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

ARROYO ESCONDIDO, LLC,
Plaintiff,
v.
BALMORAL FARM, INC., et al.,
Defendants.

Case No. 2:19-cv-08464-ODW (DFMx)
**ORDER DENYING PLAINTIFF’S
MOTION FOR PARTIAL SUMMARY
JUDGMENT [50] AND GRANTING
DEFENDANTS’ MOTION FOR
PARTIAL SUMMARY JUDGMENT
[49]**

I. INTRODUCTION

Plaintiff Arroyo Escondido, LLC initiated this action against Defendants Balmoral Farm, Inc., Traci Brooks, and Carleton Brooks claiming Defendants fraudulently induced Arroyo into purchasing a pony that was unsuitable for its intended purpose—competing in high-level sporting events. (Compl., ECF No. 1.) Presently before the Court are the parties’ Motions for Partial Summary Judgment. (Pl.’s Mot. Partial Summ. J. (“PMPSJ”), ECF No. 50; Defs.’ Mot. Partial Summ. J. (“DMPSJ”), ECF No. 49.) For the reasons discussed below, the Court **DENIES** Arroyo’s Motion and **GRANTS** Defendants’ Motion.¹

¹ Having carefully considered the papers filed in connection with the Motions, the Court deemed the matters appropriate for decision without oral argument. Fed. R. Civ. P. 78; C.D. Cal. L.R. 7-15.

1 **II. BACKGROUND²**

2 Arroyo Escondido breeds, sells, and leases horses; its principal manager and
3 sole member is Dr. Cristina Payan. (Defs.’ Statement of Uncontroverted Facts
4 (“DSUF”) 1, ECF No. 48-2.) Defendants Traci Brooks and Carleton Brooks are joint
5 owners of Defendant Balmoral Farm, Inc., which is a professional equestrian business
6 that buys and sells horses and ponies. (*Id.*)

7 Payan wanted to purchase Defendants’ pony, Neon Moon (the “Pony”), for her
8 daughter, so Arroyo enlisted Peter Pletcher to serve as Arroyo’s agent in obtaining the
9 Pony. (DSUF 22; Pl.’s Statement of Uncontroverted Facts (“PSUF”) 39, ECF
10 No. 50-2.) The Pony has been identified by several names, including Tucker, Angus,
11 and Little Big Shot. (PSUF 31.) Prior to purchasing the Pony, Arroyo had the Pony
12 examined by a veterinarian, and Payan’s daughter tried out the Pony by riding him in
13 five small pony competitions. (DSUF 25.) After the riding trial and veterinarian
14 exam, on August 18, 2018, Arroyo purchased the Pony from Balmoral Farm for
15 \$190,000. (DSUF 27; PSUF 37.)

16 The United States Equestrian Federation (“USEF”) is the governing body for
17 equestrian competition in the United States. (DSUF 8.) By January 2019, Payan’s
18 daughter competed on the Pony in more than forty-five USEF small pony equestrian
19 classes. (DSUF 29.) However, Payan’s daughter never developed the ability to ride
20 the Pony. (DSUF 32.) On March 13, 2019, Arroyo delivered the Pony back to
21 Balmoral Farm without a written agreement. (DSUF 30.)

22 On October 1, 2019, Arroyo initiated this action claiming Defendants
23 misrepresented the Pony’s size and medical history and asserted seven claims:
24

25 ² The Court **OVERRULES** all boilerplate objections and improper argument in the parties’
26 Statement of Uncontroverted Facts and Statement of Genuine Issues. (*See* Scheduling and Case
27 Mgmt. Order 7–9, ECF No. 29.) Further, where the objected evidence is unnecessary to the
28 resolution of the Motion or supports facts not in dispute, the Court need not resolve those objections
here. To the extent the Court relies on objected-to evidence in this Order, those objections are
OVERRULED. *See Burch v. Regents of Univ. of Cal.*, 433 F. Supp. 2d 1110, 1122 (E.D. Cal.
2006) (proceeding with only necessary rulings on evidentiary objections).

