasonable, even when added to the overtime hours for which Park was compensated.

Korea Daily and Media Network failed to produce any evidence to contradict this evidence or negate its reasonableness. On appeal they essentially argue the trial court erred by believing Park's evidence over their own: They maintain that their records were accurate and complete and that Park failed to adequately show how many uncompensated overtime hours he worked.[7] Again, Korea Daily and Media Network fail to acknowledge the applicable law or the scope of our review. Park's testimony, as credited by the trial court, supported the court's finding he was not compensated for 25 hours of overtime per month from 2009 to 2011 and for 20 hours per month in 2012.

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[7] Korea Daily and Media Network also argue the employee handbook, which Park acknowledged he received, precludes a finding their records were inadequate because it states, "The company records [of hours worked] shall be presumed to be accurate if you fail to maintain your records." The trial court found the handbook was presented to Park in English only. Because Park did not read or understand English, the court "refuse[d] to give any evidentiary weight" to the handbook. Korea Daily and Media Network argue this finding was error.

We, too, decline to consider the handbook. Even if Park received and understood it, the handbook does not vitiate Korea Daily's and Media Network's statutory duty to maintain accurate records. Nor can the handbook affect the significance of a failure to comply with that statutory duty. (See *Hoover v. American Income Life Ins. Co.* (2012) 206 Cal.App.4th 1193, 1208 ["the rights accorded by sections 203, 1194, and 2802 may not be subject to negotiation or waiver"]; see also *Cicairos v. Summit Logistics, Inc.* (2005) 133 Cal.App.4th 949, 961 ["'[w]here the employer has failed to keep records required by statute, the consequences for such failure should fall on the employer, not the employee'"].)

We are bound by the court's credibility finding and will not reweigh the evidence. (See *Tribeca Companies, LLC v. First American Title Ins. Co.*, *supra,* 239 Cal.App.4th at p. 1102.) To the extent Korea Daily and Media Network contend Park was required to provide documentary evidence of his time worked rather than relying on his recollection alone, there is no legal support for that position. As discussed, an employee need not provide precise evidence of damages when the employers' records are inaccurate. (See *Eicher v. Advanced Business Integrators, Inc.*, *supra*, 151 Cal.App.4th at pp. 1377-1378.)

4. *Substantial Evidence Supports the Award of Statutory Penalties Pursuant to Sections 203 and 226*

Section 203, subdivision (a), mandates a penalty up to a maximum of 30 days' pay if an employer willfully fails to pay the wages, including unpaid overtime wages, of an employee who is discharged or quits. Section 226, subdivision (e)(1), imposes a penalty up to a maximum of $4,000 if an employer knowingly and intentionally fails to provide an employee with an accurate itemized statement showing the gross wages earned and total hours worked at the time of each payment of wages.

Korea Daily and Media Network contend, because there was insufficient evidence to support a finding of failure to pay overtime, there was likewise insufficient evidence to support findings it failed to pay overtime wages upon Park's resignation or failed to provide accurate paystubs. For the reasons discussed, substantial evidence supports the trial court's conclusion that Korea Daily and Media Network failed to pay overtime wages. Thus, substantial evidence also supports imposition of penalties under sections 203 and 226.

5. *The Trial Court's Findings in Park's Favor on His Section 970 and Fraud Claims Were Not Supported by Substantial Evidence*

Section 970 creates a "statutory tort cause of action" that "prohibits an employer or potential employer from inducing an employee or prospective employee to relocate his or her residence through means of a knowingly false representation concerning the terms or conditions of employment."[8] (*Burden v. County of Santa Clara* (2000) 81 Cal.App.4th 244, 253.) This section serves a fundamental public purpose "to protect the community from the harm inflicted when a fraudulently induced employment ceases and the former employee is left in the community without roots or resources and becomes a charge on the community." (*Mercuro v. Superior Court* (2002) 96 Cal.App.4th 167, 180.) To establish a claim for violation of section 970, Park had to prove Korea Daily and Media Network made a knowingly false representation with the intent to persuade him to move to California to take the position. (See *Burden,* at p. 253; *Finch v. Brenda Raceway Corp.* (1994) 22 Cal.App.4th 547, 553; see also *Tyco Industries, Inc. v. Superior Court* (1985) 164 Cal.App.3d 148, 157 [to withstand demurrer on a section 970 cause of action, plaintiff must allege

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[8] Section 970 provides, "No person, or agent or officer thereof, directly or indirectly, shall influence, persuade, or engage any person to change from one place to another in this State or from any place outside to any place within the State, or from any place within the State to any place outside, for the purpose of working in any branch of labor, through or by means of knowingly false representations, whether spoken, written, or advertised in printed form, concerning . . . . [¶] (b) The length of time such work will last, or the compensation therefor . . . ."

employer "intended *not* to perform under his relocation agreement as it had promised"].)

