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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PAOLO MORENO, LAWRENCE
VAVRA, and GABRIEL MORENO,

Plaintiffs,

v.

SFX ENTERTAINMENT, INC.,
ROBERT F.X. SILLERMAN, and
SHELDON FINKEL,

Defendants.

No. CV-14-0880-RSWL-CWx

**ORDER re: Defendants'
Motion for Summary
Judgment [61]**

Currently before the Court is Defendants SFX Entertainment, Inc. ("SFX") and Robert F.X. Sillerman's ("Sillerman") (collectively, "Defendants")¹ Motion for Summary Judgment [61] ("Motion"), in which Defendants request summary judgment in their favor on all

¹ All claims asserted against Defendant Sheldon Finkel were dismissed with leave to amend in the Court's August 1, 2014, Order [38] granting Defendants' Motion to Dismiss Plaintiffs' twelfth and thirteenth claims. Plaintiffs did not amend their Complaint.

1 remaining claims asserted against them by Plaintiffs
2 Paolo Moreno ("Paolo"), Gabriel Moreno ("Gabriel"), and
3 Lawrence Vavra ("Vavra") (collectively, "Plaintiffs").
4 Not. of Defs.' Mot. Summ. J. 2:1-10, ECF No. 61.

5 The Court, having reviewed all papers submitted and
6 pertaining to Defendants' Motion [61], **NOW FINDS AND**
7 **RULES AS FOLLOWS:** The Court **DENIES** Defendants' Motion
8 for Summary Judgment [61] in its entirety.

9 I. BACKGROUND

10 A. Factual Background

11 Plaintiffs Paolo Moreno, Gabriel Moreno, and
12 Lawrence Vavra are individuals and residents of Los
13 Angeles County, California. Compl. ¶¶ 9-11, ECF No. 1.
14 Defendant SFX is a Delaware corporation with its
15 principal place of business in New York. Id. ¶ 12;
16 Answer ¶ 12 (undisputed). Defendant Sillerman is an
17 individual residing in New York and is Chairman and CEO
18 of SFX. Id. ¶ 13; Answer ¶ 13 (undisputed).

19 In short, Plaintiffs allege that the parties
20 entered into a joint venture/partnership agreement
21 ("the agreement") to create, based on Plaintiffs'
22 business plan, a new EDM company that was to be
23 financed by Defendant Sillerman and that was to, and
24 now does, operate as SFX, which was, at the time of the
25 alleged agreement, a corporate shell that had been
26 incorporated by Sillerman. Plaintiffs allege that,
27 after the agreement was made and after Plaintiffs
28 performed their obligations, which benefitted

1 Defendants, Defendants did not uphold their side of the
2 agreement in various ways, but, primarily, by refusing
3 to compensate Plaintiffs according to the terms of the
4 agreement.

5 Specifically, Plaintiffs allege that, in early
6 January 2012, after spending nearly two years creating
7 their business plan, Plaintiffs met with Defendant
8 Sillerman to present their business plan for a venture
9 that would "identify, acquire, consolidate, and operate
10 assets in the [EDM] industry." Compl. ¶¶ 2, 9.

11 Plaintiffs allege that, in and after those meetings,
12 Plaintiffs and Defendant Sillerman "agreed to 'partner'
13 in the venture that is now known as SFX" such that
14 Plaintiffs would "use their contacts, skills, and
15 experience in EDM to consolidate the fragmented
16 industry through a series of acquisitions" and
17 Sillerman would "provide the financing for the
18 venture." Id. (internal alterations and quotation
19 marks omitted). Plaintiffs allege that Plaintiffs and
20 Sillerman "came to a firm deal" on January 8, 2012,
21 that promised Plaintiffs millions of founders' shares
22 in the business, along with options and other cash
23 compensation. Id. ¶ 3. Plaintiffs allege that
24 "Sillerman unambiguously confirmed this in e-mails,
25 stating[,] 'We have a deal.'" Id.

26 Plaintiffs allege that they "performed their part
27 in the venture," by using their "EDM connections,"
28 "knowledge" of the EDM industry, and "acumen" to

1 acquire targeted assets that resulted in "much of the
2 [\$1 billion] value of [SFX]." Id. ¶¶ 1, 4. Plaintiffs
3 state that, until "they were forced out by Sillerman .
4 . . ., Plaintiffs worked full-time on the venture's
5 behalf to close its most important and lucrative
6 acquisitions." Id. ¶ 4. Plaintiffs allege that "of
7 the eight 'principal assets' identified by SFX's S-1
8 SEC filing . . ., seven were acquired in deals
9 identified and facilitated by Plaintiffs." Id.
10 Plaintiffs further assert that, even aside from the
11 acquisitions, Plaintiffs benefitted Defendants by
12 creating the "conceptual development" of the business
13 idea that SFX became. Id. ¶¶ 2, 4.

