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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BEINER ENTERPRISES, INC.

Plaintiff,

v.

ADAM CALDWELL, INC. et al.

Defendants.

Case No. CV 13-08723-AB (MRWx)

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW RE
LIABILITY**

TRIAL DATE: FEBRUARY 17, 2015

This matter was tried before this Court, sitting without a jury, on February 17–19, 2015.

Brook Carroll and Danielle Everson of Clark Everson LLP appeared on behalf of Plaintiff and Counter-defendant Beiner Enterprises. Mary Reiten of Terrell Marshall Daudt & Willie PLLC appeared for Defendants and Counter-claimants Adam Caldwell, Inc. and Jennifer Caldwell.

Having heard the admissible evidence presented by the parties, the arguments of counsel, and the supplemental briefing, and having considered the demeanor and credibility of the witnesses and all papers and exhibits presented by the parties for purposes of this trial, including admissions in the Final Pretrial Conference Order, the Court makes the following findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

1.

FINDINGS OF FACT¹

A. The Parties

1. Plaintiff and Counter-Defendant Beiner Enterprises, Inc. (“BEI”) is a citizen of the state of Washington. BEI’s president and sole shareholder is Robert Lance Beiner (“Lance”). (Dkt. No. 95, Admitted Fact (“AF”) 1, 3.) Lance, the individual, is not a party to the instant litigation.

2. Defendants and Counter-Claimants Adam Caldwell, Inc. (“ACI”) and Jennifer Caldwell (“Jennifer”) are citizens of the State of California. Jennifer is the president and sole shareholder of ACI, a position she has held since November 2011. (AF 6, 10-11.)

3. Adam Caldwell (“Adam”) incorporated ACI, a California corporation, in August 2004 and served as ACI’s president and sole shareholder through November 2011. (AF 7; Ex. 34.)

4. Lance incorporated BEI, a Washington corporation, in December 12, 2005. (Ex. 127.)

5. Prior to incorporating BEI, Lance was the president of Beiner, Inc., a California corporation. Beiner, Inc. dissolved and ceased to exist in December 2005. (AF 5; Ex. 128.) Beiner, Inc. is not a party to the instant litigation.

B. Background Regarding Gray Market

6. A “gray market” is defined as “a market employing irregular but not illegal methods; a market that legally circumvents authorized channels of distribution to sell goods at prices lower than those intended by the manufacturer.” (Merriam

¹ Following the bench trial, both parties filed and lodged proposed findings of fact and conclusions of law and responses/objections to the opposing party’s proposed findings and conclusions. (Dkt. Nos. 110-113.) Where one party contested a proposed factual finding by the other party but failed to cite contradictory evidence or otherwise explain why the other party’s cited evidence should not be credited, the Court disregarded the purported contention to the extent the contention was inconsistent with the Court’s review and understanding of the evidence.

1 Webster's Online Dictionary, available at <http://www.merriam->
2 [webster.com/dictionary/gray%20market](http://www.merriam-webster.com/dictionary/gray%20market); *see also* Trial Tr. at 32:24-33:7 (L. Beiner).)

3 7. ACI currently operates in – and Beiner, Inc. and BEI used to operate in –
4 the gray market for electric motor parts. (Trial Tr. at 32:24-33:7 (L. Beiner); 279:2-8
5 (J. Caldwell).)

6 8. The major vendors that supply electric motor parts to ACI (and
7 previously supplied them to BEI) on the gray market are also original equipment
8 manufacturers (“OEMs”) that would sell parts to unauthorized distributors. While this
9 practice is not illegal, it may violate agreements between manufacturers and these
10 vendors. (Trial Tr. at 35:20-36:15; 38:6-39:8 (L. Beiner).)

11 9. Vendor relationships such as these are valuable, and as a result ACI has
12 always kept and continues to keep its purchases from these vendors confidential.
13 (Trial Tr. at 361:12-17 (J. Caldwell).)

14 10. ACI keeps its customer lists secret for similar reasons. (Trial Tr. at
15 288:19-25 (J. Caldwell).)

16 **C. Creation Of ACI And BEI**

17 **a. Beiner, Inc.**

18 11. From 1991 through 2004, Lance owned and operated Beiner, Inc., which
19 engaged in the purchase and sale of electric motor parts under the trade name B&B
20 Electric Sales. (Trial Tr. at 32:13-20 (L. Beiner).)

21 12. Adam Caldwell (“Adam”) and Jennifer Caldwell (née Shows)
22 (“Jennifer”) became employees of Beiner, Inc. in the early 1990s. (Trial Tr. at
23 280:18-281:12 (J. Caldwell).)

24 13. Lance taught Adam about the gray market business, and the two
25 developed a close working relationship. (Trial Tr. at 49:17-22, 52:8-21 (L. Beiner).)

26 14. When Jennifer began working for Beiner, Inc. (in approximately 1992 or
27 1993), she and Adam were dating; they subsequently married. (AF 14, 16-17; Trial
28 Tr. at 281:8-12, 323:11-14 (J. Caldwell).)

1 15. Beiner, Inc. dissolved in December 2005. (AF 5; Ex. 128.)

2 16. Neither party adduced any evidence at trial that Lance, as an individual
3 sole proprietor, ever engaged in any business using the trade name B&B Electric Sales
4 following the dissolution of Beiner, Inc. in 2005.

5 **b. Lance's Contested Divorce**

6 17. In 2004, Lance was going through a contested divorce in Washington
7 State and sought to, and did in fact, minimize his assets to avoid having to share those
8 assets with his soon-to-be ex-wife.² (Trial Tr. at 233:19-21; 243:9-244:16 (L.
9 Beiner).)

10 18. As part of his effort to minimize his assets, Lance sought permission
11 from the Washington state court to liquidate Beiner, Inc. and retire. (Exs. 32-33.)
12 Lance represented to the Washington state court that liquidation (as opposed to selling
13 the company) was necessary because Beiner, Inc. had lost a key vendor and could no
14 longer maintain the volume of sales it once enjoyed. (Ex. 33.)

15 19. Despite his representations to the Washington state court, Lance neither
16 retired nor liquidated Beiner, Inc. (Trial Tr. at 281:24-282:10 (J. Caldwell); 417:1-3,
17 417:21-23 (B. Gonzalez).)

18
19 ² Though Lance denied this when testifying at trial, Lance did acknowledge
20 during his deposition that he sought “to demonstrate that Beiner, Inc. ha[d] reduced
21 income” during his divorce proceedings in 2004. (Trial Tr. at 344:8-16.) Testimony
22 by trial witnesses Becky Gonzalez and Mike Ladiana supported Lance’s deposition
23 testimony, *i.e.*, that Lance sought to minimize the Beiner, Inc. assets in order to avoid
24 relinquishing any of those assets as part of his divorce settlement. (*See* Trial Tr. at
25 416:22-25 (B. Gonzalez); 466:22-467:13 (M. Ladiana).) Additionally, Ms. Gonzalez
26 testified that ACI began conducting business in October 2004, purchasing inventory
27 from Lance in his personal capacity and re-selling that inventory to customers, and per
28 Lance’s instructions, Ms. Gonzalez did not post any sales for ACI or pay Lance for
any purchased inventory until December 2005. (Trial Tr. at 418:7-419:5 (B.
Gonzalez).) In light of this evidence, the Court finds that Lance’s trial testimony
denying that he sought to minimize his assets during his divorce proceedings is
entitled to little weight.

