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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ISAAC MICHALOV et al., Plaintiffs and Respondents, v. SYNDICATE FILMS INTERNATIONAL, LLC, Defendant and Appellant.	B228360 (Los Angeles County Super. Ct. No. LC077567)

APPEAL from a judgment of the Superior Court of Los Angeles County. Bert Glennon, Jr., Judge. Affirmed.

Nahai Law Group, Behzad Nahai and Edward Wei for Defendant and Appellant.

Krane & Smith, Samuel Krane and Marc Smith for Plaintiffs and Respondents.

* * * * * *

A jury entered a general verdict in favor of plaintiffs and respondents Isaac Michalov, Michael Grayson and Axis Entertainment, Inc. (sometimes collectively plaintiffs) and against defendant and appellant Syndicate Films International, LLC in the amount of $1 million. Appellant contends that there was insufficient evidence to support the verdict and that a new trial should have been granted on the ground of juror misconduct.

We affirm. There was sufficient evidence to support the general verdict under more than one of the multiple theories of recovery on which the jury was instructed. Moreover, the juror declarations offered by plaintiffs were inadequate to show the jury rendered an improper quotient verdict.

FACTUAL AND PROCEDURAL BACKGROUND

Transactions Involving Plaintiffs and Appellant.[1]

David Glasser and Michael Grayson met in their teens and became reacquainted in 1997. Approximately two years later, Glasser approached Grayson about loaning him $50,000 for one of his films. At that time, Glasser was with Cutting Edge Entertainment (Cutting Edge). Grayson began lending money to support additional projects, always with Glasser's representation that he would be repaid with interest, typically within a 90 to 120 day time frame. Grayson received some level of repayment, but Glasser often rolled the loan amounts into other projects.

When Glasser went to another company, Splendid, in 2000, he continued borrowing money from Grayson and Grayson's company Axis Entertainment (Axis), and also began borrowing money from Isaac Michalov who was associated with Grayson. When he changed positions, Glasser transferred some of his projects and investments

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[1] The parties presented conflicting evidence. "Because this appeal comes to us after judgment in [plaintiffs'] favor, we must view the evidence in the light most favorable to [plaintiffs]. We must not reweigh the evidence, but rather must defer to the jury's factual findings if there is any substantial evidence to support them. [Citation.]" (*Hill v. City of Long Beach* (1995) 33 Cal.App.4th 1684, 1687.) Our summary of the facts is necessarily guided by these principles.

from Cutting Edge to Splendid. Glasser represented that the funds were often necessary to act a bridge for forthcoming bank loans obtained to fund production costs. The loans from plaintiffs funded both Glasser's film projects and satisfied some of his personal obligations to creditors. He repaid portions of the loans, but sometimes wrote bad checks to plaintiffs. The total value of the returned checks exceeded $1 million.

Appellant was formed in 2003 as a limited liability company in order to conduct foreign sales for the Yari Film Group (Yari Film). Appellant's role was to act as a foreign sales agent by entering into licensing or distribution agreements with foreign distributors for finished or potential films. Each agreement would typically have a minimum guarantee paid upon the delivery of the film; for potential films, producers would use such agreements to obtain financing. Appellant was not a production company and had no role in paying producer fees.

In 2003, Glasser joined appellant as its president. As part of Glasser's compensation package, appellant agreed to pay approximately $1 million of his personal debts. Appellant issued checks to Channel Films and plaintiffs in furtherance of that arrangement, including a series of checks directly to Axis. Appellant also issued at least one check directly to a personal creditor of Glasser's. An in-house accountant at Yari Film estimated that the total amount of the payments was approximately $1.3 million.

Glasser told Grayson that appellant had assumed approximately $1.2 million of the debt incurred by Cutting Edge and Splendid; plaintiffs understood that amount had been "rolled over" into appellant. Appellant denied that it assumed any obligations incurred by either Cutting Edge or Splendid.

In his role as president, Glasser was authorized to sign checks on appellant's behalf. Prior to June 2005 and before appellant instituted certain internal accounting controls, Glasser wrote checks from appellant's account to pay his creditors. At least one check from appellant to plaintiffs was returned for insufficient funds.

In 2005, Grayson and Michalov expressed their concerns to Glasser about not having been fully repaid. At that time, Glasser owed plaintiffs slightly over $3 million from prior loans; they had not ever invested in or loaned money directly to appellant.