14 Plaintiffs allege that Defendants engaged "in a
15 deliberate and deceptive scheme to deprive Plaintiffs
16 of their rightful ownership stake in, and control of,
17 the venture that they created and built" by, among
18 other actions, deceiving Plaintiffs about their
19 ownership interests in SFX, reassuring Plaintiffs while
20 they worked that they would receive what was promised,
21 and, ultimately, failing to compensate Plaintiffs
22 according to the terms of the agreement. Id. ¶¶ 5, 40.
23 Plaintiffs allege that Defendant Sillerman ultimately
24 "[took] Plaintiffs' ownership shares for himself and
25 continually evad[ed] Plaintiffs' requests to honor
26 their agreement." Id. ¶ 43.

27 On the basis of the above and additional factual
28 allegations, Plaintiffs allege the following eleven

1 remaining claims:

- 2 1. Breach of Joint Venture/Partnership Agreement
- 3 2. Breach of Implied Joint Venture/Partnership
- 4 Agreement
- 5 3. Breach of Fiduciary Duty Owed to Joint
- 6 Venturers/Partners
- 7 4. Constructive Fraud
- 8 5. Breach of Contract
- 9 6. Breach of Implied Contract
- 10 7. Promissory Estoppel
- 11 8. Fraudulent Inducement
- 12 9. Promissory Fraud
- 13 10. Unfair Competition - Violation of Cal. Bus. & Prof.
- 14 Code §§ 17200 et seq.
- 15 11. Quantum Meruit

16 **B. Procedural Background**

17 Plaintiffs filed this Action [1] on February 5,
18 2014. On April 7, 2015, Defendants filed the present
19 Motion for Summary Judgment [61]. The Opposition [81]
20 and Reply [90] were timely filed. The hearing on the
21 Motion was set for May 26, 2015, and the Motion was
22 taken under submission [93] on May 21, 2015.

23 **II. LEGAL STANDARD**

24 A "court shall grant summary judgment" when the
25 movant "shows that there is no genuine dispute as to
26 any material fact and the movant is entitled to
27 judgment as a matter of law." Fed. R. Civ. P. 56(a).
28 The party moving for summary judgment has the initial

1 burden of proof to show no genuine dispute as to any
2 material fact. Nissan Fire & Marine Ins. Co. v. Fritz
3 Cos., 210 F.3d 1099, 1102-03 (9th Cir. 2000); see Fed.
4 R. Civ. P. 56(a). The burden then shifts to the non-
5 moving party to produce admissible evidence showing a
6 triable issue of fact. Fritz, 210 F.3d at 1102-03; see
7 Fed. R. Civ. P. 56(a). When a defendant moves for
8 summary judgment, summary judgment "is appropriate when
9 the plaintiff fails to make a showing sufficient to
10 establish the existence of an element essential to
11 [her] case, and on which [she] will bear the burden of
12 proof at trial." Cleveland v. Policy Mgmt. Sys. Corp.,
13 526 U.S. 795, 805-06 (1999).

14 III. DISCUSSION

15 A. Evidentiary Objections

16 Defendants make several evidentiary objections [92]
17 to Plaintiffs' Statement of Genuine Disputes [81-1].
18 Upon review of the objected-to evidence and Defendants'
19 bases for their objections, Defendants' evidentiary
20 objections are **OVERRULED** either because the objections
21 are without merit or because the Court need not rely on
22 the objected-to evidence.

23 B. Motion for Summary Judgment

24 Defendants request summary judgment in their favor
25 as to all eleven claims asserted against them.

26 1. Breach of Express or Implied Joint Venture/ 27 Partnership Agreement Claims

28 Plaintiffs' first and second claims assert breach

1 of joint venture/partnership agreement and breach of
2 implied joint venture/partnership agreement.

3 "A joint venture exists when there is an agreement
4 between the parties under which they have a community
5 of interest, that is, a joint interest, in a common
6 business undertaking, an understanding as to the
7 sharing of profits and losses,² and a right of joint
8 control." Farhang v. Indian Inst. of Tech., Kharagpur,
9 No. C-08-02658 RMW, 2010 WL 2228936, at *9 (N.D. Cal.
10 Oct. 24, 2013) (internal quotation marks omitted)
11 (quoting Connor v. Great W. Sav. & Loan Ass'n, 447 P.2d
12 609 (Cal. 1968)). "A joint venture requires little
13 formality in its creation, and the agreement is not
14 invalid because it may be indefinite with respect to
15 details." Gross v. Raeburn, 33 Cal. Rptr. 432, 437
16 (Ct. App. 1963).

17 A joint venture agreement may also be implied by
18 reasonable deduction based on the parties' "'acts and
19 declarations.'" Farhang, 2010 WL 2228936, at *10
20 (quoting Holtz v. United Plumbing & Heating Co., 319
21 P.2d 617 (Cal. 1957)). "[W]hen parties have
22 'manifested their mutual intent to take [an] idea and
23 make it concrete by forming a company and engaging in
24 the business together . . . [this agreement combined
25 with] the subsequent acts of the parties as they worked
26

27 ² "[I]n the absence of an agreement to the contrary, losses
28 are shared in the same proportion as profits." Farhang, 2010 WL
2228936, at *10.

1 out the details provide [] sufficient certainty to
2 determine the existence of a breach and a remedy.'"³

3 Id.

4 Though Defendants assert that Plaintiffs have "no
5 evidence" showing the formation of an express or
6 implied joint venture or partnership agreement,
7 Plaintiffs in fact provide ample admissible evidence
8 creating a genuine dispute of material fact as to
9 Plaintiffs' first and second claims. See Fed. R. Civ.
10 P. 56(a).

11 Plaintiffs allege that a joint venture/partnership
12 agreement was formed on January 8, 2012, via email
13 exchanges between Defendant Sillerman and Plaintiff
14 Paolo and that the parties' statements and actions
15 thereafter confirmed the existence of the express
16 agreement and/or established the existence of an
17 implied agreement. Key facts are statements made by
18 the parties in emails from January 6, 2012, through
19 January 8, 2012, as well as subsequent statements and
20 actions of the parties. See Sillerman Decl., Exs. RS3-
21 RS7, ECF No. 70; see also Hueston Decl., Ex. JH1, ECF
22 No. 82; Paolo Moreno Decl. ("Paolo Decl."), ECF No. 83.

23 The first email that could relate to a potential
24 joint venture or partnership is an email from Plaintiff

25
26 ³ "For a contract to be enforceable, its terms must be
27 reasonably certain, meaning the parties' obligations under the
28 contract must be sufficiently clear such that one can determine
whether there has been a breach." Id. (citing Bustamonte v.
Intuit, Inc., 141 Cal. App. 4th 199, 209, 45 Cal. Rptr. 3d 692
(2006)).

1 Paolo to Defendant Sillerman on January 6, 2012, in
2 which Paolo refers to a meeting between Paolo and
3 Sillerman on January 5, 2012, and implies that Paolo
4 and Sillerman discussed the creation of a new company
5 at that meeting. Sillerman Decl., Ex. RS4 at 026
6 (email from Paolo to Sillerman, Jan. 6, 2012, 4:18
7 p.m.). Paolo provides Sillerman with what Paolo calls
8 "confidential information" about activity surrounding
9 important EDM acquisition targets, including the
10 activity of Paolo's team with regard to those targets,
11 and states that the confidential information is being
12 shared with Sillerman "for our new company." Id. at
13 026-027. Paolo states, "I would like to sort out our
14 deal as soon as possible[] [s]o we can go and conquer
15 the space immediately" Id. at 027. Paolo
16 explains that "Electric Daisy Carnival is a deal I
17 would like for us to cut next week." Id. (emphasis
18 added). Paolo signs his name and, underneath his name,
19 writes "Future (CEO / SFX Entertainment)." Id.

20 Sillerman's response does not refute any of Paolo's
21 statements about the creation of a new company with
22 Sillerman. Id. at 026 (email from Sillerman to Paolo
23 on January 6, 2012, at 5:08 p.m.). Sillerman's
24 response states, "We must be fated to be together," and
25 proposes specific terms⁴ for what Sillerman calls "our

26
27 ⁴ Defendant Sillerman proposes that Paolo "receive 1MM
28 shares of SFX stock," "200K options a year for 5 years as part of
your 5 year employment agreement," "[s]alary of \$300K, plus a
bonus," and "[u]sual perks appropriate to your position."

1 deal." Id. Sillerman concludes: "Let's get it done
2 and have at it. We're ready to go." Id.

3 In response, Paolo asks about and negotiates the
4 proposed terms and requests "a deal" for Plaintiffs
5 Gabriel and Vavra. Id. at 025 (email from Paolo to
6 Sillerman, Jan. 6, 2012, at 6:27 p.m.).