1 34. As part of this partnership arrangement, BEI acquired inventory from
2 vendors and then transferred inventory to ACI based upon customer orders. ACI in
3 turn shipped the inventory that was sold, collected customer payments, and paid BEI
4 the cost of its inventory plus a “special markup,” usually consisting of ACI’s revenues
5 minus operating expenses, including employee payroll. (Trial Tr. at 59:3-14, 93:16-
6 25 (L. Beiner); 280:3-7 (J. Caldwell).)

7 35. The special markup was calculated based on ACI’s monthly gross sales
8 (*i.e.*, profit/loss statement), and it was not dependent on ACI’s accounts receivables,
9 retained earnings, or any other balance sheet entries. (Trial Tr. at 434:18-435:20;
10 439:24-440:2 (B. Gonzalez).)

11 36. Also as part of this partnership arrangement, ACI and BEI agreed that
12 once Lance decided to retire – which he represented he would do upon turning seventy
13 years old – ACI would have the right of first refusal to acquire BEI and/or its assets.⁵
14 (Trial Tr. at 280:13-15; 286:16-287:3; 291:7-15 (J. Caldwell); *see also* 467:22-468:4
15 (M. Ladiana).)

16 37. ACI paid BEI for their inventory pursuant to the partnership arrangement
17 until July 12, 2013, when BEI (pursuant to a directive by Lance) instructed ACI to
18 cease selling BEI inventory, and ACI complied with that instruction. (Trial Tr. 61:21-
19 24 (L. Beiner), 275:17-276:13 (B. Gonzalez); 299:5-300:10 (J. Caldwell).)

20 38. ACI and BEI never agreed not to compete with one another upon
21 termination of the partnership. (Trial Tr. 282:22-283:10 (J. Caldwell).)

22
23 acted as BEI’s agent (*see* Trial Tr. at 493:8-14 (BEI closing argument)) is not
24 persuasive. Neither Lance nor BEI had any ownership interest in ACI, and, as
25 discussed more fully below, any control Lance exercised the over ACI’s business
26 operations was consistent with the ACI-BEI partnership structure. *See infra* Factual
27 Finding No. 52.

28 ⁵ Lance’s testimony to the contrary (*see infra* Factual Finding No. 39-42) is
entitled to little evidentiary weight, as it is self-serving and contradicted by the trial
testimony of several other witnesses.

1 43. ACI and BEI exercised joint control over the business enterprise, jointly
2 participating in the profits, losses, and management of the partnership. For example,
3 ACI personnel, including Adam, Jennifer and Michael Ladiana, engaged in the
4 purchase of electric motor parts on BEI's behalf (and as a result, ACI has always had
5 business relationships with vendors). ACI and BEI collaborated in decisions affecting
6 both companies, such as hiring and firing decisions, scheduling, the purchase of
7 inventory, and related matters, and ACI and BEI were privy to each other's customer
8 and vendor lists. (Trial Tr. at 283:23-284:9; 284:22-285:5; 362:11-363:1 (J.
9 Caldwell); 426:9-427:5 (B. Gonzalez); 465:18-466:21 (M. Ladiana); Ex. 112.)

10 44. Despite exercising joint control over the business enterprise, ACI and
11 BEI were separately owned. In this regard, Adam held himself out as the exclusive
12 owner of ACI during his tenure. ACI bore the brunt of the day-to-day efforts in
13 operating the enterprise and the brunt of the business risk. (Trial Tr. at 284:7-21 (J.
14 Caldwell); *see also* 465:18-466:21 (M. Ladiana).)

15 45. For example, ACI paid for all the office equipment and furniture used in
16 the partnership, including the shelving at ACI and BEI's leased warehouse and office
17 space. (Trial Tr. at 230:19-22 (L. Beiner); 430:23-431:3 (B. Gonzalez).)

18 46. ACI has paid and continues to pay for the maintenance of B&B Electric
19 Sales' website domain, abplace.com.⁷ (Trial Tr. at 230:23-25 (L. Beiner); 430:17-22
20 (B. Gonzalez).)

21 47. ACI pays for the health insurance provided to its employees. (Trial Tr. at
22 429:23-430:9 (B. Gonzalez).)

25 ⁷ Lance testified that the B&B Electric Sales website, abplace.com, listed Lance
26 as the owner and president of the company from approximately 1997 through 2008.
27 (*see* Trial Tr. at 42:18-43:14 (L. Beiner).) This testimony is insignificant and, at most,
28 indicates that Lance was listed on the website as owner and president as a result of
ACI's inattention in maintaining the website.

1 48. ACI pays for the 401K plan provided to its employees. (Trial Tr. at
2 430:10-16 (B. Gonzalez).)

3 49. When an employee of ACI brought an unemployment insurance claim
4 against ACI, it was ACI's unemployment fund that was tapped when the claim was
5 resolved against ACI. (Trial Tr. at 231:1-17 (L. Beiner).)

6 50. Additionally, both Adam and Jennifer were and continue to be
7 responsible for filing income tax returns on behalf of ACI (Trial Tr. at 27:14-29:3 (S.
8 Freeman)), as well as keeping ACI's corporate minutes during their respective tenures
9 as president and sole shareholder over ACI. (Trial Tr. at 292:5-295:11 (J. Caldwell),
10 Ex. 41.)

11 51. Through July 12, 2013 and pursuant to the above-described partnership
12 arrangement, ACI's revenues were exclusively the result of sales of inventory
13 purchased from BEI. The partnership arrangement, however, does not change the fact
14 that ACI was and continues to be responsible for the expenses described above, *e.g.*,
15 office equipment, furniture, shelving, leased office and warehouse space, and the
16 website domain name.

17 52. Indeed, Adam and Jennifer (during their respective tenures as president
18 and sole shareholder of ACI) often looked to Lance (as president and sole shareholder
19 of BEI) for guidance in operating the business and in making certain business
20 decisions, including salary determinations. This, however, was consistent with the
21 partnership agreement between the companies because, for example, any ACI salary
22 increases would cut into BEI's special markup payments, payments that operated as
23 the agreed-upon quid pro quo for ACI's right to purchase BEI and/or its assets upon
24 Lance's retirement.⁸ (See 349:10-25, 363:2-10 (J. Caldwell).)