Likewise, to succeed on his claim for common law fraud, Park was required to prove "(1) a misrepresentation (false representation, concealment, or nondisclosure); (2) knowledge of falsity (or scienter); (3) intent to defraud, i.e., to induce reliance; (4) justifiable reliance; and (5) resulting damage." (*Robinson Helicopter Co., Inc. v. Dana Corp*. (2004) 34 Cal.4th 979, 990.) Although fraudulent intent must often be established by circumstantial evidence, that evidence must nevertheless be sufficient to support such an inference. (See *Tenzer v. Superscope, Inc*. (1985) 39 Cal.3d 18, 30.) "'[S]omething more than nonperformance is required to prove the defendant's intent not to perform his promise.'" (*Ibid.*)

Park's statutory and common law fraud claims are based on the allegation Korea Daily and Media Network made knowingly false representations that his living expenses would be paid while he worked for them in the United States. In support of these claims Park relied on the July 24, 2008 letter signed by the chief executive officer of A-Printing and submitted as part of his visa application. The letter stated, "[Park's] stay [in the United States] will be fully guaranteed financially, including his annual salary of USD 37,200 paid by A-Prin[t]ing Co., Ltd. for all living expenses." Park also relied on a second letter signed by the same executive and submitted as part of his visa application, which stated, "This is to certify that we will assume the responsibility of financial support during Mr. Park and his family's stay in the United States of America. [¶] I will guarantee all expenses during Mr. Park and his family's stay in your country including round trip travel fare, living expenses, etc."

Park testified he had a meeting with an executive at A-Printing prior to his visa application interview during which the executive told him his "living expenses will be bore [*sic*] by Los Angeles Joong-Ang Ilbo, located in the U.S." Once in Los Angeles Park requested reimbursement from Korea Daily but was told they would not pay his expenses. Park complained to management at A-Printing in Korea and subsequently received reimbursement from Korea Daily for 50 percent of his moving and travel expenses. At some point Park complained to his supervisor in Los Angeles that his living expenses had not been reimbursed. He was told there were too many employees, so the company could not reimburse them. Park's immigration law expert also testified it was common practice for the United States subsidiary to fulfill any financial promises made to the transferring employee.

Based on this evidence the trial court found Korea Daily and Media Network were "obligated to pay the living expenses of Plaintiff while he was employed by them and living in the United States." Because Korea Daily and Media Network "offered no evidence to contradict" the evidence of that obligation, the court found for Park on his section 970 and fraud claims. On appeal Korea Daily and Media Network argue there was no evidence the promise to pay living expenses was knowingly false. We agree.

As discussed, the statement of decision found Korea Daily and Media Network promised to pay Park's living expenses. While there may be sufficient evidence to support that finding, the statement of decision identifies no evidence that supports an inference that the promise was knowingly false at the time it was made or that Korea Daily and Media Network never intended to fulfill the promise. For his part, Park entirely fails to address

this argument on the merits in his respondent's brief, let alone point to any evidence in the record on appeal that justifies a finding in his favor on this element of fraud.[9] In fact, the only evidence relating to a knowing misrepresentation was Bae's testimony Korea Daily did not have a policy to reimburse living expenses of its employees. However, that testimony alone is too tenuous to support a finding the individuals in Korea who made the promise to Park knew Korea Daily's policies or knew the promise in this particular instance would not be kept.

The court awarded damages of $65,796.94 for Park's section 970 claim. No additional damages were awarded for the fraud cause of action. Accordingly, the aggregate damage award to Park in the judgment must be reduced by $65,796.94.

