IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE FOURTH APPELLATE DISTRICT

DIVISION TWO

SANG HOON LEE, Plaintiff and Respondent/Cross-Appellant vs. MICHAEL P. NEWMAN Defendant and Appellant/Cross-Respondent	**E073745** (Superior Ct. No. RIC1716036)

COMBINED APPELLANT'S REPLY BRIEF AND CROSS-RESPONDENT'S BRIEF

APPEAL from the judgment of the Superior Court of Riverside County

Honorable Superior Court Judge Daniel A. Otorlia

MICHAEL P. NEWMAN
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[1] CLIENT's Argument Section IV. does not track his "Issues on Appeal" in Section II (at page 4); and it includes, without *separation,* both issues raised responsive to ATTORNEY's AOB (conversion), and those in his cross-appeal (fraud), in violation of Rule 8.216(b)(2).

II.
TABLE OF AUTHORITIES

Cases

Statutes

Rules

Other

III.
INTRODUCTION

The Appellant and Cross-Respondent, Michael P. Newman, will be referred to as ATTORNEY, and the Respondent and Cross-Appellant, Sang Hoon Lee, will be referred to as CLIENT. ATTORNEY's opening brief will be referred to as "AOB"; and CLIENT's combined briefing will be referred to as "CCB."

The CCB and appendices contain substantive Rule violations. The appendices, in addition to improperly including numerous trial briefs, contain two exhibits which were never entered into evidence, and cited in the CCB as "supporting facts":

1. Defendant Michael P. Newman's Response to Request for Production (I RCA, page 295); and,

2. Sang Hoon Lee's RJN (Request for Judicial Notice) in Support of Closing Brief (II RCA, page 329), which is an answer filed by ATTORNEY on behalf of 3 employees of ARMS (or its sister company), who were cross-defendants in that litigation (the Fast Trucking Case). The trial Court did not take judicial notice. Other than filing a pro-forma answer, there is no evidence that ATTORNEY litigated the case.

Lindy Park, co-owner of ARMS, testified that ATTORNEY didn't handle the company's (or their employees) litigation; and they used another attorney for that purpose. When she was asked who represented their 3 employees in Fast Trucking case, ATTORNEY's counsel at trial objected on the grounds of "relevance", which was sustained; and the judge instructed Lindy Park not to answer the question. (I RT 194, lines 2-10)

Further, Rule 8.124 (b)(3) states that appendices "must not contain documents ... that are not necessary for the proper consideration of the issues"; and the Advisory Comments under section (b), specifically prohibits inclusion of trial briefs. In violation of the rule, CLIENT's appendices include numerous trial briefs [2]; and many of the documents included in the appendices are irrelevant and immaterial to the genuine issues on appeal.

[2] Lee's Bench Brief re informed consent (Vol. I, page 278); Lee's Closing Brief (Vol. II, page 300); Lee's RJN in Support of Closing Brief (Vol. II, page 329); Lee's Post Trial Reply Brief (Vol. II, page 380); Lee's

CLIENT's Introduction, after page 1, (CCB @ pages 2-4) mostly contains argument, disguised as facts, and are not supported in the record. His introduction is, at best, misleading and should be ignored.

CLIENT's "Factual Background" (CCB @ pages 8-40) and section titled "Findings of the Court and Undisputed Evidence Proved LEE's Fraud Claim" (CCB @ pages 40-45) is also mostly improper "argument."

The "Factual Background" cites each the Court's 27 findings verbatim. Below each numbered heading, as to each material, contested finding, is argument; and his "supporting evidence" is unsupported by the record, and rarely includes conflicting or unfavorable evidence, or distorts the the record as a whole.

CLIENT's "Legal Argument" (CCP @ pages 46-57), is often not responsive to the genuine issues presented in AOB. The case law and legal authority he cites is not on-point, or the analysis does not support his arguments, and is generally disingenuous.

It would be difficult to controvert within the word count limits, CLIENT's numerous misstatements of fact; his failure to include conflicting, credible, unfavorable, evidence; and his confusing, conclusory and misleading legal arguments. Because they (hopefully) are apparent on the briefing's face and the actual record, ATTORNEY will not attempt to do so below, opting instead to limit his argument to the genuine, material issues on appeal.

IV.
OPPOSITION TO LEE'S LEGAL STANDARD OF REVIEW

FOR THE APPEAL

CLIENT's proposed standard of review for the statutory construction of the applicable one-year statute of limitations for conversion, is "substantial evidence to support the judgment" (CCB at pages 5-6); and the case authority cited in support is not on on point. CLIENT completely ignores the California Supreme Court holding in the leading case involving the

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Trial Brief (Vol.II, page 196); Newman's Trial Brief (Vol. I, page 218); Newman's Closing Brief (Vol. 2, page 341); and Newman's Post-Trial Reply Brief (Vol. II, page 399).

same legal question at bar: *Lee v. Hanley* (2015) 61 Cal. 4th 1033, 1036, which states "[w]e review de novo questions of statutory construction."

CLIENT's also fails to address any of the other cases cited in the AOB's Standard of Review (pages 6-7), requiring the de novo standard in cases, where there are mixed questions of law and fact, or when legal issues predominate.

ATTORNEY does acknowledge, as he did in his AOB, that there is a sufficiency of evidence issue raised on appeal (whether the elements of conversion were proven by substantial evidence (AOB, page 7, footnote # 1). As to those two issues only, the standard of review is substantial evidence and abuse of discretion.

Whether the admission of evidence of legal malpractice/breach of professional ethics over the denied objections raised in his Motion in Limine was prejudicial error is subject to the "abuse of discretion" legal standard. *See Kinda v. Carpenter* (2016) 247 Cal. App. 4th 1268, 1281)

"Failure to acknowledge the proper standard of review might, in and of itself, be a concession of a lack of merit." *James B. v. Superior Court* (1995) 35 Cal. App. 4th 1018, 1021.

ATTORNEY suggests that the Court of Appeal adopt the AOB's standard of legal review.

FOR THE CROSS-APPEAL

As to the trial Court's finding that CLIENT failed to meet his burden of proof on his fraud claim, and the appropriate standard of legal review on appeal, ATTORNEY would add the following to the CCB "Legal Standard for the Appeal":

It is the duty of an appellant who claims insufficiency of the evidence . . . to demonstrate that there is no substantial evidence to support the challenged findings. *In re Edwards' Estate* (1959) 173 Cal.App.2d 705, 711, 344 P.2d 89.) Under the substantial evidence test, the court views the evidence in a light most favorable to the respondent. *Orange County Employees Assn. v. County of Orange* (1988) 205 Cal.App.3d 1289, 1293.) All conflicts must be resolved in favor of the respondent, and all legitimate and reasonable inferences indulged in to uphold the verdict if possible. . .. The power of the appellate court

begins and ends with a determination as to whether there is any substantial evidence which will support the conclusion. *Crawford v. Southern Pac. Co.* (1935) 3 Cal.2d 427, 429.

CLIENT also claims under the "Legal Standard for the Cross Appeal" that "Newman Waived His Right to Claim That the [fraud] Judgment Was Not Supported by Substantial Evidence." (CCB at pages 7-8)

Frankly, the "waiver" assertion makes no sense. In support, CLIENT states that the AOB did not raise issues or argument relating to the cross-appeal. Secondly, he claims that "attorney fails to make any substantial effort to present evidence contrary to his positions", and fails to "set forth all of the material evidence on point", warranting a waiver of his rights on appeal.

