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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

MITCHELL PLETCHER et al., Plaintiffs and Appellants, v. BROOKLYN LAVIN et al., Defendants and Respondents.	B257009 (Los Angeles County Super. Ct. No. BC489787)

APPEAL from a judgment of the Superior Court of Los Angeles County, Joseph R. Kalin, Judge. Affirmed.

Orland Law Group and James J. Orland; Joel S. Poremba for Plaintiffs and Appellants.

Lewis, Brisbois, Bisgaard & Smith, Jon P. Kardassakis, Deborah F. Sirias, Jeffry A. Miller, Jonna D. Lothyan for Defendant and Respondent Brooklyn Lavin.

Manning & Kass Ellord, Ramirez, Trester, Shari L. Rosenthal, Steven J. Renick, Paul Hanna for Defendants and Respondents Bloc Talent Agency Talent Agency, Inc., McDonald Selznick Associates, Inc., Candice Coke, Deirdre Barnes, Julie Schmid, Amy Edwards, Erica Kiehl Jenkins, Alyssa Marquez, and Donna Hood.

Fox Rothschild, Lincoln D. Bandlow, Rom Bar-Nissim for Defendants and Respondents Tim O'Brien, Tim O'Brien & Associates, Tyne Stecklein, Rachel Markarian, and Francesca Kintz.

I. INTRODUCTION

Plaintiffs, Mitchell Pletcher and Mitchell Anthony Productions, LLC, appeal from a summary judgment. Defendants are: Tim O'Brien; Tim O'Brien and Associates doing business as Clear Talent Group; Tyne Stecklein, Rachel Markarian, and Francesca Kintz who are dancers who were represented by Clear Talent Group; Bloc Talent Agency, Incorporated; McDonald-Selznick Associates, Inc.; Candice Coke, Deirdre Barnes, Julie Schmid and Amy Edwards, dancers represented by McDonald-Selznick Associates, Inc.; Erica Kiehl Jenkins, Alyssa Marquez, and Donna Hood, dancers represented by Bloc Talent Agency Talent Agency; and Brooklyn Lavin.

Plaintiff filed a first amended complaint against defendants that alleged various contract based claims, defamation, and unfair business practices in violation of Business and Professions Code section 17200. Defendants moved for summary judgment as to all claims. The trial court granted defendants' summary judgment motions and entered judgment in their favor.

Plaintiffs assert the trial court erred by denying their continuance motion under Code of Civil Procedure section 437c, subdivision (h).[1] Plaintiffs also argue the trial court erred by granting summary judgment. We affirm the summary judgment.

II. BACKGROUND

A. Plaintiffs' First Amended Complaint

Plaintiffs filed their first amended complaint on September 5, 2012. Mr. Pletcher is the sole owner of Mitchell Anthony Productions, LLC. Clear Talent Group represents Ms. Stecklein, Ms. Markarian, and Ms. Kintz. McDonald-Selznick Associates, Inc. represents Ms. Coke, Ms. Barnes, Ms. Schmid, and Ms. Edwards. Bloc Talent Agency, Incorporated represents Ms. Jenkins, Ms. Marquez, and Ms. Hood. Plaintiffs allege 16 causes of action. The first through fourth and the eighth causes of action are against Mr. O'Brien, Clear Talent Group, Bloc Talent Agency, Incorporated and McDonald-Selznick Associates, Inc. The first cause of action is for negligent prospective economic

[1] Further statutory references are to the Code of Civil Procedure unless otherwise stated.

advantage interference. The second cause of action is for intentional prospective economic advantage interference. The third cause of action is for inducing contract breach. The fourth cause of action is for contract interference. The eighth cause of action is for unfair business practices in violation of Business and Professions Code section 17200. The sixth and seventh causes of action are for defamation against Mr. O'Brien and Ms. Lavin. The fifth cause of action is also for defamation against Jennifer Hamilton. Ms. Hamilton is not a party to this appeal.

The ninth through sixteenth causes of action are for contract breach. The ninth cause of action is against Clear Talent Group, Ms. Stecklein, Ms. Markarian and Ms. Kintz. The tenth through sixteenth causes of action are against Ms. Coke, Ms. Barnes, Ms. Schmid, Ms. Edwards, Ms. Jenkins, Ms. Marquez, and Ms. Hood, respectively.

B. Relevant Procedural History

The use of discovery devices began sometime in June 2013. On October 7, 2013, Mr. Pletcher, in propria persona, deposed Ms. Lavin. That day, a fight occurred between Mr. Pletcher and Lincoln Bandlow, counsel for Clear Talent Group, Ms. Stecklein, Ms. Markarian and Ms. Kintz.

On October 10, 2013, Mr. Pletcher applied ex parte for a protective order against Mr. Bandlow. Judge Rita Miller appointed a discovery referee. Judge Miller ordered that the referee costs be paid equally by both parties. On October 15, 2013, Mr. Pletcher moved again for a protective order against Mr. Bandlow. Mr. Pletcher also sought to impose all costs for a discovery referee on defendants. On October 18, 2013, Judge Miller formally appointed a discovery referee.

On November 5, 2013, Mr. Pletcher again applied ex parte for a protective order against Mr. Bandlow and requested shifting costs of the discovery referee onto defendants. On November 13, 2013, following the presentation of testimony and argument, Judge Miller denied Mr. Pletcher's ex parte application. On February 5, 2014, Mr. Pletcher applied ex parte for appointment of a pro bono discovery referee. Judge Miller denied Mr. Pletcher's application.

On February 21, 2014, Clear Talent Group, Ms. Stecklein, Ms. Markarian and Ms. Kintz moved for summary judgment. On February 25, 2014, Ms. Lavin moved for summary judgment. On March 18, 2014, a summary judgment motion was filed by: Bloc Talent Agency, Incorporated; McDonald-Selznick Associates, Inc.; Ms. Coke; Ms. Barnes; Ms. Schmid; Ms. Edwards; Ms. Jenkins; Ms. Marquez; and Ms. Hood. On February 24, 2014, plaintiffs retained counsel, H. Dean Aynechi.