6. *Substantial Evidence Supports the Award of Damages Pursuant to Section 2802*

Section 2802, subdivision (a), provides, "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties . . . ." This section is "'designed to prevent employers from passing their operating expenses on to their employees. For example, if an employer requires an

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[9] Park argues only that Korea Daily and Media Network forfeited their argument the evidence did not support a finding of a knowingly false representation because they did not specifically raise the issue before the trial court. However, challenges to the sufficiency of the evidence may be raised for the first time on appeal. (See *Tahoe National Bank v. Phillips* (1971) 4 Cal.3d 11, 23, fn. 17 [although arguments not presented to the trial court may ordinarily not be raised on appeal, the "contention that a judgment is not supported by substantial evidence, however, is an obvious exception to the rule"].)

employee to travel on company business, the employer must reimburse the employee for the cost of that travel under Section 2802.'" (*Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 562.) Courts have held employee expenses recoverable under section 2802 when the activity "was broadly incidental" to employment. (*Jacobus v. Krambo Corp.* (2000) 78 Cal.App.4th 1096, 1104 [holding employer liable under section 2802 for former employee's legal costs incurred defending sexual harassment action].) Whether an employee's acts are in direct consequence of the discharge of his or her duties and whether the expenses incurred were necessary are ordinarily questions of fact. (*Id.* at pp. 1103-1104.)

The trial court found Korea Daily and Media Network were obligated pursuant to section 2802 to reimburse expenses Park incurred in hiring an attorney to assist with his visa renewal application in 2010. On appeal Korea Daily and Media Network argue there was insufficient evidence to support this finding. Once again, they fail to acknowledge the evidence in the record that supports the trial court's ruling.

Bae testified that, during the time Park worked for Korea Daily and Media Network, Park's E-2 visa required renewal and that such renewal was necessary for Park to continue his employment. Bae signed the renewal application and submitted an additional letter supporting it. Park testified he incurred expenses between $5,000 and $6,000 for his visa renewal, including attorney fees and the cost of temporarily returning to Korea, which was a requirement of the renewal process. This evidence supports the court's findings the visa renewal expenditures were necessarily incurred in direct consequence of Park's employment.

Korea Daily and Media Network attempt to refute this evidence by citing Bae's testimony that an employer has no obligation to pay for visa renewal expenses. Bae based that conclusion on "personal research" and "asking around." Bae's opinion, to the extent it has any relevance, was certainly not binding on the trial court, which was entitled to give more weight to his statement the visa renewal was necessary to Park's continued employment and his facilitation of that renewal by executing the renewal documents.[10]

Finally, Korea Daily and Media Network contend Park was required to provide documentary evidence to prove his damages under section 2802. There is no such obligation. "[P]recise calculations [of damages] are not required; fair approximations based on personal knowledge will suffice: '[T]he general rule [is] that while a plaintiff must show with reasonable certainty that he has suffered damages by reason of the wrongful act of defendant, once the cause and existence of damages have been so established, recovery will not be denied because the damages are

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[10] Korea Daily and Media Network's citation to *Gattuso v. Harte-Hanks Shoppers, Inc.*, *supra*, 42 Cal.4th 554 does not support their argument. The court in *Gattuso* did not consider whether an employer should reimburse an employee's expenses, but examined when and in what manner expenses should be reimbursed. (*Id.* at pp. 567-568 ["[T]he parties agree that section 2802 . . . requires Harte-Hanks to fully reimburse its outside sales representatives for the automobile expenses they actually and necessarily incur in performing their employment tasks. They disagree only on whether section 2802 permits an employer to do so through an increase in overall compensation rather than through a separately identified reimbursement payment."].)

difficult of ascertainment.'" (*Mardirossian & Associates, Inc. v. Ersoff* (2007) 153 Cal.App.4th 257, 269; accord, *GHK Associates v. Mayer Group, Inc.* (1990) 224 Cal.App.3d 856, 873 ["Where the *fact* of damages is certain, the amount of damages need not be calculated with absolute certainty. [Citations.] The law requires only that some reasonable basis of computation of damages be used, and the damages may be computed even if the result reached is an approximation."].)

Park testified concerning the cost to renew his visa. Korea Daily and Media Network presented no evidence to contradict or undermine that testimony. Further, Park's account was neither physically impossible nor inherently improbable. Thus, Park's testimony, as credited by the trial court, was sufficient to establish his damages. (See *Harry Carian Sales v. Agricultural Labor Relations Bd.*, *supra*, 39 Cal.3d at p. 220 ["findings based on the credibility of witnesses will not be disturbed unless the testimony is 'incredible or inherently improbable'"]; *Fuentes v. AutoZone, Inc.*, *supra*, 200 Cal.App.4th at p. 1233 [same].)

