



1 I. Background

2 This case proceeded to a bench trial on January 25, 2016, on plaintiff's claims against  
3 defendant Rama Gogineni for fraudulent concealment, negligent misrepresentation, and breach of  
4 fiduciary duty. Plaintiff appeared pro se, and defendant Gogineni made no appearance.

5 The evidence at trial demonstrated that plaintiff and Gogineni agreed to go into business  
6 together and formed a staffing agency that operated under the name Cosmic Technologies Corp.  
7 ("Cosmic"). Cosmic successfully placed several consultants with a company, which resulted in  
8 plaintiff receiving substantial profit distributions from early 2000 through May 2003. However,  
9 in June 2003, Gogineni stopped distributing profits and the parties' working relationship  
10 significantly deteriorated. *Id.* Ultimately, the parties' differences led to litigation in state court in  
11 two lawsuits over ownership of Cosmic stock.

12 In October 2006, Gogineni filed a certificate of dissolution and Cosmic was dissolved. *Id.*  
13 at 5. Plaintiff subsequently requested that he be provided his portion of the corporation's assets,  
14 but was informed by Cosmic's counsel that the corporation had incurred substantial costs in  
15 litigating the state court actions, and that Cosmic did not anticipate having any remaining assets  
16 for distribution.

17 However, evidence submitted at trial showed that Gogineni used Cosmic funds for more  
18 than just paying the corporation's legal fees. Although plaintiff's last profit distribution was  
19 received in May 2003, Gogineni continued to receive checks from Cosmic until September 2005.  
20 Between February 2003 and January 2006, Cosmic also made payments to Titan Info Tech Corp.  
21 ("Titan"), a corporation Gogineni formed shortly after the parties started their staffing agency.  
22 Gogineni also wrote checks, on behalf of Cosmic, to one of his relatives living in India and to law  
23 firms that did not provide legal services for Cosmic.

24 Based on the evidence presented at trial, the court found that plaintiff established that  
25 Gogineni breached his fiduciary duty he owed to plaintiff, and that plaintiff sustained damages in  
26 the amount of \$921,110.58. ECF No. 152 at 9-11. The court, however, also found that plaintiff  
27 had not produced evidence showing that he justifiably relied on a statement or omission by  
28 Gogineni, and therefore failed to establish his right to relief on his fraudulent concealment and

1 negligent misrepresentation claims. *Id.* at 6-8. Accordingly, judgment was entered in plaintiff's  
2 favor in the amount \$921,110.58 based on his breach of fiduciary duty claim. ECF No. 153.

3 II. Legal Standard

4 Federal Rule of Civil Procedure 59(e) provides that “[a] motion to alter or amend a  
5 judgment must be filed no later than 28 days after the entry of the judgment.” The Ninth Circuit  
6 has identified four grounds for providing relief under Rule 59(e): (1) to correct manifest errors of  
7 law or fact upon which the judgment is based, (2) to present newly discovered or previously  
8 unavailable evidence, (3) to apply an intervening change in the law, and (4) to prevent manifest  
9 injustice. *McDowell v. Calderon*, 197 F.3d 1253, 1255 n. 1 (9th Cir. 1999) (per curiam and en  
10 banc). A district court has considerable discretion in ruling on a motion brought pursuant to Rule  
11 59(e). *Id.* “While Rule 59(e) permits a district court to reconsider and amend a previous order,  
12 the rule offers an extraordinary remedy, to be used sparingly in the interest of finality and  
13 conservation of judicial resources.” *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003)  
14 (internal quotations omitted). When seeking reconsideration, a party is not permitted to “raise  
15 arguments or present evidence for the first time when they could reasonably have been raised  
16 earlier in the litigation.” *Id.*

17 III. Discussion

18 Plaintiff moves to alter or amend the judgment, arguing that it is based on several manifest  
19 errors of law and fact. Specifically, he argues that the court erred in (1) calculating his damages,  
20 (2) failing to award prejudgment interest and (3) punitive damages, and (4) finding that he failed  
21 to establish his right to relief on his fraudulent concealment and negligent misrepresentation  
22 claims. ECF No. 159.

23 A. Calculation of Damages

24 Plaintiff first argues that the court made a “transcription error” in calculating his damages.  
25 ECF No. 159-1 at 3. Specifically, he contends that the court incorrectly concluded that the  
26 evidence showed that Gogineni improperly transferred only \$240,630 of Cosmic’s funds to Titan.  
27 *Id.*

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1 As noted above, the court found that plaintiff sustained \$921,110.58 in damages based on  
2 Gogineni improperly transferring Cosmic's profits to himself and third-parties. ECF No. 152 at  
3 9-11. In calculating the amount of damages, the court found that plaintiff's trial exhibit 39a  
4 established that Gogineni transferred \$240,630 to Titan, and that plaintiff was entitled to receive  
5 half of these funds. ECF No. 152 at 10-11.

