

BACKGROUND

This case arises out of a dispute between competitors in the thermal coating products industry—flame retardant products. On February 1, 2011, Plaintiffs International Fireproof Technology, Inc. and Paint to Protect, Inc. (“Plaintiffs”) filed suit against Defendants Flame Seal Products, Inc. and Michael Kiser (together “Defendants”), alleging ten separate claims of relief: (1) violations of the Federal Unfair Competition and False Advertising arising under the Lanham Act, 15 U.S.C. § 1125(a); (2) trade libel; (3) tortious interference with a contract; (4) intentional interference with prospective economic advantage; (5) false advertising arising under California Business & Professions Code § 17500; (6) unfair competition arising under California Business & Professions Code § 17200; (7) defamation; (8) negligent interference with prospective economic advantage; (9) accounting; and (10) declaratory relief. Plaintiffs dropped the tortious interference with a contract claim prior to submitting the case to the jury. Both parties agreed that California law governs Plaintiffs’ causes of action arising under state law.

Trial commenced on May 16, 2011. On May 25, 2011, after seven days of testimony, evidence, and argument, the jury rendered a verdict, finding that Defendants had committed some wrongdoing, but determining that Plaintiffs did not suffer any harm. The jury declined to award any compensatory damages to

Plaintiffs, but it did award Plaintiffs punitive damages in the amount of \$400,000.00.

Defendants now move the Court to enter judgment in favor of them and vacate the jury's award of punitive damages. Plaintiffs, in contrast, move the Court to enter a final judgment "precisely tracking the jury's verdict," and a permanent injunction against Defendants, "tracking the operative terms of the Court's existing Preliminary Injunction." The Court will address Defendants' motion first and Plaintiffs' motion second.

1. Defendants' Motion to Set Aside the Jury Verdict

Defendants contend that the Court should enter a final judgment in favor of Defendants and vacate the jury's award of punitive damages, arguing that the jury awarded no compensatory damages and the jury erroneously answered the punitive damages question. In response, Plaintiffs contend that Defendants' "Motion for Judgment Notwithstanding the Verdict" should be denied for two reasons: it does not bear the correct title and Defendants filed it prematurely. The Court will first address Plaintiffs' objections because whether the Court reaches Defendants' motion depends on Plaintiffs' objections.

First, Plaintiffs point out that the Defendants' terminology "Motion for Judgment Notwithstanding the Verdict" is incorrect. They correctly state that Federal Rule of Civil Procedure 50 was amended in 1991, and the amendment

revised the correct terminology for this type of motion is "Motion for Judgment as a Matter of Law." FED. R. CIV. P. 50(b); *see also United States ex rel. A+ Homecare, Inc. v. Medshares Mgmt. Grp., Inc.*, 400 F.3d 428, 447, n.14 (6th Cir. 2005). Plaintiffs, however, concede that the legal standards governing the analysis of the motion remains unchanged. *See Medshares Mgmt. Grp.*, 400 F.3d at 447, n.14 (noting that although the 1991 revision established "judgment as a matter of law" as a uniform term, replacing the use of "j.n.o.v." and "directed verdict," the amendment did not change the substance of Rule 50(b)). Accordingly, the Court construes Defendants' motion as a motion for judgment as a matter of law, even though it is entitled "Motion for Judgment Notwithstanding the Verdict."

Second, Plaintiffs contend that Defendants' motion was prematurely filed, and that, as a renewed motion for judgment, Defendants' motion should be filed within 28 days after the Court's entry of judgment. Essentially, Plaintiffs move the Court to enter a final judgment in their favor, and then consider Defendants' motion for judgment. Rule 50(b)(3) reads that, in ruling on the renewed motion, "the court may . . . direct the entry of judgment as a matter of law." FED. R. CIV. P. 50(b)(3). Because the jury verdict has been entered, Defendants filed the motion within 28 days of entry of the jury's verdict, and Defendants raise a legal argument as to the jury's verdict, the Court will consider Defendants' motion in

entering a final judgment in this case. FED. R. CIV. P. 50(b)(3).

The Court now turns to Defendants' motion, moving the Court to vacate the jury's award of punitive damages. California law is clear that an award of punitive damages must be accompanied by an award of compensatory damages. *See, e.g., California v. Altus Fin. S.A.*, 540 F.3d 992, 1001–02, 1011 (9th Cir. 2008) (affirming the district court's order, vacating a jury's award of \$700 million in punitive damages where the jury did not award any compensable damages); *John Paul Mitchell Sys. v. Eslami*, 110 F.3d 68, 1997 WL 143947, at *4 (9th Cir. Mar. 26, 1997) (applying California law and confirming the "punitive damages will not be awarded absent a finding of some compensable damages"); *Mother Cobb's Chicken Turnovers, Inc. v. Fox*, 73 P.2d 1185, 1186 (Cal. 1937) ("Actual damages must be found as a predicate for exemplary damages . . . Evil thoughts or acts, barren of result, are not the subject of exemplary damages."); *Cheung v. Dalnder*, 42 Cal. Rptr. 2d 164, 166–67 (Cal. Ct. App. 1995) ("The issue presented is whether a jury can award exemplary damages when it has expressly determined that the plaintiffs were entitled "0.00" compensatory damages. Our answer is No."). The Court need not question a legal issue that a multitude of other courts have settled. Accordingly, the Court finds that the jury's award of punitive damages should be vacated, because the jury did not award compensatory damages.

Defendants argue, in the alternative, that the jury erroneously answered the punitive damages question, because the jury had not found that Defendants caused Plaintiffs harm. The punitive damages question—Question 40 of the jury instructions—reads: “Ha[ve Plaintiffs] proved by clear and convincing evidence that [Defendants] acted with malice, oppression, or fraud with respect to their claims for Trade Libel, Intentional Interference with Prospective Economic Advantage or Defamation?” Defendants urge the Court to ignore the jury’s answer to this question. Because the Court has determined that the jury’s award of punitive damages should be set aside for lack of a requisite compensatory damages award, the Court need not “ignore” the jury’s answer, as Defendants request.

II. Plaintiffs’ Motion for Entry of Judgment

Plaintiffs move the Court to enter a final judgment “precisely tracking the jury’s verdict,” and a permanent injunction against Defendants, “tracking the operative terms of the Court’s existing Preliminary Injunction.” The Court declines to accept Plaintiffs’ argument and enter a judgment which would, in effect, conflict with well-settled law.

Plaintiffs also seek the Court enter a permanent injunction against Defendants. Pending trial, the parties agreed on a preliminary injunction, which the Court executed and entered on February 14, 2011. It remained effective

pending trial on the merits of Plaintiffs' claims. Plaintiffs now seek the Court to enter a permanent injunction, adopting the language of the agreed preliminary injunction.

Injunctive relief is an extraordinary remedy never awarded as of right. *Winter v. Nat'l Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). In order to receive a permanent injunction in their favor, Plaintiffs must demonstrate: (1) that they have suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the Plaintiffs and Defendants, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction. *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391 (2006). "The decision to grant or deny permanent injunctive relief is an act of equitable discretion by the district court, reviewable on appeal for abuse of discretion." *Id.* Relying on *Silver Sage Partners, Ltd. v. City of Desert Hot Springs*, Plaintiffs contend that they are entitled to injunctive relief because the jury found that Defendants engaged in acts or practices prohibited by a statute that provides for injunctive relief. 251 F.3d 814, 826–27 (9th Cir. 2001).

Plaintiffs make the assumption that, because the jury answered "yes" to some of the questions posed in the jury instructions, Defendants violated the statutes providing injunctive relief. But, with the exception of the question

regarding punitive damages, the jury did not reach a damages question for the nine causes of action submitted, because the jury did not affirmatively answer the questions upon which the damages questions were predicated. Furthermore, Plaintiffs have not presented sufficient evidence to show that Defendants violated a statute that provides for injunctive relief. *See Silver Sage Partners*, 251 F.3d at 827 (stating that where a defendant has violated a civil rights statute, the court presumes that plaintiffs have suffered irreparable injury). Most importantly, Plaintiffs have not shown that they sustained irreparable injuries or are sustaining continued irreparable injuries. Upon careful review of the record and considering the testimony and evidence presented at trial, the Court finds Plaintiffs have failed to meet their burden to show that they have suffered an irreparable injury, warranting the Court's application of a permanent injunction. Accordingly, the Court denies Plaintiffs' motion for entry of a permanent injunction.

CONCLUSION

The Court determines that, because the jury did not find that Plaintiffs suffered compensatory damages, the jury's award of punitive damages in the amount of \$400,000.00 should be vacated. Based on the jury verdict and the lack of evidence presented by Plaintiffs in demonstrating continued irreparable injury, the Court also declines to enter a permanent injunction in favor of

Plaintiffs. Based on the foregoing, the Court hereby

ORDERS that Defendants' Motion for Judgment Notwithstanding the Verdict (Document No. 81) is GRANTED. The Court further

ORDERS that Plaintiffs' Notice of Motion and Motion for Entry of Judgment (Document No. 84) is GRANTED to the extent that the Court enters judgment. The Court further

ORDERS that Plaintiffs' Motion for Expedited Consideration of their Motion for Entry of Judgment (Document No. 85) is DENIED as moot. The Court further

ORDERS that Defendants' Motion for Entry of Judgment (Document No. 87) is GRANTED. The Court further

ORDERS that Defendants' Objection to Supplemental Declaration of Gary Wolfe (Document No. 92) is DENIED as moot.

The Court enters a Final Judgment in conjunction with this Order.

SIGNED at Houston, Texas, on this ____ day of August, 2011.

DAVID HITTNER
United States District Judge

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The Court enters a Final Judgment in conjunction with this Order.

SIGNED at Houston, Texas, on this 12 day of August, 2011.



DAVID HITTNER
United States District Judge