On March 13, 2014, plaintiffs moved to continue the trial, discovery cutoff and summary judgment hearing dates. Plaintiffs asserted defendants' counsel had taken advantage of Mr. Pletcher's situation of proceeding in propria persona for a long period of time. Plaintiffs also asserted the discovery referee had hampered their ability to retain counsel.

On March 26, 2014, Judge Miller ruled on plaintiffs' motions to continue the trial and discovery cutoff dates. Judge Miller allowed plaintiffs to take up to 5 depositions in the next 21 days in support of their opposition to the summary judgment motions. Judge Miller required plaintiffs to provide notice to the court of any additional depositions and the general nature of the expected testimony. Judge Miller set a May 1, 2014 hearing date to determine the need for any further depositions. Judge Miller also continued the hearing date for all of defendants' summary judgment motions to May 27, 2014.

On April 21, 2014, Mr. Aynechi applied ex parte to withdraw as plaintiffs' counsel. Mr. Aynechi asserted, "The general facts involve conduct by the client which renders it unreasonably difficult for me to carry out effective representation, and which has resulted in a breakdown in the attorney client working relationship." Mr. Aynechi sent a resignation letter via email to Mr. Pletcher on April 17, 2014. Following an in-camera hearing also on April 21, 2014, during which Mr. Pletcher was present telephonically, Judge Joseph Kalin granted Mr. Aynechi's ex parte application. (Future references to the trial court are to rulings by Judge Kalin.) On May 1, 2014, the trial court denied plaintiffs' application for a continuance to reopen discovery.

On May 13, 2014, when plaintiffs' opposition to defendants' summary judgment motions was due, they applied ex parte for a continuance under section 437c, subdivision

(h). The continuance request was denied. Plaintiffs filed their opposition to the summary judgment motions on May 21, 2014. The trial court heard the summary judgment motions on May 27, 2014.

C. Defendants' Summary Judgment Motions

1. The contract related issues

a. undisputed facts

Mr. Pletcher attempted to produce a live theatrical cabaret and burlesque production entitled "Beautiful." Mr. Pletcher had no prior experience in live stage production. Mr. Pletcher owns Mitchell Anthony Productions, a California company. Mitchell Anthony Productions co-owns "Beautiful" with Mr. Pletcher. Mr. Pletcher decided to produce a short video in order to market "Beautiful." Mr. Pletcher hired Ms. Hamilton as his choreographer for the promotional video. Mr. Pletcher agreed to have Ms. Hamilton contact talent agencies regarding casting for the promotional video.

Ms. Hamilton sent a February 22, 2012 e-mail to talent agents. Included in those receiving the e-mail was Bloc Talent Agency, Incorporated, McDonald-Selznick Associates, Inc., and Clear Talent Group, advising them of a casting notice for the video. The casting notice stated that the job would entail six rehearsal days and approximately two taping days at the Dancer's Alliance rate. The casting notice states in pertinent part, "This video will be for In-house footage only, not for profit (no Buyout)." The casting notice does not include a requirement that the dancers sign a talent release form.

On February 27, 2012, the performers attended auditions for the video, including: Ms. Coke, Ms. Barnes, Ms. Schmid, and Ms. Edwards for McDonald-Selznick Associates, Inc.; Ms. Jenkins, Ms. Marquez, and Ms. Hood for Bloc Talent Agency, Incorporated; and Ms. Stecklein, Ms. Markarian, and Ms. Kintz for Clear Talent Group. Mr. Pletcher declared he gave an introductory speech to the performers in which he explained: "[A] condition of being chosen was their agreement to sign a talent release to enable use of the reel for marketing and advertising . . . ."

Brandon Sierra of Clear Talent Group prepared a deal memo. The deal memo covered the Clear Talent Group performers, Ms. Stecklein, Ms. Markarian and Ms. Kintz.

The Clear Talent Group deal memo describes the nature of the project, how many rehearsal days, when the taping would occur and compensation. The Clear Talent Group deal memo describes the production title as "'Beautiful' Burlesque Promo." The deal memo states the rehearsal dates were to be February 29 to March 3 and March 5 and 6, 2012. The taping was to occur on March 7, 2012. The Clear Talent Group deal memo describes the usage as follows, "Pay is for one music video only and advertising and promotion of the above mentioned music video." The Clear Talent Group deal memo lists compensation as $250 per day for 8-hour rehearsals and $550 for 12 hours of videography. The Clear Talent Group deal memo provides, "This is a memorandum of an agreement between the producer/production company named below and the agency named therein, on behalf of named talent." Regarding talent releases, the Clear Talent Group deal memo states in part, "All talent releases must be approved by agency prior to being offered to talent." The Clear Talent Group deal memo also provides, "This deal memo shall serve as confirmation of our understanding unless and until a more formal long form agreement can be executed between Agency and Producer." On March 2, 2012, Mr. Sierra sent the Clear Talent Group deal memo to Mr. Pletcher. Mr. Pletcher signed and returned the Clear Talent Group deal memo that day, March 2, 2012. Mr. Sierra, on behalf of Clear Talent Group, Ms. Stecklein, Ms. Markarian and Ms. Kintz, signed the deal memo on March 5, 2012. No long form agreement was executed.

On March 7, 2012, Mr. Pletcher also signed a deal memo prepared by McDonald-Selznick Associates, Inc. The March 7, 2012 deal memo covered McDonald-Selznick Associates, Inc., Ms. Coke, Ms. Barnes, Ms. Schmid and Ms. Edwards. No representative of McDonald-Selznick Associates, Inc. signed this deal memo. The McDonald-Selznick Associates, Inc. deal memo identifies the project, the rehearsal and the videography days and compensation. The project is listed as "Beautiful Project." The rehearsal and taping days were to be February 29 to March 3 and March 5 through March 7, 2012. The deal memo lists the compensation rate as $250 per day for rehearsals and $550 per day for taping lasting up to 12 hours. The McDonald-Selznick Associates, Inc. deal memo provides in part, "The following confirms the terms of agreement

between MP Entertainment [Mr. Pletcher's company] and Candice Coke, Dierdre [sic] Barnes, Julie Schmid, . . . and Amy Edwards (Talent)." The McDonald-Selznick Associates, Inc. deal memo states regarding usage: "TALENT'S LIKENESS TO BE USED FOR INHOUSE VIDEO USAGE, PROMOTIONAL USAGE, AND MARKETING OF THE SHOW 'BEAUTIFUL.'" There is no mention of a talent release form that the performers had to sign.