6 Plaintiff, however, correctly observes that exhibit 39a reflects that Gogineni transferred  
7 \$480,630, not \$240,630, in funds to Titan. See ECF No. 148. As plaintiff was entitled to half of  
8 Cosmic's profits, the transfers of \$480,630 to Titan caused plaintiff to sustain \$240,315. Because  
9 the judgment only awarded \$120,315 (one-half of \$240,630) based on the wrongful transfers to  
10 Titan, the judgment will be amended to increase plaintiff's damages by \$120,000. Accordingly,  
11 the judgment will be amended to reflect that plaintiff sustained damages in the amount of  
12 \$1,041,110.58.

13 B. Prejudgment Interest

14 Plaintiff also moves to amend the judgment to add compound prejudgment interest. ECF  
15 No. 159-1 at 3-6.

16 Where a court fails to award prejudgment interest, a plaintiff may bring a motion for such  
17 interest pursuant to Rule 59(e). See *Osterneck v. Ernst & Whinney*, 489 U.S. 169, 176-177  
18 (1989); *McCalla v. Royal MacCabees Life Ins. Co.*, 369 F.3d 1128, 1131-1132 (9th Cir. 2004).  
19 In federal diversity cases, state law governs whether a party is entitled to prejudgment interest. *In*  
20 *re Exxon Valdez*, 484 F.3d 1098, 1101 (9th Cir. 2007).

21 Under California law, the fact finder has discretion to award prejudgment interest "[i]n  
22 any action for the breach of an obligation not arising from contract," Cal. Civ. Code § 3288,  
23 including a breach of a fiduciary duty, *Michaelson v. Hamada*, 29 Cal. App. 4th 1566, 1586  
24 (1994). "The primary purpose of an award of prejudgment interest is to compensate the plaintiff  
25 for the loss of use of money during the period before the entry of judgment, in order to make the  
26 plaintiff whole." *Bullock v. Philip Morris USA, Inc.*, 198 Cal. App. 4th 543, 573 (2011). "[A]  
27 party may recover prejudgment interest on an amount awarded as damages from the date the  
28 amount was both (1) due and owing and (2) certain or capable of being made certain by

1 calculation.” *Id.* Damages are certain where the defendant “actually know[s] the amount owed or  
2 from reasonable available information could [] have computed that amount. Only if one of those  
3 two conditions is met should the court award prejudgment interest.” *Chesapeake Indus., Inc. v.*  
4 *Togova Enters., Inc.*, 149 Cal. App. 3d 901, 907 (1983). Unless a statute governing the type of  
5 claim specifies otherwise, prejudgment interest is to be awarded at a rate of 7 percent. *Michelson*,  
6 29 Cal. App. 4th at 1585.

7 Here, prejudgment interest is appropriate as Gogineni’s conduct deprived plaintiff of the  
8 use of the money he was owed at the time of each distribution. Moreover, Gogineni would have  
9 known the amount he owed plaintiff at the time of each profit distribution, as each party was  
10 entitled to equal distributions. Thus, on the date of each distribution, the amount owed would be  
11 certain. However, calculating prejudgment interest is complicated by the fact that there were  
12 numerous distributions over the course of several years. Plaintiff acknowledges this much, and  
13 offers to remove the burden by proposing that interest be calculated from the date Gogineni made  
14 the last profit distribution. ECF No. 159-1 at 6.

15 Plaintiff’s proposal is more than reasonable and is adopted. The evidence presented at  
16 trial shows that the last distribution was made on October 13, 2006. *See* ECF No. 149 (Ex. 38a).  
17 Accordingly, plaintiff is entitled to prejudgment interest at a rate of 7 percent from that date. *See*  
18 *Lund v. Albrecht*, 936 F.2d 459, 464-65 (9th Cir 1991) (finding that under California law,  
19 prejudgment interest rate of 7 percent applied to breach of fiduciary duty claim as there is no  
20 relevant legislative act specifying a different rate). Moreover, the interest will be compounded as  
21 plaintiff’s damages are predicated on Gogineni’s breach of his fiduciary duty. *See Michelson*, 29  
22 Cal. App. 4th at 1586 (finding that “an award of compound interest *is appropriate*” where the  
23 jury found that the defendant breached his fiduciary duty owed to the plaintiff) (emphasis in  
24 original); *Hardisty v. Moore*, 2015 WL 6393884, at \*15 (S.D. Cal. Oct. 22, 2015) (under  
25 California law, compound interest is generally “awarded only if the defendants owed a fiduciary  
26 duty to the plaintiff.”).

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1 Based on \$1,041,110.58 in damages, plaintiff is entitled to \$1,145,809.32 in compound  
2 interest from October 13, 2016 through the date of this order and entry of an amended judgment,  
3 for a total award of \$2,186,919.90.<sup>4</sup>

4 C. Punitive Damages

5 Plaintiff next argues that the court erred by failing to address in its findings of fact his  
6 request for punitive damages. ECF No. 15-1 at 6.

7 California Civil Code § 3294(a) provides, in relevant part:

8 In an action for the breach of an obligation not arising from  
9 contract, where it is proven by clear and convincing evidence that  
10 the defendant has been guilty of oppression, fraud, or malice, the  
plaintiff, in addition to the actual damages, may recover damages  
for the sake of example and by way of punishing the defendant.

11 “[A] breach of fiduciary duty alone without malice, fraud or oppression does not permit an award  
12 of punitive damages. The wrongdoer must act with the intent to vex, injure, or annoy, or with a  
13 conscious disregard of the plaintiff’s rights.” *Lackner v. North*, 135 Cal. App. 4th 1188, 1210  
14 (2006). “Under California law, a punitive damages award must be based on three factors: (1) the  
15 reprehensibility of the defendant’s conduct; (2) the amount of compensatory damages awarded to  
16 or actual harm suffered by the plaintiff; and (3) the defendant’s financial condition.” *Behr v.*  
17 *Redmond*, 193 Cal. App. 4th 517, 535 (2011); *see also State Farm Mut. Auto Ins. Co. v.*  
18 *Compbell*, 538 U.S. 408, 418 (2003).

19 Although plaintiff requested punitive damages in his trial brief (ECF No. 139 at 30), at  
20 trial he did not advance any arguments in support of that request, nor did he submit evidence  
21 sufficient to support punitive damages. Notably, plaintiff did not present any evidence regarding  
22 Gogineni’s financial condition.

23 As observed by the California Supreme Court, “the quintessence of punitive damages is to  
24 deter future misconduct by the defendant,” and therefore “the most important question is whether  
25 the amount of the punitive damages award will have deterrent effect—without being excessive.”

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27 <sup>4</sup> Compound interest was calculated using the following formula: Total Amount = P(1 +  
28 R)N. In this equation, “P” stands for principal amount (\$1,041,110.58 ), “R” stands for the rate  
(7%), and “N” is the number of years (4004 days/365).

1 *Adams v. Murakami*, 54 Cal.3d 105, 110 (1991). Thus, “an award of punitive damages cannot be  
2 sustained . . . unless the trial record contains meaningful evidence of the defendant’s financial  
3 condition.” *Baxter v. Peterson*, 150 Cal. App. 4th 673, 680 (2007) (quoting *Adams v. Murakami*,  
4 54 Cal.3d 105, 109 (1991)); *see also Sleep Concepts Therapy, LLC v. Evans*, 2016 WL 1179099,  
5 at \* 10 (Cal. App. Mar. 25, 2016) (“The punitive damage award cannot be sustained also because  
6 [plaintiff] presented no meaningful evidence of appellants’ financial condition.”). This is because  
7 “the function of deterrence . . . will not be served if the wealth of the defendant allows him to  
8 absorb the award with little or no discomfort. By the same token, of course, the function of  
9 punitive damages is not served by an award which in light of the defendant’s wealth . . . exceeds  
10 the level necessary to properly punish and deter.” *Baxter*, 150 Cal. App. 4th at 680.

11 Plaintiff contends, however, that he presented evidence of defendant’s wealth by  
12 submitting “checks, answers to interrogatories, and requests for admissions showing how much  
13 money defendant Gogineni received from Cosmic.” ECF No. 159-1 at 7. He argues that from the  
14 evidence submitted at trial “the court can conclude Gogineni’s current wealth to be well beyond  
15 double the \$1,041,110.58” he is entitled to receive as compensatory damages.

16 The evidence plaintiff now relies upon only concerns the money Gogineni  
17 misappropriated from Cosmic, and does not provide any indication as to his overall financial  
18 condition. Consequently, this evidence does not allow the court to fashion an award of punitive  
19 damages that would serve as a deterrent without being excessive. *See Adams*, 54 Cal.3d at 110.  
20 Accordingly, plaintiff has failed to demonstrate a manifest error based on the absence of an award  
21 of punitive damages.

22 D. Fraudulent Concealment and Negligent Misrepresentation Claims

23 Lastly, plaintiff argues that the court erred in finding that he failed to establish his  
24 entitlement to relief on his fraudulent concealment and negligent misrepresentation claim. ECF  
25 No. 159-1 at 6.