25
26 ⁸ In this regard, it is unremarkable that Lance (whether in his personal capacity
27 or on behalf of BEI) reimbursed Adam and Jennifer for their incurred personal tax
28 liability stemming from ACI's retained earnings. (*See* Trial Tr. at 77:16-78:22 (L.
Beiner); Ex. 23.) To the extent Lance reimbursed Adam and Jennifer in his personal

1 **E. Prophet 21**

2 53. In 2010, ACI purchased Prophet 21 using its own revenue.⁹ (Trial Tr. at
3 423:424:5 (B. Gonzalez); see also Ex. 111.)

4 54. ACI has always depreciated and continues to depreciate Prophet 21 on its
5 income taxes. (Trial Tr. at 229:20-24 (L. Beiner).)

6 55. ACI set up Prophet 21 so that it had two “sides.” ACI’s side was
7 designated as “BBB,” and BEI side was designated as “WAS.” (Trial Tr. at 149:1-10
8 (L. Beiner); 271:14-22 (B. Gonzalez).)

9 56. The BBB (ACI) side of Prophet 21 contained ACI’s accounts
10 receivables, accounts payables, sales orders, the general ledger, and the “Assemblies
11 Database.” The WAS (BEI) side of Prophet 21 contained the purchase order module
12 and the inventory module, including minimum and maximum inventory amounts.
13 (Trial Tr. at 425:15-24 (B. Gonzalez).)

14 57. The Assemblies Database contained information regarding parts
15 available in the inventory that could be used to assemble various electric components,
16 and ACI used the database as a sales tool. (Trial Tr. at 288:1-18 (J. Caldwell).)

17 58. Though BEI did not use the Assemblies Database (Trial Tr. at 425:25-
18 426:1 (B. Gonzalez)), BEI had full access to the entire Prophet 21 system, *i.e.*, both
19 the BBB and WAS sides, until July 2013. (Trial Tr. at 148:2-11.)
20
21

22 capacity, this fact is immaterial to the issues in this case because Lance (the
23 individual) is not a party to this litigation. To the extent Lance reimbursed Adam and
24 Jennifer on behalf of BEI (there is no evidence that BEI incurred this liability), it is
25 consistent with the general partnership structure that ACI paid BEI the special markup
26 only *after* deducting operating expenses, as Adam and Jennifer’s personal tax liability
27 resulting from ACI’s retained earnings can be perceived as ACI “operating” expenses.

28 ⁹ Again, it is irrelevant that, at the time, ACI’s revenue was exclusively from
sales of inventory purchased through BEI, as this arrangement was a function of the
partnership structure.

1 59. Because BEI and ACI are two separate entities, each with their own
2 federal employer identification numbers, the companies separately maintained their
3 financial books, including any related information on their respective Prophet 21
4 “side.” (Trial Tr. at 424:19-425:14 (B. Gonzalez).)

5 **F. Transfer of ACI to Jennifer**

6 60. In 2011, Adam and Jennifer divorced and divided their assets equally.
7 (AF 14; Trial Tr. at 279:13-18; 289:6-10 (J. Caldwell).)

8 61. In November 2011, as part of their divorce settlement, Adam turned over
9 all of his ACI shares to Jennifer, thus making Jennifer the sole shareholder of ACI and
10 its legal owner.¹⁰ (Trial Tr. at 279:19-20 (J. Caldwell); Ex. 40.)

11 62. Adam placed no restrictions on ACI’s shares, *i.e.*, there was no
12 requirement that Lance or BEI had complete control over ACI, and there was no
13 requirement that Jennifer was obligated to sell ACI should Lance and/or BEI demand
14 that she do so. (See Ex. 40; Trial Tr. at 285:6-14; 290:4-291:6; 323:1-324:6 (J.
15 Caldwell).)

16 63. Jennifer understood that as part of Adam transferring his ACI shares to
17 her, Adam was also transferring his ownership rights in the trade name B&B Electric
18 Sales. (Trial Tr. at 282:22-283:18; 360:24-361:3 (J. Caldwell).)

19 64. In fact, in an email dated October 18, 2013, Lance concedes that “B&B
20 [Electric Sales] is owned by [Jennifer] legally.” (Ex. 81.)

21 65. When Jennifer received the ACI shares, ACI and BEI’s business
22 partnership structure remained the same as it was during Adam’s tenure as president
23 and sole shareholder of ACI. *See supra* Factual Findings Nos. 34-38.

24 ¹⁰ Lance’s trial testimony that Adam transferred the ACI shares to Jennifer
25 pursuant to Lance’s direction, following objection by counsel for Defendants and
26 Cross-Claimants ACI and Jennifer, was not offered for the truth, and therefore the
27 Court does not consider it for purposes of the instant Factual Findings. (Trial. Tr. at
28 90:5-92:20 (L. Beiner).) Even if it had been offered for the truth, the Court deems the
testimony irrelevant to these Factual Findings.

1 66. Specifically, when Jennifer received the ACI shares, she understood that
2 pursuant to ACI and BEI's partnership agreement, and in exchange for the special
3 markup payment arrangement (described above), Lance would either turn over or sell
4 BEI to ACI when he decided to retire, and the two companies would become
5 combined under one owner. Jennifer also understood that ACI's opportunity to
6 purchase and combine with BEI would have been available to Adam (as ACI's owner
7 and sole shareholder) but for Adam and Jennifer's divorce, and Lance represented the
8 same to Jennifer at the time she received ACI's shares. (Trial Tr. at 280:13-15;
9 286:16-287:3; 291:7-15 (J. Caldwell); *see also* 467:22-468:4 (M. Ladiana).)

10 67. Jennifer, like Adam, treated ACI as a true owner would; for example, she
11 learned to read and understand the financial statements. Though she collaborated with
12 Lance on certain issues, such as personnel decisions, she held herself out to be the
13 owner of ACI. (Trial Tr. at 291:16-292:13 (J. Caldwell).)

14 68. As stated above, Jennifer also filed income tax returns on behalf of ACI
15 and kept the corporate minutes of ACI. (Trial Tr. at 27:14-29:3 (S. Freeman); 292:5-
16 295:11 (J. Caldwell); Exs. 41, 95.)

17 69. In April 2012, ACI and BEI leased new office and warehouse space
18 located on Transport Street in Ventura County, and both ACI and BEI were
19 signatories to the lease for the premises. (See Ex. 83.)

20 **G. Asset-Purchase Sale to All Current**

21 **a. BEI receives an initial inquiry from All Current**

22 70. In early 2013, Lance decided to retire. (Trial Tr. at 101:2-102:7 (L.
23 Beiner).)

24 71. In May 2013, ACI employee Michael Ladiana went to Lance's home in
25 Washington state at Lance's request so that Lance could be sure that he (Ladiana)
26 knew how to handle the inventory when Lance retired and when BEI was turned over
27 to ACI. (Trial Tr. at 469:13-470:4; 477:6-23 (M. Ladiana); *see also* 104:7-105:8 (L.
28 Beiner).)

