

United States District Court  
Northern District of California

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

PEPPER, N.A.,  
Plaintiff,  
v.  
EXPANDI, INC., NETPARTNERING  
LTD.,  
Defendants.

Case No. 15-cv-04066 NC  
**ORDER ON JURY VERDICT**

On May 19, 2016, the jury returned a verdict in this case finding defendant NetPartnering liable to plaintiff for promissory estoppel in the amount of \$700,000; common count in the amount of \$60,000; and unfair business practices in the amount of \$100,000. Dkt. No. 111. The jury also found in favor of Epanidi Inc. on all counts. After receiving the jury verdict, the Court asked the parties to submit a stipulated judgment, or to propose competing judgments to resolve the question of whether the Court should award the total sum of the damages award.

In plaintiff's additional briefing, plaintiff argues that the Court should award additional damages for unjust enrichment, an equitable claim demanded by plaintiff but not heard by the jury. Dkt. No. 113-1. Plaintiff also argues that the jury awards are not duplicative because plaintiff sought up to \$2 million in damages, so no one award reflects the full amount of restitution to which plaintiff is entitled.

Defendant NetPartnering argues that the unfair competition and common count

1 claims are duplicative because both are restitutionary. Dkt. No. 115. NetPartnering also  
2 argues that plaintiff waived its right to proceed on the unjust enrichment claim by failing to  
3 object to the Court’s jury instructions and failing to request a finding on the unjust  
4 enrichment count. Dkt. No. 115 at 4. Finally, NetPartnering challenges the sufficiency of  
5 the evidence in the record for the jury to have found liability and damages on all counts.

6 The Court addresses (1) the effect of the jury’s verdict; (2) plaintiff’s unjust  
7 enrichment claim; (3) whether the damages awards are duplicative; and (4) the Court’s  
8 conclusion as to the judgment.

9 First, although no party has objected to presenting equitable claims to a jury, the  
10 Court notes that it is entitled under Federal Rule of Civil Procedure 39(c)(2) to “try any  
11 issue by a jury whose verdict has the same effect as if a jury trial had been a matter of  
12 right.” “If one party demands a jury, the other parties do not object, and the court orders  
13 trial to a jury, this will be regarded as a jury trial by consent.” 9 Fed. Prac. & Proc. Civ. §  
14 2333 (3d ed.). Here, although claims of promissory estoppel and unfair business practices  
15 do not have a right to a jury trial, neither party objected to presenting all claims to the jury.  
16 *See e.g., Tomlinson Black N. Idaho v. Kirk-Hughes*, 361 F. App’x 712, 713 (9th Cir.  
17 2009)(“The district court also did not err by submitting the issue of unjust enrichment to a  
18 jury.”).

19 Second, the Court agrees with NetPartnering that plaintiff waived its right to  
20 proceed on its unjust enrichment claim by failing to seek a jury instruction and jury  
21 determination of unjust enrichment on the verdict form. Additionally, plaintiff admits that  
22 unjust enrichment is a quasi-contract claim seeking restitution. Dkt. No. 113-1 at 2 (citing  
23 *Cal. Fed. Bank v. Matreyek*, 8 Cal. App. 4th 125, 132 (1992)). The jury was instructed on  
24 restitution and was also instruction on two other quasi-contract claims: promissory  
25 estoppel and common count. Thus, the Court does not find an additional award under the  
26 theory of unjust enrichment to be appropriate.

27 Third, NetPartnering is mistaken as to the basis for the jury’s finding on the unfair  
28 business practices act claim. The Court instructed the jury that the claim could be based

1 on NetPartnering’s breach of fiduciary duty and/or NetPartnering’s fraudulent activity.  
2 Dkt. No. 107 at 8-9. The jury did not find NetPartnering liable for a breach of fiduciary  
3 duty. Instead, the jury found NetPartnering liable under a theory of fraudulent business  
4 practices. Thus, the Court finds that the unfair business practices award has a basis for  
5 damages separate from the quasi-contract claims. Additionally, no party has presented any  
6 persuasive case law to suggest that the promissory estoppel, common count, and unfair  
7 business practices act awards are duplicative as a matter of law. Therefore, the Court  
8 concludes that they are all remedies available to the plaintiff and that adding the awards  
9 together is appropriate.

10 Finally, the Court agrees with plaintiff that the jury awards may be added together  
11 to reach a final verdict against NetPartnering in the amount of \$860,000. NetPartnering  
12 raises a number of concerns about the evidentiary basis for the jury’s determination of  
13 liability and damages. The Court finds these arguments are more appropriate for post-trial  
14 briefing brought under Rules 59 and 60.

15 The Court will therefore issue a judgment in a separate document detailing a total  
16 damages award against NetPartnering in the amount of \$860,000.

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19 **IT IS SO ORDERED.**

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21 Dated: May 31, 2016

  
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NATHANAEL M. COUSINS  
United States Magistrate Judge