It is axiomatic that an appellant need not, indeed should not, raise those issues or facts or findings in an AOB, before a cross-appellant files an opening brief.

Furthermore, unlike the CLIENT's purported statement of facts, the AOB cites, often verbatim, or accurately summarizes, all the relevant and material documents, and the testimony of the witnesses at trial, whether favorable, unfavorable or neutral.

Notwithstanding ATTORNEY having no duty to state facts in his opening brief not relevant to his appeal, in anticipation that CLIENT would rely on many factual "red herrings" and non-issues [3] in his CCB, as he did at trial, the AOB's lengthy statement of facts did include those factual parts of the record.

For example: (1) Korean being CLIENT's native language, although there is no evidence he didn't understand any of the attorney-client communications—written or oral; (2) that ATTORNEY occasionally used ARM's employees as translators, although there is no evidence that any translation was incomplete or inaccurate; (3) the entire convoluted genesis of the "130K" reimbursement of ARMS document and it's three iterations; although it was not prepared by ATTORNEY; he tried to protect CLIENT's interests from being bound by the document which was not signed by ARMS and is of dubious legality; and it is not relevant to either conversion or fraud; (4) the possible misclassification of CLIENT as an independent contractor based on a document prepared by ATTORNEY before he was retained to represent CLIENT, when the law was not settled; although it also had no relevance to conversion or

[3] See AOB at page 13, footnote No. 4.

fraud [4]; (5) that ATTORNEY had no prior personal injury experience when he undertook to represent CLIENT, and didn't understand some of his ethical duties concerning the required disclosures in a contingency fee retainer that fees are negotiable (which he acknowledged at trial: AOB at page 16); although CLIENT suffered no damage or prejudice because the 15% attorney fee he paid, was much less that the standard fee of 33%—a fact that was recognized and discussed between LEE and Lindy Park (AOB at page 23), and ATTORNEY obtained the best possible outcome: the insurance policy tender of one million dollars. Further, it is not relevant to the claim of conversion or fraud.

CLIENT's entire waiver argument is not remotely responsive to the appropriate legal standard for review of the cross-appeal; and there is no basis for a waiver of any of ATTORNEY's rights on appeal.

V.

REPLY TO LEE'S "FACTUAL BACKGROUND" (CCB at pages 8-40) AND "FINDINGS OF THE COURT AND UNDISPUTED EVIDENCE PROVED LEE'S FRAUD CLAIM" (CCB at pages 40-45)

On appeal, the party's briefs must set forth, discuss, and analyze all the evidence on that point, both favorable and unfavorable. *See Doe v. Roman Catholic Archbishop of Cashel & Emly* (2009) 177 Cal.App.4th 209, 218.)

An appellant is required to provide proper citations to the record. *See Critzer v. Enos* (2010) 187 Cal.App.4th 1242, 1258, fn. 12 [noting the brief did not comply with Cal. Rules of Court, rule 8.204(a)(1)(C) in that it failed to contain "proper citations to the appellate record"].) It is well established that an appellant who fails to provide proper citations to the record to support appellate claims may be deemed to have forfeited such claims. *See e.g.*, *South County Citizens for Smart Growth v. County of Nevada* (2013) 221 Cal.App.4th 316, 331 [the failure

[4] Indeed, CLIENT's counsel at trial advised the trial Court that it would be difficult to litigate the classification issue, and that ARM's provided similar benefits he would have received under worker's compensation (salary, transportation to medical appointments). The Court agreed. (III RT at pages 607-608). There is no evidence that CLIENT was harmed by the potential misclassification; it is unrelated to any allegations in his complaint, and not relevant to proof of any of his causes of action on appeal. The entire alleged misclassification issue is another "red herring."

to present argument with references to the record results is a forfeiture of any assertion that could have been raised].

CLIENT's briefing does not contain a genuine "statement of facts." The "factual background" consists of an unnecessary, verbatim recitation of each of the Court's 27 numbered findings spanning 31 pages (CCB pages 9-39), followed by a claim of "supporting evidence", and long-winded opinions and circular argument, which is palpably misleading, conclusory, and mostly unsupported by the record as a whole. The CCB's unabashed, reductive statement in the CCB titled section: "Findings of the Court and Undisputed Evidence Proved Lee's Fraud Claim", is a perfect example.[5]

The CCB misses the mark. The gravamen of the issues on appeal is not whether the trial Court made the 27 numbered findings cited in the CCB, but rather whether the trial Court's relevant findings [6], and judgment of conversion, is time-barred; and, if not, whether they are supported by substantial evidence (or, alternatively, whether a new trial is warranted because of prejudicial error).

It appears to this author that many if not most of the material, contested findings of the trial Court and the "supporting evidence" citations, are derived from CLIENT's trial briefs, and could have been "copied and pasted." The "supporting evidence" cited does not include— indeed it ignores— conflicting or unfavorable documentary and testimonial evidence, it is inconsistent with the record as a whole, and is entirely unreliable.

Another tactic to distort the record employed by CLIENT, and incorporated by the trial Court in many of its findings, is to take out of context, benign facts, and twist and slant them to take on an unintended meaning.

[5] The trial Court found ATTORNEY did not commit fraud, and there is no credible evidence to the contrary, as discussed in the Argument section VII. (c) below.

[6] In his AOB and in this reply, ATTORNEY argues that most of the Court's findings are gratuitous, and not dispositive of whether the elements of conversion, and the pertinent complaint allegations, were proven by substantial evidence.

A sampling of examples demonstrates the unreliability of the CCB's statement of facts, and the trial Court's findings, generally: [7]

1. The trial Court found that "[t]throughout the time NEWMAN worked on LEE's claim, NEWMAN took direction exclusively from the owners of ARMS. Prior to getting control of the settlement funds, NEWMAN never discussed his retainer agreement or his fees with LEE" (CCB at page 25, heading # 17).

The undisputed evidence is that ATTORNEY never received any direction from ARMS other than to do the obvious: contact the adverse party's insurance company at the outset of his representation of CLIENT. (I RT, pages 83-84; page 128, lines 11-16; page 255, lines 6-11); and CLIENT expressly authorized ARMS (through Lindy Park) to act on his behalf as his representative when communicating with ATTORNEY, and he relied on and trusted her to always be truthful. (II RT page 367, line 26 to page 368, line 8; and page 342, lines 24 to page 343, line 5). Moreover, the 15% retainer agreement was faithfully translated in Korean to CLIENT by Ilhwan (a/k/a) Kim, the Vice President of ARMS; he signed and initialed each page; and he understood ATTORNEY would receive 15% under its terms. (AA 4;15% retainer) (I RT page 58, line 22 to page 59 line 3; II RT page 449, lines 5-9) (II RT page 449, line 28 to page 450, line 2; page 452, lines 18-18)—and all of this occurred before the insurance company made an offer of settlement (I RT page 141, lines 13-15).

2. The trial Court found that "LEE was required to use NEWMAN's services and did not have a meaningful opportunity to retain outside counsel." (CCB at 17, heading # 8(d)

The undisputed record is that CLIENT chose to use ATTORNEY to represent him, and he knew that he had the option to retain another attorney (II RT at page, 369), and he knew his interests were potentially adverse with ARMS and he could sue the company if he used another attorney, but he elected, out of a sense of loyalty and the benefits of doing so, not to sue ARMS and use ATTORNEY; and in exchange, he benefited from the company continuing to pay his

[7] References to the Court's findings will track the CCB's page and the finding's heading #, rather than the Statement of Decision. The record that support the facts below, which controvert the findings, are included in the AOB, or in the supplemental facts in section VI. below, and are not always cited again here to avoid duplication. In some instances, herein, the COA is referred to pages in the AOB'S statement of facts, in lieu of the record.

salary, and provide other benefits, including him paying a substantially below market contingency fee if he elected to use ATTORNEY (15% v. 33%). (I RT at pages 194-196) (II RT at pages 287; and pages 341-342; 369, lines 7-10)

3. The trial Court found that "NEWMAN was able to obtain $1 million settlement offer with one or two phone calls to the insurance adjuster." (CCB at page 24; # 15).

There is no evidence to support this finding. On the contrary, the undisputed (and only) evidence is that ATTORNEY did not keep time records in the contingency fee case, and when asked by CLIENT's counsel at trial "if it was safe to say you put in 30 hours or less", ATTORNEY testified that it was "a lot more than that." (I RT at page 105, lines 2-8).

Moreover, ATTORNEY had to overcome the insurance company's position that CLIENT was 50% comparatively at fault; and, in anticipation of litigation, he prepared a rough draft of a civil complaint. (I RT at pages 43-45; III RT page 511, lines 14-23) (I RCA at page 21; Complaint). Furthermore, there was no competent testimony, expert or otherwise, that the 15% retainer and the fee paid was unreasonable, or unconscionable. Of course, as with most of CLIENT's protestations, this too, even if actionable, would have been a time-barred claim.

4. The trial Court found that "In doing work for ARMS, NEWMAN would not always identify his affiliation with the company in dealing with third parties and would, on occasion, use the designation "Law Offices of Michael P. Newman." (CCB at page 11, heading # 4)

Nowhere in the record is there any suggestion that this was misleading or improper in any instance. [8] In his representation of CLIENT, ATTORNEY's retainer used his private law office address, personal phone number, private email and webpage, and *no* contact information of ARMS. This was consistent with his private representation of CLIENT, and gave him further actual notice that ATTORNEY was not representing him in his capacity as ARMS attorney (AA 14;15% Retainer).

[8] That an in-house attorney who also maintains a private practice can, occasionally, ethically alternate addresses, depending upon the circumstances. This proposition is arguably within the common knowledge of attorneys, and not reasonably subject of dispute. The Court of Appeals could consider taking judicial notice. *See* Cal. Evid. Code Section 452 (g) & (f).

This fact is also contrary to the Court's finding that on August 2, 2016, ATTORNEY "for the first time, provided LEE with a card showing that he had a law practice separate from his employment with ARMS. (CCB at pages 37-38, heading No. 25)

5. The trial court found that "[b]y the end of 2015, NEWMAN knew that the ... insurance carrier was likely to make a policy limits or near policy limits offer of $1,000.000.: (CCB at 19, # 10)

Notwithstanding CLIENT's "supporting evidence", there is no evidence in the record to support this finding. On the contrary, the adjuster notes that CLIENT obtained in discovery, clearly shows that the insurance company didn't even consider ATTORNEY's settlement offer as of February 9, 2016; and didn't have the authority to settle within policy limits until thereafter. (II RCA 142; Notepad Detail Note 2016; at pages 151; 161)

6. The Court found that "NEWMAN ... would, at the direction of the owners of ARMS (Park and Hudrlik) represent owners, employees and contractors of ARMS in legal matters ...and did not require a separate retainer, and did not collect fees from the employees/contractors." (CCB at page 11, heading # 3)

In CLIENT's commentary that follows, he states: "...LEE is the only one for which NEWMAN demanded compensation over his [ARM's] salary" (CCB at page 13). Here he tries to create the false impression that ATTORNEY wasn't representing CLIENT privately, for which he expected renumeration under his 15% retainer.

This is inconsistent with the record. Lindy Park testified that ATTORNEY didn't handle the company's (or their employees) litigation; and used another attorney for that purpose. (I RT 194, lines 2-10)

7. The trial Court found that: "[o]n March 16, 2016, LEE signed the insurance release and the final ARMS/LEE agreement in which LEE waived claims against ARMS in addition to agreeing to reimburse ARMS $130,000.00 from the settlement funds" ... and that "NEWMAN never disclosed he intended to take $150,000 from the settlement funds. If NEWMAN had disclosed that fact, LEE would never had signed the ARMS/LEE reimbursement agreement. (CCB at pages 25-26, # 18).

At trial, Lee said he was "confused"; he categorically denied that ARMS was entitled to $130,000.00; and reiterated that he told ATTORNEY not to pay ARMS until he authorized the

payment—which he never did; and he testified that the "amount was much less than $130,00.00." (II RT at page 372, line 16 to page 373, line 8). ATTORNEY testified that he told him that the amount was about $60,000.00 (III RT page 483, line 2, to page 484 line 1)

Other relevant parts of the record which CLIENT and the Court ignore: (a) the 15% retainer, which CLIENT signed after a faithful translation of all its material terms is disclosure of his intent; (b) Lindy Park's email ("Newman Keeps" the 15% (AA-7); (c) the CLIENT had refused to sign the previous iterations of the agreement to reimburse ARMS, and ARMS didn't know why (1 RT pages 61-62; 216-217; II RT page 329). In fact, CLIENT testified that he didn't have to pay ARMS back, and didn't object to paying a 15% contingency fee (I RT page 235; III RT page 524-527); (d) CLIENT signed the 130K agreement after it was amended by ARMS to include the payment of $130,000.00 (a/k/a 130K agreement) at the signing of the insurance release (III RT at pages 522-523), only *after* he and with Lindy Park agreed at the time of settlement that he would pay ARMS 130K (II RT at page 287, lines 17-21); (e) the amended 130K agreement was prepared by ARMS, and not by ATTORNEY (AOB at pages 20-21); and it was not signed by ARMS at the time it was presented at the release's signing by the translator, as a favor requested by David Hudrlik, and it was grabbed off the table by ATTORNEY (III RT pages 522-523) (II RT PAGE 469, line 28 to page 471, line 2) to protect CLIENT from himself (AOB pages 20-21); and it was of dubious enforceability because it was not signed, and possibly constituted illegal fee-splitting (AOB at pages 25-26); (f) as to whether CLIENT would have never signed the 130K agreement based on what he knew or didn't know is rank speculation and entirely self-serving; and (g) CLIENT instructed ATTORNEY not to pay ARMS on two occasions, up through and including their last meeting, when the representation ended. (I RT page 235, lines 6-28; pages 99-100; and 158-159; III RT page 532)

8. The trial Court's finding # 26 (CCB at page 39) states that ATTORNEY drafted the 130K amended agreement. The credible evidence establishes that amendment providing for the payment of $130,000.00 was added by other key employees of ARMS, and not ATTORNEY, at the request of Lindy Park (see her Email dated January 21, 2016: "make a separate contract for the salary to be paid back from the winnings") (AA 7) (I RT page 61-62; pages 145-147; and III RT page 508).

9. The trial Court found that "[p]rior to the receipt of the settlement funds, NEWMAN had never raised the issue of fee splitting or his intent to keep $150,000.00 from the settlement funds." (CCB at pages 34-35, # 22)

The undisputed evidence is that the fee splitting issue never arose until after the receipt of the settlement funds, when ARMS improperly sought to participate in his fees. ATTORNEY's prior intent to be paid 15% is discussed in example # 7 above, and throughout the AOB's facts.