1 72. While Mr. Ladiana was working out of Lance's home in Washington
2 state, Lance received a telephone call from the representative of an ACI competitor,
3 All Current Electric ("All Current"), which informed Lance that it was interested in
4 purchasing the assets of BEI and ACI. (Trial Tr. at 103:1-104:6 (L. Beiner); 470:5-
5 471:6 (M. Ladiana).)

6 73. Thereafter, Lance began negotiating an asset sale of BEI and ACI with
7 All Current. During those negotiations, Lance provided All Current with confidential
8 information regarding ACI, including its financial statements for January through May
9 2013, a partial list of ACI's customers, and ACI's sales by state for certain years.
10 (Trial Tr. at 217:11-218:11; 218:21-221:15 (L. Beiner); 306:10-307:10 (J. Caldwell);
11 Trial Exs. 53, 54, 55, 59, 60.)

12 74. Lance informed All Current about the partnership with ACI, informing
13 All Current that ACI controlled the trade name B&B Electric Sales and the ACI
14 customer list. (Trial Tr. at 218:12-20 (L. Beiner); Exs. 55, 81.)

15 75. Lance never disclosed to Jennifer that he was negotiating on behalf of
16 ACI or that he was providing All Current with ACI's confidential information. (Trial
17 Tr. at 220:13-221:15 (L. Beiner).)

18 **b. Lance notifies Jennifer of All Current's interest in an**
19 **asset sale**

20 76. In June 2013, Lance informed Jennifer that he wished to sell BEI and
21 ACI's assets to All Current and asked for Jennifer's cooperation as the owner of ACI.
22 (Trial Tr. at 295:12-298:1 (J. Caldwell).)

23 77. On July 3, 2013, All Current provided Lance with a written offer to
24 purchase BEI and ACI's assets for, collectively, \$5.8 to \$6.8 million, contingent on
25 All Current's satisfaction with its due diligence investigation and the negotiation of
26 deal documentation. (Trial Tr. 126:8-12, 128:6-20, 129:19-130:6 (L. Beiner); Ex. 63.)

27 78. Lance felt that All Current's offer was one he could not refuse. (Trial Tr.
28 at 129:2-11 (L. Beiner).)

1 79. In early July 2013, after receiving All Current's offer, Lance and Jennifer
2 again discussed the sale of BEI and ACI's assets to All Current. At that time, Jennifer
3 indicated that she would accept \$3,500,000 for ACI's assets, and Lance responded
4 that that price was too high. The parties agreed to talk again the following week.
5 (Trial Tr. at 298:2-18 (J. Caldwell).)

6 80. Lance and Jennifer subsequently discussed Jennifer's interest in
7 purchasing BEI's assets in lieu of the ACI and BEI asset sale to All Current. Lance
8 explained to Jennifer that All Current was offering all cash, and Jennifer could not pay
9 all cash for the BEI assets, which Jennifer did not dispute. (Trial Tr. at 104:23-105:1-
10 5, 131:7-23 (L. Beiner).)

11 81. Jennifer informed Lance that she would accept \$2,500,000 (the
12 equivalent of \$125,000 annual salary for 20 years) for the sale of ACI's assets to All
13 Current. Lance replied that her offer was "not even close" and countered with
14 \$500,000. Lance considered the counteroffer a "bonus" to compensate Jennifer for
15 her cooperation and for her service and loyalty toward Lance. Lance and Jennifer did
16 not reach an agreement. (Trial Tr. at 123:2-124:11 (L. Beiner); 298:19-299:4 (J.
17 Caldwell).)

18 **c. BEI directs ACI to cease selling BEI inventory**

19 82. On Friday, July 12, 2013, Lance orally instructed Jennifer that ACI was
20 to cease selling BEI's inventory unless and until an agreement could be reached.
21 Jennifer ceased selling BEI's inventory effective Monday, July 15, 2013 pursuant to
22 this directive. (Trial Tr. at 275:17-276:13 (B. Gonzalez); 299:5-300:10 (J. Caldwell).)

23 83. On July 14, 2013, Jennifer informed ACI's employees about the
24 disagreement regarding the sale of BEI and ACI's assets to All Current. She
25 instructed the employees that they were not to sell any more of BEI's inventory until
26 further notice. However, hopeful that BEI and ACI would reach agreement, Jennifer
27 instructed her employees to continue to take orders but to inform the customers that
28

1 ACI's computers had crashed, and the material could not ship immediately. (Trial Tr.
2 at 300:11-301:11 (J. Caldwell).)

3 84. On July 15 and 16, 2013, Lance again communicated to Jennifer that ACI
4 should not sell any of BEI's inventory without his permission. (Trial Tr. at 223:12-
5 20; 224:17-225:3 (L. Beiner); Exs. 65, 66, 67.)

6 85. On July 16, 2013, Jennifer sent a letter to customers using B&B Electric
7 Sales letterhead, explaining that B&B Electric Sales had been selling inventory that it
8 had on consignment from a vendor, that the vendor had pulled the company's
9 inventory, and that the company was working on acquiring new inventory. (Trial Tr.
10 at 335:1-336:6 (J. Caldwell); Ex. 27.)

11 86. Also on July 16, 2013, Lance met with ACI's office manager and
12 bookkeeper, Becky Gonzalez, at a restaurant. Ms. Gonzalez also kept the books for
13 BEI. Ms. Gonzalez brought certain financial statements for ACI and BEI that Lance
14 had requested. (Trial Tr. at 444:15-19 (B. Gonzalez).)

15 87. Based on his review of those financial statements, Lance asked Ms.
16 Gonzalez to write out a BEI invoice to ACI for all of the money outstanding in ACI's
17 accounts receivables, \$535,042.48, and cash on hand, \$43,454.66. (Trial Tr. at
18 444:20-445:19 (B. Gonzalez).)

19 88. Ms. Gonzalez refused to prepare the BEI invoice because BEI had
20 already been paid current for all of its inventory and special markup through July 12,
21 2013, and she knew of no other agreement between ACI and BEI that would permit
22 BEI to claim 100 percent of ACI's accounts receivables and cash on hand. (Trial Tr.
23 at 445:20-446:13 (B. Gonzalez).)

24 89. Ms. Gonzalez, on behalf of ACI, paid BEI its special markup through
25 July 15, 2013. The amount of the special markup was determined by calculating the
26 average of the special markup on gross sales from January through June 2013,
27 converting that to a percentage of gross sales, and applying that percentage to gross
28 sales between July 1 and July 15, 2013. Though this was a variation on ACI and

1 BEI's payment procedures under the partnership structure, Ms. Gonzalez had no
2 choice but to calculate the payment this way because there was no established method
3 for calculating the special markup payment in the middle of the month. (Trial Tr. at
4 436:3-437:4 (B. Gonzalez).)

5 90. ACI paid the last remaining balance owed to BEI under the special
6 markup arrangement – for ACI's sales through July 12, 2013 – on or before July 20,
7 2013. (Trial Tr. at 436:3-437:20 (B. Gonzalez).)

8 **d. Lance and Jennifer resume negotiations regarding the**
9 **ACI and BEI asset sale to All Current, but they are**
10 **unable to reach an agreement**

11 91. While Lance continued to ask Jennifer to propose a resolution to the
12 parties' disagreement, Lance made clear to Jennifer that he was not prepared to accept
13 any offer except either (1) a sale of ACI's assets to All Current pursuant to the terms
14 already negotiated; or (2) a continuation of the parties' previous arrangement where
15 BEI sold its inventory to ACI at cost plus a special markup. In other words, Jennifer
16 and ACI had no meaningful ability to negotiate with BEI. (Trial Tr. at 225:4-12;
17 479:18-482:2 (L. Beiner); Ex. 64).

18 92. On July 30, 2013, Lance asked Jennifer to continue to sell BEI's
19 inventory under the previously existing partnership arrangement. Jennifer did not
20 respond to Lance's request. (Ex. 65.)

21 93. In a final attempt to obtain Jennifer's cooperation and salvage a deal with
22 All Current, Lance asked All Current to make a joint offer. On August 2, 2013, All
23 Current made a joint offer to BEI and ACI in the form of a letter of intent ("LOI").
24 This LOI offered to purchase ACI and BEI's assets for \$6 million, with \$4 million
25 paid to BEI and \$2 million paid to ACI for their respective business assets. (Trial Tr.
26 at 145:1-10 (L. Beiner), 308:21-309:3 (J. Caldwell); Ex. 30.)

27 94. The LOI also included the requirement that Jennifer, as owner of ACI,
28 sign a five-year agreement not to compete with All Current. (Ex. 30.)

1 95. No guarantee existed that either ACI or BEI would receive the purchase
2 amounts listed in the LOI because the offer was subject to All Current's due diligence
3 (Trial Tr. at 227:22-228:7 (L. Beiner)), among other contingencies.

4 96. Jennifer rejected All Current's offer presented in the LOI because, among
5 other reasons, the LOI contained a contingency that Jennifer deemed unreasonable.
6 The contingency required ACI meet certain sales goals per month (\$480,000) through
7 closing of the deal. Because ACI had grossed that sales amount only once in the
8 preceding seven months, Jennifer considered the contingency unreasonable. (Trial Tr.
9 at 309:4-312:19 (J. Caldwell); Exs. 30, 126, 129, 135 at Schedule 3.)

10 97. As Lance admits, the asset-purchase sale of ACI to All Current was not
11 in ACI's best interest. (Trial Tr. at 217:8-10 (L. Beiner).)

12 98. Lance also admits that had Jennifer accepted All Current's \$2 million
13 asset-purchase offer on behalf of ACI, and had the sale to All Current had gone
14 through pursuant to the terms of the LOI, then Lance never would have brought the
15 instant lawsuit against ACI and Jennifer. (Trial Tr. at 227:2-5 (L. Beiner).)

16 **e. BEI interferes with ACI's business dealings**

17 99. After BEI directed ACI to cease selling BEI inventory, ACI began efforts
18 to acquire inventory from vendors on its own based on its ongoing relationships with
19 such vendors. *See supra* Factual Finding Nos. 43s.

20 100. During this time, before the BEI asset sale to All Current, Lance had
21 telephone conversations and sent emails to Vendors A, B, and C¹¹ (which previously
22 sold inventory to BEI and with which ACI had independent business relationships),
23 asking these vendors to not sell any inventory to ACI because Lance did not want ACI
24 to have the ability to purchase material from a company that Lance considered a BEI

25
26 ¹¹ In light of the Court's conclusions that ACI's vendor and customer lists
27 constitute trade secrets (*see infra* Conclusions of Law Nos. 114-117), the relevant
28 vendors shall be referred to as Vendor A, Vendor B, and Vendor C on the public
record.

1 vendor. (Trial Tr. at 314:3-15 (J. Caldwell); 484:8-488:3 (L. Beiner); Exs. 72, 73,
2 81.)

3 101. As a result, Vendors A, B, and C – vendors that had previously done
4 business with B&B Electric Sales vis-à-vis ACI and BEI’s partnership – stopped
5 doing business with ACI. Upon deciding to resume business with ACI, these vendors
6 required ACI to pay for all merchandise up front and by credit card (this requirement
7 is sometimes referred to as Cash on Delivery, or COD), which hinders ACI’s ability to
8 purchase sufficient inventory to fulfill all of its orders. (Trial Tr. at 314:14-316:1 (J.
9 Caldwell).)

10 **f. BEI asset sale to All Current**

11 102. On September 10, 2013, the BEI asset sale to All Current closed. (See
12 Ex. 77.)

13 103. All Current paid BEI a total of \$3,019,378. (See Ex. 79; Trial Tr. at
14 152:13-20, 156:9-158:3 (L. Beiner); Ex. 78.)

15 104. The contract with All Current also included an “earn out” clause. That is,
16 All Current agreed that if it could issue purchase orders from a certain vendor, Vendor
17 A, that totaled \$300,000 over a specified period of time after the deal closed, then All
18 Current would pay BEI an additional \$500,000. (Trial Tr. at 152:15-20, 153:24-
19 154:6; Ex. 77 at Article 2, ¶ 2.1(b)(i) (page 4).)

20 105. All Current was only able to issue purchase orders from Vendor A in the
21 amount of \$222,937.16 over the designated “earn out” period, and so All Current paid
22 BEI only \$371,561.93 – the pro rata calculation for the amount available in the earn
23 out” agreement. (See Ex. 78.)

24 106. ACI did not interfere with BEI’s ability to procure \$300,000 in purchase
25 orders from Vendor A. (Trial Tr. at 313:3-17 (J. Caldwell).) BEI adduced no
26 evidence at trial that ACI interfered with Vendor A or BEI’s ability to complete the
27 “earn out.” To the extent BEI relies on the fact ACI purchased inventory from
28 Vendors A, B, and C after July 12, 2015, this evidence is irrelevant because the ACI-

1 BEI partnership had no agreement not to compete in the case either company
2 disassociated from the partnership. *See supra* Factual Finding No. 38.

3 **H. ACI No Longer Has Access To BEI's Inventory Or Data**

4 107. During July and August 2013, Becky Gonzalez, on behalf of ACI,
5 worked with a Prophet 21 vendor to separate BEI's inventory data from ACI's sales
6 data, including the minimum and maximum inventory data, in the Prophet 21 system.
7 (Trial Tr. 427:6-428:18 (B. Gonzalez).)

8 108. ACI removed BEI's data from the WAS side of Prophet 21 and provided
9 that data to BEI, after which ACI has not had access to any of the data on the WAS
10 side of Prophet 21. (Trial Tr. at 428:19-429:8 (B. Gonzalez).)

