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4 IN THE UNITED STATES DISTRICT COURT  
5 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
6

7 MOOSE RUN, LLC,  
8 Plaintiff,

9 v.

10 RENATO LIBRIC,  
11 Defendant.

Case No. 19-cv-01879-MMC

**ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT**

Re: Doc. No. 46

12  
13 Before the Court is plaintiff Moose Run, LLC's ("Moose Run") Motion for Summary  
14 Judgment, filed December 13, 2019, whereby Moose Run seeks summary judgment as  
15 to all claims alleged in its complaint against defendant Renato Libric ("Libric").<sup>1</sup> On  
16 March 11, 2020, Libric, who proceeds pro se, filed opposition, which he supplemented on  
17 March 25, 2020. On April 30, 2020, Moose Run filed its reply. Having read and  
18 considered the parties' respective written submissions, the Court rules as follows.<sup>2</sup>

19 **BACKGROUND**

20 **A. Moose Run's Complaint**

21 In its complaint, Moose Run alleges that, in July 2017, it was contacted by an  
22 investment banker "regarding an opportunity to invest in Bouxtie, Inc. ['Bouxtie']," a "start  
23 up technology company based in various locations in Silicon Valley, California," and that  
24 said banker "connected" Moose Run to Libric (see Compl. ¶¶ 7, 8); Libric, "the majority

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26 <sup>1</sup>Libric has filed a counterclaim, which pleading is not the subject of the instant  
motion.

27 <sup>2</sup>By order filed March 6, 2020, the Court advised the parties it would take the  
28 matter under submission as of the date on which Moose Run filed its reply.

1 shareholder and the Chief Executive Officer of Bouxtie," then "reached out" to Moose  
2 Run "for the purposes of seeking additional financing for Bouxtie." (See Compl. ¶¶ 2, 9.)

3           According to Moose Run, Libric, for the purpose of inducing Moose Run to invest  
4 in Bouxtie: (1) "fraudulently suggested to [Moose Run] that a large publicly traded  
5 corporation," specifically, First Data Corporation, "was interested in purchasing Bouxtie at  
6 a price of \$150 million," and, "[t]o bolster this claim," "fraudulently placed the signature of  
7 an executive with [First Data Corporation] on a forged Term Sheet" that "purported to  
8 indicate [First Data Corporation] was interested in the purchase of Bouxtie" (see Compl.  
9 ¶¶ 12, 28); (2) provided Moose Run "an August 2017 bank account statement" for  
10 Bouxtie that he had "altered" to show a "balance of \$2,175,574.87," when, "in fact, the  
11 balance in Bouxtie's account at that time was \$7,642.82" (see Compl. ¶¶ 14, 30); and  
12 (3) gave Moose Run a "forged" document titled "Corporation Resolution of Bouxtie, Inc.,"  
13 in which the Board of Directors of Bouxtie purportedly agreed to allow Libric to cause  
14 Moose Run to enter into a series of agreements with Bouxtie, whereby Moose Run would  
15 lend Bouxtie the sum of "\$1,500,00 at an interest rate of 3.5% and allow for [a] Note to  
16 convert to shares equaling no less than 3.99% of [Bouxtie] at the time of conversion" (see  
17 Compl. ¶ 21, Ex. 5).

18           Moose Run alleges it thereafter invested the sum of \$1,500,000 in Bouxtie (see  
19 Compl. ¶¶ 15-16, 18), and that Libric subsequently was indicted for and convicted of  
20 "wire fraud" (see Compl. ¶¶ 33-34).

21           Based on the above allegations, Moose Run asserts seven Causes of Action,  
22 specifically, (1) a state law claim for "Fraud/False Promise," (2) a federal claim for  
23 "Racketeering" under the Racketeer Influenced and Corrupt Organizations Act ("RICO"),  
24 and five additional state law claims for, respectively, (3) "Breach of Contract," (4) "Good  
25 Faith and Fair Dealing," (5) "Conversion," (6) "Unjust Enrichment," and (7) "Fraudulent  
26 Transfers."