10. The trial court found that "...NEWMAN agreed that ARMS would be paid reimbursement of $130,000 and NEWMAN would accept a flat fee of $20,000 from LEE's settlement ... LEE demanded the return of the specifically identified sum of $130,000, and NEWMAN refused." (CCB at 46)

ATTORNEY only considered reducing his 15% attorney fee, if he was unable to achieve substantial medical lien reductions. (I RT at page 59, line 25 to page 60, line 24) (III RT page 542, lines 5-22).

CLIENT's email (in English) to ATTORNEY on August 23, 2016 *after* disengagement and payment of attorney's fees, did not demand return of attorney fees; he only wrote "I have some questions that came up now that my case was settled. I would appreciate your giving me answers." (AA 15; Email from Client to ATTORNEY dated August 23, 2016)

There is no evidence, let alone "substantial evidence", to support either of these findings, both of which are essential to a judgment of conversion.

Most of the Court's unsupported findings, which are controverted here or not addressed, are dicta, because they are not dispositive of conversion or fraud. [9]

[9] The factual gravamen of the conversion claim is whether the 130K was CLIENT's property, which ATTORNEY refused to return on demand; and the factual and legal issues raised are whether there is substantial evidence CLIENT proved the elements of conversion, and or the fee dispute is time-barred. As to these material issues, there are almost no trial Court findings which are directly on point or dispositive of conversion or fraud, even if proven. ATTORNEY only addresses some of them here in an abundance of causation this Court may feel otherwise; and to show the general unreliability of the findings themselves based on the record.

ATTORNEY suggests that the Court reject CLIENT's statement, and adopt the accurate statement of facts in his AOB, as supplemented above and below.

VI.
SUPPLEMENTAL FACTS TO THE CROSS APPEAL

1. FRAUD CLAIM

CLIENT's Complaint's alleges that ATTORNEY committed fraud in his Second Cause of Action (AA 16, pages 37-38). The two specific misrepresentations he claims ATTORNEY knew were false, upon which he relied, causing him harm are:

1. "Defendant represented to Plaintiff that he would accept a fee of $20,000.00 for the legal services provided" (Complaint allegation # 23); and,

2. "Defendant represented that he would use $130,000.00 from the settlement proceeds to pay Arms." (Complaint allegation # 24)

In CLIENT's brief, he represents as a fact, that the "Undisputed Evidence Proved Lee's Fraud Claim." (CCB at page 40).

There is no evidence in the record that either of these alleged misrepresentations, essential to proving fraud, ever occurred; or that the undisputed evidence, outside of the complaint, proves his claim of fraud.

2. THE 130K AGREEMENT: WHAT ATTORNEY KNEW AND WHEN HE KNEW IT[10]

ATTORNEY not only didn't prepare the 130K agreement, but was unfamiliar with its terms. The reimbursement agreement was made entirely between CLIENT and ARMS.

[10] The 130K matter, along with the many other non-issues in the CCB, raises the question: should it even be addressed by ATTORNEY. Because the CCB goes down that rabbit hole, the author feels compelled to briefly reply, rather than ignore disingenuous arguments.

In response to ATTORNEY's March 28, 2016 letter (AA11; Letter from Attorney to Client, March 28, 2016), CLIENT met with him with a translator present. They conversed about his 15% fee, and the 130K ARMS document. [11]

CLIENT testified that ATTORNEY wasn't familiar with his separate, side-agreement to pay ARMS 130K; and that he "took it for granted" that ARMS would get 15%, and that ATTORNEY and Lindy Park discussed the matter; and the agreement that ARMS would get paid out of ATTORNEY's 15% fee was entered into between CLIENT and ARMS, and not with him and ATTORNEY (II RT at page 373, lines 9-13; page 374, lines 19-28; and page 375, lines 1-9)

3. CONTROL OF LEE'S PERSONAL INJURY CASE

The undisputed evidence is ATTORNEY never received any direction from ARMS other than the obvious: to contact the adverse party's insurance company at the outset of his representation of CLIENT. (RT I, pages 83-84; page 128, lines 11-16; page 255, lines 6-11)

4. ARMS DID NOT USE NEWMAN TO HANDLE LITIGATION CASES

Lindy Park testified that ATTORNEY didn't handle the company's (or their employees) litigation; and used another attorney for that purpose. (I RT 194, lines 2-10).[12]

VII.

[11] As discussed in the AOB (pages 21-22), ATTORNEY knew that CLIENT had previously refused to sign the agreement to repay ARMS for the salary continuation and incidental expenses, when he grabbed the 130K document—an amount far in excess of ARM's out of pocket expenses advanced—presented to CLIENT by the translator at the insurance release signing. He was concerned that ARMS was overreaching (no pun intended). The March 28, 2016 letter was written to get the CLIENT's reaction, and ascertain his intent to pay his 15% retainer fee, and 130K to ARMS.

[12] CLIENT's Appendix impermissibly includes a Motion to Take Judicial Notice (II RCA, page 329), which was never granted. The motion contains one exhibit: an answer filed by ATTORNEY on behalf of 3 ARMS employees, and was improperly referenced in their "supporting evidence" and argument. Other than filing a pro forma answer in this one case, there is no evidence ATTORNEY ever actively litigated this case or any other on behalf of ARMS (or their employees), except to agree to represent CLIENT in his personal injury case, privately.

ARGUMENT

AS TO RESPONDENT'S BRIEF'S ARGUMENT (Section VII at pages 36-46) [13]

The headings A-D below are the counterparts to CLIENT's "Legal Argument." By combining all of his argument in one section, he does not separate the issues raised as a respondent, and those as a cross-appellant, as required by Rule 8.216(b)(2).

The concern is that this rule violation could result in CLIENT failing to confine his reply to the scope and points raised in his appeal as a cross-appellant, as required by subdivision (b)(3) of the rule.[14]

ATTORNEY separates his argument below into two sections: as to his respondent's and cross-appellant briefs, while maintaining CLIENT's combined "A"- "D" headings designations.

SECTION I

A. The Court's Conversion Finding was Not Supported by Substantial Evidence and/or the Cause of Action was Time-Barred.

1. SUBSTANTIAL EVIDENCE

CLIENT's argument (and statement of facts) does not state facts which contradict the trial court's 27 findings he cites verbatim, relying instead on entirely conclusory and out of context statements. He merely cites the trial Court's findings, and "cherry picked" facts in the

[13] CLIENT's Argument Section IV. does not track his "Issues on Appeal" in Section II (CCB at page 4).
[14] If the cross-appellant's reply brief, which should be limited to *his cross appeal* of the fraud claim, improperly goes outside of the rule's parameters, either as to controverting facts or additional argument, this respondent will not have the opportunity to respond. If that occurs, Attorney prays that the Court of Appeal, on its own motion, grant leave to file a response.

record, without disclosing or discussing all the unfavorable, conflicting evidence on point. Most of the trial court's findings are not dispositive of conversion.

As to the one relevant finding, there is no credible evidence, much less "substantial evidence", that ATTORNEY "agreed that ARMS would be paid reimbursement of $130,000"; or that "he would accept a flat fee of $20,000 from LEE's settlement" ... or that "LEE demanded the return of the specifically identified sum of $130,000, and NEWMAN refused"—essential to a finding of conversion.