Mr. Pletcher also signed a deal memo, which was dated March 14, 2012, and prepared by Bloc Talent Agency, Incorporated for Ms. Jenkins, Ms. Marquez, and Ms. Hood. The Bloc Talent Agency, Incorporated deal memo also describes the project, the rehearsal and taping days and compensation. The performance is identified as "'Beautiful' Promotional reel." The work dates were February 29 to March 3 and March 5 through March 6, 2012, for rehearsal. March 7, 2012 was reserved for taping the video. Rehearsal rates were $250 per day for 8 hours. For the taping day, Ms. Jenkins was to be paid $550, while Ms. Marquez and Ms. Hood were to be paid $650. Like the Clear Talent Group deal memo, the Bloc Talent Agency, Incorporated deal memo provides, "All talent releases must be approved by agency prior to being offered to talent." It identifies the usage as follows, "For the purposes of education, promotion, or marketing of the show 'Beautiful.'" The Bloc Talent Agency, Incorporated deal memo also provides, "This deal memo shall serve as confirmation of our understanding unless and until a more formal long form agreement can be executed between Agency and Producer." No Bloc Talent Agency, Incorporated representative executed this deal memo. On appeal, plaintiffs assert the Bloc Talent Agency, Incorporated and McDonald-Selznick Associates, Inc. deal memos are valid contracts.

The first amended complaint alleges that none of the McDonald-Selznick Associates, Inc. performers executed talent releases as they were obligated to do so. Plaintiffs allege in his first amended complaint that the performers represented by Clear Talent Group, Ms. Stecklein, Ms. Markarian, and Ms. Kintz breached the contract on March 12, 2012, by refusing to sign a talent release form.

b. alleged defamatory statements

We begin by reciting these specific allegations of the first amended complaint which was part of the evidence before the trial court in connection with the defamation claim. Plaintiffs attempted to proceed with production of "Beautiful." In June 2012, plaintiffs allegedly contacted Tara Hughes and Melanie Lewis as potential choreographers for Beautiful. Both Ms. Hughes and Ms. Lewis allegedly decided not to work with plaintiffs after talking with Ms. Lavin. Plaintiffs allege, "Brooklyn Lavin made oral, and potentially written statements to Tara Hughes and Melanie Lewis, and potentially others to the effect that Plaintiffs did not treat their talent fairly, and were not people that they would want to do business with." Also in June 2012, plaintiffs allegedly contacted JoAnn Jansen, another choreographer. Ms. Jansen decided not to work with plaintiffs after talking with Mr. O'Brien. Plaintiffs allege, "Tim O'Brien made oral, and written statements to JoAnn Jansen, and potentially others to the effect that Plaintiffs did not treat their talent fairly, and were not people that she would want to do business with." It is undisputed plaintiffs had no evidence that Bloc Talent Agency, Incorporated and McDonald-Selznick Associates, Inc. disparaged plaintiffs to any choreographers. The same is true as to the dancers represented by Bloc Talent Agency, Incorporated and McDonald-Selznick Associates, Inc.

In addition to the first amended complaint's allegations, Mr. Pletcher declared that Mr. O'Brien and Ms. Lavin made additional defamatory statements to prospective choreographers, including: "Mitch tried to steal usage from past performers he employed"; "Mitch treated them unfairly and failed to pay them for the usage of the reel project properly"; "Mitch harassed the people on the Reel project"; "Mitch is going to fail miserably in his production"; "working with Mitch will damage your career"; "Mitch is not an honest guy"; and "Mitch is not somebody you can trust."

C. Trial Court's Order and Judgment

On May 27, 2014, the hearing on the summary judgment motions was held. On the same date, defendants' summary judgment motions were granted.

III. DISCUSSION

A. Trial Court Did Not Abuse Its Discretion by Denying Plaintiffs' Continuance Motion

Plaintiffs contend the trial court erred by not granting a continuance under section 437c, subdivision (h) which provides : "If it appears from the affidavits submitted in opposition to a motion for summary judgment or summary adjudication or both that facts essential to justify opposition may exist but cannot, for reasons stated, then be presented, the court shall deny the motion, order a continuance to permit affidavits to be obtained or discovery to be had, or make any other order as may be just. The application to continue the motion to obtain necessary discovery may also be made by ex parte motion at any time on or before the date the opposition response to the motion is due." We review a trial court's ruling on continuances under section 437c, subdivision (h) for an abuse of discretion. (*Combs v. Skyriver Communications, Inc.* (2008) 159 Cal.App.4th 1242, 1270; *Cooksey v. Alexakis* (2004) 123 Cal.App.4th 246, 254; *Knapp v. Doherty* (2004) 123 Cal.App.4th 76, 100.) If a good faith showing by affidavit is met, continuances under section 437c, subdivision (h) are to be liberally granted. (*Id.* at p. 101; *Frazee v. Seely* (2002) 95 Cal.App.4th 627, 634-635; *Bahl v. Bank of America* (2001) 89 Cal.App.4th 389, 395.)

Plaintiffs contend the trial court improperly granted Mr. Aynechi's withdrawal request at an ex parte hearing. Plaintiffs also assert they could not complete the discovery process because of the alleged assault by Mr. Bandlow. Plaintiffs argue the trial court abused its discretion by denying their motion for a continuance under Code of Civil Procedure, section 437c, subdivision (h). In support of their continuance motion, plaintiffs submitted Mr. Pletcher's declaration.