Grayson and Michalov discussed with Glasser the possibility of having to file a lawsuit to recover their funds, and Glasser responded that they would never be repaid if they did because he would be fired.

Instead, when Michalov went to Glasser's office on April 25, 2005 to pick up a payment, Glasser presented him with a letter (April 25 letter) addressed "To Whom It May Concern" which stated: "At this time Mr. Michalov has business investments with Syndicate totaling One Million Two Hundred Thousand U.S. Dollars ($1,200,000). Interest from Mr. Michalov's investment is accruing at the rate of Twenty-five percent (25%) with set interest income to be an additional $300,000 at year's end making his gross investment One Million Five Hundred Thousand U.S. Dollars ($1,500,000). [¶] Mr. Michalov is also a principal in a commission-only based project involving two motion pictures: *Cop War*, written and directed by Sheldon Lettich, and *The Run*, written by Ron Base. Mr. Michalov's guaranteed commission on this project is Five Hundred Thousand U.S. Dollars ($500,000), with payment due on or before December 1, 2005. [¶] Should you have any questions or need any further [*sic*] regarding Mr. Michalov, please feel free to contact the undersigned." Glasser signed the letter in his capacity as appellant's president and on appellant's letterhead.

Also dated April 25, 2005, Glasser signed a $1.5 million promissory note in favor of Michalov. An addendum to the promissory note provided that Glasser agreed to make payments of $25,000 per month minimum to Michalov and represented that the $1.5 million amount had been owed to Michalov for five years, with Glasser having borrowed the money to conduct business.

Glasser indicated that both documents—the April 25 letter and the promissory note—were necessary because appellant had assumed an amount only up to $1.2 million and Glasser, personally, was liable for the $1.5 million. No one from appellant ever told plaintiffs that Glasser was not authorized to execute the April 25 letter, and Grayson and Michalov understood that Glasser was acting on behalf of appellant in signing the letter.

Glasser denied that the April 25 letter was intended to reflect any obligation on the part of appellant and considered it to reflect only his personal obligations. He did not believe he could have obligated appellant without obtaining additional approvals. He viewed the purpose of the April 25 letter as being a response to Michalov's interest in investing in a tanning salon and his request to provide information to the seller about his other assets and investments. Both Grayson and Michalov stated that could not have been the purpose of the April 25 letter because Michalov did not invest in the tanning salon until 2006.

With respect to the $500,000 commission, Glasser had also represented that plaintiffs were guaranteed a commission for any script appellant accepted. The commission identified in the April 25 letter was for the scripts for *Cop War* and *The Run*—not for any production credit. Grayson and Michalov expected to receive producer's fees and executive production credit when and if either film was produced. Glasser denied that the April 25 letter was designed to reflect any type of "guaranteed" payment; as was typical in the industry, Grayson and Michalov would receive a payment only if the films were produced.

The amounts referenced in the April 25 letter and the promissory note were never paid to plaintiffs. Neither *Cop War* nor *The Run* was ever produced.

Bob Yari, president of Yari Film, was unaware that Glasser had written the April 25 letter until the instant lawsuit was filed in 2007. At that time, Glasser told him that he signed the letter as an accommodation to Michalov to assist him in getting a loan. Appellant's executives were likewise unaware that Glasser had been paying his creditors with checks from appellant. With the exception of payments made in the ordinary course of business pursuant to existing contracts, Yari's approval was required for appellant to obligate itself to a loan or commission payment. Yari had not approved any written agreement between appellant and plaintiffs.

Glasser remained at appellant for another one and one-half years after Yari learned that he prepared the April 25 letter, ultimately leaving his employment with appellant for a position at the Weinstein Company in September 2008.

Pleadings, Trial and Judgment.

Plaintiffs initially filed a lawsuit in April 2007 against appellant, Glasser and individuals related to Glasser, and filed the operative third amended complaint (complaint) in July 2008, which alleged 23 causes of action, including contract, tort and equitable claims. The claims involving appellant were designed to recover an alleged $2.1 million balance remaining on a $4.7 million debt resulting from "complex and intertwined loan transactions encompassing seven years." Appellant answered, denying the allegations and asserting multiple affirmative defenses.