Substantial evidence in the record, as discussed at length in the AOB, establishes that, *at best* [15], there was a genuine fee dispute, arising from CLIENT's claim he was misled by Lindy Park—who he acknowledged was his "agent" for communication purposes by and between himself and ATTORNEY; and was the product of his own mistakes, lack of diligence, and his unfortunate decision to ally his cause with ARMS, who committed misconduct by seeking and obtaining money by "fee splitting."

2. "IN THE PERFORMANCE OF PROFESSIONAL SERVICES"

The "in the performance of professional services" issue was discussed and analyzed at length in AOB (pages 31-34).

CLIENT's conclusory argument that conversion was not barred by the one-year statute of limitations, does not begin to substantively address whether ATTORNEY's alleged "wrongful act or omission" arose "in the performance of professional services." It is this language which triggers the one-year statute of limitations, upon which the leading and controlling case of *Lee v. Hanley* (2015) 61 Cal. 4th 1225 ("*Lee*"), and its holding squarely turns.

Throughout the CCB it is argued that ATTORNEY committed malpractice, and breached ethical and fiduciary duties, which ironically all require proof that attorney violated "professional services", and triggers the one-year statute of limitations under *Lee.*

[15] CLIENT argues that there was no legitimate fee dispute. However, based on CLIENT's testimony, at best, the dispute was a misunderstanding based on CLIENT's conversations with Lindy Park of ARMS.

Two rules of professional conduct govern an attorney's duties regarding the distribution of settlement funds, and further support the argument that the alleged misconduct arose in the performance of professional services:

1. Funds received or held by a lawyer for the benefit of a client or "other person to whom the lawyer owes a contractual, statutory, or other legal duty" shall be deposited in a segregated trust account and withdrawn at the earliest possible time "after the lawyer or law firm's interest in that portion becomes fixed." (Rules Prof. Conduct, rule 1.15(a), (c)(2).)

2. If a client ... disputes the lawyer's right to receive a portion of those funds, "the disputed portion shall not be withdrawn until the dispute is finally resolved." (Rules Prof. Conduct, rule 1.15(c)(2).)

Although he had multiple opportunities to do so, CLIENT never disputed ATTORNEY'S payment of his 15% retainer fee before his representation ended on August 2, 2016. His first and only communication with ATTORNEY regarding the fee paid, was in his email dated August 23, 2016, when he wrote that "I have some questions that have come up"—questions based on what he "understood" from his conversations with ARMS. (AA 15; Email from Client to Attorney)

Fairly read, the complaint alleges that ATTORNEY was acting in his capacity as CLIENT's attorney when he directed payment of, received, and distributed settlement funds. Each of these actions are specifically governed by the Rules of Professional Conduct, and each was reasonably required by, and in the course of, ATTORNEY's carrying out his professional obligations to CLIENT.

In *Lee, at the time of the alleged conversion*, (a) the matter for which the attorney had been retained had settled, and he was no longer representing the client; and (b) the attorney was holding money he acknowledged was due and owing the client.

In contrast, here, the alleged conversion occurred *at a time* (a) ATTORNEY was still representing CLIENT; (b) there was no extant fee dispute; and (c) the alleged misconduct was intimately connected to the ongoing rendering of professional services. Indeed, the only fair reading of the complaint is that ATTORNEY's alleged conversion arose *in his capacity as* the CLIENT's attorney; and in violation of his duty under the *Rules of Professional Conduct*, not to withdraw from a client trust account, funds to which a client claims an interest.

Therefore, CLIENT cannot establish his claims against ATTORNEY without demonstrating a breach of his professional duties. *See also Foxen v. Carpenter* (2016) 6 Cal. App.5th 284, 292; and the one-year statute of limitations governs the alleged misconduct. *See also Lee.*

Fatal to the trial Court's 27 findings leading to a judgment of conversion, the "performance of professional services" issue was never addressed by the trial Court; and there is no finding that the alleged wrongful act(s) did not arise in the performance of professional services.

Without factual foundation in the record, hoping to avoid the one-year statute of limitations, CLIENT wishfully parrots the language in *Lee* that ATTORNEY committed "garden variety theft." He did not.

Applying *Lee* to the facts of this case, the claim of conversion was time-barred.

3. "INDISPUTABLY OWED"

CLIENT also does not logically distinguish the *Foxen v. Carpenter* (2017) 6 Cal. App. 5th 284 analysis that, to maintain an action of conversion, the money must be "indisputably owed", which is the corollary to *Lee's* "garden variety theft" analogy.

The substantial evidence in the record supports a finding that the amount of ATTORNEY's fees was, at best, genuinely disputed and, therefore, conversion does not lie. All CLIENT had was a contractual, time-barred "generalized claim for money", which is not actionable as conversion. *PCO, Inc. v. Christensen, Miller, Find, Jacobs, Glasre, Weil & Shapiro* (2010) 150 Cal. App. 4th 384, 395.

4. CLIENT FAILED TO PROVE A KEY COMPLAINT ALLEGATION

To prevail at trial or on appeal, proving essential complaint allegations matter. The triable issues are framed by the parties' pleadings; and the failure to prove essential complaint allegations, subject the lawsuit to summary disposition for failure to meet a plaintiff's burden of proof. *See Brantley v. Pisaro* (1996) 42 Cal. App. 4th 1591.

As to conversion, CLIENT's complaint (AA 16; Paragraph # 9 at page 38) alleges:

> "...Defendant Newman assured Plaintiff he would accept a fee of $20,000.00 for the services provided, which Plaintiff agreed to pay from the settlement proceeds."

This was CLIENT complaint's sole factual allegation of conversion that that (a) the fee dispute was not genuine (that it amounted to "garden variety theft", and the attorney "decided to keep the money for no good reason", under *Lee, supra* at 1240);
(b) the money was "indisputably owed" (*Foxen, supra at 292*); and (c) the money belonged to him (See CACI 2100).

The trial Court, stretching to find that CLIENT proved this essential complaint allegation, wrote in its statement of decision: "LEE proved, at trial, ...NEWMAN would accept a flat fee of $20,000.00 from the settlement." (AA 20, at page 92)

There is no evidence that ATTORNEY ever had any communication with CLIENT that could remotely be construed to support this essential complaint allegation. On the contrary, CLIENT's understanding as to how the 15% fee would be allocated, contrary to the 15% retainer which was faithfully translated and understood before he signed it, was solely based on his conversation and his agreement with ARMS owner, Lindy Park, at the time of settlement, who was pursuing her own self-interest, and to whom he felt loyal. See AOB (at page 23-25).

In finding "conversion", in the absence of any proof the CLIENT proved his factual complaint allegation, the trial Court impermissibly re-wrote his complaint. *See also Das v. Bank of America, N.A.* (2010) 186 Cal. App. 4th 727, 745.

5. THE ELEMENTS OF CONVERSION WERE NOT PROVEN: CACI 2100

CACI 2100 sets forth the elements of conversion.

To prove conversion, in addition to failing to prove that the 130K belonged to him (CACI 2100 (a), CLIENT did not address the AOB's argument that he also failed to prove the other elements of conversion under CACI 2100: (1) that he demanded return of the property; (2) he did not consent; and (3) the ATTORNEY (and not himself) was a substantial factor in causing the harm. See CACI 2100; and AOB (at pages 39-40).