The Court of Appeal has held: "A declaration in support of a request for continuance under section 437c, subdivision (h) must show: '(1) the facts to be obtained are essential to opposing the motion; (2) there is reason to believe such facts may exist;

and (3) the reasons why additional time is needed to obtain these facts. [Citations.]' [Citation.] '"The purpose of the affidavit required by Code of Civil Procedure section 437c, subdivision (h) is to inform the court of outstanding discovery which is necessary to resist the summary judgment motion. [Citations.]'" [Citation.] 'It is not sufficient under the statute merely to indicate further discovery or investigation is contemplated. The statute makes it a condition that the party moving for a continuance show "facts essential to justify opposition may exist."' [Citation.]" (*Cooksey v. Alexakis*, *supra*, 123 Cal.App.4th at p. 254; accord, *Jade Fashion & Co., Inc. v. Harkham Industries, Inc.* (2014) 229 Cal.App.4th 635, 656.)

Without abusing its discretion, the trial court could have found that Mr. Pletcher's declaration fails to show facts essential to opposing the summary judgment motions exist which required a continuance. Mr. Pletcher contends in his declaration that because of Mr. Bandlow's alleged assault, the completion of depositions was delayed by four months. As noted, the discovery process opened in June 2013. Mr. Bandlow's alleged assault occurred on October 7, 2013. The declaration does not explain why Mr. Bandlow's alleged assault affected plaintiffs' ability to depose additional parties. Mr. Pletcher's declaration also failed to identify who would be deposed and what relevant evidence they would provide.

Mr. Pletcher also declared that from May 1 through 12, 2014, he attempted to settle this action without success. Mr. Pletcher's declaration regarding the attempted settlement does not explain that ground warranted a continuance of the summary judgment hearing.

Mr. Pletcher in his declaration also complained that the trial court allowed Mr. Aynechi, to withdraw on April 21, 2014. Mr. Pletcher asserted he had four pending depositions scheduled but he could not act in a timely manner because he did not have counsel. As noted, on March 26, 2014, the trial court granted Mr. Pletcher 21 days in which to complete 5 additional depositions. Mr. Aynechi's withdrawal on April 21, 2014, occurred after that time period. Mr. Pletcher's declaration does not explain why plaintiffs could not have conducted these depositions before the deadline. And Mr.

Pletcher's declaration fails to specify what facts essential to opposing defendants' summary judgment motion would have been secured if the additional depositions had been completed .

Plaintiffs also assert the trial court permitted Mr. Aynechi to withdraw as counsel without requiring the filing of proper forms or giving the required notice. However, Mr. Aynechi filed a notice of motion and motion to be relieved as counsel. On April 29, 2014, the trial court issued its order granting Mr. Aynechi's application to be relieved as counsel. The trial court specifically noted Mr. Aynechi had served his clients by mail of his ex parte application. Additionally, Mr. Pletcher was present telephonically during the in-camera hearing addressing Mr. Aynechi's application be relieved as counsel. Accordingly, the trial court did not err by denying plaintiffs' motion for a continuance under section 437c, subdivision (h).

B. Summary Judgment Standard of Review

Plaintiffs also argue defendants' summary judgment motions should have been denied. In *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850-851, our Supreme Court described a party's burden on summary judgment motions as follows: "[F]rom commencement to conclusion, the party moving for summary judgment bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law. That is because of the general principle that a party who seeks a court's action in his favor bears the burden of persuasion thereon. [Citation.] There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof . . . . [¶] [T]he party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact . . . . A prima facie showing is one that is sufficient to support the position

of the party in question. [Citation.]" (Fns. omitted; see *Kids' Universe v. In2Labs* (2002) 95 Cal.App.4th 870, 877-878.)

We review an order granting summary judgment de novo. (*Coral Construction, Inc. v. City and County of San Francisco* (2010) 50 Cal.4th 315, 336; *Johnson v. City of Loma Linda* (2000) 24 Cal.4th 61, 65, 67-68.) The trial court's stated reasons for granting summary judgment are not binding because we review its ruling, not its rationale. (*Coral Construction, Inc. v. City and County of San Francisco, supra*, 50 Cal.4th at p. 336; *Continental Ins. Co. v. Columbus Line, Inc.* (2003) 107 Cal.App.4th 1190, 1196.) In addition, a summary judgment motion is directed to the issues framed by the pleadings. (*Turner v. Anheuser-Busch, Inc.* (1994) 7 Cal.4th 1238, 1252; *Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666, 673, overruled on a different point in *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 527, fn. 5.) These are the only issues a motion for summary judgment must address. (*Conroy v. Regents of University of California* (2009) 45 Cal.4th 1244, 1249-1250; *Goehring v. Chapman University* (2004) 121 Cal.App.4th 353, 364.)

C. The Trial Court Did Not Err by Granting Defendants' Summary Judgment Motions

1. Mitchell Anthony Productions, LLC

When plaintiffs filed their opposition to defendants' summary judgment motions, Mitchell Anthony Productions, LLC was without counsel. A corporation must be represented by counsel in order to appear in litigation. (*Merco Construction Engineers, Inc. v. Municipal Court* (1978) 21 Cal.3d 724, 731; *Gamet v. Blanchard* (2001) 91 Cal.App.4th 1276, 1284, fn. 5.) On this ground alone, the summary judgment against Mitchell Anthony Productions, LLC is affirmed.

2. The summary judgment motion of Clear Talent Group, Ms. Stecklein, Ms. Markarian and Ms. Kintz

a. contract breach

In the ninth cause of action, plaintiffs allege Clear Talent Group, Ms. Stecklein, Ms. Markarian and Ms. Kintz breached an oral contract by failing to have each dancer execute a talent release form. The Court of Appeal has held, "A cause of action for

breach of contract requires pleading of a contract, plaintiff's performance or excuse for failure to perform, defendant's breach and damages to plaintiff resulting therefrom." (*McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1489; accord, *Spinks v. Equity Residential Briarwood Apartments* (2009) 171 Cal.App.4th 1004, 1031.) We now turn to the evidence which demonstrates the summary judgment motion of Clear Talent Group, Ms. Stecklein, Ms. Markarian and Ms. Kintz was correctly granted.