7. *The Trial Court Did Not Abuse Its Discretion in Awarding Attorney Fees to Park*

"'"On review of an award of attorney fees after trial, the normal standard of review is abuse of discretion. However, de novo review of such a trial court order is warranted where the determination of whether the criteria for an award of attorney fees and costs in this context have been satisfied amounts to statutory construction and a question of law.'" [Citations.] In other words, 'it is a discretionary trial court decision on the propriety or amount of statutory attorney fees to be awarded, but a determination of the legal basis for an attorney fee award is a question of law to be reviewed de novo.'" (*Mountain Air*

Enterprises, LLC v. Sundowner Towers, LLC (2017) 3 Cal.5th 744, 751.) In particular, "'[w]ith respect to the *amount* of fees awarded, there is no question our review must be highly deferential to the views of the trial court.'" (*Concepcion v. Amscan Holdings, Inc.* (2014) 223 Cal.App.4th 1309, 1319.) "An appellate court will interfere with the trial court's determination of the amount of reasonable attorney fees only where there has been a manifest abuse of discretion." (*Heritage Pacific Financial, LLC v. Monroy* (2013) 215 Cal.App.4th 972, 1004; see also *Laffitte v. Robert Half Internat. Inc.* (2016) 1 Cal.5th 480, 488 ["'[t]he "experienced trial judge is the best judge of the value of professional services rendered in his [or her] court, and while his [or her] judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong"'"].)

Korea Daily and Media Network contend the trial court abused its discretion in awarding attorney fees to Park by failing to apportion the requested fees between the causes of action for which fees were permitted and those for which they were not. They also argue the fees requested and awarded included duplicative activity by Park's two attorneys and were unreasonably inflated.

Korea Daily and Media Network have failed to provide an adequate record on appeal, which prevents any meaningful review of the trial court's award of fees. In addition to the moving and opposition papers, the Appellants' Appendix submitted by Korea Daily and Media Network for their appeal of the postjudgment fee award contains only the trial court's minute order entered after the hearing on January 7, 2016 and the notice of ruling filed several days later. The minute order states the

matter was called for hearing; the clerk "partially read the court's tentative ruling to counsel," who appeared by telephone; and the tentative ruling was adopted as the final ruling of the court "and incorporated herein by reference to the case file." The order further states, "The Motion is is [sic] granted. Defendants shall pay Plaintiff attorney fees in the amount of $258,155." The notice of ruling similarly stated the court granted the motion and awarded attorney fees in the sum of $258,155. The record on appeal does not include any transcript or settled statement of the hearing on the motion for attorney fees, nor does it include the tentative ruling adopted by the court. Even after Park pointed out these inadequacies in his respondent's brief, Korea Daily and Media Network did not attempt to augment the record or address their failure in any way.

Because we cannot determine from the record on appeal the basis for the court's award of attorney fees, including whether the court declined to apportion fees between causes of action because it found the issues connected or intertwined (see, e.g., *Amtower v. Photon Dynamics, Inc.* (2008) 158 Cal.App.4th 1582, 1604 ["[w]here fees are authorized for some causes of action in a complaint but not for others, allocation is a matter within the trial court's discretion"]) or how the court addressed claims of excessiveness (see, e.g., *Akins v. Enterprise Rent-A-Car Co.* (2000) 79 Cal.App.4th 1127, 1134 ["[t]he only proper basis of reversal of the amount of an attorney fees award is if the amount awarded is so large or small that it shocks the conscience and suggests that passion and prejudice influenced the determination"]), we are in no position to disturb the court's ruling. (See *Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 132 ["[w]e reject defendants' claim, therefore, because they failed to provide this

court with a record adequate to evaluate this contention"]; *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296 ["[b]ecause they failed to furnish an adequate record of the attorney fee proceedings, defendants' claim must be resolved against them"]; see also *Vo v. Las Virgenes Municipal Water Dist.* (2000) 79 Cal.App.4th 440, 448 ["[t]he absence of a record concerning what actually occurred [in the trial court] precludes a determination that the trial court abused its discretion"].)

DISPOSITION

The findings in favor of Park on the causes of action for violation of section 970 and fraud are reversed, and the damages awarded are reduced by $65,796.94. The judgment is affirmed in all other respects. The postjudgment order awarding attorney fees is affirmed.[11] The parties are to bear their own costs on appeal.

PERLUSS, P.J.

We concur:

SEGAL, J.

BENSINGER, J.*

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[11] Our reversal of the causes of action for violating section 970 and fraud does not affect the award of attorney fees because fees were not available, and therefore could not have been awarded, for those claims. Further, Korea Daily and Media Network have not requested remand for reconsideration of attorney fees should judgment on one or more of the causes of action be reversed.

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