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1 **B. Criminal Case Against Libric<sup>3</sup>**

2 On May 10, 2018, Libric was indicted on one count of wire fraud, which count was  
3 based on the allegation that Libric engaged in a fraudulent scheme to cause, and did  
4 cause, Moose Run to engage in an "interstate wire transmission" of \$1,500,000 to  
5 Bouxtie. (See United States v. Libric, CR 18-00196, Indictment, Doc. 1, ¶¶ 10, 15.)

6 On September 5, 2018, Libric, pursuant to a Plea Agreement, pleaded guilty. In  
7 his Plea Agreement, he "agreed to pay restitution" to Moose Run "in the amount of no  
8 less than \$1,500,000. (See United States v. Libric, Plea Agreement, Doc. No. 17, at  
9 6:18-21, 23-24).

10 The Plea Agreement includes a number of admissions by Libric. In particular,  
11 Libric admitted he "knowingly devised, intended to devise, and carried out a scheme . . .  
12 to obtain money or property by means of materially false and fraudulent pretenses,  
13 representations, and promises" (see id. at 3:5-7), and that, as "part of the scheme to  
14 defraud," he engaged in the following acts: (1) he "fraudulently placed a signature on a  
15 Term Sheet that purported to indicate a large publicly-traded corporation was interested  
16 in purchasing Bouxtie at a price of \$150,000,000" and gave it to Moose Run (see id. at  
17 3:16-20), (2) he "caused a bank statement to be transmitted to . . . Moose Run, which  
18 statement purported to show that Bouxtie had over \$2,000,000 in its bank account" when,  
19 "[i]n fact," the balance was \$7642.82 (see id. at 3:21-24), and (3) he "fraudulently placed  
20 the signatures of members of Bouxtie's Board of Directors on a document entitled  
21 'Corporate Resolution of Bouxtie, Inc.'" that "purportedly authorized [him] to enter into  
22 agreements with Moose Run, under which Moose Run would lend Bouxtie \$1,500,000"

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24  
25 <sup>3</sup>The parties, in their respective written submissions in support of and in opposition  
26 to the motion, cite to and rely on several filings in United States v. Libric, CR 18-00196  
27 MMC. Under such circumstances, the Court takes judicial notice of the filings in said  
28 criminal action. See Lee v. City of Los Angeles, 250 F.3d 668, 689 (9th Cir. 2001)  
(holding "court may take judicial notice of matters of public record") (internal quotation  
and citation omitted); Minor v. FedEx Office & Print Services, Inc., 182 F. Supp. 3d 966,  
974 (N.D. Cal. 2016) (noting "[p]roper subjects of judicial notice include court documents  
in the public record").

1 (see id. at 3:25-27). Libric also admitted that, after Moose Run "receiv[ed]" the above-  
2 described "representations," Moose Run "caused a wire in the amount of \$1,500,000 to  
3 be transmitted . . . to Bouxtie's account." (See id. at 4:3-7.)

4 On December 19, 2018, the Court conducted a sentencing and restitution hearing,  
5 at which time two representatives of Moose Run appeared and made statements. At the  
6 hearing, the Court sentenced Libric to a term of thirty-six months in prison, to be followed  
7 by three years of supervised release, and, in addition, ordered Libric to pay restitution to  
8 Moose Run in the amount of \$1,520,074.<sup>4</sup> On December 21, 2018, the Clerk of Court  
9 entered judgment in accordance therewith. No appeal was filed.

10 **LEGAL STANDARD**

11 Pursuant to Rule 56 of the Federal Rules of Civil Procedure, a "court shall grant  
12 summary judgment if the movant shows that there is no genuine issue as to any material  
13 fact and that the movant is entitled to judgment as a matter of law." See Fed. R. Civ. P.  
14 56(a). Where, as here, the moving party "bears the burden of proof at trial, he must  
15 come forward with evidence which would entitle him to a directed verdict if the evidence  
16 went uncontroverted at trial." See Houghton v. South, 965 F.2d 1532, 1536 (9th Cir.  
17 1992) (internal citation and quotation omitted). Once the moving party meets his initial  
18 burden, "the burden shifts to [the non-movant] to set forth specific facts" to show a triable  
19 issue of fact exists. See id. at 1537.<sup>5</sup>

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23 <sup>4</sup>As explained by the government in its sentencing memorandum, Moose Run, in  
24 addition to transferring the sum of \$1,500,000 to Bouxtie, "incurred \$20,074 in  
reimbursable expenses." (See United States v. Libric, United States' Sentencing Mem.,  
Doc. No. 24, at 7:7-14.)

25 <sup>5</sup>Libric is a prisoner who, as noted, proceeds pro se. In conformity with the Ninth  
26 Circuit's directive that district courts must provide all pro se prisoners, including  
27 defendants, with "fair notice of the requirements of the summary judgment rule," see  
28 Securities and Exchange Commission v. Nite, 207 F.3d 1134, 1135, the Court, on  
December 17, 2019, provided Libric with such notice. (See Order Providing Def. with  
Notice of the Requirements of Rule 56.)

1 **DISCUSSION**

2 Moose Run argues that, under the doctrine of collateral estoppel and in light of the  
3 admissions made by Libric in United States v. Libric, it is entitled to judgment in its favor  
4 as to its claims.

5 The Court considers in turn the claims alleged in the complaint

6 **A. First Cause of Action: Fraud/False Promise**

7 In the First Cause of Action, Moose Run alleges Libric made knowingly false  
8 representations to Moose Run to induce it to transfer the sum of \$1,500,000 to Bouxtie,  
9 that Moose Run did transfer said amount to Bouxtie, and that it received none of the  
10 benefits promised. (See Compl. ¶¶ 11-23, 37, 46-49.) Moose Run argues each of the  
11 facts on which it bases its fraud claim was decided in United States v. Libric, and,  
12 consequently, that those determinations are conclusive in the above-titled action.

13 "Under collateral estoppel, once an issue is actually and necessarily determined  
14 by a court of competent jurisdiction, that determination is conclusive in subsequent suits  
15 based on a different cause of action involving a party to the prior litigation." Montana v.  
16 United States, 440 U.S. 147, 153 (1979). Collateral estoppel may be raised by a party in  
17 the second action who was not a party to the first action, see Parklane Hosiery Co.  
18 v. Shore, 439 U.S. 322, 324-25, 332-33 (1979) (holding defendants in private securities  
19 fraud action were collaterally estopped from denying statements made to investors were  
20 false, where fact of falsity had been established against them in earlier civil action filed by  
21 Securities and Exchange Commission), and may be based on findings made in a criminal  
22 case, see Ivers v. United States, 581 F.2d 1362, 1367 (9th Cir. 1978) (holding defendant  
23 in civil forfeiture action was collaterally estopped from denying he was unaware of law  
24 requiring him to declare currency when entering country, where he admitted to such  
25 knowledge in prior criminal action in which he pleaded guilty to willful failure to report  
26 currency when entering country).

27 Here, the issue presented is whether facts necessary to establish Moose Run's  
28 fraud claim were actually and necessarily determined in United States v. Libric.

1 To establish a fraud claim, the plaintiff must establish the following five elements:  
2 "(a) misrepresentation (false representation, concealment, or nondisclosure);  
3 (b) knowledge of falsity (or 'scienter'); (c) intent to defraud, i.e., to induce reliance;  
4 (d) justifiable reliance; and (e) resulting damage." See Lazar v. Superior Court, 12  
5 Cal.4th 631, 638 (1996). In his Plea Agreement, Libric admitted facts that establish each  
6 of those elements; specifically, he admitted (1) he made false representations to Moose  
7 Run, (2) he knew the representations were false, (3) he made the representations with  
8 the intent of defrauding Moose Run by causing it to transfer money to Bouxtie, (4) Moose  
9 Run, after receiving the false representations, "caused a wire in the amount of  
10 \$1,500,000" to be sent to Bouxtie, and (5) Moose Run incurred losses of "no less than"  
11 \$1,500,000, which losses were "caused" by Libric's "fraudulent" scheme. (See United  
12 States v. Libric, Plea Agreement, Doc. No. 17 at 3-4, 6.) Additionally, as noted, the  
13 Court, at the restitution hearing, found Moose Run was a victim entitled to restitution in an  
14 amount in excess of \$1,500,000.

15 As a judgment may not be entered on a guilty plea unless the district court  
16 "determine[s] that there is a factual basis for the plea," see Fed. R. Crim. P. 11(b)(3), the  
17 admissions by Libric that he made knowingly false representations to Moose Run, that he  
18 intended to defraud Moose, and that Moose Run used a wire to transfer funds to Bouxtie  
19 were necessary to support the conviction. See United States v. Pelisamen, 641 F.3d  
20 399, 409 (9th Cir. 2011) (holding "elements of wire fraud" are "the existence of a scheme  
21 to defraud," the "specific intent to defraud," and "the use of wire . . . to further the  
22 scheme"); Carpenter v. United States, 484 U.S. 19, 28 (1987) (holding element of use of  
23 wire satisfied where victim's use of wire was "essential part of the scheme"). Additionally,  
24 as an award of restitution requires a finding that the victim was "directly and proximately  
25 harmed as a result of the commission of [the] offense," see 18 U.S.C. § 3663A(a), Libric's  
26 admission that Moose Run was harmed by the scheme in an amount of at least  
27 \$1,500,000 was necessary to support the restitution award.

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1           Accordingly, the facts on which Moose Run bases its fraud claim having been  
2 actually and necessarily decided in United States v. Libric, the Court finds Moose Run  
3 has met its initial burden to show it is entitled to judgment on the First Cause of Action in  
4 the amount sought, \$1,500,000.

5           The Court next considers whether Libric, in his opposition, has met his burden to  
6 establish a triable issue of fact or to otherwise show a basis for finding Moose Run is not  
7 entitled to summary judgment on its fraud claim. See Houghton, 956 F.2d at 1537. In  
8 that regard, Libric, noting the judgment entered in United States v. Libric included an  
9 award of restitution to Moose Run, concludes Moose Run's request for an award of  
10 damages is "moot." (See Def.'s Opp. at 4.) Although not clearly expressed, the Court  
11 understands Libric to be arguing that where a crime victim is awarded restitution in a  
12 criminal case, the victim may not bring a civil action seeking to recover for the same loss.  
13 Libric fails, however, to cite any authority so holding, and the Court has located  
14 none. Moreover, as Moose Run points out, 18 U.S.C. § 3664 provides that the amount  
15 awarded as restitution to a victim in a criminal proceeding "shall be reduced by any  
16 amount later recovered as compensatory damages for the same loss by the victim in . . .  
17 any Federal civil proceeding" or "any State civil proceeding." See 18 U.S.C.  
18 § 3664(j)(2). If a victim who is awarded restitution would, by reason of such award, be  
19 barred from seeking to recover a civil remedy for the same loss, § 3364(j)(2) would  
20 be rendered a "nullity," a result contrary to "the rule that [a] statute[ ] should not be  
21 construed in a manner which robs specific provisions of independent effect." See In re  
22 Cervantes, 219 F.3d 955, 961 (9th Cir. 2000). Consequently, Libric has failed to  
23 establish a triable issue of fact or to otherwise show Moose Run is not entitled to  
24 summary judgment as to the fraud claim.

25           Accordingly, the Court finds Moose Run is entitled to judgment in its favor on the  
26 First Cause of Action.

27           The Court next considers whether Moose Run is entitled to the additional relief it  
28 seeks, specifically, an award of prejudgment interest.

1           Moose Run, in its moving papers, argues it is entitled to prejudgment interest  
2 "using the interest rate specified for postjudgment interest -- the one-year constant  
3 maturity Treasury yield." (See Pl.'s Mot. at 10:9-10.) In support of this argument, Moose  
4 Run cites to authority addressing the circumstances under which a plaintiff who prevails  
5 on a federal maritime claim is entitled to prejudgment interest. See Western Pacific  
6 Fisheries, Inc. v. SS President Grant, 730 F.2d 1280, 1289 (9th Cir. 1984) (holding it is  
7 "well-established that compensatory damages in maritime cases normally include pre-  
8 judgment interest"; finding award of prejudgment interest, using rate applicable to  
9 postjudgment interest, proper under circumstances presented). As Moose Run's fraud  
10 claim arises under state law, however, state law controls, see In re Exxon Valdez, 484  
11 F.3d 1098, 1101 (9th Cir. 2007) (holding, "[i]n diversity jurisdiction, state law governs all  
12 awards of prejudgment interest") (internal quotation and citation omitted), and Moose Run  
13 fails to argue in its moving papers, let alone show, it is entitled to prejudgment interest  
14 under state law.<sup>6</sup>

15           Accordingly, Moose Run has failed to show it is entitled to summary judgment on  
16 its request for an award of prejudgment interest.

17 **B. Other Causes of Action**

18           As noted, Moose Run seeks summary judgment on all of the claims asserted in its  
19 complaint. As set forth below, the Court finds Moose Run has not shown it is entitled to  
20 summary judgment on any claim other than its fraud claim.

21           At the outset, the Court notes that, under California law, an "Unjust Enrichment"  
22 claim, such as that brought here as the Sixth Cause of Action, is not actually a cause of  
23 action. See McBride v. Boughton, 123 Cal. App. 4th 379, 387 (2004) (characterizing  
24 unjust enrichment as "a general principle underlying various legal doctrines and  
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26           <sup>6</sup>In its reply, Moose Run argues it is entitled to an award of prejudgment interest  
27 under California law. As Moose Run first raised this argument in its reply, the Court has  
28 not considered it herein. See, e.g., Lentini v. California Center for the Arts, Escondido,  
370 F.3d 837, 843 n.6 (9th Cir.2004) (refusing to consider argument raised for the first  
time in reply because opposing party had no opportunity to respond).



1 remedies") (internal quotation and citation omitted). A cause of action titled "unjust  
2 enrichment," however, can be construed as a claim that the plaintiff is entitled to  
3 restitution under the theory "the defendant obtained a benefit from the plaintiff by fraud."  
4 See id. at 388. To proceed on such a construction, the plaintiff "choose[s] not to sue in  
5 tort, but instead to seek restitution on a quasi-contract theory (an election referred to at  
6 common law as waiving the tort and suing in assumpsit)." See id. Here, however,  
7 Moose Run did not "waiv[e] the tort," but, rather, chose to "sue in tort," see id., by  
8 proceeding with its fraud claim. Under such circumstances, Moose Run has not shown it  
9 is entitled to summary judgment on its "duplicative" claim for "unjust enrichment." See In  
10 re Apple and AT&T iPad Unlimited Data Plan Litig., 802 F. Supp. 2d 1070, 1077 (N.D.  
11 2011) (holding "plaintiffs cannot assert unjust enrichment claims that are merely  
12 duplicative of statutory or tort claims"; dismissing duplicative claim for unjust enrichment)  
13 (citing cases).

14 As to the remaining Causes of Action, Moose Run has not offered evidence to  
15 establish that each essential fact alleged in support of those claims was actually and  
16 necessarily determined in United States v. Libric, or that Moose Run is otherwise entitled  
17 to summary judgment. Indeed, Moose Run fails to expressly address any of those claims  
18 in its motion.

19 Accordingly, as to the Second through Seventh Causes of Action, Moose Run has  
20 not shown it is entitled to summary judgment.

### 21 CONCLUSION

22 For the reasons stated above, Moose Run's motion for summary judgment is  
23 hereby GRANTED in part and DENIED in part, as follows:

24 1. To the extent Moose Run seeks summary judgment on its First Cause of  
25 Action, the motion is GRANTED, and Moose Run is awarded damages thereon in the  
26 amount of \$1,500,000.

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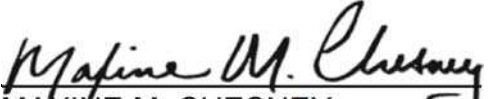
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2. In all other respects, the motion is DENIED.

**IT IS SO ORDERED.**

Dated: June 18, 2020

  
MAXINE M. CHESNEY  
United States District Judge