In their summary judgment motion, Clear Talent Group, Ms. Stecklein, Ms. Markarian and Ms. Kintz presented evidence that signing talent release forms was not a requirement of any contract or agreement. Ms. Stecklein, Ms. Markarian and Ms. Kintz all stated in their declarations that no oral agreement was ever presented or accepted at the February 27, 2012 audition. Defendants alternatively asserted that the Clear Talent Group deal memo was a partially integrated written agreement. Thus, any evidence of a prior oral agreement that contradicted the deal memo's terms was barred by the parol evidence rule, which would include the oral contract. (§ 1856, subd. (a); Civ. Code, § 1625; *Casa Herrera, Inc. v. Beydoun* (2004) 32 Cal.4th 336, 343.) As noted, the Clear Talent Group deal memo provides, "All talent releases must be approved by agency prior to being offered to talent." No such approval of account releases by any employee of Clear Talent Group occurred. Clear Talent Group, Ms. Stecklein, Ms. Markarian and Ms. Kintz have met their initial burden of production that the contract breach cause of action fails as a matter of law. (§ 437c, subd. (p)(1); *Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th at p. 851.)

The burden of production therefore shifted to plaintiffs who argue there was an oral agreement on February 27, 2012. As noted, Mr. Pletcher made the following statement which serves as the basis of his oral contract claims: "[A] condition of being chosen was their agreement to sign a talent release to enable use of the reel for marketing and advertising . . . ." Plaintiffs concede the deal memo may be a partially integrated written agreement. However, plaintiffs contend that requiring the dancers to sign a talent release does not contradict the Clear Talent Group deal memo.

Mr. Pletcher declared plaintiffs made an offer of employment that: named the project; described the usage; provided the compensation rates; and required signing a talent release form. Mr. Pletcher also declared all of the dancers agreed to the oral contract which required the signing of a talent release form. For purposes of summary judgment, we assume plaintiffs and Ms. Stecklein, Ms. Markarian and Ms. Kintz entered into an oral contract on February 27, 2012, at the audition.

However, plaintiff claims are barred by Civil Code section 1697 which provides, "A contract not in writing may be modified in any respect by consent of the parties, in writing, without a new consideration, and is extinguished thereby to the extent of the modification." (*Slavin v. Borinstein* (1994) 25 Cal.App.4th 713, 720; *Roehm Distributing Co. v. Burgermeister Brewing Corp.* (1961) 196 Cal.App.2d 678, 681.) Under Civil Code section 1697, the March 2, 2012 Clear Talent Group deal memo functions as a written modification of the alleged February 27, 2012 oral contract. The February 27, 2012 oral agreement to sign talent release forms is omitted in the March 2, 2012 Clear Talent Group deal memo. As noted, under the March 2, 2012 deal memo, the talent release form requirement is subject to the approval of Clear Talent Group. Plaintiffs argue the March 2, 2012 Clear Talent Group deal memo cannot contradict the February 27, 2012 oral contract. The March 2, 2012 Clear Talent Group deal memo was a written *modification* of the February 27, 2012 oral contract entered into Ms. Stecklein, Ms. Markarian and Ms. Kintz.

The Clear Talent Group deal memo modified the oral contract such that there was no triable issue of material fact of a contract breach. The Clear Talent Group deal memo notably added the term requiring all talent releases be approved by the agency before being given to the dancers. There is no evidence that Clear Talent Group ever approved talent release forms for their dancers.

However, plaintiffs rely on the deposition testimony from Laney Filuk, a Bloc Talent Agency, Incorporated agent, that requiring the dancers to sign a talent release is a standard industry practice. Ms. Filuk testified, "When you're putting someone's image on camera, you should have them sign a release form of some sort . . . ." Contrary to

plaintiffs' assertions, Ms. Filuk's testimony does not demonstrate that talent agencies must agree to talent releases. There is no requirement in the oral contract or the March 2, 2012 deal memo that Clear Talent Group had to approve talent releases. The provision requiring Clear Talent Group to approve talent release forms prior to being given to the dancers does not contradict any prior oral contract obligation. The March 2, 2012 deal memo modifies the requirement that Ms. Stecklein, Ms. Markarian and Ms. Kintz had to sign a talent release form. The March 2, 2012 deal memo added a condition precedent to the execution of a talent release form--Clear Talent Group's approval. Because Clear Talent Group did not approve talent releases, Ms. Stecklein, Ms. Markarian, and Ms. Kintz were not contractually required to sign talent releases. Clear Talent Group, Ms. Stecklein, Ms. Markarian and Ms. Kintz are entitled to judgment on the ninth cause of action. We need not address the parties' remaining arguments concerning contract breach issues.

b. inducing contract breach and contract interference

Plaintiffs third cause of action alleges Clear Talent Group and Mr. O'Brien induced Ms. Stecklein, Ms. Markarian and Ms. Kintz to breach their contractual obligations. Plaintiffs allege, "Defendants intended to induce the dancers to breach their contracts with Plaintiffs by publishing false information to the dancers and dancers' agents and others regarding the intended use for the reel, by wrongfully instructing the dancers not to sign releases unless they are paid more money than they had already been contracted to be paid for their work, and by disparaging plaintiffs to other choreographers, thereby discouraging them from working with plaintiffs and preventing plaintiffs from producing, marketing and putting on their intended show. [¶] The defendants' conduct caused, or was a substantial factor in causing the dancers to breach their contracts with Plaintiffs and refuse to sign releases unless paid more money that [sic] was called for in their contracts."

Mr. O'Brien, Clear Talent Group, Ms. Stecklein, Ms. Markarian and Ms. Kintz argue plaintiffs cannot raise a triable issue for the third and fourth causes of action. This is because plaintiffs failed to raise a triable issue on their contract breach claim, which is

the basis for the third and fourth causes of action. Plaintiffs do not dispute this argument. The elements of a cause of action for inducing contract breach are: a valid contract between the plaintiff and a third party; the defendant's knowledge of contract; the defendant's intentional acts designed to induce contract breach; actual breach; and resulting damage. (*Pacific Gas & Elec. Co. v. Bear Stearns & Co.* (1990) 50 Cal.3d 1118, 1126; see *Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 55; CACI No. 2200.) Plaintiff's cause of action for inducing contract breach has no merit. As stated above, plaintiffs have failed to raise a triable issue that a contract breach occurred. Accordingly, plaintiffs fail to raise a triable issue of material fact for inducement of a contract breach.