The facts in the record are clear:

- CLIENT never demanded return of the attorney's fee (or $130,000) (See CACI (b) and Section 4 above; and,
- CLIENT's own conduct was the substantial causative factor in causing his alleged harm; (*See* CACI (d); and,
- CLIENT consented or impliedly assented to or ratified the payment of the 15% attorney's fee on multiple occasions; and he never conditioned the attorney's fee to payment of money to ARMS. *See* CACI 2100 (c)

The "law is well settled that there can be no conversion where an owner either expressly or impliedly assents to or ratifies the taking, use or disposition of his property." *Frarington v. A. Teichert & Son* (1943) 59 Cal. App. 2d 468, 474.

There is no substantial evidence that all the elements of conversion were proven.

6. PAROL EVIDENCE CONSIDERATIONS

CLIENT did not address the violation of the Parol evidence rule, triggered by his and the trial Court's relying on extrinsic evidence to alter the terms of the 15% retainer agreement. See AOB (at page 41).

B. The Court Abused its Discretion in Allowing Evidence of Ethical Violations and Malpractice to be Introduced; and its gratuitous findings of such violations to support its judgment of conversion, are proof of prejudicial error, warranting a new trial— only if the Court of Appeals were to conclude that conversion was proven.

CLIENT's argument here, as it is throughout the CCB, is unsupported by the record, and not responsive to the actual issues presented. The case law cited is not on point.

Throughout trial (and on appeal), CLIENT argued and that ATTORNEY committed multiple unethical acts, and malpractice. ATTORNEY unsuccessfully sought to limit the introduction of extraneous, time-barred and prejudicial evidence, by filing a motion in limine.

To understand the motion in limine, it is necessary to begin with the Complaint's allegations (AA: 16, at page 34), which set forth the parameters of "relevant" evidence.

In paragraph # 8 of the complaint (AA: 16, at page 35), CLIENT sought to void the 15% retainer agreement under California Business and Professional Code Section 6147(a)(4), because it did not include the statutorily required language that the fee is not set by law and is negotiable. The omission was never disputed, and the retainer speaks for itself.

Nevertheless, CLIENT's exercise of the statutory option to void the retainer more than one year after the representation ended, was barred by the one-year statute of limitations. (AOB at pages 41-42). CLIENT never addressed this issue in his brief. [16]

Moreover, it is a "no harm, no foul" violation, because it is improbable that LEE could have negotiated a contingency fee retainer for under 15%. Both he and Lindy Park acknowledged that the customary fee is 30-33%, and CLIENT wanted to pay to 15%. (II RT at page 287, lines 17-21; and page 369, lines 7-10).

In paragraphs # 33 & 34 of the complaint (AA: 16, at page 38), in support of his malpractice claim, CLIENT alleged that ATTORNEY "recommended that Plaintiff accept the settlement offer of $1,000.000.00 dollars" (policy limits), without due diligence as to whether there were other policies or assets available. [17] These are the only three complaint allegations of unethical impropriety or acts of malpractice.

In the fraud count of the complaint (AA 16, page37), CLIENT alleges two specific fraudulent representations: "Defendant represented to Plaintiff that he would accept a fee of $20,000.00 for the legal services provided" (Complaint allegation # 23); and; "Defendant represented that he would use $130,000.00 from the settlement proceeds to pay Arms." (Complaint allegation # 24). Nevertheless, the trial and CCB is replete with allegations of misconduct not mentioned in the complaint.

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[16] The trial Court found that CLIENT exercised his option to void the retainer (AA 20 at page 92; Statement of Decision). There is no evidence he attempted to until he filed his complaint, more than one year after the representation ended. CLIENT's email dated August 23, 2016 did not seek to void the retainer. He merely asked questions, and stated his understanding as to how the 15% fee would be distributed. (AA 15; Email from Client to Attorney)

[17] Parenthetically, nowhere in the record does it appear that, in fact, Attorney recommended acceptance of the offer to Client or Lindy Park; although he would have had he been asked.

Notably, before trial, CLIENT never alleged ATTORNEY (a) had an undisclosed "conflict of interest" because he was also ARM's in-house counsel; or (b) ATTORNEY failed to obtain informed consent; and (c) these breaches proximately caused damages—which he repeats throughout his briefing like a mantra.[18]

Moreover, none of the evidence of alleged breaches of ethics and malpractice, nor any of the trial Court's findings of ethical errors, are relevant to the finding of conversion.

The trial Court could have erroneously admitted the evidence and disregarded its relevance. However, that multiple, irrelevant findings of ethical errors gratuitously included in the judgment of conversion, evinces prejudicial error.

CLIENT's arguments that (a) the judge was the trier of fact; (b) no demurrer was filed; (c) the motion in limine was an improper attempt "to exclude all of Lee's evidence and to obtain a summary judgment"; that his English skills were limited and he relied on others to

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[18] The representation of both CLIENT and ARMS without written informed consent is a non-issue for the purpose of conversion or fraud issues on appeal. Nevertheless, ATTORNEY will briefly discuss its insignificance:

Former California Rule of Professional Responsibility 3-310 (C) (in effect in 2015-2016, until the rule was amended in 2018) governed an attorney's ethical requirements when representing adverse interests. The pertinent subsection (C) states: A member shall not, without the informed written consent of each client:
(1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or (2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or (3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.

In retrospect and in the future, to err on the side of caution, ATTORNEY would always obtain informed written consent under the instant circumstances. However, CLIENT tries to make much to do about nothing. ARMS and CLIENT's interests were not materially adverse in the personal injury case, because it was entirely separate and distinct from ATTORNEY's work as ARMS counsel. CLIENT wanted and benefited from the representation, because the customary fee of going to another attorney would have been 33%; CLIENT did not want to retain another attorney because by using ATTORNEY he was able to secure weekly salary continuation from ARMS, and he didn't want to sue ARMS. (II RT page 287, lines 17-21) (II RT page 369, lines 7-10) (I RT, pages 195-198; and 205-206). Furthermore, ATTORNEY's independent judgment owed CLIENT was not affected. CLIENT sustained no harm, and in fact got the best possible result: a one-million-dollar policy limits settlement, with no offset for the 50% comparative negligence defense raised by the insurance company, and a very below market contingency fee retainer.

translate, are all irrelevant, and immaterial to the error complained of, and do not merit further discussion here.

Finding for ATTORNEY, the trial Court correctly found that CLIENT's malpractice cause of action was time-barred; that CLIENT did not meet his burden of proof; and he failed to introduce any expert witness testimony on the requisite standard of care. (II RT page 443)

CLIENT suggests that the statute of limitations was tolled because ATTORNEY received a refund check from a former medical lien holder, and transmitted it to him after his representation ended on August 2, 2016. Even if that would constitute "continued representation" for tolling purposes—which it does not— it wouldn't be grounds for the trial Court to admit irrelevant, prejudicial evidence, and outside the scope of the essential complaint's allegations, over the objections in ATTORNEY's timely raised motion in limine.

However, the trial Court properly rejected any claim of tolling—which was also readily apparent at the time the motion in limine was filed— and correctly found that the legal malpractice claim was time-barred because "Mr. Lee obviously understood there was a problem well before one year of the filing of the complaint ..." (II RT page 443). CLIENT did not appeal this finding, and waived this frivolous argument.

