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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRIAN DAWE; FLAT IRON  
MOUNTAIN ASSOCIATES, LLC,  
formerly known as FLAT  
IRON MOUNTAIN ASSOCIATES,  
a Partnership,

Plaintiffs,

v.

CORRECTIONS USA, a California  
Corporation; CALIFORNIA  
CORRECTIONAL PEACE OFFICERS'  
ASSOCIATION, a California  
Corporation; JAMES BAIARDI,  
an individual; DONALD JOSEPH  
BAUMANN, an individual,

Defendants.

\_\_\_\_\_  
AND CONSOLIDATED ACTIONS &  
RELATED COUNTERCLAIMS  
\_\_\_\_\_

NO. CIV. S-07-1790 LKK/EFB

O R D E R

Defendants have moved for a new trial and renewed their  
motions for judgment as a matter of law. Only two questions raise  
serious questions: (1) whether the punitive damage award is  
unconstitutionally excessive and violates defendants' due process

1 rights<sup>1</sup> and (2) whether FIMA's verdict for intentional interference  
2 with contract fails as a matter of law because CCPOA cannot be  
3 liable for interfering with the CUSA contract. The motions are  
4 denied as to all other arguments.

5 **I. Constitutionality of Punitive Damages Award**

6 After awarding plaintiffs significant compensatory damages,  
7 the jury also awarded plaintiffs very large punitive damages awards  
8 from two of the four defendants. The court summarizes the relevant  
9 awards below:

	Claim	Compensatory Award	Punitive Award	Ratio of Punitive Award to Compensatory Award
10				
11				
12				
13	Brian Dawe's ("Dawe") Claims Against Corrections USA ("CUSA")	\$100,000	\$25,000	0.25:1
14				
15				
16	Flat Iron Mountain Associates, LLC's ("FIMA") Claims Against CUSA	\$111,000		
17				
18	Breach of Contract	\$0		
19	Breach of the Implied Covenant of Good Faith and Fair Dealing <sup>2</sup>			
20				

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23 <sup>1</sup> The court only addresses whether the award must be remitted  
24 to comport with due process. There is sufficient evidence in the  
25 record from which the jury could have reasonably concluded that  
26 defendants' conduct was reprehensible.

<sup>2</sup> The jury found in favor of FIMA, yet awarded no compensatory damages.

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	Intentional Interference with Prospective Economic Relations <sup>3</sup>	\$1	\$25,000	25,000:1
	TOTAL	\$111,001	\$25,000	0.23:1
Dawe and FIMA's Claims Against CUSA	TOTAL (including breach of contract claims)	\$211,001	\$50,000	0.24:1
	TOTAL (excluding breach of contract claims)	\$100,001	\$50,000	0.50:1
Gary Harkins' ("Harkins") Claims Against CUSA	Breach of Contract	\$6,000		
	Defamation	\$28,000	\$25,000	0.89:1
	False Imprisonment	\$2,000	\$10,000	5:1
	TOTAL (including breach of contract claim)	\$36,000	\$35,000	0.97:1
	TOTAL (excluding breach of contract claim)	\$30,000	\$35,000	1.17:1

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<sup>3</sup> The verdict form headings indicated that the claim applied to FIMA and Dawe's claim for intentional interference with prospective economic relations. The jury, however, was only given the opportunity to choose between finding in favor of FIMA and against CUSA or finding in favor of CUSA and against FIMA. For this reason, the court only considers this jury award as for FIMA.