Similarly, plaintiffs' fourth cause of action is for intentional interference with a contract. Mr. O'Brien and Clear Talent Group's alleged misconduct is the same as the misconduct alleged for the third cause of action. The elements of a cause of action for intentional contract interference are: a valid contract between the plaintiff and a third party; the defendant's knowledge of contract; the defendant intended to disrupt contractual relationship; the defendant's conduct prevented performance or made performance more expensive or difficult; and resulting damage. (*Pacific Gas & Elec. Co. v. Bear Stearns & Co., supra*, 50 Cal.3d at pp. 1126, 1129; see *Quelimane Co. v. Stewart Title Guaranty Co., supra*, 19 Cal.4th at p. 55; CACI No. 2201.)

The basis for plaintiff's claims is that Mr. O'Brien and Clear Talent Group caused Ms. Stecklein, Ms. Markarian and Ms. Kintz to breach their contractual obligations under the oral agreements. This is the same allegation present in the third cause of action. For the same reasons, plaintiffs' intentional interference claims have no merit.

c. defamation

In their sixth cause of action, plaintiffs allege: "In June, 2012, Tim O'Brien made oral, and potentially written statements to Joann Jansen and others to the effect that Plaintiffs did not treat their talent fairly, and were not people that they would want to do business with." Plaintiffs allege these statements were understood to be implying that plaintiffs cheat and take advantage of their talent and are unethical in their business

practices. The essential elements for a defamation claim are: an intentional publication of an unprivileged statement of fact which is false; a factual statement that has a natural tendency to injure the plaintiff; or, if there is no natural tendency to injure, the defamatory matter must consist of a factual statement which causes special damage. (*Smith v. Maldonado* (1999) 72 Cal.App.4th 637, 645; accord, *Ringler Associates Inc. v. Maryland Casualty Co.* (2000) 80 Cal.App.4th 1165, 1179; see Civ. Code, §§ 45, 46.) The Court of Appeal has held: "The critical determination of whether an allegedly defamatory statement constitutes fact or opinion is a question of law for the court. [Citations.]" (*Campanelli v. Regents of University of California* (1996) 44 Cal.App.4th 572, 578; accord, *Smith v. Maldonado, supra*, 72 Cal.App.4th at pp. 646-647.)

The Court of Appeal has described the difference between opinion and fact and the defamation context thusly: "In drawing the distinction between opinion and fact '"California courts have developed a 'totality of the circumstances' test" . . . . [Citation.] The court must put itself in the place of an "average reader" and decide the "natural and probable effect" of the statement. [Citations.] The words themselves must be examined to see if they have a defamatory meaning, or if the "sense and meaning . . . fairly presumed to have been conveyed to those who read it" have a defamatory meaning. [Citations.] Statements "cautiously phrased in terms of apparency" are more likely to be opinions. [Citations.] [¶] In addition to the language, the context of a statement must be examined. [Citation.] The court must "look at the nature and full content of the communication and to the knowledge and understanding of the audience to whom the publication was directed." [Citation.]' [Citation.]" (*Campanelli v. Regents of University of California, supra*, 44 Cal.App.4th at p. 578.) "In determining whether disparaging remarks are actionable defamation, '"the question is not strictly whether the published statement is fact or opinion . . . [r]ather, the disposition question is whether a reasonable fact finder could conclude the published statements declares or implies a provably false assertion of fact." [Citation.]' [Citation.]" (*Integrated Healthcare Holdings, Inc. v. Fitzgibbons* (2006) 140 Cal.App.4th 515, 527.)

There are two alleged defamatory statements at issue. The first statement is that plaintiffs did not treat their talent fairly. The second statement is that plaintiffs are not a person or a company that the choreographers would want to do business with. Clear Talent Group and Mr. O'Brien argued that his statements are opinion and are not actionable offenses. They assert the statements were subjective in nature and not provably false factual statements. Clear Talent Group and Mr. O'Brien have met their initial burden of demonstrating there is no triable issue of material fact as to the defamation cause of action against him. (§ 437c, subd. (p)(1); *Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th at p. 851.)

In opposition, plaintiffs argue Mr. O'Brien's alleged statements are not opinions. Plaintiffs contend the alleged statements, even if opinions, imply factual statements such as Mr. Pletcher cheats his talent and engages in unethical business practices. As noted, plaintiffs assert additional alleged defamatory statements by Mr. O'Brien to choreographers other than Ms. Jansen.

The first statement is opinion. Whether a person treats someone "fairly" is a subjective judgment. An opinion is actionable if it implies the existence of unstated defamatory facts. (See, e.g., *Franklin v. Dynamics Details, Inc.* (2004) 116 Cal.App.4th 375, 387 [stating "I think Jones is an alcoholic" implies speaker knows facts to justify that conclusion, such as Jones goes to a bar every night and drinks multiple martinis].) Here, it is unclear what facts are implied when a person is described as not treating someone fairly. Plaintiffs allege in their first amended complaint only that Mr. O'Brien stated "[p]laintiffs did not treat their talent fairly." As noted, the issues are framed by the pleadings on summary judgment motions. (*Turner v. Anheuser-Busch, Inc.*, *supra*, 7 Cal.4th at p. 1252; *Ann M. v. Pacific Plaza Shopping Center*, *supra*, 6 Cal.4th at p. 673; see *Comstock v. Aber* (2012) 212 Cal.App.4th 931, 948 ["To plead . . . a [defamation] cause of action, [the plaintiff] must set forth 'either the specific words or the substance of' the allegedly defamatory statements."].) There is no implication or inference of cheating and behaving unethically to be made from the first statement. The first statement is nonactionable opinion.