7 Additional negotiations occur,⁵ and at 9:08 p.m. on
8 January 6, 2012, Paolo sends Sillerman an email that
9 proposes terms for Plaintiffs Gabriel and Vavra. Id.
10 Paolo says his "team will all be walking away from
11 there [sic] current situations and coming on board 24/7
12 to build this empire and all believe in the stock value
13 at the end of the day." Id. Paolo notes, "we can
14 figure out offices overhead staff etc later on."⁶ Id.
15 at 025.

16 In response, on January 7, 2012, Sillerman writes
17 two sentences to Paolo: "We're fine on these deals.
18 Let's go." Id. at 024 (email from Sillerman to Paolo,
19

20 Sillerman Decl., Ex. RS4, at 026 (email from Sillerman to Paolo
21 on January 6, 2012, at 5:08 p.m.).

22 ⁵ See id. at 025 (email from Sillerman to Paolo on Jan. 6,
23 2012 at 9:48 p.m.) (Sillerman states that he needs Paolo's input
24 "on deals for your associates," and states that he is "standing
25 by" for those details); id. (Sillerman rejects Paolo's \$500,000
26 salary request and states, "Cash compensation is not how you'll
grow rich. \$300K, plus bonus, is a good starting point. You do
close to what you say you can and you'll never mention comp to me
again. You'll make more than you can imagine.").

27 ⁶ Such evidence, among other statements by the parties,
28 genuinely disputes Defendants' argument that Plaintiffs were
intended only to be mere employees of SFX, and not joint
venturers or partners. See Mot. 4:21-25.

1 Jan. 7, 2012, at 12:12 a.m.).

2 Plaintiff Paolo responds that he "presented the
3 deals below to the team" and that, though the salaries
4 are "pay cuts" for his team, the team is "okay on the
5 salaries" because they "believe in you, they believe in
6 me." Id. at 023 (email from Paolo to Sillerman on Jan.
7 7, 2012, at 10:52 a.m.). Paolo requests additional
8 founders shares Plaintiffs Gabriel and Vavra and asks
9 questions regarding bonuses and ownership interests.
10 Id. Paolo states that he "want[s] to close this today"
11 because his team is "ready to get busy" and Paolo
12 "want[s] to walk in the rooms next week, and start
13 making offers on our companies['] behalf." Id.

14 Defendant Sillerman responds to Paolo's questions
15 and requests and concludes that they should "not wait
16 until the end of the week to begin papering this," as
17 they should "keep the momentum going." Id. at 022-23
18 (email from Sillerman to Paolo on Jan. 7, 2012, at
19 11:12 a.m.). In response, Paolo writes, "MY TEAM AND I
20 ARE FULLY IN%100." Id. at 022 (email from Paolo to
21 Sillerman on Jan. 7, 2012, at 4:49 p.m.). Paolo
22 states: "Let's put the lawyers in contact now to paper
23 this up. We are officially partners, I have two
24 changes." Id. Plaintiff proposes his "last
25 negotiation" regarding founders shares so that they can
26 "close this deal." Id. Paolo urges Sillerman to "move
27 forward [to] close this deal" to become "partners" and
28 states that "[b]y partner I mean across the board our

1 interest will NEVER be mis-aligned." Id.

2 In response, on January 7, 2012, at 8:49 p.m.,
3 Sillerman writes to Paolo: "Deal. The additional
4 shares will come from me. Send me a quick summary to
5 make sure we're on the same page. ... Once I receive
6 and confirm the recap the lawyers will be on it." Id.
7 (email from Sillerman to Paolo, Jan. 7, 2012, at 8:40
8 p.m.). Paolo responds, "Will do." Id. at 021 (email
9 from Paolo to Sillerman, Jan. 7, 2012, at 6:27 p.m.).

10 On January 8, 2012, at 10:47 a.m., Paolo emails
11 Sillerman the following terms:

- 12 1. "5 year employment agreements" for all.
- 13 2. For Paolo Moreno:
 - 14 a. "300K base+ bonuses"
 - 15 b. "1.5mm founder shares"
 - 16 c. "200k options a year"
 - 17 d. "additional options and bonuses, payable in
18 stock or cash, as warranted"
- 19 3. For Lawrence Vavra:
 - 20 a. "200K base+ bonuses"
 - 21 b. "500k founder shares"
 - 22 c. "200k options a year"
 - 23 d. "additional options and bonuses, payable in
24 stock or cash, as warranted"
- 25 4. For Gabriel Moreno:
 - 26 a. "100K base+ bonuses"
 - 27 b. "500k founder shares"
 - 28 c. "100k options a year"

1 d. "additional options and bonuses, payable in
2 stock or cash, as warranted"

3 5. For "Associate C," which is "Donnie" (James "Disco
4 Donnie" Estopinal),⁷ Paolo states, "we have to
5 discuss."

6 Id. at 021 (email from Paolo to Sillerman, Jan. 8,
7 2012, at 10:47 a.m.).

8 On January 8, 2012, at 11:06 a.m., Defendant
9 Sillerman responds: "We have a deal." Id. at 020
10 (email from Sillerman to Paolo, Jan. 8, 2012, at 11:06
11 a.m.). The only other statement Sillerman makes in the
12 email is: "Ask anyone who has been part of any of our
13 companies, like Mitch, and they will tell you that they
14 made more money from the optional payments than from
15 the mandatory payments. Let's get the lawyers
16 working." Id.

17 The above email discourse is sufficient to create a
18 genuine dispute of material fact⁸ as to whether an
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22 ⁷ See Opp'n 3:22.

23 ⁸ Though Defendants argue that the parties reserved final
24 agreement until formal documents were signed, see Mot. 5:15-18,
25 the Court does not find any indisputable statements that
26 expressly reserve final agreement until formal documents are
27 signed. See Smissaert v. Chiodo, 330 P.2d 98, 100 (Cal Ct. App.
28 1958) (noting that there must be a "manifest intention that the
formal agreement is not to be complete until reduced to a formal
writing"); Ablett v. Clauson, 272 P.2d 753, 756 (Cal. 1954) (in
bank) (requiring "an essential element" to be "reserved for the
future agreement of both parties" for a "contract[] to agree").

1 express joint venture/partnership agreement was formed.⁹
2 Plaintiffs' evidence also establishes a genuine dispute
3 of material fact as to whether an implied joint
4 venture/partnership agreement was formed.¹⁰

5 In light of the above, Defendants' Motion for
6 Summary Judgment with regard to Plaintiffs' first and
7 second claims for breach of an express or implied joint
8 venture/partnership agreement is **DENIED**.

9 2. Breach of Fiduciary Duty Owed to Joint
10 Venturers or Partners & Constructive Fraud
11 Claims

12 Plaintiffs' third and fourth claims assert breach
13 of fiduciary duty owed to joint venturers or partners
14

15 ⁹ See Interserve, Inc. v. Fusion Garage PTE. Ltd., No. C 09-
16 5812 RS (PVT), 2010 WL 3339520, at *6 (N.D. Cal. Aug. 24, 2010)
17 ("While it may be true that the parties never reached a meeting
18 of the minds on how the business would operate on an ongoing
19 basis, their cooperative efforts in developing the product were
20 sufficient to give rise to an obligation on both parties' part
21 not to usurp the fruits of those efforts." (citing Holmes, 88
22 Cal. Rptr. 2d at 134 for the Holmes court's rejection of the
23 contention that a partnership agreement was too indefinite when
24 the evidence showed that the parties had agreed, "It's going to
25 be our baby, and we're going to work on it together," and had in
26 fact done so)).

27 ¹⁰ The parties' statements and conduct could support a
28 reasonable jury's finding that the parties "'manifested their
mutual intent to take [an] idea and make it concrete by forming a
company and engaging in the business together'" and took
"'subsequent acts . . . [to] work[] out the details.'" Gross, 33
Cal. Rptr. at 437; see Johnson v. Am. Cas. Co. of Reading, Pa.,
408 F. App'x 76, 79 (9th Cir. 2011) (stating that because "a
reasonable jury could find" plaintiff's material facts to be
true, summary judgment was "improper"); Sillerman Decl., Exs.
RS2-RS9; Paolo Moreno Decl., Exs. PM2-PM5; Hueston Decl., Ex. JK1
(Sillerman Dep.).

1 and constructive fraud.

2 a. *Breach of Fiduciary Duty*

3 Under California law, “[t]he elements of a claim
4 for breach of fiduciary duty are (1) the existence of a
5 fiduciary relationship, (2) its breach, and (3) damage
6 proximately caused by that breach.” Love v. The Mail
7 on Sunday, 489 F. Supp. 2d 1100, 1104 (C.D. Cal. 2007)
8 (citing City of Atascadero v. Merrill Lynch, Pierce,
9 Fenner & Smith, Inc., 68 Cal. App. 4th 445, 483
10 (1998)); see also Knox v. Dean, 205 Cal. App. 4th 417,
11 433 (2012). “In both joint ventures and partnerships,
12 the parties owe fiduciary duties to each other.”
13 Interserve, Inc. v. Fusion Garage PTE. Ltd., No. C 09-
14 5812 RS (PVT), 2010 WL 3339520, at *4 (N.D. Cal. Aug.
15 24, 2010) (citing Leff v. Gunter, 189 Cal. Rptr. 377,
16 381 (Ct. App. 1983)).

17 Defendants argue that Plaintiffs’ claims for breach
18 of fiduciary duty and constructive fraud should be
19 dismissed because no fiduciary duty exists when no
20 joint venture/partnership agreement exists. But, as
21 discussed above, Plaintiffs’ first and second claims
22 asserting a joint venture/partnership agreement
23 survive, and, thus, Plaintiffs’ evidence establishes a
24 genuine dispute of material fact as to whether a
25 fiduciary relationship exists among the parties.
26 Plaintiffs’ evidence establishes a genuine dispute of
27 material fact regarding also the second and third
28

1 prongs of their claim for breach of fiduciary duty.¹¹

2 b. *Constructive Fraud*

3 Constructive fraud "depends on the existence of a
4 fiduciary relationship of some kind." Beco Dairy
5 Automation, Inc. v. Global Tech Sys., Inc., No. CV-F-
6 12-1310 LJO SMS, 2012 WL 4052066, at *8 (E.D. Cal.
7 Sept. 14, 2012). Constructive fraud under California
8 law is "'any breach of duty which, without actual
9 fraudulent intent . . .[,] gains an advantage to the
10 person at fault . . . by misleading another to his or
11 her prejudice.'" Id. (citing Cal. Corp. Code § 1573).¹²

12 Upon review of the evidence, and as exhibited in
13 part by the above facts, Plaintiffs provide ample
14 evidence establishing a genuine dispute of material
15 fact as to the elements of constructive fraud. As
16 such, the Court **DENIES** Defendant's Motion for Summary

18 ¹¹ See, e.g., Compl. ¶¶ 55-56; Pls.' Facts ¶¶ 158, 161;
19 Sillerman Dep. at 92:4-93:23 (Hueston Decl., Ex. JH1 at 019); id.
20 at 203:11-238:17 (Hueston Decl., Ex. JH1 at 033-035); Defs.'
21 Resps. to Pl. Vavra's First Interoggs. No. 55 (stating
22 compensation of SFX officers from January 1, 2012, to the
23 present); see Pellegrini v. Weiss, 81 Cal. Rptr. 3d 387, 397 (Ct.
24 App. 2008) ("[P]artners or joint venturers have a fiduciary duty
25 to act with the highest good faith towards each other regarding
26 affairs of the partnership or joint venture."); see also Boyd v.
Bevilacqua, 55 Cal. Rptr. 610, 247 Cal. App. 2d 272, 288 (Ct.
App. 1966) (noting that where a joint venture / partnership
agreement "is entirely repudiated by one of the parties and the
fruits of the venture are sought to be appropriated," breach of
fiduciary duty can be established "without determining all the
terms of the agreement with exactness").

27 ¹² See also Boyd, 247 Cal. App. 2d at 290 ("Constructive
28 fraud frequently consists in the breach of a duty arising out of
a confidential or fiduciary relationship.").

1 Judgment as to Plaintiff's third and fourth claims for
2 breach of fiduciary duty and constructive fraud.

3 3. Breach of Express and Implied Contract,
4 Promissory Estoppel, and Quantum Meruit Claims

5 Plaintiffs' fifth, sixth, seventh, and eleventh
6 claims assert breach of contract, breach of implied
7 contract, promissory estoppel, and quantum meruit.

8 Breach of Express Contract

9 "A cause of action for damages for breach of
10 contract is comprised of the following elements: (1)
11 the contract, (2) plaintiff's performance or excuse for
12 nonperformance, (3) defendant's breach, and (4) the
13 resulting damages to plaintiff.'" Agam v. Gavra, 186
14 Cal. Rptr. 3d 295, 305 (Ct. App. 2015).

15 Upon review of the evidence, and as exhibited in
16 part by the above facts, Plaintiffs' evidence genuinely
17 disputes the existence of a contract, Plaintiffs'
18 performance, Defendants' breach, and Plaintiffs'
19 resulting injury. See, e.g., Paolo Moreno Decl. ¶¶ 29-
20 34 (citing Exs. PM14-25); Sillerman Decl., Exs. RS3-
21 RS5; Sillerman Dep. (Hueston Decl., Ex. JH1).

22 Breach of Implied Contract

23 "A cause of action for breach of implied contract
24 has the same elements as does a cause of action for
25 breach of contract, except that the promise is not
26 expressed in words but is implied from the promisor's
27 conduct." Yari v. Producers Guild of Am., Inc., 161
28 Cal. App. 4th 172, 182 (Ct. App. 2008). "California

1 law allows for recovery for the breach of an implied-
2 in-fact contract when the recipient of a valuable idea
3 accepts the information knowing that compensation is
4 expected, and subsequently uses the idea without paying
5 for it.'" Green v. Schwarzenegger, No. CV 93-5893-WMB,
6 1995 WL 874191 (C.D. Cal. 1995).

7 Plaintiffs provide evidence that they shared their
8 valuable business plan with Defendants and performed
9 valuable services for Defendants at Defendants' request
10 and with the expectation of being compensated, and that
11 Plaintiffs were never compensated for their
12 performance. See, e.g., Paolo Moreno Decl. ¶¶ 22-41;
13 Sillerman Dep. 92:4-93:23; id. at 238:20-13.

14 Plaintiffs' evidence creates a genuine dispute of
15 material fact as to whether an implied contract was
16 formed.

17 Promissory Estoppel

18 The elements of promissory estoppel are "(1) a
19 promise clear and unambiguous in its terms; (2)
20 reliance by the party to whom the promise is made; (3)
21 reliance [that is] both reasonable and foreseeable; and
22 (4) . . . injury [based on that] reliance.'" US
23 Ecology, 28 Cal. Rptr. 3d at 905.

24 Plaintiffs provide evidence that Defendants made
25 clear and unambiguous promises to Plaintiffs; that
26 Plaintiffs reasonably and foreseeably relied on
27 Defendants' promises; and that Plaintiffs were injured
28

1 by their reliance on the promises because Plaintiffs
2 were never compensated, as expected, for the valuable
3 services Plaintiffs performed for Defendants. See,
4 e.g., Paolo Moreno Decl. ¶¶ 22-41; Sillerman Dep.
5 (Hueston Decl., Ex. JH1); Sillerman Decl., Ex. RS2-RS5.
6 As such, Plaintiffs' evidence establishes a genuine
7 dispute of material fact as to whether the elements of
8 promissory estoppel are satisfied.

9 Quantum Meruit

10 "The elements of quantum meruit are: (1) that the
11 plaintiff performed certain services for the defendant,
12 (2) the[] reasonable value [of the services can be
13 determined], (3) [the services] were rendered at
14 defendant's request, and (4) [the services] are
15 unpaid." Cedars Sinai Med. Ctr. v. Mid-W. Nat'l Life
16 Ins. Co., 118 F. Supp. 2d 1002 (C.D. Cal. 2000) (citing
17 Haggerty v. Warner, 115 Cal. App. 2d 468, 475 (Ct. App.
18 1953)).

19 As discussed above, Plaintiffs' evidence
20 establishes a genuine dispute of material fact as to
21 whether the elements of quantum meruit are satisfied.

22 In light of the above, the Court **DENIES** Defendants'
23 Motion for Summary Judgment as to Plaintiff's fifth,
24 sixth, seventh, and eleventh claims asserting breach of
25 contract, breach of implied contract, promissory
26 estoppel, and quantum meruit.

27 4. Fraudulent Inducement and Promissory Fraud

1 Claims

2 Plaintiffs' eighth and ninth claims are fraudulent
3 inducement and promissory fraud.

4 Fraud requires "(a) a misrepresentation (false
5 representation, concealment, or nondisclosure); (b)
6 scienter or knowledge of its falsity; (c) intent to
7 induce reliance; (d) justifiable reliance; and (e)
8 resulting damage." Hinesley v. Oakshade Town Ctr., 37
9 Cal. Rptr. 3d 364, 367 (Ct. App. 2005).

10 Fraud in the inducement "is a subset of the tort of
11 fraud" and "occurs when the promisor knows what he is
12 signing [or agreeing to][,] but [the promisor's]
13 consent is induced by fraud" such that "mutual assent
14 is present and a contract is formed," but, due to the
15 fraud, the contract is "voidable." Id. Promissory
16 fraud is "a subspecies of the action for fraud" and is
17 supported by evidence that the "misrepresentation" was
18 a promise made without the intent to perform that
19 promise. Lazar v. Sup. Crt., 909 P.2d 981, 984-85
20 (Cal. 1996); see id. ("An action for promissory fraud
21 may lie where a defendant fraudulently induces the
22 plaintiff to enter into a contract.").

23 Plaintiffs' evidence establishes a genuine issue of
24 material fact for each element of fraud. Plaintiffs
25 provide evidence that Defendants made
26 misrepresentations. See, e.g., Sillerman Decl. 167:4-
27 169:18; id. 129:13-138:10. Plaintiffs also provide
28

1 circumstantial evidence that could support a reasonable
2 jury's finding that Defendants made promises to
3 Plaintiffs to induce them to work for SFX that
4 Defendants did not intend to keep. See, e.g., id. at
5 129:13-138:10; Paolo Moreno Decl. ¶¶ 22-41; Sillerman
6 Decl. 92:4-93:8; id., Ex. RS4. Plaintiffs provide
7 evidence that would support a reasonable jury's finding
8 that Plaintiff's reliance on Defendants'
9 misrepresentations was justifiable. See, e.g., Paolo
10 Decl.; Sillerman Decl., Exs. RS2-RS5. Finally,
11 Plaintiffs provide evidence supporting injury resulting
12 from their reliance. See, e.g., Defs.' Resps. to Pl.
13 Vavra's First Interoggs. No. 55; Paolo Decl.; Sillerman
14 Dep. (Hueston Decl., JH1).

15 As such, the Court **DENIES** Defendants' Motion for
16 Summary Judgment as to Plaintiffs' eighth and ninth
17 claims for fraudulent inducement and promissory fraud.

18 5. Unfair Competition Claim, Cal. Bus. & Prof.
19 Code § 17200

20 Finally, Plaintiff's tenth claim is for violation
21 of California's Unfair Competition Law, Cal. Bus. &
22 Prof. Code §§ 17200 et seq.

23 "California's Unfair Competition Law ("UCL")
24 prohibits any 'unlawful, unfair or fraudulent business
25 act or practice.'" Williams v. Gerber Prods. Co., 552
26 F.3d 934, 938 (9th Cir. 2008); Cal. Bus. & Prof. Code §
27 17200. Plaintiffs' Complaint asserts that Defendants
28

1 actions constitute "unfair and unlawful business
2 practices." Compl. ¶ 116.

3 Unlawful

4 "Unlawful business practices [under the UCL] are
5 'anything that can properly be called a business
6 practice and that at the same time is forbidden by law
7 . . . be it civil, criminal, federal, state, or
8 municipal, statutory, regulatory, or court-made,' where
9 court-made law is, 'for example a violation of a prior
10 court order.'" Tervon, LLC v. Jani-King of Cal., Inc.,
11 No. 14-cv-2648 BAS (JMA), 2015 WL 4135162, at *7 (S.D.
12 Cal. July 8, 2015) (quoting Nat'l Rural Telecomm. Co-op
13 v. DIRECTV, Inc., 319 F. Supp. 2d 1059, 1074 (C.D. Cal.
14 2003)). While an unlawful business act or practice
15 cannot be based on "common law violations such as
16 breach of contract," "[c]ourts have found that facts
17 supporting a violation of [Cal.] Civil Code § 1709¹³
18 sufficiently state a cause of action under Cal. Bus. &
19 Prof. Code § 17200." Id. (citing Whitehurst v. Bank2
20 Native Am. Home Lending, LLC, No. 14-cv-00318-TLN-AC,
21 2014 WL 4635387, at *8 (E.D. Cal. Sept. 10, 2014)).
22 The Supreme Court of California has clearly stated that
23 the UCL's scope, which "is broad," encompasses "actual

24
25 ¹³ California Civil Code section 1709, which "codif[ies] in
26 part the common law tort of fraud," states that a person who
27 "wilfully deceives another with intent to induce him to alter his
28 position to his injury or risk" is "liable for any damage which
[the victim] thereby suffers." Cal. Civ. Code § 1709; Clemens
v. DaimlerChrysler Corp., 534 F.3d 1017, 1022 (9th Cir. 2008).

1 fraud as defined in and prohibited by Civil Code
2 section 1572 and deceit as defined in and prohibited by
3 Civil Code sections 1709 and 1710." Kasky v. Nike,
4 Inc., 45 P.3d 243, 249 (Cal. 2002).

5 Because, as discussed above, Plaintiffs' evidence
6 creates a genuine dispute of material fact regarding
7 fraud, including fraud as defined under Cal. Civ. Code
8 §§ 1572, 1709, and 1710, Plaintiffs' evidence creates a
9 genuine dispute of material fact regarding Plaintiffs'
10 UCL claim under the "unlawful" prong.

11 As such, the Court **DENIES** Defendants' Motion for
12 Summary Judgment as to Plaintiffs' claim for violation
13 of Cal. Bus. & Prof. Code §§ 17200 et seq.

14 **IV. CONCLUSION**

15 Based on the foregoing, the Court **DENIES**
16 Defendants' Motion for Summary Judgment [61] in its
17 entirety.

18 **IT IS SO ORDERED.**

19 DATED: July 29, 2015

RONALD S.W. LEW

HONORABLE RONALD S.W. LEW
Senior U.S. District Judge