Nevertheless, briefly: ATTORNEY'S representation indisputably ended on August 2, 2016. All the work relating to the lien reduction was performed before his representation ended. On July 29, 2016, he wrote a lien-holder, claiming they were overpaid, and asking that the lien-holder check their records. On or about August 23, 2016, ATTORNEY received by mail a refund check in the amount of $817 payable to his law office. He immediately deposited it in his account, and had a cashier's check issued to CLIENT, which he mailed to him on August 24, 2016 (I RT page 111, line 23, through page 113, line 23; page 161 from line 17 to page 164, line 12). That is CLIENT's fallacious argument that this fact amounted to "continued representation", tolling the statute of limitations.

The California Supreme Court explained the rationale of of the "continuous representation" rule, to wit: to avoid disrupting the attorney-client relationship by a lawsuit, and to enable an attorney to correct or minimize an apparent error, while at the same time preventing lawyers from defeating malpractice claims by continuing to represent the client until the statute has run. *Laird v. Blacker* (1992) 2 Cal. 4th 606, 618.

For tolling, the "continuous representation" must also involve the same, "specific subject matter." There can be no tolling when, as here, the continuous representation is only "tangentially related." *Foxborough v. Van Atta* (1994) 26 Cal. App. 4th 217, 228-229.

There was no "tolling." Clearly, the remaining ministerial act of sending CLIENT by mail an overpayment of a medical lien payment, did not preclude CLIENT from disturbing their relationship by a lawsuit which would prevent ATTORNEY from correcting or minimizing any alleged malpractice. The sending of the check was, substantively, a different "subject matter" from any alleged wrongdoing and, or, was only "tangentially related."

The combined effect of CLIENT throwing so many wild and unsupported allegations of misconduct against the fact-finder's wall, hoping something might stick, created prejudice, which begged the trier of fact to reach and stretch to find conversion as a compromise verdict.

In the event the Court of Appeals does not reverse the judgment of conversion, because of the prejudice, ATTORNEY prays that this Court reverse and remand for a new trial, limiting the evidence to relevant proofs to insure a fairer trial.

[C.] Sections "C" and "D" in CLIENT's combined briefing are Discussed Below under "As to Cross-Appellant's Opening Brief."

SECTION II

CLIENT's CCB did not address (a) the AOB argument that the trial Court erred in finding the retainer agreement was voided pursuant to California Business Code Section 6147(b) because the relief was time-barred [19]; (b) his failure to prove the elements of Conversion, and essential complaint allegations; and (c) the misconduct of ARMS, including "fee splitting"; and his own mistakes and culpability.

[19] It is undeniable that the failure to include the statutory mandated language that attorney fees are negotiable, is an "omission ... arising in the performance of professional services."

The failure to brief an issue constitutes a waiver or abandonment of the issue on appeal. *See Behr v. Redmond* (2011) 193 Cal. App. 4th 517, 538.

See AOB (Voiding the retainer at pages 41-42);
(Elements of conversion at pages37-40)
(ARMS misconduct and CLIENT's mistakes are discussed throughout the AOB)

AS TO CROSS-APPELLANT'S OPENING BRIEF

C. The Court Did Not Err Finding CLIENT did Not Prove His Fraud Claim. Indeed, there is no evidence ATTORNEY Committed Fraud. The judgment should not be reversed based on the requisite legal standard on review.

CLIENT's Complaint's alleges that ATTORNEY committed fraud in his Second Cause of Action (AA 16, pages 37-38). The complaint's paragraph # 22 (at page 37) states: "As an alternative and cumulative remedy, Plaintiff alleged (sic) that Defendant defrauded Plaintiff out of $130,000.00"—whatever that means.[20]

To prove fraud, the only two specific complaint misrepresentations he alleges ATTORNEY knew were false, upon which he relied, causing him harm, are that:
(1) "Defendant represented to Plaintiff that he would accept a fee of $20,000.00 for the legal services provided" (Complaint allegation # 23); and, (2) "represented that he would use $130,000.00 from the settlement proceeds to pay Arms." (Complaint allegation # 24)

In CLIENT's brief, he boldly represents as a fact, that the "Undisputed Evidence Proved Lee's Fraud Claim." (CCB at page 40).

In California, "fraud must be plead with specificity; general or conclusory allegations do not suffice." *Lazar v. Superior Court* (1966) 12 Cal. 4th 631, 645.

[20] To the author, it's meaning is a disingenuous "run around" of the applicable one-year statute of limitations applicable to all of his non-fraud causes of action.

There is no evidence in the record that either of these complaint allegations ever occurred, or that he "intentionally concealed" facts (CCB at pages 41-42), much less proofs that could satisfy the evidentiary burden to warrant a reversal, under the legal standard for review.

The CCB's conclusory claims of wrongdoing, unsupported in the record, go impermissibly far afield of the complaint's specific allegations of fraud; and his attempt to rewrite his complaint on appeal is improper. *See Das v. Bank of America, N.A.* (2010) 186 Cal. App. 4th 727, 745. No fraud occurred. No fraud was proven.

The judgment should not be reversed, based on the requisite legal standard on review.

D. ATTORNEY's Alleged Ethical Violations and Conflicts of Interest, even if Proven, Caused Client No Damages. The Remedy of Fee Disgorgement is Not Warranted, and is Time-Barred.

Fee disgorgement was not alleged in LEE's complaint; and the remedy was never raised in the Court below. Assuming that it is considered appropriate to be raised and considered for the first time on appeal, the gravamen of the allegations in support of disgorgement as a restitutionary remedy for his alleged malpractice, and breaches of ethics, are all time-barred.

Even if the causes of action for ethical breaches or malpractice were not time-barred (as they are), and even if the malpractice or breach of ethics (or even breach of fiduciary duty which was not alleged) were proven, the remedy would fail as a matter of law, because there is no substantial evidence that the the alleged misconduct proximately caused CLIENT damages. *See Slovensky v. Friedman* (2006) 142 Cal. App. 4th 1518, 1536.

Giving CLIENT the benefit of the doubt that he is seeking fee disgorgement as a remedy for his allegation of fraud, he did not prove fraud. See subsection "C" above.

There is no legal or factual basis that would entitle CLIENT to fee disgorgement.

VIII.

CONCLUSION

For the reasons and legal grounds stated, the finding of conversion should not stand: the fee dispute arose within the "performance of professional services" and, therefore, is subject to a one-year statute of limitations and time barred. Indeed, so are the litany of the other wrongful acts, irrelevant to conversion, CLEINT complained of. Furthermore, CLIENT did not prove the elements of conversation, nor the essential allegations in the complaint.

Factually, there is no conflicting evidence on any material contested issue between CLIENT and ATTORNEY, based on their personal knowledge. CLIENT'S testimony as to what he understood, which differs from ATTORNEY's testimony, is entirely derived from his conversations with ARMS' owner, Lindy Park, and speculation.

There is only marginally conflicting testimony between ATTORNEY and ARM's owners, Lindy Park and David Hudrlik ("ARMS adverse witnesses" on any dispositive issue: their claim that ATTORNEY agreed to accept less than 15%; although it diametrically is contrary to ARM's own email, which speaks volumes: "In Newman's contract, put 15% ...Newman keeps ..."(AA 7; Email from Park to Allen and Daniel).

ARMS' adverse witnesses are not disinterested, 3rd party witnesses. ARMS had its own agenda: to split attorney's fees, and to obtain money from CLIENT's settlement to which they were not entitled.

Unfortunately, CLIENT, by his own choice, apparently out of a misguided sense of loyalty, aligned himself with ARMS. Their alliance permeated the trial proceedings, as it does on appeal.