The second statement alleged by plaintiffs is clearly opinion and nonactionable. Whether choreographers would want to work with plaintiffs is a subjective belief. Like the first statement, there is no implication or inference of fact to be made from the second statement. Accordingly, plaintiffs have failed to raise a triable issue of material fact for defamation. Mr. O'Brien is entitled to judgment as a matter of law for the sixth cause of action.

d. prospective economic advantage interference

In their first and second causes of action, plaintiffs allege negligent and intentional prospective economic advantage interference against Mr. O'Brien and Clear Talent Group. Plaintiffs allege three instances of misconduct: publishing false information to dancers regarding intended use of the video; instructing dancers to not sign talent release forms unless more money was paid; and disparaging them to other choreographers. Defendants argue that these causes of action fail because they are based on the alleged misconduct of the above causes of action. Plaintiffs do not dispute this argument.

The elements of an intentional prospective economic advantage interference cause of action are: an economic relationship between the plaintiff and a third party; the defendant's knowledge of the relationship; intentional acts on the part of the defendant designed to disrupt the relationship; actual disruption of the relationship; and damages. (*Reeves v. Hanlon* (2004) 33 Cal.4th 1140, 1152; *Youst v. Longo* (1987) 43 Cal.3d 64, 71, fn. 6; CACI No. 2202.) The elements of a negligent prospective economic advantage interference cause of action are: an economic relationship between the plaintiff and a third party; the defendant's knowledge of the relationship; the defendant's negligence; and the negligence caused damage to the plaintiff in that the economic relationship was actually interfered with or disrupted. (*Venhaus v. Shultz* (2007) 155 Cal.App.4th 1072, 1078; *North American Chemical Co. v. Superior Court* (1997) 59 Cal.App.4th 764, 786; CACI No. 2204.) The third element for both types of prospective economic advantage interference requires the conduct be wrongful by some legal measure rather than be improper but lawful. (*Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th

1134, 1153; *Della Penna v. Toyota Motor Sales, U.S.A., Inc.* (1995) 11 Cal.4th 376, 393; *Contemporary Services Corp. v. Staff Pro Inc.* (2007) 152 Cal.App.4th 1043, 1060.)

As noted, plaintiffs have not raised a triable issue of material fact concerning the claims for: contract breach; interference with contract; or defamation. Plaintiffs have not identified any independently unlawful conduct by Mr. O'Brien or Clear Talent Group. Accordingly, plaintiffs have not raised a triable issue of either intentional or negligent prospective economic advantage interference.

e. unfair competition law

In the eighth cause of action, plaintiffs allege Mr. O'Brien and Clear Talent Group violated the Unfair Competition Law based on the above stated misconduct. Plaintiffs allege, "Defendants' actions as alleged above in the preceding causes of action, as fully alleged set forth, constituted unfair business practices as defined by California Business and Professions Code Section 17200 et seq." Business and Professions Code section 17200 provides in pertinent part, "[U]nfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice . . . ." (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 180 (*Cel-Tech*); *Smith v. State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, 717 (*Smith*).) Our Supreme Court held, "By proscribing 'any unlawful' business practice, 'section 17200 "borrows" violations of other laws and treats them as unlawful practices' that the unfair competition law makes independently actionable. [Citations.]" (*Cel-Tech, supra,* 20 Cal.4th at p. 180; *Smith, supra*, 93 Cal.App.4th at p. 718.) In the context of unfairness to competitors, our Supreme Court held: "When a plaintiff who claims to have suffered injury from a direct competitor's 'unfair' act or practice invokes [Business and Professions Code] section 17200, the word 'unfair' in that section means conduct that threatens an incipient violation of an antitrust law, or violates the policy or spirit of one of those laws because its effects are comparable to or the same as a violation of the law, or otherwise significantly threatens or harms competition." (*Cel-Tech, supra,* 20 Cal.4th at p. 187; see *Smith, supra*, 93 Cal.App.4th at p. 719 [in context of consumer claims, " 'an "unfair" business practice occurs when that practice "offends an established policy or

when the practice is immoral, unethical, unscrupulous or substantially injurious to consumers.""""] [citations and footnotes omitted]; but see *Scripps Clinic v. Superior Court* (2003) 108 Cal.App.4th 917, 940 [applying *Cel-Tech*'s requirement for "unfair" to consumer claims] (*Scripps*).) Defendants assert the unfair competition law cause of action fails because defendants' conduct as alleged above was neither unlawful nor unfair.

Here, plaintiffs' unfair competition law cause of action has no merit. As noted, plaintiffs have failed to raise a triable issue for all their other claims against Mr. O'Brien and Clear Talent Group. Thus, plaintiffs have failed to raise a triable issue as to whether Mr. O'Brien and Clear Talent Group engaged in unlawful conduct subject to the unfair competition law. As to the unfairness prong, plaintiffs have not presented evidence indicating how Mr. O'Brien and Clear Talent Group's conduct was unfair under either *Scripps* or *Smith*. Plaintiffs have failed to raise a triable issue that indicates Mr. O'Brien and Clear Talent Group engaged in unlawful, unfair or fraudulent business practices. Mr. O'Brien and Clear Talent Group are entitled to judgment on the eighth cause of action for unfair competition.

3. Tenth through sixteenth causes of action

a. contract breach

In the tenth through sixteenth causes of action, plaintiffs allege Ms. Coke, Ms. Barnes, Ms. Schmid, Ms. Edwards, Ms. Jenkins, Ms. Marquez, and Ms. Hood committed contract breach. Plaintiffs allege the contract breach occurred on or around March 12, 2012. This occurred when Ms. Coke, Ms. Barnes, Ms. Schmid, Ms. Edwards, Ms. Jenkins, Ms. Marquez, and Ms. Hood failed to sign a talent release form. As noted, plaintiffs contend the dancers had a duty to do so under the alleged aforementioned February 27, 2012 oral contract. And as noted, plaintiffs assert the Bloc Talent Agency, Incorporated and McDonald-Selznick Associates, Inc. deal memos are valid contracts. (See *Fagelbaum & Heller LLP v. Smylie* (2009) 174 Cal.App.4th 1351, 1365; *Angell v. Rowlands* (1978) 85 Cal.App.3d 536, 542.)