In August 2009, Glasser and the other individual defendants reached a settlement and entered into a stipulated judgment. Among other terms, judgment would be entered against Glasser and his wife in the amount of $4.5 million and they would satisfy that judgment with an initial lump sum payment of $500,000 and a series of monthly payments thereafter. Upon timely submission of the initial payment, however, the settlement permitted Glasser to pay a total amount of $2.05 million by August 2011 in full satisfaction of the judgment; following the initial payment, an amended judgment was entered in the amount of $1.55 million.

A jury trial against appellant only commenced in May 2010. Glasser, Grayson, Michalov, Yari and appellant's in-house counsel William Immerman and in-house accountant Dennis Brown testified. The jury was instructed on the theories of breach of contract, breach of the implied covenant of good faith and fair dealing, money had and received, account stated and unjust enrichment. By general verdict, the jury found in favor of plaintiffs and awarded them $1 million. A judgment incorporating the jury verdict was entered in July 2010.

Appellant moved for judgment notwithstanding the verdict and a new trial, the latter motion premised on insufficiency of evidence, irregularity in the proceedings and juror misconduct.[2] Appellant submitted two juror declarations, which averred in part that

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2 Appellant also moved for a directed verdict, which the trial court characterized as another motion for judgment notwithstanding the verdict and denied.

on the second day of deliberations "one of the jurors proposed voting to award one million dollars ($1,000,000) to Plaintiffs as a compromise amount to avoid a hung jury. The quotient of one million dollars ($1,000,000) was arrived at by taking the difference between the amount advocated by those jurors who felt Plaintiffs were entitled to the entire two million dollars and the amount advocated by those jurors who felt Plaintiffs were entitled to nothing. The final award of one million dollars served as an average of the sums being advocated by competing factions of jurors to avoid a deadlocked jury."

Plaintiffs opposed the motions and filed evidentiary objections to the two juror declarations submitted in support of the motion for new trial. They also filed a juror declaration in support of their opposition to the motion for a new trial. According to that juror, the jury determined the $1 million award after numerous discussions and "[a]t no time did the jurors agree, in advance, or at anytime, to use an average sum or quotient to adopt as its verdict." Following a September 2010 hearing, the trial court denied the motions.

Appellant appealed from the judgment.[3]

DISCUSSION

Appellant contends there was insufficient evidence to support the verdict and a new trial was warranted on the ground of juror misconduct in the form of an improper quotient verdict. We find no merit to either contention.

I. Substantial Evidence Supported the General Verdict.

A. Effect of a General Verdict and Standard of Review.

Appellant challenges the verdict on the grounds that there was insufficient evidence to establish its liability for a breach of contract—a theory it asserts was the sole basis for plaintiffs' recovery. It contends that any written or oral contract fails for a lack

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[3] Although appellant's notice of appeal only refers to the judgment, we will construe the notice of appeal to include the order denying the motion for a new trial. (Cal. Rules of Court, rule 8.100(a)(2) [notice of appeal to be liberally construed].)

of consideration on its part and further argues that plaintiffs were statutorily barred from recovering any sum for the sale of the *Cop War* and *The Run* scripts. In support of its assertion that plaintiffs' recovery was necessarily premised on the jury's finding a breach of contract, appellant points to plaintiffs' counsel's statements in closing argument that plaintiffs' case was "based on the promises that David Glasser made as the president of Syndicate Films on Exhibit 1, the April 25, 2005 letter."

While appellant accurately contends that plaintiffs sought to recover from appellant for its failure to fulfill those "promises," it inaccurately limits their theory of recovery to breach of contract. Rather, the jury was instructed that the failure to pay the amounts set forth in the April 25 letter formed the basis of not only plaintiffs' breach of contract cause of action, but also their claims for money had and received, account stated and unjust enrichment. The parties agreed to submit a general verdict to the jury, and it returned a general verdict in plaintiffs' favor. For this reason, we must look beyond appellant's isolated challenge and determine whether substantial evidence supported the verdict on any theory submitted to the jury. As explained in *Stonelight Tile, Inc. v. California Ins. Guarantee Assn.* (2007) 150 Cal.App.4th 19, 39: """Where several counts or issues are tried, a general verdict will not be disturbed by an appellate court if a single one of such counts or issues is supported by substantial evidence and is unaffected by error, although another is also submitted to the jury without any evidence to support it and with instructions inviting a verdict upon it."' [Citation.] Thus, on review of the underlying judgment, the general verdict will be upheld if sufficient as to any one of the causes of action alleged." (Accord, *Codekas v. Dyna-Lift Co.* (1975) 48 Cal.App.3d 20, 25 [when a case is tried on alternate theories, the appellate court must assume the jury's verdict was based on the cause of action or theory which was supported by substantial evidence].)