11 109. ACI provided the data to Lance on a memory stick, but Lance never
12 reviewed the data to determine the scope of what BEI received. (Trial Tr. at 230:5-18
13 (L. Beiner).)

14 110. BEI also obtained all of its inventory material from the Transport Street
15 location as part of the asset sale to All Current. (Trial Tr. at 316:2-21 (J. Caldwell).)

16 111. Neither Lance nor BEI have occupied the Transport Street location since
17 the BEI inventory was moved out of the facility, which occurred in September and
18 October 2013, and since then BEI has never attempted to access or occupy the
19 Transport Street location. (Trial Tr. at 166:24-167:1 (L. Beiner).)

20 **CONCLUSIONS OF LAW**

21 **I. Jurisdiction**

22 112. Jurisdiction is based on diversity of citizenship. 28 U.S.C. § 1332.
23 Plaintiff and Counter-Defendant BEI is a citizen of Washington state, and Defendants
24 and Counter-Claimants ACI and Jennifer are citizens of California. (Dkt. No. 95 at 8
25 (Uncontested Facts Nos. 1, 6, 10); Trial Exs. 34, 127.) The amount in controversy
26 exceeds \$75,000.

27 113. The Court also has federal question jurisdiction pursuant to 28 U.S.C.
28 §§ 1331 because BEI asserts a claim under § 43 of the federal Lanham Act, 15 U.S.C.

1 § 1125(a), and there is supplemental jurisdiction pursuant to 28 U.S.C. § 1367 with
2 respect to the parties' common law and state law claims.

3 **J. Identification Of Vendors And Customer Lists**

4 114. In judicial proceedings dealing with trade secrets, Cal. Civ. Code
5 § 3426.5 provides that the court "shall preserve the secrecy of an alleged trade secret
6 by reasonable means, which may include . . . sealing the records of the action."
7 Customer and vendor lists may be provided protection under the CUTSA if it can be
8 shown that the lists derive economic value by not being generally known to the public
9 and the owner of those lists has taken pains to keep them secret. *Norsat Int'l v. BIP*
10 *Corp.*, 12-cv-674, 2014 WL 2453034, *6 (S.D. Cal. May 30, 2014). The parties have
11 presented sufficient evidence to satisfy these elements, and the parties have stipulated
12 to the same.

13 115. ACI has an ownership interest in the vendor and customer lists trade
14 secrets, as the company has, on its own, developed relationships with its vendors and
15 customers.

16 116. ACI (and BEI, when BEI was an active corporation and a member of the
17 ACI-BEI partnership) maintained the secrecy of their vendors because if it did not,
18 any vendor that was discovered risked its franchise being discontinued by the
19 manufacturer. Additionally, there is intense competition in the electric motor parts
20 gray market for customers. As a result, ACI keeps its vendor and customer lists secret
21 and does not share them with any other entity (save for BEI during the existence of
22 their partnership). ACI's employees are instructed to keep the vendor and customer
23 lists secret, and the vendor and customer lists derive economic value. *See Citizens of*
24 *Humanity, LLC v. Costco Wholesale Corp.*, 171 Cal. App. 4th 1, 13-14 (2009)
25 disapproved of on other grounds by *Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310
26 (2011).

27 117. Accordingly, the Court finds that ACI's vendor and customer lists
28 constitute trade secrets, and it is appropriate to protect the identities of the vendors and

1 customers to the extent they are relevant to the issues in this trial. The relevant
2 vendors shall be referred to as Vendor A, Vendor B, and Vendor C on the public
3 record. Customer names shall not be identified at all in the public record.

4 **K. BEI's Claim For Breach Of Contract**

5 118. BEI's claim for breach of contract is premised on the fact that BEI and
6 ACI had an agreement whereby ACI acted as the sales agent of BEI and that ACI's
7 operations remained in BEI's exclusive control (including BEI's exclusive right to sell
8 ACI and/or its assets without ACI's consent) unless and until Lance died or became
9 suddenly incapacitated. Because ACI and BEI did not agree to an agency relationship
10 as described above, BEI's claim for breach of contract fails.

11 119. Additionally, though Jennifer is ACI's principal and acts on ACI's
12 behalf, she owes no separate contractual duty to BEI as a result of the ACI-BEI
13 partnership, and BEI has not otherwise established that ACI's corporate veil should be
14 pierced such that Jennifer should be personally liable for any wrongful conduct by
15 ACI.

16 **a. ACI's refusal to cooperate in the asset sale to All**
17 **Current**

18 120. ACI and BEI entered into an oral partnership agreement, and the
19 partnership lasted from approximately 2005 through July 12, 2013 at the close of
20 business, upon Lance's instruction that ACI cease selling BEI inventory, and ACI's
21 compliance with that instruction. *See* Cal. Corp. Code §§ 16601(1), 16602.

22 121. The partnership agreement, when it was in effect, included no such term
23 that BEI had the right to exclusive control over ACI's operations or the right to sell
24 ACI and/or its assets without ACI's consent.

25 122. Further, the terms of a partnership agreement may not eliminate the
26 duties of loyalty, care, or good faith and fair dealing between partners. Cal. Corp.
27 Code § 16103(b)(3), (4), & (5). Thus, the scope of the parties' partnership agreement
28 could not have given BEI the right to exclusive control over ACI's operations,

1 including the right to sell ACI without its consent, under terms that were not in ACI's
2 best interest.

3 123. Because ACI and BEI's partnership agreement did not include a term that
4 allowed BEI the right to sell ACI without its consent, and to the extent BEI's claim for
5 breach of contract is premised on the partnership agreement, BEI's claim for breach of
6 contract on this ground fails.

7 124. Moreover, any agreement between Lance (as an individual) and Adam
8 and/or ACI that Lance or BEI would have the right to exclusive control over ACI's
9 operations does not change the analysis. Lance (as an individual) is not a party to this
10 litigation, and therefore he cannot seek to enforce such a purported agreement in this
11 lawsuit.

12 **b. BEI's directive and ACI's compliance with the**
13 **directive to cease sale of BEI inventory**

14 125. BEI also argues breach of contract on the grounds that ACI ceased selling
15 BEI's inventory as of July 15, 2013, that ACI failed to remit all monies owed to BEI
16 under the partnership structure, and that ACI refused to return to BEI other intangible
17 business assets. Each of these arguments fails.

18 126. California contract law requires that a plaintiff "who seeks to enforce a
19 contract must show that he has complied with the conditions and agreements of the
20 contract on his part to be performed." *Brown v. Dillard's, Inc.*, 430 F.3d 1004, 1010
21 (9th Cir. 2005) (citations omitted); *see also* California Civil Code § 1439. BEI was in
22 breach of ACI and BEI's partnership agreement, which required BEI to sell its
23 inventory to ACI. BEI instructed ACI to cease selling BEI inventory effective July
24 12, 2013 at the close of business, and ACI complied with that instruction. Thus,
25 ACI's performance was excused, and BEI's claim for breach of contract on the ground
26 that ACI ceased selling BEI's inventory fails.

27 127. According to the evidence adduced at trial regarding the parties' course
28 of conduct, BEI failed to establish that it was entitled to anything more than its costs

1 of goods sold and special markup for sales through the close of business on July 12,
2 2013. Because the evidence established that ACI did in fact pay BEI the money to
3 which it was entitled under the partnership agreement, BEI's claim for breach of
4 contract fails on the ground that ACI failed to remit all monies owed to BEI under the
5 partnership structure.

6 128. Also according to the evidence adduced at trial, BEI failed to establish
7 that it "loaned" ACI any intangible assets, such as the trade name B&B Electric Sales.
8 ACI is the ostensible owner of the trade name B&B Electric Sales: ACI registered the
9 trade name, and the registration recognizes that ACI began using the trade name in
10 2004, before BEI came into existence. BEI has offered no evidence that it ever used
11 the trade name B&B Electric Sales or that it is otherwise has an ownership interest in
12 the trade name. To the extent the trade name was contractually "loaned" from Beiner,
13 Inc. to ACI, Beiner, Inc. (which dissolved and ceased to exist in December 2005) is
14 not a party to this litigation, and BEI has no standing to assert a breach of contract
15 claim on Beiner, Inc.'s behalf. *See* Fed. R. Civ. P. 17(a) ("An action must be
16 prosecuted in the name of the real party in interest."); *Martin v. Bridgeport Cmty.*
17 *Ass'n, Inc.*, 173 Cal. App. 4th 1024, 1031-32 (2009) ("A real party in interest is one
18 who has an actual and substantial interest in the subject matter of the action and who
19 would be benefited or injured by the judgment in the action.") (citation and internal
20 quotation marks omitted). Thus, BEI's claim for breach of contract on the ground that
21 ACI failed to return contractually "loaned" intangible assets also fails.

22 129. Because BEI has failed to establish any claim for breach of contract, BEI
23 is not entitled to any damages under this claim for relief.

24 **L. BEI's Claim For Breach Of Fiduciary Duty**

25 130. BEI claims that ACI and Jennifer breached their fiduciary duties of
26 loyalty and care to BEI by retaining assets and money belonging to BEI, by seizing
27 control of the ACI business, and by refusing to cooperate in the ACI asset sale to All
28 Current.

1 131. As stated above, ACI was not an agent to BEI. Rather, ACI and BEI
2 were partners, and therefore they owed each other and the partnership the fiduciary
3 duties of loyalty and care. *See* Cal. Corp. Code § 16404. While Jennifer is ACI’s
4 principal and acts on ACI’s behalf, she owes no separate fiduciary duty to BEI as a
5 result of the ACI-BEI partnership, and BEI has not otherwise established that ACI’s
6 corporate veil should be pierced such that Jennifer should be personally liable for any
7 wrongful conduct by ACI.

8 132. ACI has not retained any assets or money belonging to BEI. ACI has
9 paid BEI all monies owed to it for the costs of BEI’s goods sold and special markup
10 for sales through the close of business on July 12, 2013. Additionally, BEI has no
11 ownership interest in the B&B Electric Sales trade name or any other intangible asset
12 ostensibly owned by ACI. Thus, BEI’s claim for breach of fiduciary duty on the
13 ground the ACI has retained assets and money belonging to BEI fails.

14 133. BEI does not have (and never has had) any ownership rights in ACI, and
15 BEI does not have (and never has had) any contractual rights to exercise exclusive
16 control over ACI’s operations. Thus, BEI’s claim for breach of fiduciary duty on the
17 ground that ACI and/or Jennifer “seized” control of the ACI business fails.

18 134. BEI had no right to sell ACI without ACI’s consent and cooperation, and
19 the proposed sale of ACI’s assets to All Current was not in ACI’s best interest. Thus,
20 ACI could not have breached any fiduciary duty to BEI when it refused to consent to
21 and cooperate in the asset sale to All Current, and BEI’s claim for breach of fiduciary
22 duty on these grounds fails.

23 135. To the extent BEI claims a breach of fiduciary duty based on ACI’s
24 failure to sell BEI inventory following July 12, 2013 at the close of business, this
25 claim also fails. BEI instructed ACI to cease selling BEI inventory effective July 12,
26 2015 at the close of business, and ACI could not have breached any fiduciary duty to
27 BEI by complying with that instruction.

28

1 136. Because BEI has failed to establish any claim for breach of fiduciary
2 duty, BEI is not entitled to any damages under this claim for relief.

3 **M. BEI's Claim For Violation Of The Lanham Act**

4 137. BEI claims that ACI violated the Lanham Act because ACI used BEI's
5 purported trade name (B&B Electric Sales) in connection with its goods and services;
6 ACI's use of the trade name is likely to cause confusion, mistake, or deception in the
7 marketplace as to ACI's affiliation, connection, or association with BEI and/or its
8 products; and as a result, BEI suffered damage.

9 138. ACI owns the trade name B&B Electric Sales.

10 139. ACI has been doing business under the trade name B&B Electric Sales
11 since 2004, the same year indicated on ACI's registered Fictitious Business Name
12 Statement.

13 140. BEI concededly has never done business under the trade name B&B
14 Electric Sales, and BEI concededly does not otherwise have a protectable ownership
15 interest in the trade name B&B Electric Sales.

16 141. Because BEI does not own the trade name B&B Electric Sales and has
17 never done business under the trade name B&B Electric Sales, BEI cannot show (and
18 did not otherwise establish at trial) that ACI's use of the trade name B&B Electric
19 Sales is likely to cause confusion, mistake, or deception in the marketplace, or that
20 ACI's use of the trade name B&B Electric Sales causes BEI to suffer any damages.
21 Accordingly, BEI's claim under the Lanham Act with respect to ACI fails.

22 142. For these reasons, BEI's claim under the Lanham Act with respect to
23 Jennifer also fails. This is aside from the fact that BEI offered no evidence at trial that
24 Jennifer, in her personal capacity, used the trade name B&B Electric Sales in the
25 market place.

1 N. **BEI's Claim For Intentional Interference With Prospective Economic**
2 **Relations**

3 143. BEI claims that ACI and Jennifer intentionally interfered with BEI's
4 prospective economic relations with respect to All Current's offers to purchase BEI's
5 assets, as described above.

6 144. Assuming All Current's joint asset-purchase offer (as outlined in All
7 Current's August 2, 2013 LOI) constituted an actionable prospective economic
8 relationship between BEI and All Current, ACI's refusal to participate in the asset sale
9 was not independently wrongful. ACI had no contractual or fiduciary duty to BEI to
10 participate in the asset sale to All Current, and ACI had no obligation to participate in
11 any business dealings that was not in its best interest. While Jennifer is ACI's
12 principal and acts on ACI's behalf, she owes no separate contractual or fiduciary duty
13 to BEI as a result of the ACI-BEI partnership, and BEI has not otherwise established
14 that ACI's corporate veil should be pierced such that Jennifer should be personally
15 liable for any wrongful conduct by ACI. Thus, BEI's claim for intentional
16 interference with prospective economic relations on this ground fails.

17 145. To the extent BEI bases its claim for intentional interference with
18 prospective economic relations on ACI's purchase of inventory material from Vendor
19 A and All Current's inability to issue purchase orders to Vendor A totaling \$300,000
20 during the specified earn out period, BEI's claim likewise fails. The ACI-BEI
21 partnership did not include any agreement not to compete upon one partner's
22 disassociation from the partnership. Thus, following BEI's disassociation from the
23 partnership, ACI's business dealings with Vendor A amounted to fair competition and
24 were not wrongful or otherwise actionable interference.

25 146. Additionally, BEI offered no evidence at trial that ACI or Jennifer
26 otherwise engaged in any wrongful conduct that interfered with All Current's ability
27 to issue \$300,000 worth of purchase orders during the designated earn out period.
28

1 147. Because BEI has failed to establish any claim for intentional interference
2 with prospective economic relations, BEI is not entitled to any damages under this
3 claim for relief.

4 **O. BEI's Claim For Conversion**

5 148. BEI claims that ACI converted money belonging to BEI when ACI
6 retained possession of and failed to turn over the balance of its accounts receivables
7 and cash on hand as of July 15, 2013.

8 149. Pursuant to the parties' partnership agreement, ACI paid BEI its cost of
9 goods sold and special markup for the sale of BEI's goods through July 12, 2013 at
10 the close of business, at which time ACI ceased selling BEI's goods.

11 150. The parties had no other agreement whereby BEI was entitled to ACI's
12 accounts receivables and cash on hand above and beyond BEI's cost of goods sold and
13 special markup, and BEI offered no evidence that it otherwise owned or was entitled
14 to ACI's accounts receivables and cash on hand.

15 151. Thus, ACI's retention and refusal to turn over its accounts receivables
16 and cash on hand could not have interfered with BEI's purported property interest in
17 the accounts receivables and cash on hand, and BEI's claim for conversion fails.

18 152. Because BEI has failed to establish any claim for conversion, BEI is not
19 entitled to any damages under this claim for relief.

20 **P. BEI's Claim For Declaratory Relief**

21 153. BEI seeks declaratory relief on its right to joint possession of the leased
22 premises at the Transport Street location in Ventura County, California.¹² BEI is not
23

24 ¹² BEI appears to have abandoned its claims for declaratory relief that it is the
25 rightful owner of all information and data contained in the Prophet 21 databases, that
26 it is the rightful owner of ACI's accounts receivables and cash on hand effective July
27 15, 2013, and that it is the rightful and superior owner of the trade name B&B Electric
28 Sales, as BEI provides no proposed conclusions of law in support of the same. (*See*
Dkt. No. 110.) To the extent BEI has not abandoned these claims for declaratory
relief, for the reasons discussed herein, the Court finds that these claims are meritless.

1 entitled to declaratory relief because BEI failed to present evidence of an actual
2 controversy.

3 154. While BEI is identified as a co-tenant on the Transport Street lease, BEI
4 has no property stored at the Transport Street location, and it has had no need to
5 access the Transport Street location since removing its property from the location in
6 October 2013 because BEI effectively ceased doing business upon completing the
7 asset sale to All Current. BEI has not attempted to access the Transport Street
8 location since October 2013, and BEI presented no evidence at trial that it would need
9 to or seek to access the Transport Street location at any point in the future.

10 155. Thus, BEI has failed to establish that the resolution of its declaratory
11 relief claim would, at this point, have any practical consequences, and so there is no
12 actual controversy relating to BEI's legal rights to joint possession of the Transport
13 Street location. For this reason, BEI's claim for declaratory relief fails.

14 **Q. ACI's Counterclaim For Breach Of Fiduciary Duty**

15 156. ACI claims that BEI breached its fiduciary duties of loyalty and care to
16 ACI in conjunction with the asset sale negotiation to All Current.

17 157. ACI and BEI were in a partnership from approximately 2005 through
18 July 12, 2013 at the close of business. BEI dissociated itself from the partnership with
19 ACI upon instructing ACI to cease selling BEI inventory effective July 15, 2013. *See*
20 *Cal. Corp. Code §§ 16601(1), 16602.*

21 158. BEI's partnership fiduciary duties of loyalty and care to ACI continued
22 after dissociation with regard to matters that arose and events that occurred before the
23 dissociation, such as fulfillment of orders for electric motor parts and the winding up
24 of the partnership business. *See Cal. Corp. §§ 16404(c), 16603(3).*

25 159. BEI breached its partnership fiduciary duties of loyalty and care to ACI
26 when BEI negotiated the asset sale of ACI's assets to All Current (a competitor of
27 ACI) without informing ACI; provided All Current with confidential material related
28 to ACI, such as ACI's financial statements, partial customer list, and sales

1 information; insisted that ACI agree to terms of an asset sale to All Current that were
2 not in ACI's best interest; and instructed ACI to cease selling BEI inventory in
3 violation of the partnership agreement.

4 **R. ACI's Counterclaim For Intentional Or Negligent Interference With**
5 **Prospective Business Advantage**

6 160. ACI claims BEI intentionally or negligently interfered with its
7 prospective economic interest when – after BEI disassociated from the partnership and
8 while it was negotiating the asset sale to All Current – BEI contacted vendors and
9 asked them not to do business with ACI.

10 161. ACI had economic relationships with Vendors A, B, and C that would
11 have probably resulted in an economic benefit to ACI, *i.e.*, ACI would have likely
12 been able to purchase inventory material from these vendors and re-sell that material
13 to customers.

14 162. BEI had actual knowledge of these economic relationships; and BEI
15 intentionally telephoned and emailed representatives of Vendors A, B, and C and
16 asked them not to sell inventory to ACI, knowing that these efforts would have the
17 effect of disrupting ACI's economic relationship with these vendors and, in turn,
18 reducing ACI's sales.

19 163. As a result of BEI's intentional conduct, ACI's economic relationships
20 with Vendors A, B, and C were in fact disrupted. These vendors altogether stopped
21 doing business with ACI for a certain period of time, and upon resuming business
22 with ACI, the vendors required ACI to purchase inventory under the COD method.

23 164. Also as a result of BEI's intentional conduct, ACI suffered financial
24 harm, and BEI's intentional conduct was a substantial factor in causing ACI's harm.

25 165. Accordingly, BEI intentionally interfered with ACI's prospective
26 business and economic interest.

1 Order re supplemental briefing on damages suffered by ACI and Jennifer
2 Caldwell to issue.

3
4 **IT IS SO ORDERED.**

5
6 Dated: June 10, 2015



7 HONORABLE ANDRÉ BIROTTE JR.
8 UNITED STATES DISTRICT COURT JUDGE
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