Bloc Talent Agency, Incorporated and McDonald-Selznick Associates, Inc. assert the casting notice was a unilateral contract. Under their theory, Ms. Coke, Ms. Barnes, Ms. Schmid, Ms. Edwards, Ms. Jenkins, Ms. Marquez, and Ms. Hood accepted by the unilateral contract appearing at the audition. The casting notice makes no mention of talent release forms. By contrast, plaintiffs assert the casting notice did not form a unilateral contract. Rather, plaintiffs contend the oral contract formed on February 27, 2012, between plaintiffs and the performers. As stated, there is evidence the oral contract required the performers to sign talent release forms.

b. Ms. Jenkins, Ms. Marquez and Ms. Hood, the dancers represented by Bloc Talent Agency, Incorporated

Assuming an oral contract formed on February 27, 2012, plaintiffs fail to raise a triable issue as to whether Ms. Jenkins, Ms. Marquez, and Ms. Hood breached the agreement. As with the Clear Talent Group deal memo, the Bloc Talent Agency, Incorporated deal memo is a written modification of an oral contract. (Civ. Code, § 1697; *Slavin v. Borinstein, supra,* 25 Cal.App.4th at p. 720; *Roehm Distributing Co. v. Burgermeister Brewing Corp., supra,* 196 Cal.App.2d at p. 681.) This written modification included the requirement that any talent release form be approved by Bloc Talent Agency, Incorporated. It is undisputed no Bloc Talent Agency, Incorporated employee agreed to any talent release form. Additionally, plaintiffs presented no evidence indicating Bloc Talent Agency, Incorporated was required to agree to a talent release. Thus, plaintiffs have not raised a triable issue of material fact that Ms. Jenkins, Ms. Marquez, and Ms. Hood were contractually required to sign talent release forms.

c. Ms. Coke, Ms. Barnes, Ms. Schmid and Ms. Edwards, the dancers represented by McDonald Selznick Associates, Inc.

As a connection with the other dancers, plaintiffs argue Ms. Coke, Ms. Barnes, Ms. Schmid and Ms. Edwards failed to sign a talent release form. This contention has no merit. On March 16, 2012, J.C. Gutierrez, a McDonald-Selznick Associates, Inc. agent, signed a talent release form on behalf of Ms. Coke, Ms. Barnes, Ms. Schmid and Ms.

Edwards. Thus, a talent release form was provided and there was no breach of the February 27, 2012 oral agreement.

d. inducing contract breach and interference with contract

Plaintiffs allege in their third and fourth causes of action that Bloc Talent Agency, Incorporated and McDonald-Selznick Associates, Inc. induced a contract breach and interfered with a contractual relation. Plaintiffs contentions in this regard are the same as there are theories involving Clear Talent Group. Bloc Talent Agency, Incorporated and McDonald-Selznick Associates, Inc. assert that if there is no contract breach, there is no triable issue of material fact for these causes of action. Plaintiffs do not dispute this argument. We adopt by reference our analysis concerning the contract-based tort claims against Clear Talent Group. The third and fourth causes of action have no merit.

e. prospective economic advantage interference

Plaintiffs allege in their first and second causes of action that Bloc Talent Agency, Incorporated and McDonald-Selznick Associates, Inc. intentionally and negligently interfered with plaintiffs' prospective economic advantage. These allegations parallel plaintiff's claims against Clear Talent Group. We adopt our prior discussion concerning these same claims against Clear Talent Group. Thus, Bloc Talent Agency, Incorporated and McDonald-Selznick Associates, Inc. are entitled to judgment on the first and second causes of action.

f. unfair competition law

Plaintiffs allege in their eighth cause of action that Bloc Talent Agency, Incorporated and McDonald-Selznick Associates, Inc. violated the Unfair Competition Law. Plaintiffs made the same allegations against Clear Talent Group which we have rejected. For the same reasons, Bloc Talent Agency, Incorporated and McDonald-Selznick Associates, Inc. are entitled to judgment on the eighth cause of action. Accordingly, summary judgment was properly entered in favor of Bloc Talent Agency, Incorporated and McDonald-Selznick Associates, Inc.

3. Ms. Lavin's motion

The seventh cause of action is against Ms. Lavin for defamation. Like Mr. O'Brien, plaintiffs allege Ms. Lavin made two defamatory statements to Ms. Hughes and Ms. Lewis. The first defamatory statement was that plaintiffs did not treat talent fairly and the choreographers would not want to work with them. Like Mr. O'Brien, Ms. Lavin asserts her alleged statements were nonactionable opinion. Plaintiffs' arguments in opposition are the same as the ones raised against Mr. O'Brien for defamation. For the reasons stated regarding the slander claim against Mr. O'Brien, the defamation cause of against Ms. Lavin has no merit. Ms. Lavin is entitled to judgment as a matter of law on the seventh cause of action.

The eighth cause of action is against Ms. Lavin for violation of the Unfair Competition Law. Plaintiffs allege Ms. Lavin committed unlawful business practices because of the defamation alleged in the seventh cause of action. Ms. Lavin asserts the unfair competition law cause of action fails because the defamation cause of action fails. We agree. Accordingly, the trial court did not err by granting summary judgment for Ms. Lavin.

IV. DISPOSITION

The judgment is affirmed. Appellate costs are imposed against plaintiffs, Mitchell Pletcher and Mitchell Anthony Productions, LLC and in favor of defendants: Tim O'Brien; Tim O'Brien and Associates doing business as Clear Talent Group; Tyne Stecklein; Rachel Markarian; Francesca Kintz; Bloc Talent Agency, Incorporated; McDonald-Selznick Associates, Inc.; Candice Coke; Deirdre Barnes; Julie Schmid; Amy Edwards; Erica Kiehl Jenkins; Alyssa Marquez; Donna Hood; and Brooklyn Lavin.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

TURNER, P. J.

We concur:

KRIEGLER, J.

BAKER, J.