Their joint enterprise was in plain view when Lindy Park, *and* ARM's company attorney, and CLIENT, all drafted the Bar complaint and follow-up communiques, as first threatened by ARMS' co-owner, David Hudrlik. (AOB at pages 28-29).[21]

[21] As stated in AOB (page 28, footnote 28), the bar complaint was not included in ATTORNEY'S appendix, because he does not have a legible copy of all of CLIENT's correspondence with the California Bar Association; and, after a good faith effort, he was unable to obtain a copy from opposing counsel. It is crystal clear that the letters to the Bar were written by Lindy Park and their company attorney. The letters legalese stunningly mirrors CLIENT's combined brief.

In resolving the credibility contest, the trial Court's reliance on ARMS' testimony was misplaced. The company desperately wanted $130,000.00 to which they were not entitled, and their officers and owners were unabashedly willing to commit fraud to justify their attempts at "fee-splitting. (II RT page 315, lines 19-26; page 333, lines 16-28; II RT page 296, lines 1-9) (AOB at page 25-26) (AA 6; Unexecuted contract between Arms and Client and AOB at page 29).

Even if ARMS' adverse witnesses did not pursue their own agenda, the substantial evidence does not support the finding of conversion, factually or legally.

The trial Court's judgment of conversion is tantamount to absolving CLIENT of his many errors and choices, as well as his just obligation under a fair and reasonable retainer agreement, that he knowingly entered into. Further, the oral testimony seeking to annul the unambiguous 15% retainer, confirmed in Park's "Newman Keeps" email, flies in the face of the parol evidence rule. The judgment also operated to reward ARMS for its misconduct, and indirectly condoned "fee splitting."

Under the facts and circumstances in this case, a finding of conversion would also create a precedent that would convert contractual fee disputes between a lawyer and client into a "garden variety theft" and, thereby, skirt the appropriate cause of action (contract) for relief, and the applicable one-year statute of limitations.

CLIENT paints himself as a victim of ATTORNEY, and he ignores his own conduct. It is exceedingly hard to fathom the reasons for the choices he and ARMS made together.[22]

CLIENT is not a victim. He is the beneficiary—and suffered no harm—of the very acts he complains of throughout the CCB. This fact did not go unnoticed by the trial Court, at the close of the evidence, when the judge stated:

> "So with respect to the overall picture of the case, Mr. Lee was charged 15% ...that is well below the standard fee for personal injury cases ... Mr. Lee is here

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If CLIENT disputes this assertion, ATTORNEY invites his counsel to supplement its appendices with *all* of LEE's written Bar communications, and his July 14, 2017 letter to the Bar, in particular.

[22] Based on what he characterized as "unusual" meetings that took place with CLIENT at ARMS, after ATTORNEY terminated his employment, Shinkum Kim (a/k/a "Steve"), the company's operations manager, testified that he believed that CLIENT was being pressured by ARMS to pay the company $130,000.00 (III RT page 484, line 11 to page 487, line 17).

> ...requesting that he be reimbursed the $150,000 that Mr. Newman has received; however, Mr. Lee needs to understand that 15% is really a very reasonable amount (III RT pages 605-607)

CLIENT initially agreed with Lindy Park ("Park") to use their attorney to represent him, because she was able to secure a below market contingency fee of 15%, and further agreed that ARMS would continue his salary at $1000.00 week, and assist him with translation and transportation benefits.

Park testified that, at the outset, they also agreed CLIENT would reimburse ARMS for their out-of pocket. However, he disavowed agreeing to that term. Indeed he refused to sign the agreement agreement to reimburse ARMS. It wasn't until settlement was imminent that he and Park decided on how the 15% fee would be distributed; and, it was only thereafter, that he was willing to sign the amended 130K agreement presented to him at the insurance company's release signing by the translator at the request of Hurdrlik—and taken away by ATTORNEY to protect CLIENT—which was never signed by ARMS, and unenforceable. There are consequences to his decision—likely bending to pressure by ARMS (see fn # 21)— to pay the company more than they were entitled, to after ATTORNEY was no longer representing him.

Had CLIENT retained another attorney, and paid the customary 33 1/3% contingency fee, he would have incurred $333, 333.00 in legal fees—not the $150,000.00 ("150K) he paid. Even if you add the $74,200.00 ARMS apparently paid for salary continuation (AA 6; Unexecuted contract between Arms and Client) [23] to the $150K he paid ATTORNEY—totaling $224,200.00– CLIENT still saved $108,800.00 under the agreement with ARMS he voluntarily entered into. He suffered no damages; and his lawsuit makes no sense.[24]

The trial Court abused its discretion when it denied ATTORNEY's motion in limine. Thereafter, he could not "unring the bell." The fairness of the trial was prejudicially tainted by the trial Court's refusal to limit proofs of time-barred claims, and the presentation of irrelevant

[23] ARMS did not have records of any other expenses, and the value of transportation and translation services would have been nominal. Further, CLIENT told ATTORNEY that he had only received about $60,000. (III RT page 483, line 21 to page 484, line 1).

[24] Damages are an essential element to CLIENT's causes of action. Parenthetically, even if his causes of action were not time-barred, he would not recover money damages. *See also City of Vista v. Robert Thomas Securities* (2000) 84 Cal. App. 4th 882, 886-887.

and prejudicial evidence, in what should have been a simple and short trial ending in a judgment in favor of ATTORNEY on all counts.

That so many of the trial Court's findings are woefully inconsistent with the record, further calls into serious question and fatally undermines its ultimate conclusion: a judgment of conversion. CLIENT's arguments are untethered to facts, evidence and the applicable law.

ATTORNEY respectfully prays that the Court of Appeals reverse the judgment of conversion (or, alternatively, remand for a new trial); deny the cross-appeal, and award him his appellate costs.

MICHAEL P. NEWMAN
Appellant/ Cross-Respondent

IX.
CERTIFICATE OF WORD COUNT

I, Michael P. Newman, pro se Appellant and Cross-Respondent, certify that, pursuant to Rule 8.205 of the California Rules of Court, this combined briefing was produced using New Times Roman 13- point type (except footnotes), and contains approximately 10,193 words, inclusive of footnotes and excluding the cover, tables & certificates, is less than the words permitted for a combined brief. I relied on Microsoft Word to prepare this brief, and calculate the word count.

MICHAEL P. NEWMAN
Appellant/ Cross-Respondent

X.
DECLARATION OF SERVICE

I, Marilyn Newman, hereby declare:

I am employed in the city of Corona and county of Riverside, California in the office of a member of the bar of this court at whose direction the following service was made. I am over the age of eighteen years and not a party to the within action. My business address is Law Office of Michael P Newman, PC., 2191 Sampson Ave., Suite 104, Corona, CA 92879.

On July 2nd, 2020, I served this combined brief on the interested parties in this action by electronic transmission via TrueFiling whose e-filing system, and will automatically serve the following attorneys of record who have consented to receive electronic service of documents in this manner.

Richard A. Lucal (ral@looral.com)

On July 2nd, 2020, I also served the combined brief via mail on the persons listed below by placing a true copy thereof, enclosed in a sealed envelope following the ordinary business practice

Superior Court of California, Riverside County
Honorable Daniel A. Ottolia, Dept 4
4050 Main Street
Riverside, California 92501

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on July 2nd,[i] 2020, at Corona, CA.

x Marilyn Newman
Marilyn Newman