We are likewise guided by the related principle that "'the jury's general verdict "imports findings in favor of the prevailing party on all material issues; and if the evidence supports implied findings on any set of issues which will sustain the verdict, it will be assumed that the jury so found. The court on appeal does not have to speculate on what particular ground the jury may have found in favor of the prevailing party." [Citations.]'" (*Wilson v. County of Orange* (2009) 169 Cal.App.4th 1185, 1193; see also *Codekas v. Dyna-Lift Co., supra,* 48 Cal.App.3d at p. 24 ["A general verdict implies a finding in favor of the prevailing party of every fact essential to the support of his action; all inferences and intendments favor such a verdict"]; *Thomson v. Casaudoumecq* (1962) 205 Cal.App.2d 549, 555 [same].)

This principle is consistent with the more general standard governing our review of a challenge to a jury verdict, which requires that "we apply the substantial evidence standard of review. All conflicts in the evidence are resolved in favor of the prevailing party, and all reasonable inferences are drawn in a manner that upholds the verdict." (*Holmes v. Lerner* (1999) 74 Cal.App.4th 442, 445.) "In short, even if the judgment of the trial court is against the weight of the evidence, we are bound to uphold it so long as the record is free from prejudicial error and the judgment is supported by evidence which is 'substantial,' that is, of '"ponderable legal significance,"' '"reasonable in nature, credible, and of solid value . . . ."' [Citations.]" (*Howard v. Owens Corning* (1999) 72 Cal.App.4th 621, 631.) In other words, "'[i]f there is substantial evidence in favor of the respondent, *no matter how slight it may appear* in response with the contradictory evidence, the judgment will be affirmed.'" (*Bowers v. Bernards* (1984) 150 Cal.App.3d 870, 872.)

B. Substantial Evidence Supported Plaintiffs' Recovery Under the Common Counts.

In addition to their claim for breach of contract, plaintiffs alleged multiple other causes of action seeking recovery of up to $2 million, and, correspondingly, the jury was instructed on several common counts. Because appellant has not challenged the sufficiency of the evidence to support the verdict under any theory other than breach of contract, we could affirm the judgment on the ground it has waived any claim of error. (See, e.g., *Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784–785 ["When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived”].) Nonetheless, we will examine the evidence supporting the general verdict under the common counts.[4]

1. Money had and received.

In their tenth cause of action for money had and received, plaintiffs alleged that appellant and others had obtained money from them in excess of $4.7 million, but had repaid only $2.6 million, and that the balance “was had and received for said Defendants’ benefit which should be paid to Plaintiffs” in an amount according to proof. “‘A cause of action is stated for money had and received if the defendant is indebted to the plaintiff in a certain sum “for money had and received by the defendant for the use of the plaintiff.”’” (*Gutierrez v. Girardi* (2011) 194 Cal.App.4th 925, 937; accord, *Weiss v. Marcus* (1975) 51 Cal.App.3d 590, 599 [“An action for money had and received lies wherever one person has received money which belongs to another, and which in equity and good conscience should be paid over to the latter”].) A claim for money had and received is available where the plaintiff has paid money to the defendant under a contract that is void or otherwise unenforceable. (*Schultz v. Harney* (1994) 27 Cal.App.4th 1611, 1623.) Conversely, however, the existence of a contract does not bar relief. (*Supervalu, Inc. v. Wexford Underwriting Managers, Inc.* (2009) 175 Cal.App.4th 64, 78–79.)

In accordance with these principles, the jury was instructed in order for plaintiffs to establish their right to recover the money they claimed that appellant owed, they had to prove that appellant “received money that was intended to be used for the benefit of the plaintiffs,” “[t]hat the money was not used for the benefit of the plaintiffs” and that appellant “has not given the money to plaintiffs . . . .”