1	Dawe's Claims Against California Correctional Peace Officers' Association ("CCPOA")	Defamation	\$1,639,405	\$3,000,000	1.83:1
2	FIMA's Claims Against CCPOA	Intentional Interference with Contractual Relations	\$333,000	\$3,000,000	9.01:1
3		Intentional Interference with Prospective Economic Relations <sup>4</sup>	\$1	\$3,000,000	3,000,000:1
4		TOTAL	\$333,001	\$6,000,000	18.02:1
5	Harkins' Claims Against CCPOA	Defamation	\$315,000	\$1,000,000	3.17:1

15 While the Supreme Court has not set "concrete constitutional limits  
16 on the ratio between harm, or potential harm, to the plaintiff and  
17 the punitive damages award," it has announced a principle that, "in  
18 practice, few awards exceeding a single-digit ratio between  
19 punitive and compensatory damages, to a significant degree, will  
20 satisfy due process." State Farm Mut. Auto Ins. Co. v. Campbell,  
21 538 U.S. 408, 425 (2003). The Court has further suggested that a  
22 4-to-1 ratio "might be close to the line of constitutional  
23 impropriety." Id. (internal citation omitted). "Nonetheless,  
24 because there are no rigid benchmarks that a punitive damages award  
25

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26 <sup>4</sup> Same issue as to FIMA's claim against CUSA.

1 may not surpass, ratios greater than those we have previously  
2 upheld may comport with due process where a particularly egregious  
3 act has resulted in only a small amount of economic damages. Id.  
4 (internal quotation omitted). For example, the Ninth Circuit found  
5 that a punitive damages award of \$5,000 was appropriate where a  
6 plaintiff was awarded \$3 in nominal damages. Mendez v. County of  
7 San Bernadino, 540 F.3d 1109, 1122-23 (9th Cir. 2008) (affirming  
8 district court's remittur of punitive damage award of \$250,000 to  
9 \$5,000). However, "When compensatory damages are substantial, then  
10 a lesser ratio, perhaps only equal to compensatory damages, can  
11 reach the outermost limit of the due process guarantee. The precise  
12 award in any case, of course, must be based upon the facts and  
13 circumstances of the defendant's conduct and the harm to the  
14 plaintiff." State Farm, 538 U.S. at 419.

15       This case involved numerous plaintiffs, defendants, and causes  
16 of action. As an initial matter, the court must determine which  
17 ratios to consider before it concludes whether those ratios are  
18 excessive. Defendants argue that each cause of action should be  
19 separately considered. Plaintiffs contend that the damages should  
20 be considered as awarded against each defendant. There is little  
21 authority on this question. However, in Bains LLC v. ARCO Products  
22 Comp., 405 F.3d 764, 775-76 (9th Cir. 2005), the Ninth Circuit  
23 evaluated the issue. It found that, "On the facts of this case, in  
24 determining the correct amount of punitive damages, the jury could  
25 properly consider not only the one dollar in nominal damages  
26 awarded for discrimination under § 1981, but also the \$50,000 in

1 compensatory damages awarded for breach of contract . . . .”  
2 because the conduct supporting both claims was “intertwined.” Id.  
3 The Circuit did not set forth a test, but rather noted that in the  
4 case before it the proper ratio was the total amount of punitive  
5 damages compared with the total amount of compensatory damages  
6 where the conduct underlying both claims was related. Defendants  
7 argue that the verdict form issued in this case prohibits  
8 consolidation. Under the terms of Bains LLC, however, that is  
9 simply not the case. A claim for breach of contract can never  
10 support an award of punitive damages, yet the Ninth Circuit  
11 considered the compensatory damages awarded for breach of contract  
12 when determining the proper award of punitive damages. Defendants  
13 cited Bains LLC numerous times, yet did not address this finding  
14 in their briefs.

15 Defendants also raised for the first time in reply that a  
16 punitive award that is 10% of the net worth of an entity is  
17 presumptively unconstitutional. Plaintiffs contend that the  
18 argument is waived, or alternatively not an accurate statement of  
19 the law. In support of the net worth argument, defendants rely on  
20 the following analysis in a district court opinion:

21 [Defendant] contends that the punitive damages award was  
22 excessive because most California courts have stated  
23 that punitive damages should not be allowed to exceed  
24 10% of the defendant's net worth. Storage Services v.  
25 Oosterbaan, 214 Cal. App. 498 (1989), citing Devlin v.  
26 Kearny Mesa AMC/Jeep/Renault, Inc., 155 Cal. App. 3d  
381, 393-96 (1984) (Survey of punitive damages as  
percentages of net worth in a sampling of 15 cases from  
1950-1984 indicates that punitive damage awards are  
generally about 10% of the defendant's net worth).

1 Eldorado Stone, LLC v. Renaissance Stone, Inc., 2007 U.S. Dist.  
2 LEXIS 60885 (S.D. Cal. 2007). I begin by noting that El Dorado is  
3 based upon a survey where the reasons for a particular result are  
4 neither articulated or known. It does not appear to this court to  
5 be of any value in considering the instant case.

6 In Southern Union Co. v. Irvin, 563 F.3d 788 (9th Cir. 2009),  
7 however, which was issued after State Farm, the Ninth Circuit  
8 considered the value that a defendant's net worth should have in  
9 determining whether a punitive damages award was unconstitutionally  
10 excessive. Judge Reinhardt's concurrence is helpful on this  
11 question, even though ultimately firm answers are not to be found.  
12 In any event, Judge Reinhardt explains,

13 If punitive damages are to achieve the twin purposes of  
14 deterrence and punishment, . . . we must consider the  
15 impact of a damage award upon the particular defendant  
16 in determining the constitutional limit. The appropriate  
17 ratio of punitive to compensatory damages may vary with  
18 the amount of the compensatory damages and the net worth  
19 of the defendant. In some cases, although the conduct  
20 may be similar, because of lower compensatory damages or  
21 the defendant's higher net worth, a higher ratio may be  
22 necessary to achieve a deterrent or punitive effect. In  
23 other cases, where the variables are the opposite, a  
24 lower ratio may be appropriate.

25 For example, if \$10,000 in compensatory damages is  
26 awarded against a defendant with a net worth of \$50,000,  
then \$10,000 in punitive damages may be an appropriate  
amount to achieve both the punitive and deterrent  
purposes. The same amount of punitives awarded against  
a company earning \$1 billion a year, with a net worth of  
\$50 billion, would hardly serve either of these  
objectives.

27 Finally, this appears to be a fact based test. Of note,  
28 however, the Ninth Circuit found a punitive damage award of  
29 \$1,185,217.14 appropriate where compensatory damages were

1 \$395,072.38, a ratio of three to one.

2 **1. Awards Against CUSA**

3 Upon consideration of the facts before it, the court finds  
4 that all the punitive damages awards for Dawe and FIMA need not be  
5 remitted to comport with due process. CUSA does not seek to remit  
6 the award to Dawe. As to FIMA, the court sees two alternative  
7 understandings of how the award should be calculated under Bains  
8 LLC. FIMA's claims of breach of contract and intentional  
9 interference prospective economic relations are intertwined. Thus,  
10 when the two are calculated together, the ratio of punitive damages  
11 is 0.23:1, well within the bounds of State Farm. Alternatively,  
12 Dawe's claims against CUSA could be intertwined with FIMA's claims  
13 against CUSA. These ratios also comport with due process.

14 The court cannot, however, determine that Harkins' false  
15 imprisonment claim is intertwined with his other claims against  
16 CUSA. The question, then, becomes whether a ratio of 5:1 is  
17 impermissible where Harkins was only awarded a relatively small  
18 amount of compensatory damages. Considering the totality of the  
19 circumstances, the court determines that this punitive damages  
20 award should be remitted to \$6,000, a ratio of three to one.

21 The court also determines that these punitive damages awards  
22 are appropriate under Southern Union Co. in light of all the  
23 evidence before it.

24 **2. Awards Against CCPOA**

25 After a close review of all the evidence in this case, the  
26 court finds that the punitive damages awarded against CCPOA must



1 all be remitted to a ratio of one to one. Specifically, the court  
 2 finds that the punitive damages be remitted as follows:

	Claim	Compensatory Award	Jury Award for Punitive Damages	Remitted Punitive Damages Award
3 4 5 6 7 8 9	Dawe's Claims Against California Correctional Peace Officers' Association ("CCPOA")	\$1,639,405	\$3,000,000	\$1,639,405
10 11 12	FIMA's Claims Against CCPOA	Intentional Interference with Contractual Relations	\$333,000	\$3,000,000
13 14 15		Intentional Interference with Prospective Economic Relations	\$1	\$3,000,000
16 17		TOTAL	\$333,001	\$6,000,000
18 19	Harkins' Claims Against CCPOA	\$315,000	\$1,000,000	\$315,000

20 The court further finds that these remitted awards comport  
 21 with due process relative to CCPOA's net worth.

22 **II. Liability for Interference with Contract**

23 CCPOA has filed a renewed motion for judgment as a matter of  
 24 law on plaintiff's interference with contract claims against CCPOA.  
 25 Specifically, CCPOA argues that it cannot be liable for interfering  
 26

1 with the contract between CUSA and FIMA because "the only alleged  
2 'interference' attributed to CCPOA were actions taken by Mike  
3 Jimenez, who was the incorporator and a board member of CUSA."  
4 Def.'s Renewed Mots. J. Matter Law ("RJMOL"), Doc. No. 533, 5 (Nov.  
5 22, 2010). FIMA opposes this motion on several grounds. First, it  
6 contends that a reasonable jury could have found that Jimenez was  
7 acting on behalf of CCPOA at the time that the conduct supporting  
8 this claim occurred. Second, FIMA argues that the jury could have  
9 also reasonably concluded that conduct of defendant Donald Baumann  
10 ("Baumann"), CCPOA Chapter President, interfered with the contract  
11 between FIMA and CUSA even though the jury found that Baumann was  
12 not liable for interference with this contract.

13       The parties generally agree as to the standard the court  
14 should apply. The parties agree that CCPOA can only be found liable  
15 for interference with contract if the CCPOA agents who engaged in  
16 the interfering conduct were not employees of CUSA or otherwise  
17 acting as agents of CUSA at the time of the interfering conduct,  
18 and this standard seems to be supported under California law. See  
19 Shoemaker v. Myers, 52 Cal. 3d 1, 24 (Cal. 1990); Mintz v. Blue  
20 Cross of California, 172 Cal. App. 4th 1594, 1604 (2009). Here, the  
21 law is clear that Jimenez could not act on behalf of CUSA because  
22 he was merely an incorporator and board member. See Woods v. Fox  
23 Broadcasting Sub., Inc., 129 Cal. App. 4th 344, 356 (2005)  
24 (petition for review denied at 2005 Cal. Lexis 9494) ("[O]ur courts  
25 have allowed contract interference claims to be stated against  
26 owners, officers, and *directors* of the company whose contract was

1 the subject of the litigation.”) (emphasis in original). Thus,  
2 CCPOA’s motion is denied on this ground.


3 **III. Conclusion**

4 For the foregoing reasons, the court ORDERS as follows:

- 5 (1) Defendants' renewed motions for judgment as a matter of  
6 law are DENIED. (Doc. No. 533)
- 7 (2) Defendants' motion for a new trial (Doc. No. 534) is  
8 GRANTED on the grounds of (a) whether the punitive  
9 damage award for Harkins' false imprisonment claim  
10 against CUSA was unconstitutionally excessive; (b)  
11 whether the punitive damage award for Dawe's defamation  
12 claim against CCPOA was unconstitutionally excessive;  
13 (c) whether the punitive damage awards for FIMA's claims  
14 against CCPOA were unconstitutionally excessive; and (d)  
15 whether the punitive damage awards for Harkins'  
16 defamation claim against CCPOA was unconstitutionally  
17 excessive. It is OTHERWISE DENIED.
- 18 (3) Plaintiffs shall inform the court within twenty-one (21)  
19 days of the issuance of this order as to whether they  
20 will (a) stipulate to the remitted punitive damage  
21 awards described herein; (b) seek a new trial; or (c)  
22 intend to appeal this order.

23 IT IS SO ORDERED.

24 DATED: March 17, 2011.

25   
26 LAWRENCE K. KARLTON  
SENIOR JUDGE  
UNITED STATES DISTRICT COURT