1 violation of California Business and Professions Code section 19525 (Count I);
2 concealment (Count II); intentional misrepresentation (Count III); negligent
3 misrepresentation (Count IV); fraudulent inducement (Count V); unjust enrichment
4 (Count VI); and violation of California Penal Code section 496(a) (Count VII).
5 (Compl. ¶¶ 15–43.) Before the Court are the parties’ cross Motions for Partial
6 Summary Judgment.

7 III. LEGAL STANDARD

8 A court “shall grant summary judgment if the movant shows that there is no
9 genuine dispute as to any material fact and the movant is entitled to judgment as a
10 matter of law.” Fed. R. Civ. P. 56(a). Courts must view the facts and draw reasonable
11 inferences in the light most favorable to the nonmoving party. *Scott v. Harris*,
12 550 U.S. 372, 378 (2007). A disputed fact is “material” where the resolution of that
13 fact might affect the outcome of the suit under the governing law, and the dispute is
14 “genuine” where “the evidence is such that a reasonable jury could return a verdict for
15 the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).
16 Conclusory or speculative testimony in affidavits is insufficient to raise genuine issues
17 of fact and defeat summary judgment. *Thornhill Publ’g Co. v. GTE Corp.*, 594 F.2d
18 730, 738 (9th Cir. 1979). Moreover, though the Court may not weigh conflicting
19 evidence or make credibility determinations, there must be more than a mere scintilla
20 of contradictory evidence to survive summary judgment. *Addisu v. Fred Meyer, Inc.*,
21 198 F.3d 1130, 1134 (9th Cir. 2000).

22 Once the moving party satisfies its burden, the nonmoving party cannot simply
23 rest on the pleadings or argue that any disagreement or “metaphysical doubt” about a
24 material issue of fact precludes summary judgment. *See Celotex Corp. v. Catrett*,
25 477 U.S. 317, 322–23 (1986); *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*,
26 475 U.S. 574, 586 (1986); *Cal. Architectural Bldg. Prods., Inc. v. Franciscan*
27 *Ceramics, Inc.*, 818 F.2d 1466, 1468 (9th Cir. 1987). Nor will uncorroborated
28 allegations and “self-serving testimony” create a genuine issue of material fact.

1 *Villiarimo v. Aloha Island Air, Inc.*, 281 F.3d 1054, 1061 (9th Cir. 2002). The court
2 should grant summary judgment against a party who fails to demonstrate facts
3 sufficient to establish an element essential to his case when that party will ultimately
4 bear the burden of proof at trial. *See Celotex*, 477 U.S. at 322.

5 Pursuant to the Local Rules, parties moving for summary judgment must file a
6 proposed “Statement of Uncontroverted Facts and Conclusions of Law” that sets out
7 “the material facts as to which the moving party contends there is no genuine dispute.”
8 C.D. Cal. L.R. 56-1. A party opposing the motion must file a “Statement of Genuine
9 Disputes” setting forth all material facts as to which it contends there exists a genuine
10 dispute. C.D. Cal. L.R. 56-2. “[T]he Court may assume that material facts as claimed
11 and adequately supported by the moving party are admitted to exist without
12 controversy except to the extent that such material facts are (a) included in the
13 ‘Statement of Genuine Disputes’ and (b) controverted by declaration or other written
14 evidence filed in opposition to the motion.” C.D. Cal. L.R. 56-3.

15 **IV. ARROYO’S MOTION FOR PARTIAL SUMMARY JUDGMENT**

16 The Court first addresses Arroyo’s Motion, which seeks partial summary
17 judgment on Counts II (fraudulent concealment), III (intentional misrepresentation),
18 IV (negligent misrepresentation), V (fraudulent inducement), and VII (violation of
19 California Penal Code section 496(a)).

20 **A. Fraudulent Concealment**

21 Arroyo moves for partial summary judgment on Count II (fraudulent
22 concealment), in which Arroyo asserts Defendants concealed: (a) the Pony was
23 medium and not small; and (b) Defendants’ agent changed the Pony’s name and
24 obtained a new USEF record number for the Pony prior to its sale. (PMPSJ 13–15.)
25 Arroyo claims Defendants “were under a duty to disclose” these alleged material facts
26 before the sale and if Arroyo’s agent, Pletcher, was aware of these facts “he would not
27 have instructed” Arroyo to purchase the Pony. (*Id.* at 14–15.) However, as
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1 Defendants argue in opposition, genuine issues of material fact preclude partial
2 summary judgment on this claim.

3 The required elements for fraudulent concealment are: (1) “concealment or
4 suppression of a material fact”; (2) “by a defendant with a duty to disclose the fact to
5 the plaintiff”; (3) “the defendant intended to defraud the plaintiff by intentionally
6 concealing or suppressing the fact”; (4) “the plaintiff was unaware of the fact and
7 would not have acted as he or she did if he or she had known of the concealed or
8 suppressed fact”; and (5) “plaintiff sustained damage as a result of the concealment or
9 suppression of the fact.” *Hambrick v. Healthcare Partners Med. Grp., Inc.*, 238 Cal.
10 App. 4th 124, 162 (2015).

11 *1. The Pony’s Size*

12 First, there are genuine issues of material fact concerning the first element—
13 whether Defendants concealed the Pony was “medium.” Arroyo argues that
14 Defendants concealed this alleged fact, but Arroyo puts forth no evidence
15 demonstrating that is the Pony’s *official* size classification. On the other hand,
16 Defendants submit evidence demonstrating in November 2017, the USEF measured
17 the Pony at 12.2 hands, which is a “small pony” measurement. (Defs.’ Statement of
18 Genuine Issues (“DSGI”) 81, ECF No. 54-1.) The Pony is still registered with the
19 USEF as a “small pony,” and from January 2018 to August 2018 the Pony competed
20 in approximately sixty USEF small pony competitions. (DSGI 82, 83.) Indeed,
21 Plaintiff’s daughter competed on the Pony in forty-five USEF *small pony classes*
22 without protest from USEF officials. (*See* DSGI 87.)

23 Second, there are genuine issues of material fact regarding the fourth element—
24 whether Arroyo would have purchased a medium pony. Arroyo contends that if
25 Pletcher was aware the Pony was medium, Pletcher would not have instructed Arroyo
26 to purchase the Pony. (PMPSJ 14–15.) However, Arroyo relies on Pletcher’s
27 conflicting and speculative deposition testimony, which fails to demonstrate the
28 Pony’s purported medium size would have affected his recommendation. At one

1 point, Pletcher testified, “[t]o say we wouldn’t buy [the Pony] because he was
2 measured [medium], I can’t say that.” (Decl. of T. Randolph Catanese, Ex. E, Dep. of
3 Peter Pletcher (“First Pletcher Dep.”) 124:22–23, ECF No. 50-5; *see also* Decl. of
4 Robert Scapa ¶ 10 (“Second Pletcher Dep.”), ECF No. 54-5.) And later, Pletcher
5 testified that, “if we had gone back and seen [all of the evidence]” he would “probably
6 not” have recommended Arroyo purchase the Pony. (First Pletcher Dep. 125:5–8.)
7 Thus, on this record, it is not clear the Pony’s size would have affected Pletcher’s
8 recommendation.

9 These genuine disputes of material fact preclude partial summary judgment on
10 Arroyo’s claim Defendants concealed the Pony’s size.

11 2. *The Pony’s Name and USEF Number*

12 Next, Arroyo contends Traci Brooks changed the Pony’s name from “Angus” to
13 “Little Big Shot,” and obtained a new USEF record number for the Pony prior to its
14 sale. (PMPSJ 14.) But there are genuine issues regarding whether Defendants
15 concealed these facts, or that they were material to Arroyo’s decision to purchase the
16 Pony.