26 To succeed on his fraudulent concealment claim, plaintiff was required to prove that (1)  
27 defendant concealed or suppressed a material fact, (2) that he was under a duty to disclose the fact  
28 to plaintiff, (3) defendant intentionally concealed or suppressed the fact with the intent to defraud,

1 (4) plaintiff was unaware of the fact and would not have acted as he did if he had known of the  
2 concealed or suppressed fact, and (5) plaintiff sustained damages as a result of the concealment or  
3 suppression of the fact. *Levine v. Blue Shield of Cal.*, 189 Cal. App. 4th 1117, 1126-1127 (2010).

4 For his negligent misrepresentation claim, plaintiff was required to demonstrate (1) the  
5 defendant made a false representation as to a past or existing material fact; (2) the defendant had  
6 no reasonable ground for believing the representation was true; (3) in making the representation,  
7 the defendant intended to deceive the plaintiff; (4) the plaintiff justifiably relied on the  
8 representation; and (5) the plaintiff suffered resulting damages. *West v. JPMorgan Chase Bank,*  
9 *N.A.*, 514 Cal. App. 4th 780, 792 (2013).

10 In its findings of fact and conclusions of law, the court found that both claims failed for  
11 failure to establish justifiable reliance. Specifically, the court observed:

12 [P]laintiff failed to submit evidence establishing the fourth element  
13 of fraudulent concealment—that he would have acted in a different  
14 manner had he known of the improper distributions of Cosmic  
15 funds. Stated differently, plaintiff has failed to establish that  
16 Gogineni’s concealment resulted in justifiable reliance. “Reliance  
17 can be proven in a fraudulent omission case by establishing that had  
18 the omitted information been disclosed, the plaintiff would have  
19 been aware of it and acted differently.” *Boschma v. Home Loan*  
*Center, Inc.*, 198 Cal. App. 4th 230, 250-251 (2011). Gogineni’s  
concealment of his misappropriation of funds did not cause plaintiff  
to act in a manner different from how he would have acted had he  
known of Gogineni’s conduct. Rather, Gogineni’s concealments  
merely served to cover up his wrongful conduct, not to induce any  
action by plaintiff.

20 ECF No. 152 at 7-8. As for plaintiff’s negligent misrepresentation claim, the court found that  
21 plaintiff had failed to demonstrate that Gogineni induced plaintiff to act in a manner different than  
22 he would have. *Id.* at 8.

23 Plaintiff asserts that the court erred in finding that the evidence did not establish justifiable  
24 reliance. He now argues that Gogineni’s suppression of the fact that he was misappropriating  
25 Cosmic’s funds for his own benefits induced plaintiff to refrain from acting. Thus, plaintiff  
26 contends that Gogineni’s conduct induced plaintiff to “not to bring suit for his fair share of

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1 Cosmic’s profits for several years.”<sup>5</sup> ECF No. 159-1 at 10. He further argues that his  
2 “forbearance in filing suit for his fair share of Cosmic’s profit can be seen on the face of the  
3 complaint which shows this action was not filed until December 27, 2011 – 5 years after the last  
4 profit distribution was made to Gogineni.” *Id.*

5 Plaintiff essentially argues that the timing of the instant suit constitutes evidence  
6 demonstrating that misrepresentations and concealments by Gogineni were intended to prevent  
7 plaintiff from acting in a certain manner. Plaintiff, however, did not advance this argument at  
8 trial, nor did he submit any evidence in support of it. Accordingly, he fails to demonstrate any  
9 error warranting relief under Rule 59(e). *See Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d  
10 877, 890 (9th Cir 2000) (“A Rule 59(e) motion may *not* be used to raise arguments or present  
11 evidence for the first time when they could have reasonably been raised earlier in the litigations.”)  
12 (emphasis in original).

13 IV Conclusion

14 Accordingly, it is hereby ORDERED that:

15 1. Plaintiff’s motion to alter or amend the judgment pursuant to Rule 59(e) (ECF No.  
16 159) is granted in part and denied in part as follows:

17 a. The motion is granted as to plaintiff’s requests to correct the amount of  
18 damages sustained and to award compounding interest, resulting in a total award of  
19 \$2,186,919.90; and

20 b. The motion is denied in all other respects.

21 2. Plaintiff’s motion for a new trial (ECF No. 160) is deemed withdrawn and the Clerk is  
22 directed to terminate the motion.

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27 <sup>5</sup> The suggestion that plaintiff chose to forebear bringing the lawsuit at an earlier time is  
28 difficult to reconcile with the evidence that plaintiff was not aware at that time there was any  
reason to bring an action.

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3. The Clerk is directed to enter an amended judgment in plaintiff's favor on his breach of fiduciary duty claim.

DATED: September 27, 2017.



EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE