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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

TIMOTHY P. DEMARTINI, et al.,  
Plaintiffs,  
v.  
MICHAEL J. DEMARTINI, et al.,  
Defendants.

No. 2:14-cv-2722-JAM-CKD

**ORDER DENYING DEFENDANTS' MOTION  
FOR JUDGMENT AS A MATTER OF LAW  
OR NEW TRIAL**

This family dispute is back before the Court on Defendants' (Michael J. DeMartini and Renate DeMartini) renewed motion for judgment as a matter of law. Alternatively, Defendants seek a new trial or an amended judgment.<sup>1</sup> Defendants' motion is DENIED.

I. PROCEDURAL BACKGROUND

After several years of litigation, this case went to trial before a jury on Plaintiffs' (Timothy P. DeMartini and Margie DeMartini) breach of contract claim. ECF Nos. 328 & 332. Before

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<sup>1</sup> This motion was determined to be suitable for decision without oral argument. E.D. Cal. L.R. 230(g). The hearing was scheduled for July 10, 2018.

1 the Court submitted the case to the jury, Defendants moved for  
2 judgment as a matter of law. ECF No. 333. The Court denied the  
3 motion. Trial Transcript ("Transcript"), ECF Nos. 342-344, at  
4 181:18-21. The jury returned a verdict for Plaintiffs and  
5 awarded damages of \$68,606.25 on the breach of contract claim.  
6 Jury Verdict, ECF No. 335.

7 Following the jury trial, the Court held a bench trial on  
8 Plaintiffs' partition claim. ECF No. 336. As to the partition  
9 claim, the Court issued an interlocutory judgment ordering the  
10 subject property to be partitioned in kind. Interlocutory  
11 Judgment, ECF No. 361. The terms of the partition are still  
12 under review. See Notice and Filing of Proposed Subdivision  
13 Plan, ECF No. 372.

## 14 15 II. OPINION

### 16 A. Legal Standard

17 Once a party has been fully heard on an issue during a jury  
18 trial, the Court may grant a motion for judgment as a matter of  
19 law if it finds that a reasonable jury would not have a legally  
20 sufficient evidentiary basis to find for the party on that issue.  
21 Fed. R. Civ. P. 50(a)(1). Such motion must specify the judgment  
22 sought and the law and facts that entitle the movant to the  
23 judgment. Fed. R. Civ. P. 50(a)(2). If the Court does not grant  
24 the motion during trial, "the movant may file a renewed motion  
25 for judgment as a matter of law and may include an alternative or  
26 joint request for a new trial under Rule 59." Fed. R. Civ. P.  
27 50(b). "In ruling on the renewed motion, the [C]ourt may:  
28 (1) allow judgment on the verdict, if the jury returned a

1 verdict; (2) order a new trial; or (3) direct the entry of  
2 judgment as a matter of law.” Id.

3 In deciding a Rule 50(b) motion, the Court is bound to  
4 uphold the jury’s verdict if that verdict is supported by  
5 substantial evidence. Johnson v. Paradise Valley Unified Sch.  
6 Dist., 251 F.3d 1222, 1227 (9th Cir. 2001). “Substantial  
7 evidence is evidence adequate to support the jury’s conclusion,  
8 even if it is also possible to draw a contrary conclusion from  
9 the same evidence.” Id. The Court “must view the evidence in  
10 the light most favorable to the nonmoving party and draw all  
11 reasonable inferences in that party’s favor.” E.E.O.C. v. Go  
12 Daddy Software, Inc., 581 F.3d 951, 961 (9th Cir. 2009) (quoting  
13 Josephs v. Pac. Bell, 443 F.3d 1050, 1062 (9th Cir.2006)). “The  
14 test applied is whether the evidence permits only one reasonable  
15 conclusion, and that conclusion is contrary to the jury’s  
16 verdict.” Id. A motion under Rule 50(b) is necessarily limited  
17 to the grounds asserted in the Rule 50(a) motion. Id.