17 First, with respect to the Pony’s name change, Defendants submit evidence
18 demonstrating the Pony’s *prior owners* changed its name from “Angus” to “Little Big
19 Shot”—not Defendants, (Second Pletcher Dep. 310:24–311:14); and Pletcher was
20 aware the Pony went by the name Angus prior to the sale, (*id.* at 107:11–16). Thus,
21 genuine issues of fact exist regarding whether Arroyo was in the dark about the Pony’s
22 name change.

23 Then, turning to the USEF record number, which provides information about a
24 pony’s history, Pletcher testified that the Pony’s “performance . . . show record, [and]
25 history, was not critical in terms of [Arroyo] making a decision to purchase [the
26 Pony].” (*Id.* at 235:22–236:10.) Based on this testimony, it does not appear that
27 changing the Pony’s USEF record number prior to the sale was material in Arroyo’s
28 decision to purchase the Pony. In fact, Pletcher’s deposition testimony makes it clear

1 that he would not have told Payan to research the Pony’s record using its USEF
2 number. (*Id.* at 235:22–236:3.) Pletcher testified that his recommendation to
3 purchase the Pony was based “on what [Plaintiff] saw and what [Plaintiff] tried.” (*Id.*
4 at 236:2–3.) Thus, the record does not support Arroyo’s contention that it is entitled to
5 partial summary judgment on its claim Defendants fraudulently concealed changing
6 the Pony’s USEF record number.

7 Accordingly, to the extent Arroyo seeks partial summary judgment on Count II
8 (fraudulent concealment), Arroyo’s Motion is **DENIED**.

9 **B. Intentional Misrepresentation, Negligent Misrepresentation, and**
10 **Fraudulent Inducement**

11 Arroyo moves for partial summary judgment on Counts III (intentional
12 misrepresentation), IV (negligent misrepresentation), and V (fraudulent inducement).
13 (PMPSJ 15–21.) However, Arroyo fails to provide any argument in support of partial
14 summary judgment on these counts. (*See id.*) For example, in the section of its brief
15 concerning Count III (intentional misrepresentation), Arroyo lists almost two pages of
16 legal citations and then summarily concludes: “As stated above in the section
17 regarding concealment, but for the concealment of fact and misrepresentation of fact
18 [Arroyo] would not have” purchased the Pony; “Pletcher . . . and [Arroyo] were
19 justified in relying upon misrepresentations made by [Defendants]; and Arroyo “was
20 induced to” purchase the Pony “by reason of the concealment of fact and
21 misrepresentation of fact by the Defendants regarding the history, size, and character
22 of the Pony.” (*Id.*)

23 Arroyo’s “argument” cites no evidence and fails to address the elements in a
24 claim for intentional misrepresentation.³ This fails to show Arroyo is entitled to
25 partial summary judgment on Count III. Arroyo’s arguments concerning Counts IV
26 and V suffer the from the same defects. (*See* PMPSJ 17–21 (providing several pages

27 ³ The elements of an intentional misrepresentation claim are: (1) misrepresentation; (2) knowledge of
28 falsity; (3) intent to defraud or induce reliance; (4) justifiable reliance; and (5) resulting damage. *See*
Engalla v. Permanente Med. Grp., Inc., 15 Cal. 4th 951, 974 (1997), as modified (July 30, 1997).

1 of legal citations before summarily concluding: “For the reasons previously stated, the
2 undisputed facts show why judgment should be granted to [Arroyo].”) Arroyo must
3 provide actual legal arguments in support of its Motion and cannot simply rely on the
4 Court to sift through its numerous (and improperly filed) exhibits and moving papers
5 to manufacture support for its position. “[J]udges are not like pigs, hunting for truffles
6 buried in briefs.” *Uche-Uwakwe v. Shinseki*, 972 F. Supp. 2d 1159, 1163 n.1
7 (C.D. Cal. 2013) (internal quotation marks omitted).

8 Accordingly, to the extent Arroyo seeks partial summary judgment on
9 Counts III (intentional misrepresentation), IV (negligent misrepresentation), and
10 V (fraudulent inducement), Arroyo’s Motion is **DENIED**.

11 **C. California Penal Code Section 496(a)**

12 In Count VII (violation of California Penal Code section 496(a)), Arroyo claims
13 Defendants obtained \$190,000 (the Pony’s purchase price) under false pretenses, and
14 therefore, Defendants received stolen property. (PMPSJ 21–23.)

15 Section 496(a) imposes criminal liability on “[e]very person who buys or
16 receives any property that has been stolen or that has been obtained in any manner
17 constituting theft or extortion, knowing the property to be so stolen or obtained.”
18 Under subsection (c), an injured person may bring a civil action for three times the
19 actual damages and reasonable attorneys’ fees. Cal. Penal Code § 496(c).

20 Here, Arroyo contends “[t]he undisputed material facts affirm and establish that
21 fraud and deceit were committed by the Defendants in order to obtain \$190,000.”
22 (PMPSJ 22.) This conclusory statement utterly fails to demonstrate Defendants
23 engaged in conduct in violation of section 496(a), or that Plaintiff is entitled to partial
24 summary judgment on this claim.

25 Accordingly, Arroyo’s Motion is **DENIED** to the extent Arroyo seeks partial
26 summary judgment on Count VII (violation of California Penal Code section 496(a)).

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1 **D. Summary**

2 For the reasons discussed above, Arroyo’s Motion for Partial Summary
3 Judgment on Counts II–V and VII is **DENIED**.

4 **V. DEFENDANTS’ MOTION FOR PARTIAL SUMMARY JUDGMENT**

5 Next, the Court turns to Defendants’ Motion for Partial Summary Judgment on
6 Counts I (violation of California Business and Professions Code), VI (unjust
7 enrichment), and VII (violation of California Penal Code section 496(a)).

8 **A. Violation of California Business and Professions Code**

9 Defendants move for partial summary judgment on Count I, in which Arroyo
10 contends Balmoral’s purported agents, Carleton Brooks and Jimmy Torano, failed to
11 disclose a commission related to the sale of the Pony in violation of California
12 Business and Professions Code section 19525. (DMPSJ 8–11.)

13 Section 19525 prohibits a seller’s agent from receiving compensation in excess
14 of \$500 related to the sale of an equine, subject to certain exceptions that do not apply
15 here. Cal. Bus. & Prof. Code § 19525(e). Defendants contend that Balmoral “paid no
16 commission or any other consideration to Jimmy Torano or anyone else in the sale” of
17 the Pony. (DMPSJ 9 (citing DSUF 7, 21, 36, 37, 40).) In opposition, Arroyo attempts
18 to dispute this fact, but none of the evidence to which Arroyo cites can be found in the
19 record. (*See, e.g.*, Pls.’ Statement of Genuine Disputes, ECF No. 55-3 (citing to pages
20 of Torano’s and Pletcher’s depositions that are (1) not properly cited, or (2) not in the
21 record).) It is not the court’s task to “scour the record in search of a genuine issue of
22 triable fact.” *Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996). The parties bear
23 the obligation to lay out their support clearly. *Carmen v. San Francisco Sch. Dist.*,
24 237 F.3d 1026, 1031 (9th Cir. 2001). Therefore, Arroyo fails to raise a genuine factual
25 dispute.

26 Accordingly, the Court **GRANTS** Defendants’ Motion for partial summary
27 judgment on Count I (violation of California Business and Professions Code section
28 19525).

1 **B. Unjust Enrichment**

2 Defendants move for partial summary judgment on Count VI, in which Arroyo
3 attempts to assert a cause of action for unjust enrichment. (DMPSJ 11–15.)
4 Defendants argue, correctly, that there is no cause of action for unjust enrichment in
5 California. (*See id.*); *Melchior v. New Line Prods., Inc.*, 106 Cal. App. 4th 779, 793
6 (2003).

7 “Unjust enrichment is a general principle, underlying various legal doctrines
8 and remedies, rather than a remedy itself.” *Id.* (internal quotation marks omitted).
9 Some courts have construed a cause of action for unjust enrichment as a
10 quasi-contract claim seeking restitution. *See, e.g., Rutherford Holdings, LLC v. Plaza*
11 *Del Rey*, 223 Cal. App. 4th 221, 231 (2014). However, to assert a quasi-contract claim
12 for restitution based on unjust enrichment, the plaintiff must allege “in that cause of
13 action that the express contract is void or was rescinded.” *Id.* (internal quotation
14 marks omitted).

15 Here, Arroyo claims that it seeks to assert a quasi-contract claim for restitution
16 based on unjust enrichment. (Pls.’ Opp’n 9–12 (citing Compl. ¶¶ 37–39), ECF
17 No. 55.) But Arroyo does not allege *in Count VI of the Complaint* that the underlying
18 express contract for the sale of the Pony is void or rescinded. *See Rutherford*,
19 223 Cal. App. 4th at 231; *see also Lance Camper Mfg. Corp. v. Republic Indem. Co.*,
20 44 Cal. App. 4th 194, 203 (1996) (“The [Plaintiff] must allege that the express
21 contract is void or was rescinded in order to proceed with its quasi-contract claim.”).
22 Thus, Arroyo fails to assert a quasi-contract claim, and Arroyo’s untimely request for
23 leave to amend Count VI is denied.

24 Accordingly, the Court **GRANTS** Defendants’ Motion for partial summary
25 judgment on Count VI (unjust enrichment).

26 **C. Violation of California Penal Code section 496(a)**

27 Defendants move for partial summary judgment on Count VII, in which Arroyo
28 claims Defendants obtained Arroyo’s money under false pretenses. (DMPSJ 15–21.)

1 In opposition, Arroyo merely contends that its “Statement of Uncontroverted Facts
2 and Conclusions of Law filed concurrently with [Arroyo’s Motion for Partial
3 Summary Judgment] cited to the Court undisputed material facts which support
4 judgment in Plaintiff’s favor.” (Pl.’s Opp’n 13.) Essentially, Arroyo tasks the Court
5 with scouring through a different set of moving papers to find the facts and arguments
6 necessary to deny Defendants’ Motion. However, the Court is “not required to comb
7 the record to find some reason to deny a motion for summary judgment.” *Carmen*,
8 237 F.3d at 1029 (“A lawyer drafting an opposition to a summary judgment motion
9 may easily show a judge, in the opposition, the evidence that the lawyer wants the
10 judge to read. It is absurdly difficult for a judge to perform a search, unassisted by
11 counsel, through the entire record, to look for such evidence.”). Therefore, here too,
12 Arroyo fails to raise a genuine factual dispute.

13 Accordingly, the Court **GRANTS** Defendants’ Motion for partial summary
14 judgment on Count VII (violation of California Penal Code section 496(a)).

15 **D. Summary**

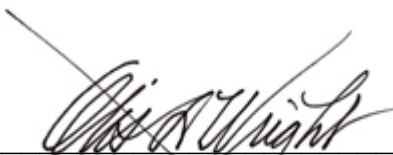
16 The Court **GRANTS** Defendants’ Motion for Partial Summary Judgment on
17 Counts I (violation of California Business and Professions Code), VI (unjust
18 enrichment), and VII (violation of California Penal Code section 496(a)).

19 **VI. CONCLUSION**

20 For the foregoing reasons, the Court **DENIES** Arroyo’s Motion for Partial
21 Summary Judgment (ECF No. 50), and the Court **GRANTS** Defendants’ Motion for
22 Partial Summary Judgment (ECF No. 49).

23 **IT IS SO ORDERED.**

24
25 August 19, 2021

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28 _____
OTIS D. WRIGHT, II
UNITED STATES DISTRICT JUDGE