

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**United States District Court  
Central District of California**

FANTASTIC SAMS SALONS CORP.,  
Plaintiff,  
  
v.  
FRANK MOASSESFAR; PARVANEH  
MOASSESFAR,  
Defendants.

Case No. 2:14-cv-06727-ODW(PJWx)

**ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFF’S  
MOTION FOR PARTIAL  
SUMMARY JUDGMENT [63]**

The Court hereby issues this Order clarifying its ruling on Plaintiff’s Motion for Partial Summary Judgment. *See* Fed. R. Civ. P. 56(a) (“The court should state on the record the reasons for granting or denying the motion.”). Plaintiff moves for summary judgment on its breach of contract claim against Defendants. For the reasons discussed below, the Court **GRANTS IN PART** and **DENIES IN PART** the Motion. (ECF No. 63.)

“[T]he elements of a cause of action for breach of contract are (1) the existence of the contract, (2) plaintiff’s performance or excuse for nonperformance, (3) defendant’s breach, and (4) the resulting damages to the plaintiff.” *Oasis W. Realty, LLC v. Goldman*, 51 Cal. 4th 811, 821 (2011). Here, Plaintiff Fantastic Sams Salon Corp. entered into two franchise contracts with Defendants Frank Moassesfar and

1 Parvaneh Moassesfar, both of which required Defendants to pay a weekly license fee  
2 and a weekly national advertising fee to Plaintiff via electronic draft. In January 2011  
3 and February 2012, Defendants closed the bank accounts from which the fees were  
4 being withdrawn, and thus ceased making fee payments. Two years later, Plaintiff  
5 sent Defendants a notice of default and request to cure. Defendants failed to cure the  
6 breach. The failure to pay the license fee and advertising fee is a material breach of  
7 the franchise agreements. Moreover, there is no evidence that Plaintiff failed to  
8 perform under the agreements. Finally, Plaintiff suffered damages in the form of  
9 unpaid fees. Defendants do not dispute any of these facts.

10 The Court therefore concludes that there are no genuine issues of material fact  
11 with respect to Plaintiff's breach of contract claim, and that Plaintiff is entitled to  
12 judgment as a matter of law on that claim. Fed. R. Civ. P. 56(a). The Court therefore  
13 **GRANTS** Plaintiff's Motion with respect to the breach of contract claim.

14 However, the Court concludes that there are genuine issues of material fact with  
15 respect to the *amount* of damages caused by Defendants' breach based on Plaintiff's  
16 failure to mitigate its damages. "A plaintiff who suffers damage as a result of either a  
17 breach of contract or a tort has a duty to take reasonable steps to mitigate those  
18 damages and will not be able to recover for any losses which could have been thus  
19 avoided." *Shaffer v. Debbas*, 17 Cal. App. 4th 33, 41 (1993). Here, although  
20 Defendants ceased paying the fees in January 2011 and February 2012, it was not until  
21 May 2014—two years later—that Plaintiff demanded that Defendants cure the breach  
22 (and then terminated the contract after Defendants failed to do so). There is no  
23 explanation for this significant delay, and had Plaintiff notified Defendants and/or  
24 terminated the contract earlier, there is a reasonable possibility that the unpaid fees  
25 would not have accumulated to its current amount. Defendants are entitled to have a  
26 jury decide whether or not Plaintiff took reasonable steps to limit their damages.

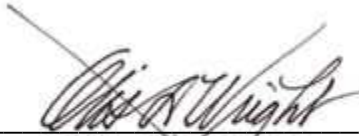
27 The fact that the Court previously limited Plaintiff's recoverable damages based  
28 on a contractual limitations clause is separate from the issue whether or not Plaintiff

1 adequately mitigated its damages by not terminating the agreement and/or filing suit  
2 earlier.

3 The Court therefore **DENIES** Plaintiff's Motion to the extent that it seeks  
4 summary judgment on the amount of damages it suffered as a result of Defendant's  
5 breach.

6  
7 **IT IS SO ORDERED.**

8  
9 March 8, 2016

10  
11 

12 \_\_\_\_\_  
13 **OTIS D. WRIGHT, II**  
14 **UNITED STATES DISTRICT JUDGE**