18 A party may request a new trial or move to alter or amend a  
19 judgment under Federal Rule of Civil Procedure 59. Under Rule  
20 59(a), the Court “may grant a new trial only if the verdict is  
21 contrary to the clear weight of the evidence, is based upon false  
22 or perjurious evidence, or to prevent a miscarriage of justice.”  
23 Passantino v. Johnson & Johnson Consumer Prod., Inc., 212 F.3d  
24 493, 510 n.15 (9th Cir. 2000). For a motion brought  
25 under Rule 59(e), the Court may reconsider “matters properly  
26 encompassed in a decision on the merits.” United States ex rel.  
27 Hoggett v. Univ. of Phoenix, 863 F.3d 1105, 1108 (9th Cir. 2017)  
28 (citation omitted). “To alter or amend the judgment requires a

1 substantive change of mind by the court.” Id. (citation and  
2 quotation marks omitted). A district court should not grant a  
3 Rule 59(e) motion unless the court “is presented with newly  
4 discovered evidence, committed clear error, or if there is an  
5 intervening change in the controlling law.” McDowell v.  
6 Calderon, 197 F.3d 1253, 1255 (9th Cir. 1999) (citation omitted).

7 B. Analysis

8 1. Motion for Judgment as a Matter of Law

9 Defendants argue they are entitled to judgment as a matter  
10 of law because there was no evidence of a contract between the  
11 parties that required Defendants to pay Plaintiffs any money and  
12 because there was no evidence of a breach of the alleged  
13 contract. Mot. at 4-7. They also argue that the waiver  
14 provision of the written contract the parties entered with West  
15 America bank establishes that Plaintiffs waived their claim  
16 against Defendants. Mot. at 7-8. Defendants raised these  
17 arguments in their Rule 50(a) motion and the Court may therefore  
18 consider them. Defendants arguments concerning the verdict form  
19 and mitigation evidence were not addressed in the Rule 50(a)  
20 motion and thus fall outside the scope of arguments the Court may  
21 consider under Rule 50(b).

22 Despite Defendants’ attempts to marshal evidence in their  
23 favor, the record contains sufficient evidence to support the  
24 jury’s verdict. First, there was evidence of an agreement  
25 between the parties to share in the encumbrance of the loan and  
26 each pay back their share. Transcript 93:2-10, 93:22-94:8,  
27 172:22-173:1. There was also evidence that Defendants breached  
28 this agreement by failing to reimburse Plaintiffs for repaying

1 the loan. Transcript 102:5-8, 174:4-6.

2 Next, although the written contract with West America bank  
3 contained a waiver provision, see Defendants' Trial Exhibit M,  
4 Defendants did not prove, as a matter of law, that Plaintiffs  
5 freely and knowingly gave up their right to have Defendants  
6 perform on this obligation. It was Defendants' burden to prove  
7 by clear and convincing evidence that Plaintiffs knowingly gave  
8 up their right to pursue relief against Defendants. See Opp'n at  
9 5; Transcript at 229:10-25. Although a jury could have inferred  
10 such knowing waiver from the language of the West America  
11 contract, there was little additional evidence showing  
12 Plaintiffs' subjective intention to waive their claim. See  
13 Transcript at 107:1-3. Thus, a jury could have reasonably  
14 concluded that Defendants failed to meet their burden. As the  
15 Court explained in denying each of the parties' motions for  
16 favorable adjudication on this issue, a reasonable jury reviewing  
17 the evidence could find in favor of either party on the waiver  
18 defense. Transcript at 221:2-223:6. Accordingly, Defendants'  
19 Rule 50(b) motion is denied.

20 2. Motion for New Trial or to Amend the Judgment

21 Defendants argue they are entitled to relief under Federal  
22 Rule of Civil Procedure 59 because the Court gave an improper  
23 jury instruction on the verdict form and because the Court  
24 excluded relevant evidence. Neither of these grounds justify  
25 granting the Rule 59 motion.