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4 Because the jury’s $1 million verdict did not necessarily include $500,000 commission plaintiffs claimed they were owed, we need not address whether substantial evidence supported any recovery for the sale of the *Cop War* and *The Run* scripts. In any event, we are of the view that any payment for those scripts to plaintiffs would have run afoul of the Talent Agencies Act because plaintiffs were not licensed talent agents. (See Lab. Code, § 1700 et seq.; *Marathon Entertainment, Inc. v. Blasi* (2008) 42 Cal.4th 974, 985.) Moreover, there was substantial evidence that no commission or fee was owed to plaintiffs for films that were never produced.

Substantial evidence supported each of these three elements. First, the April 25 letter, together with Grayson's and Michalov's testimony, established that appellant had assumed approximately $1.2 million of the debt owed to plaintiffs. Though appellant argues that it could not have received this money because the funds represented a debt incurred by Glasser prior to his joining appellant, the jury received instructions which enabled it to find that Glasser had the authority to act on appellant's behalf in purporting to assume the debt. As explained in *Ermoian v. Desert Hospital* (2007) 152 Cal.App.4th 475, 502, ostensible agency rests on the doctrine of estoppel: "'The essential elements are representations by the principal, justifiable reliance thereon by a third party, and change of position or injury resulting from such reliance [citation]. Before recovery can be had against the principal for the acts of an ostensible agent, the person dealing with an agent must do so with belief in the agent's authority and this belief must be a reasonable one. Such belief must be generated by some act or neglect by the principal sought to be charged and the person relying on the agent's apparent authority must not be guilty of neglect [citation].' [Citation.]"

There was substantial evidence that plaintiffs reasonably believed Glasser, as appellant's president, had the authority to guarantee appellant's responsibility for repayment of the $1.2 million. In reliance on Glasser's authority, plaintiffs delayed filing suit. Moreover, appellant never did anything to alert plaintiffs that Glasser did not have the authority to obligate it to repay his personal debts. Indeed, the evidence showed that up through June 2005, Glasser wrote checks on appellant's account to pay his personal creditors. And Glasser remained as appellant's president for another one and one-half years after Yari and appellant's other executives learned about his conduct. This evidence supported the jury's implied finding that Glasser had apparent authority to act on appellant's behalf. (See generally *Everett v. Everett* (1984) 150 Cal.App.3d 1053, 1063 ["the jury's general verdict 'imports findings in favor of the prevailing party on all material issues; and if the evidence supports implied findings on any set of issues which will sustain the verdict, it will be assumed that the jury so found"].) These circumstances are unlike those in *Saks v. Charity Mission Baptist Church* (2001) 90 Cal.App.4th 1116, 1134–1135 (*Saks*), where the appellate court reversed a judgment against a church held liable on a promissory note executed by its president because the "uncontradicted testimony established that the expressed intent of the parties to the transaction was to put title to the property in the Church's name for only as long as was needed to persuade the City to fund a grant or loan" (*id*. at p. 1134) and "there was no dispute that the Church itself would end up with no interest in either the property or the partnership."[5] (*Id*. at p. 1135.)

With respect to the remaining elements of money had and received, the evidence showed that plaintiffs had provided funds to Glasser with the expectation they would be repaid in a timely manner with interest, and they were not repaid. Accordingly, substantial evidence supported the general verdict in the amount of $1 million under the plaintiffs' claim for money had and received.

2. Account stated.

The jury was also instructed on the theory of account stated. An account stated is an agreement between parties transacting business and keeping accounts of their transactions that a certain amount is the final balance due from one to the other. (1 Witkin, Summary of Cal. Law (10th ed. 2005) Contracts, § 972, p. 1062.) "To constitute an account stated, it must appear that at the time of the statement an indebtedness from one party to the other existed, that a balance was then struck and agreed to be the correct sum owing from the debtor to the creditor, and that the debtor expressly or impliedly promised to pay to the creditor the amount thus determined to be owing. In addition, the amount agreed upon must be either specifically stated or readily calculable. [Citation.]" (*H. Russell Taylor's Fire Prevention Service, Inc. v. Coca Cola Bottling Corp.* (1979) 99 Cal.App.3d 711, 726–727.) "When a statement is rendered to a

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[5] *Saks* is also distinguishable on the ground that the jury rendered a special verdict, thereby requiring the appellate court to assess the jury's findings under a breach of contract theory without the attendant presumptions in favor of a general verdict. (See *Saks, supra*, 90 Cal.App.4th at p. 1131.)

debtor and no reply is made in a reasonable time, the law implies an agreement that the account is correct as rendered." (*Maggio, Inc. v. Neal* (1987) 196 Cal.App.3d 745, 753.)

Substantial evidence likewise supported plaintiffs' recovery of $1 million from appellant under the theory of account stated. The evidence showed that Glasser, as appellant's president and on appellant's letterhead, issued a statement of indebtedness reflecting prior balances for which he represented appellant had assumed responsibility. Plaintiffs did not receive any information from any individual associated with appellant that appellant disputed the amount set forth in the April 25 letter. To the contrary, appellant conceded that part of Glasser's compensation package included appellant's agreement to pay approximately $1 million of his existing debts. Though appellant's accountant testified that the $1 million had been paid to other creditors, the jury was free to disregard this testimony. (See *Downing v. Southern Pac. Co.* (1936) 15 Cal.App.2d 246, 251 [as part of its duty to determine credibility of witnesses, jury could disregard conflicting testimony of one of the defendant's employees].) Under these circumstances, we may uphold the jury's general verdict of $1 million under theory of account stated.

3. Unjust enrichment.

Plaintiffs' eleventh cause of action alleged that Glasser and appellant had been unjustly enriched in excess of $2.1 million as a result of Glasser's wrongful conduct. The jury received instructions on unjust enrichment; the first defined it as "a legal principle requiring a person who is unjustly enriched at the expense of another to provide compensation to the other in the amount of the unjust enrichment." The instructions also provided that to establish their claim, plaintiffs had the burden to prove that appellant "received a benefit from the plaintiffs" and that appellant "unjustly retained the benefit at the expense of the plaintiffs." The jury was further instructed that plaintiffs did not have the burden to show appellant committed fraud; rather, all that plaintiffs had to show was that appellant unjustly retained a benefit provided by them.

As explained in *Melchior v. New Line Productions, Inc.* (2003) 106 Cal.App.4th 779, 793, "there is no cause of action in California for unjust enrichment. 'The phrase "Unjust Enrichment" does not describe a theory of recovery, but an effect: the result of a failure to make restitution under circumstances where it is equitable to do so.' [Citation.] Unjust enrichment is '"a general principle, underlying various legal doctrines and remedies,"' rather than a remedy itself. [Citation.] It is synonymous with restitution. [Citation.]" The elements of restitution, in turn, essentially mirror what was described to the jury as a claim for unjust enrichment. "Under the law of restitution, '[a]n individual is required to make restitution if he or she is unjustly enriched at the expense of another. [Citations.] A person is enriched if the person receives a benefit at another's expense. [Citation.]' [Citation.] However, '[t]he fact that one person benefits another is not, by itself, sufficient to require restitution. The person receiving the benefit is required to make restitution only if the circumstances are such that, as between the two individuals, it is *unjust* for the person to retain it. [Citation.]'" (*McBride v. Broughton* (2004) 123 Cal.App.4th 379, 389.)

Again, there was substantial evidence to show that appellant had received a benefit by assuming the loans made by plaintiffs, had acknowledged indebtedness in the amount of $1.2 million and did not repay that amount. These circumstances are akin to those in *Halperin v. Raville* (1986) 176 Cal.App.3d 765. There, after the plaintiff and a father developed a personal relationship, the plaintiff made a series of loans to assist the father's business. He made additional loans after the son also became involved in the business, but the son refused to repay the plaintiff when he asked for his money back. (*Id*. at pp. 768–769.) Affirming the judgment against the son, the appellate court reasoned that substantial evidence supported the application of equitable principles: "It is readily apparent that the trial court was reasonably justified in concluding that, due to son's personal relationship to [the father's business], son benefited from plaintiff's loans. No person can be permitted to adopt that part of an entire transaction which is beneficial to him/her, and then reject its burdens. [Citations.] [¶] Consequently, a showing that a person had the use and benefit of money raises the obligation to pay for the value received." (*Id*. at p. 772.) Here, evidence that Glasser had "rolled over" plaintiffs' loans to appellant—thereby enabling appellant to have the use and benefit of those funds—

supported the jury's verdict under the theory that plaintiffs were entitled to restitution because it would have been unjust for appellant to retain the funds.

4. No double recovery.

We briefly address one final contention raised by appellant with respect to the verdict. Throughout trial appellant argued and again on appeal appellant contends that the jury's $1 million verdict amounted to a double recovery in light of evidence that Glasser had entered into stipulated settlement and release involving his payment of slightly over $2 million. The stipulation included the following: "It is expressly understood and agreed that the Defendant Syndicate Films International LLC ('SFI') is not a party to this Stipulation and this Stipulation does not dismiss any claims against SFI." Notwithstanding this provision, appellant relies on the general rule that a "plaintiff is entitled only to a single recovery of full compensatory damages for a single injury" in asserting that Glasser's payment should constitute full satisfaction of any liability to plaintiffs. (*Jhaveri v. Teitelbaum* (2009) 176 Cal.App.4th 740, 754.) But here, in addition to the $2.1 million sought from all defendants, plaintiffs brought multiple claims against Glasser and the individual defendants—not appellant—on the basis of allegedly fraudulent transfers of real property. These claims were referenced in the stipulation for entry of judgment between plaintiffs, Glasser and the individual defendants. Thus, the jury could have reasonably concluded that all or a portion of the over $2 million payment was in settlement of claims that did not involve appellant. There was no double recovery. (See *Lovetro v. Steers* (1965) 234 Cal.App.2d 461, 477 ["a release of the one joint debtor does not extinguish the obligation of any of the other joint debtors *to pay so much of the debt as was not paid by the released obligor*"].)

II. The Trial Court Properly Denied Appellant's Motion for a New Trial.

Appellant contends that a new trial should have been ordered on the ground of juror misconduct.[6] (See Code Civ. Proc., § 657, subd. (2).) In support of its motion, it submitted the declarations of two jurors who stated that another juror proposed an award of $1 million as an "average" or a "compromise" to avoid a deadlocked jury. According to the declarations, "[t]he quotient of one million dollars ($1,000,000) was arrived at by taking the difference between the amount advocated by those jurors who felt Plaintiffs were entitled to the entire two million dollars and the amount advocated by those jurors who felt Plaintiffs were entitled to nothing."

Appellant argues that these declarations[7] established the jury committed misconduct by returning an improper quotient verdict. "A quotient verdict is when 'jurors agree to be bound by an *average* of their views; each [juror] writes the amount he favors on a slip of paper; the sums are added and divided by 12, and the resulting "quotient," pursuant to the prior agreement is accepted as the verdict without further deliberation or consideration of its fairness.' [Citation.]" (*Fredrics v. Paige* (1994) 29 Cal.App.4th 1642, 1646.) A quotient verdict is illegal and subject to impeachment upon a juror's affidavit. (Code Civ. Proc., § 657, subd. (2).) On the other hand, no prejudicial misconduct occurs where jurors suggest damage awards and those figures are used for consideration and further balloting. (*Iwekaogwu v. City of Los Angeles* (1999) 75 Cal.App.4th 803, 819; see also *Chronakis v. Windsor* (1993) 14 Cal.App.4th 1058, 1066 ["'there is no impropriety in the jurors making an average of their individual estimates as to the amount of damages for the purpose of arriving at a basis for discussion and

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6 Though appellant raised other grounds in the motion for a new trial, it has not challenged the denial of the motion on any other grounds. Accordingly, we confine our review to the ground of juror misconduct. (E.g., *Wurzl v. Holloway* (1996) 46 Cal.App.4th 1740, 1754, fn. 1 [points not raised in opening brief are deemed waived or abandoned].)

7 Though plaintiffs filed detailed evidentiary objections to the declarations, the record does not show that they secured the trial court's ruling on those objections.

consideration, nor in adopting such average if it is subsequently agreed to by the jurors'"].)

In reviewing an order denying a motion for a new trial, we are required to review the entire record, including all the evidence, and make an independent determination whether any misconduct occurred and, if so, whether it was prejudicial. (*City of Los Angeles v. Decker* (1977) 18 Cal.3d 860, 872; *Jie v. Liang Tai Knitwear Co.* (2001) 89 Cal.App.4th 654, 666 (*Jie*).) "However, the question of the credibility of the witnesses is up to the trial court in the first instance. [Citations.]" (*Jie*, *supra*, at p. 666.) Because the trial court here denied the motion for a new trial without making any findings regarding the claim of juror misconduct, we could—as the *Jie* court did—summarily affirm the denial: "Here, the trial court denied the motion for a new trial, without making any findings. '"An order is presumed correct; all intendments are indulged in to support it on matters as to which the record is silent, and error must be affirmatively shown." [Citation.] We must "view the record in the light most favorable to the trial court's ruling and defer to its findings of historical fact, whether express or implied, if they are supported by substantial evidence." [Citation.]' [Citation.] Implicit in the order denying the motion for a new trial is a finding that the declarant was not credible. Such an implicit finding is sufficient to support the trial court's order denying the motion for a new trial." (*Id*. at pp. 666–667, fn. omitted.)

In any event, an independent examination of the record leads us to the same conclusion. The trial court instructed the jury that it must not award a quotient verdict, stating: "If you decide to award damages, you may not agree in advance to simply add up the amounts each juror thinks is right and then make that average your verdict." Absent some contrary indication, we presume the jury followed this instruction. (E.g., *Cassim v. Allstate Ins. Co.* (2004) 33 Cal.4th 780, 803–804; *Saari v. Jongordon Corp.* (1992) 5 Cal.App.4th 797, 807, fn. 6.) The declarations offered by appellant did not provide a contrary indication. Rather, both jurors averred that "one of the jurors proposed *voting* to award one million dollars" to plaintiffs. (Italics added.) The jurors' subsequent statements—that the figure "was arrived at" by taking the difference of the proposed $2 million and zero awards and "served as an average" of those sums—failed to demonstrate that the jury arrived at an improper quotient verdict, as there was no indication that the jury reached its verdict without further deliberations or a vote. (See *Bardessono v. Michels* (1970) 3 Cal.3d 780, 795 ["'If, after a quotient figure is obtained, the jurors discuss and ballot upon the adoption or rejection of that sum, it is conclusive evidence they were not bound by a previous agreement to accept it without further consideration'"].)

In large part, the juror declaration submitted by plaintiffs did not conflict with appellants' juror declarations. That juror averred that after liability had been determined, several jurors were in favor of an award between $2 and $2.1 million. Other jurors wanted to award substantially less. The juror further stated: "The jurors then discussed such issues as the amounts paid to Plaintiffs under Stipulation for Judgment, interest owed to Plaintiff, shoddy bookkeeping by the parties, payments made by Glasser, numerous exhibits admitted into evidence and the testimony of witnesses. It was very difficult to determine the exact amount owed to Plaintiffs. We studied checks which were going back and forth between the parties and bouncing all over the place. We reviewed the totality of the evidence and arrived at most [*sic*] accurate amount we could. [¶] After numerous discussions, the jurors determined that the amount of damages owed from Syndicate Films to Plaintiffs was $1 million." The absence of evidence of any agreement to be bound by the $1 million award established that the jury did not render an improper quotient verdict. (See *Diamond Springs Lime Co. v. American River Constructors* (1971) 16 Cal.App.3d 581, 605 [no quotient verdict where declarations showed the averaged amount was discussed by jurors after it had been calculated and jurors ultimately agreed the figure was fair and reasonable].)

We find no merit to appellant's assertion that the jury must have arrived at a quotient verdict because the $1 million figure was unsupported by the evidence. It contends the figure was inconsistent with plaintiffs' claims for the $500,000 commission, the $1.2 million in the April 25 letter, the $1.5 million in the promissory note or the sum of any of those amounts. But as pointed out in the juror declaration submitted by plaintiffs, the parties failed to offer any consistent bookkeeping records and the testimony conflicted concerning the exact amounts loaned by and owed to plaintiffs. Because the $1 million figure was within the range of the damages evidence presented, we cannot conclude it suggests the jury arrived at an improper quotient verdict. (See *Pellegrini v. Weiss* (2008) 165 Cal.App.4th 515, 532 [jury's award may be affirmed if within the reasonable range shown by the evidence]; see also *Johnson v. Cayman Development Co.* (1980) 108 Cal.App.3d 977, 983 ["The amount of damage sustained by a party need not be proved with the same degree of certainty as the fact of damage, but may be left to reasonable approximation or inference"].)

DISPOSITION

The judgment is affirmed. Plaintiffs are entitled to their costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____________________, J.

DOI TODD

We concur:

_____________________________, P. J.

BOREN

_____________________________, J.

ASHMANN-GERST