26 First, the Court finds Defendants are not entitled to relief  
27 based on their disagreement with the verdict form. Defendants  
28 did not object to the verdict form or the jury instructions when

1 the Court gave them the opportunity to do so at trial.  
2 Transcript 190:15-192:12. Defendants may not belatedly raise  
3 their objection in this motion. Fed. R. Civ. P. 51; Ayuyu v.  
4 Tagabuel, 284 F.3d 1023, 1026 (9th Cir. 2002) ("We hold that Rule  
5 51 includes objections to the form of the verdict as well as to  
6 any instructions about the use by the jury of the form. Because  
7 no objections to the instructions are found in the record, they  
8 are deemed waived.") (discussing waiver on appeal); see Jones v.  
9 Hollenback, No. CV-F-05-148 OWW/DLB, 2007 WL 3335012, at \*7-8  
10 (E.D. Cal. Nov. 9, 2007) (applying waiver rule to a plaintiff's  
11 motion for new trial). Defendants' motion, on this basis, is  
12 denied.

13 The Court also is not persuaded that the exclusion of  
14 purportedly relevant evidence suffices to warrant a new trial or  
15 amendment. The problems with Defendants' attempt to introduce  
16 mitigation evidence were discussed at trial. Transcript at  
17 136:11-146:10. Although Defendants raised mitigation as an  
18 affirmative defense, see Second Amended Answer, ECF No. 104, it  
19 became clear in the course of trial that Defendants' mitigation  
20 evidence pertained to a full accounting of the financial  
21 relationship between the parties, not to Plaintiffs' failure to  
22 mitigate damages related to the breach of contract in this  
23 matter.<sup>2</sup> Transcript at 136:11-146:10, 182:22-183:2. No claim  
24 for accounting was pled, nor was such an accounting contemplated  
25 in the pretrial filings. See Defendants' Trial Brief, ECF No.

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26 <sup>2</sup> Plaintiffs argue the Court's Pretrial Order supersedes the  
27 pleadings, but the Pretrial Order states that "[n]one of  
28 Defendants' affirmative defenses have been abandoned." See  
Pretrial Conference Order, ECF No. 284, at 5.

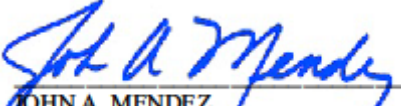
1 316, at 25 (only briefing the defense of "waiver"). The  
2 admission of this alleged mitigation evidence would necessarily  
3 open the door to inquiry into a number of different bank accounts  
4 and financial arrangements between the parties. Transcript  
5 145:11-18, 146:13-148:11, 194:25-195:3. The Court determined  
6 that these matters should be resolved in another suit for a full  
7 accounting of these financial matters or possibly a later stage  
8 of the partition action. Transcript at 145:11-18. The dispute  
9 to be resolved in this matter, however, was limited to breach of  
10 contract with respect to this particular loan. See Pretrial  
11 Conference Order, ECF No. 284; Pretrial Conference Transcript,  
12 ECF No. 286. Defendants' Exhibit PPPPP did not show any  
13 payments made on the loan at issue in this case, Transcript  
14 198:10-19, and Defendants did not proffer any further grounds for  
15 the Court to find the exhibit relevant to the narrow issue at  
16 hand. The Court properly limited Defendants' evidence to that  
17 concerning this particular loan and agreement. This exclusion  
18 was not clear error and did not result in manifest injustice.  
19 Therefore, Defendants' Rule 59 motion is denied.

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21 III. ORDER

22 For the reasons set forth above, the Court DENIES  
23 Defendants' Motion for Judgment as a Matter of Law, New Trial, or  
24 Amended Judgment.

25 IT IS SO ORDERED.

26 Dated: July 26, 2018

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JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE