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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

IBLC Abogados, S.C.,
Plaintiff,

v.

PHILIP BRACAMONTE, as Trustee
of the BRACAMONTE FAMILY
TRUST: and DOES 1-25, inclusive,

Defendants.

Civil Action No. 11-cv-2380-GPC-KSC

ORDER

**(1) GRANTING DEFENDANT’S
PARTIAL MOTION FOR
SUMMARY JUDGMENT**

**(2) DENYING PLAINTIFF’S
MOTION FOR PARTIAL
SUMMARY JUDGMENT**

[DKT. NO. 41, 51]

1 Before the Court are cross motions for partial summary judgment. (Dkt.
2 Nos. 41, 51.) For the reasons stated below, the Court **GRANTS** Defendant Philip
3 Bracamonte’s motion for partial summary judgment. (Dkt. No. 41.) The Court
4 **DENIES** Plaintiff IBLC’s motion for partial summary judgment. (Dkt. No. 51.)

5 **I. PROCEDURAL BACKGROUND**

6 On October 13, 2011, Plaintiff IBLC Abogados, S.C. (“Plaintiff” or
7 “IBLC”) filed this breach of contract claim against Defendants Philip Bracamonte
8 (“Bracamonte”), Bracamonte Family Trust, (collectively referred to as
9 “Defendants”) and DOES 1-25 for failure to pay attorney fees. (Dkt. No. 1.) On
10 November 3, 2011, Defendants filed an answer to the complaint and a third party
11 complaint for legal malpractice, fraud, and negligent misrepresentation against
12 Plaintiff IBLC Abogados and Counter-Defendant Alfredo Andere-Mendiola
13 (“Andere”). (Dkt. No. 3.) Defendants and Counter-Claimants also seek an action
14 for setoff in the event of a negative judgment and request an accounting of certain
15 property in Mexico allegedly held by Plaintiff and Counter-Defendant IBLC and
16 Counter-Defendant Andere. (*Id.*) On March 27, 2012, IBLC filed a first amended
17 complaint. (Dkt. No. 20.) On May 25, 2012, the Court provided a tentative ruling
18 denying Defendants’ motion to dismiss pursuant to the forum non conveniens
19 doctrine. (Dkt. No. 33.) On May 29, 2012, the Court by minute order affirmed the
20 tentative ruling, holding that California was the appropriate legal forum. (Dkt. No.
21 34.) On October 9, 2012, this case was transferred to the undersigned judge. (Dkt.
22 No. 37.)

23 On March 18, 2012, Defendant Bracamonte, as Trustee of the Bracamonte
24 Family Trust, filed a motion for partial summary judgment seeking a
25 determination that the law of the state of California applies to Plaintiff’s breach of
26 contract claim, and a finding that the two year statute of limitations applicable to
27 oral agreements under California law bars Plaintiff’s claims for breaches

1 occurring more than two years before the filing of the complaint and therefore
2 limits Plaintiff's damages. (Dkt. No. 41.) Plaintiff IBLC and Counter-Defendant
3 Arreola filed an opposition. (Dkt. No. 50.)

4 On April 10, 2013, this Court granted the parties' joint motion to allow the
5 filing of cross motions for partial summary judgment "limited to a mirror image of
6 the issues presented by the pending motion for partial summary judgment." (Dkt.
7 No. 49.)

8 On May 10, 2013, Plaintiff and Counter-Defendant IBLC and Counter-
9 Defendant Andere filed a motion for partial summary judgment seeking a
10 determination that Mexican law applies to the contract at issue, and under
11 Mexican law, none of Plaintiff's claim is time-barred. (Id.) Defendant
12 Bracamonte filed an opposition. (Dkt. No. 52.)

13 **II. FACTUAL BACKGROUND**

14 The material facts relevant to the motions for partial summary judgment are
15 undisputed.¹ Plaintiff IBLC is a Mexican law firm and Counter-Defendant
16 Andere is the Principal of IBLC. (FAC ¶ 3; Dkt. No. 50-1, Undisputed Material
17 Facts, "UMF" ¶ 4.) Defendant Bracamonte is a U.S. citizen and resides in
18 Henderson, Nevada. (Dkt. No. 26, "Answer," ¶ 1.) Andere is a legal resident of
19 the United States, and has made San Diego his personal residence and domicile
20 for the last 26 years. (UMF ¶ 5.) Andere practices law in Mexico and primarily
21 administers IBLC from San Diego, California. (UMF ¶ 6.)

22 Jim Bracamonte, Defendant's father, was the founder, owner and majority
23 shareholder of Jimsair, a gasoline supply business at the Mexican Tijuana Airport.
24 (FAC ¶ 12-a.) In the early 1970's, Jim invested in a major land development
25 project in Baja California, Mexico ("Bahia Properties"). (FAC ¶ 11, 12.) The

26 ¹ See Dkt. No. 42, Joint Motion for Entry of Order Allowing Cross Motions for Partial
27 Summary Judgment. "The parties agree that these issues can be determined as a matter of law
based on undisputed facts."

1 investment faced complicated personal and legal challenges resulting in a long
2 litigation battle for rightful title to the Bahia Properties. (Id.) A portion of these
3 legal challenges resulted in difficulties between Jim and his Mexican business
4 partner, Evangelina Agundez Castro (“Vitta”). (Id.) Ultimately, the development
5 was not completed due to potential liability on behalf of Bahia Property partners
6 and the Mexican government’s potential liability under NAFTA regulations. (FAC
7 ¶ 11.) In 2001, Jim fell fatally ill and he died in 2004. (FAC ¶ 12-x.) During this
8 period, Vitta and her family took over management and control over the Bahia
9 Properties. (Id.)

10 Although the exact start date of the client relationship between IBLC and
11 Mr. Bracamonte is unclear, the parties agree that sometime in 2004, Mr.
12 Bracamonte communicated with IBLC for the purposes of providing legal services
13 related to his father’s Mexican property and business investments. According to
14 IBLC, pursuant to a Mexican will left by Jim, Defendant Bracamonte had interest
15 in all of his father’s properties. (FAC ¶ 13-c.) As such, IBLC’s representation of
16 Mr. Bracamonte arose out of the IBLC’s prior and continuing representation of
17 Jimsair, and began in 2004 when Mr. Bracamonte asked Mr. Andere and IBLC
18 employees to look into the status of the Bahia Properties. (FAC ¶ 15, 16, 17.)
19 Although Defendant disputes this characterization, Mr. Bracamonte admits
20 Jimsair paid for IBLC’s legal services until 2008 and thereafter the Bracamonte
21 Family Trust paid the fees. (Answer ¶ 13.) The attorney-client relationship
22 continued until sometime in 2011.

23 Andere directed all of IBLC’s work on Bracamonte’s case from 2004 to the
24 present. (UMF ¶ 7.) Andere’s work included personally reviewing all the
25 billings, fees, and costs of IBLC in this matter, and discussing them frequently
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1 with Bracamonte, his family, and other representatives of Jimsair.² (UMF ¶ 8.)
2 The vast majority if not all of IBLC's communications with Bracamonte were sent
3 via email and/or hand delivered to Bracamonte in San Diego, and all are in
4 English. (UMF ¶ 9.) Most of the meetings between Andere and Bracamonte and
5 other members of the Bracamonte Trust Family occurred in San Diego. (UMF ¶
6 10.)

7 IBLC seeks to enforce an oral agreement to pay attorney fees and costs
8 incurred by Bracamonte. (FAC ¶ 2; UMF ¶ 1.) The agreement was "a verbal
9 agreement with the client [Bracamonte], which was demonstrated by the billings
10 and payments for years." (UMF ¶ 16.) The agreement was formed in San Diego,
11 California. (UMF ¶ 2.) The place of performance of Defendant's obligation is
12 California. (UMF ¶ 3.) IBLC contends the terms of its agreement with
13 Bracamonte required him to pay IBLC its hourly fees and actual expenses
14 incurred on the Bahia properties matter within 30 days of their being billed on a
15 monthly basis. (UMF ¶ 15.) IBLC alleges Bracamonte owes \$109, 529.23 in
16 regular fees incurred from bills sent between September 24, 2008 and August 30,
17 2011. (UMF ¶ 17.) The bills sent to Bracamonte within 30 days of October 12,
18 2009 were the bills covering the periods September 2009 and later. (UMF ¶ 18.)
19 IBLC alleges \$72,822.55 is owed but unpaid on invoices sent to Bracamonte from
20 November 18, 2009 to the present. (UMF ¶ 19.) IBLC is seeking to collect
21 \$136,087.38 in "deferred" billings, or "previous amounts owed to IBLC from Feb.
22 2004 to May 2010." (UMF ¶ 20.)

23 Under the terms of the legal services agreement between the parties, IBLC
24 agreed to provide temporary discounts to Jimsair per Bracamonte's request, which

25 ² Jimsair was founded by Defendant's father, the deceased Jim Bracamonte. (FAC ¶ 12.a.)
26 Jimsair was a gasoline supply business, flying school, and executive airplane charter service
27 located at the airport in Tijuana, Mexico. (*Id.*) Jim Bracamonte died in 2004, and left California
28 and Mexican wills. (Answer ¶ 13.a.) The sale of Jimsair closed on July 18, 2008.(Undisputed
Material Facts ¶ 22.)

1 discounts would be paid by Jimsair, plus a bonus of ten percent of the value of the
2 Mexican case at its conclusion, or upon the renewal of an airport agreement. (Id.)
3 Later on, the agreement was changed in a number of ways, including a
4 requirement that the discounts were to be paid within 6 months to 1 year from the
5 sale of Jimsair. (Id.)

6 **A. Terms of the Agreement**

7 The terms of the contract between the parties are undisputed. Mr. Andere,
8 IBLC's principal, had a close, personal, friendly relationship with Mr.
9 Bracamonte. (UMF ¶ 21.) At some point, Mr. Andere and Mr. Bracamonte
10 entered into "a verbal agreement . . . which was demonstrated by the billings and
11 payments for years." (UMF ¶ 16.) The agreement was formed in San Diego,
12 California, and the place of performance of Defendant's obligation (payment for
13 services rendered) was also in California. (UMF ¶ 2, 3.) Mr. Bracamonte was
14 required to pay IBLC hourly fees and actual expenses incurred on the Bahia
15 properties matter within 30 days of their being billed on a monthly basis. (UMF ¶
16 15.)

17 Plaintiff IBLC and Counter-Defendant Mr. Andere performed attorney
18 services for Mr. Bracamonte both in San Diego and in Mexico. From 2004 to
19 2011, IBLC "conducted wide-ranging litigation in the Mexican civil, criminal and
20 administrative courts on the Bahia Properties matter" which incurred fees totaling
21 over \$2 million. (FAC ¶ 25.) This work included a review of legal documents,
22 surveying of the land and resolving border issues, identification and prosecution
23 of squatters on the land, litigation in Mexican courts to acquire full legal title over
24 the Bahia Properties, and litigation against Jim's former Mexican business partner,
25 Vitta. (FAC ¶ 20, 26-27.) All the while, Mr. Andere, a United States legal
26 resident, resided in San Diego. (UMF ¶ 5.) Although Mr. Andere exclusively
27 practices Mexican law, he primarily administers IBLC from San Diego,
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1 California. (UMF ¶ 6.) Mr. Andere directed all of IBLC’s work on Mr.
2 Bracamonte’s case and the vast majority of IBLC’s communications were sent via
3 email and/or hand delivered to Mr. Bracamonte who resided in San Diego at the
4 time. (UMF ¶ 7-9.) Most of the attorney-client meetings took place in San Diego.
5 (UMF ¶ 10.)

6 Over the course of representation, Jimsair or the Bracamonte Family Trust
7 has paid IBLC approximately \$2 million in fees for services rendered related to
8 the Mexican business and properties. (FAC ¶ 29, Answer ¶ 15.) IBLC alleges
9 Mr. Bracamonte still owes \$109, 529.23 in “regular” fees incurred from bills sent
10 between September 24, 2008 and August 30, 2011. (UMF ¶ 17.) IBLC also seeks
11 to collect \$136,087.38 in “deferred” fees incurred during periods of temporary
12 discounts provided by IBLC to Mr. Bracamonte from Feb. 2004 to May 2010.”
13 (UMF ¶ 20.)

14 **B. Temporary Discount Modification**

15 During the course of the agreement, IBLC at times agreed to provide
16 temporary discounts to Jimsair per Mr. Bracamonte's request. (UMF ¶ 20.)
17 Initially, the discounts were to be paid by Jimsair, plus a bonus of ten percent of
18 the value of the Mexican case at its conclusion, or upon the renewal a Jimsair
19 airport agreement. (Id.) Then later on, the agreement changed, with the discounts
20 to be paid within 6 months to 1 year from the sale of Jimsair. (Id.) The temporary
21 discounts were part of the statement of accounts since August 6, 2009 and have
22 not been paid by either Jimsair or Mr. Bracamonte. (Id.)

23 **III. LEGAL STANDARD**

24 Although motions for partial summary judgment are common, Rule 56 of
25 the Federal Rules of Civil Procedure, which governs summary judgment, does not
26 contain an explicit procedure entitled “partial summary judgment.” As with a
27 motion under Rule 56(c), partial summary judgment is proper “if the pleadings,
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1 depositions, answers to interrogatories, and admissions on file, together with the
2 affidavits, if any, show that there is no genuine issue as to any material fact and
3 that the moving party is entitled to judgment as a matter of law.” Fed.R.Civ.P.
4 56(c).

5 The purpose of partial summary judgment “is to isolate and dispose of
6 factually unsupported claims or defenses.” Celotex Corp. v. Catrett, 477 U.S.
7 317, 323-325 (1986). Partial summary judgment is appropriate if the “pleadings,
8 depositions, answers to interrogatories, and admissions on file, together with the
9 affidavits, if any, show that there is no genuine issue as to any material fact and
10 that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P.
11 56(c). A fact is material when it affects the outcome of the case. Anderson v.
12 Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

13 The moving party bears the initial burden of demonstrating the absence of
14 any genuine issues of material fact. Celotex Corp., 477 U.S. at 323. The moving
15 party can satisfy this burden by demonstrating that the nonmoving party failed to
16 make a showing sufficient to establish an element of his or her claim on which
17 that party will bear the burden of proof at trial. Id. at 322-23. If the moving party
18 fails to bear the initial burden, summary judgment must be denied and the court
19 need not consider the nonmoving party’s evidence. Adickes v. S.H. Kress & Co.,
20 398 U.S. 144, 159-60 (1970).

21 Once the moving party has satisfied this burden, the nonmoving party
22 cannot rest on the mere allegations or denials of his pleading, but must “go
23 beyond the pleadings and by her own affidavits, or by the ‘depositions, answers to
24 interrogatories, and admissions on file’ designate ‘specific facts showing that
25 there is a genuine issue for trial.’” Celotex, 477 U.S. at 324. If the non-moving
26 party fails to make a sufficient showing of an element of its case, the moving party
27 is entitled to judgment as a matter of law. Id. at 325. “Where the record taken as a

1 whole could not lead a rational trier of fact to find for the nonmoving party, there
2 is no ‘genuine issue for trial.’” Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,
3 475 U.S. 574, 587 (1986). In making this determination, the court must “view[]
4 the evidence in the light most favorable to the nonmoving party.” Fontana v.
5 Haskin, 262 F.3d 871, 876 (9th Cir. 2001). The Court does not engage in
6 credibility determinations, weighing of evidence, or drawing of legitimate
7 inferences from the facts; these functions are for the trier of fact. Anderson, 477
8 U.S. at 255.

9 **IV. DISCUSSION**

10 The parties seek a determination as to whether California or Mexican law
11 applies to Plaintiff’s breach of contract claim, the applicable statute of limitations
12 and available fees and costs.¹ The Court’s finding on these issues affects the
13 amount Plaintiff may be able to recover for the alleged breach of contract.

14 Defendant Bracamonte requests a determination that California law and its
15 statute of limitations applies to the contract. (Dkt. No. 41, “Def. Mtn.” at 1.) As
16 such, Bracamonte seeks a judgment that Plaintiff is barred from seeking to recover
17 any amounts that Plaintiff contends were first due more than two years before
18 filing of this action as a result of California’s two-year statute of limitations
19 applicable to oral agreements. (Id.) This judgment would allegedly limit Plaintiff
20 to seeking \$83,145.55 of the \$245,346.61 sought in the FAC. (Id.)

21 Plaintiff IBLC contends Mexican law governs the contract. (Dkt. No. 51,
22 “Pl. Mtn.” at 1.) Under Mexican law, the statute of limitations to enforce

23 ¹ The parties have not sought a determination as to whether California law applies to Mr. Bracamonte’s
24 counterclaims for legal malpractice, fraud, and negligent misrepresentation. Under California conflict of law
25 principles, the Court is obligated to conduct a separate choice-of-law analysis as to each issue presented for
26 decision. See S.A. Empresa De Viacao Aerea Rio Grandense v. Boeing Co., 641 F.2d 746 (9th Cir.1981) (“A
27 separate choice-of-law inquiry must be made with respect to each issue in a case.”); Arno v. Club Med Boutique
28 Inc., 134 F.3d 1424 (9th Cir.1998) (under California choice of law analysis, separate choice of law analysis
required as to liability issues and attorney’s fees issues in tort action). As such, the Court declines to address other
separate causes of action presently not before it.

1 contracts for legal services is two years after the services end and, accordingly, no
2 part of Plaintiff’s request for relief would be time-barred. (Pl. Mtn.at 4.)²

3 **A. Choice of Law**

4 This Court has diversity jurisdiction pursuant to 28 USC § 1332(a)(2).
5 (FAC ¶ 1.) “A federal court sitting in diversity applies the forum state's choice of
6 law rules.” Bridge Fund Capital Corp. v. Fastbucks Franchise Corp., 622 F.3d
7 996, 1002 (9th Cir. 2010) (citing Hoffman v. Citibank (S.D.), N.A., 546 F.3d
8 1078, 1082 (9th Cir.2008) (per curiam)). Therefore, the Court must apply
9 California’s choice of law rules to determine whether California or Mexican law
10 applies to the breach of contract issue. “California, as the forum, has a special
11 interest in having its own law apply. The law of the forum will be displaced only
12 if there is a compelling reason for doing so.” Kasel v. Remington Arms Co., 24
13 Cal. App. 3d 711, 731 (Ct. App. 1972). The party advocating for the application
14 of foreign law carries the burden of proof. Downing v. Abercrombie & Fitch, 265
15 F.3d 994, 1006 (9th Cir.2001) (discussing Hurtado v. Superior Court, 11 Cal.3d
16 574, 581 (Cal.1974)).

17 The Ninth Circuit has recognized differences among California courts as to
18 whether California’s choice of law rule for contracts is the “governmental
19 interest” test or the test under Cal. Civ. Code § 1646. Arno v. Club Med Inc., 22
20 F.3d 1464, 1472 (9th Cir. 1994).

21 Relying on Frontier Oil Corp. v. RLI Ins. Co., 153 Cal.App.4th 1436
22 (2007), Defendant urges the Court select Cal. Civ. Code § 1646, the statute

23 ² Plaintiff also asserts that Defendant made the judicial admission that Mexican law applies when arguing in
24 support of dismissal based on forum non conveniens. (Def. Mtn. 5-7.) The Court has the discretion to consider
25 whether pleadings and statements in briefs may constitute judicial admissions. Am. Title Ins. Co. v. Lacelaw
26 Corp., 861 F.2d 224, 227 (9th Cir. 1988). In this case, the parties made their statements and arguments regarding
27 the appropriate legal forum before a different judge. It appears both parties made statements that would be contrary
28 to their arguments here to determine the legal question on choice of law. As such, the Court declines from finding
the statements and arguments related to selection of the appropriate legal forum constitute judicial admissions that
either Mexican or California law applies.

1 governing contract interpretation, as the authoritative choice of law rule. (Def.
2 Mtn. at 3.) Under this test, Defendant argues California law applies because the
3 contract was formed in California and the place of contract performance is San
4 Diego. (Id. at 4-7.)

5 Plaintiff disagrees, and requests the Court to utilize the “governmental
6 interest” test as articulated in Reich v. Purcell, 67 Cal. 2d 551 (1967). (Pl. Mtn. at
7 7.) Under this test, Plaintiff argues Mexican law applies because the relevant law
8 of each jurisdiction differs, each jurisdiction’s interest in the application of its own
9 law shows no true conflict exists, and Mexico has a significant interest in having
10 its own law applied. (Id. at 9-11.) Plaintiff also asserts the test under Restatement
11 Section 188 leads to the choice of Mexican law. (Id. at 13.)³

12 **i. Cal. Civ. Code § 1646**

13 Cal. Civil Code § 1646 provides that “[a] contract is to be interpreted
14 according to the law and usage of the place where it is to be performed; or, if it
15 does not indicate a place of performance, according to the law and usage of the
16 place where it is made.” In Frontier Oil Corp. v. RLI Insurance, 153 Cal.App.4th
17 1436, 1442-43 (Cal. App. 2007), the California Court of Appeals concluded that
18 “notwithstanding the application of the governmental interest analysis to other
19 choice-of-law issues, Civil Code section 1646 is the choice-of-law rule that
20 determines the law governing the interpretation of a contract.”

21 “If not expressly stated, a “contract ‘indicate[s]’ a place of performance
22 within the meaning of section 1646 if the intended place of performance can be
23 gleaned from the nature of the contract and its surrounding circumstances.”

24 Frontier, 153 Cal. App. 4th at 1450. “The intended place of performance is a
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27 ³ Although the Court refrains from addressing the Section 188 arguments, the Court finds that California
28 law would also apply under this test.

1 question of contract interpretation for the court to decide, except to the extent the
2 answer may depend on the credibility of extrinsic evidence.” Id.

3 Defendant argues the agreement being sued over is not a written contract,
4 and therefore there is no express specification of a place of performance. (Def.
5 Mtn. at 4.) Defendant also asserts the undisputed facts show Defendant’s duty to
6 perform his obligation under the contract “i.e. paying for the services provided by
7 plaintiff – was to be carried out in San Diego.” (Def. Mtn at 6; FAC ¶ 1.) Plaintiff
8 responds the Court must look to the nature of the contract and surrounding
9 circumstances to determine place of performance, and these facts argue in favor of
10 finding the place of contract performance is Mexico. (Pl. Mtn. at 12.)

11 The Court agrees with Defendant. There is no evidence on the record
12 indicating an express agreement regarding the place of contract performance. As
13 such, the Court looks to the nature of the contract and surrounding circumstances.
14 Frontier, 153 Cal. App. 4th at 1450. The undisputed facts support a finding that
15 the majority of the contract performance took place in California:

16 **a. The agreement was formed in San Diego, California.**

(UMF ¶ 2.)

17 **b. Defendant’s contract performance took place in San Diego.**

18 Defendant Mr. Bracamonte was obligated to perform his contractual
19 obligation by way of payment for attorney services in San Diego.

(UMF ¶ 3; FAC ¶ 42 [“Mr. Bracamonte failed to satisfy all, or
20 substantially all, of his material duties and obligations under the
21 agreement beginning in late 2010 – i.e., his duty to pay IBLC’s
22 monthly statements on time and in full – and IBLC never excused
23 Mr. Bracamonte from such performance, and therefore Mr.
24 Bracamonte breached the agreement.”]; Def. Mtn at 6 “Mr.
25 Bracamonte will not dispute that his obligation under the contract
26 was to make payments to IBLC in San Diego County.)

27 **c. Plaintiff IBLC’s principal, Mr. Andere, is a resident of
28 California, primarily administers IBLC from California, and
negotiated the agreement in California.**

Mr. Andere is a legal
resident of the United States, and has made San Diego his personal
residence and domicile for the last 26 years. (UMF ¶ 5.) Mr. Andere

1 practices law in Mexico and primarily administers IBLC from San
2 Diego, California. (Id. ¶ 6.) Mr. Andere negotiated the terms of the
3 agreement with Mr. Bracamonte. (Id. ¶ 21.)

4 **d. Most of the communications regarding legal services rendered**
5 **in Mexico took place in San Diego, California.** Mr. Andere
6 directed all of IBLC’s work on Mr. Bracamonte’s case from 2004 to
7 the present. (Id. ¶ 7.) Mr. Andere’s work included personally
8 reviewing all the billings, fees, and costs of IBLC in this matter, and
9 discussing them frequently with Mr. Bracamonte, his family, and
10 other representatives of Jimsair. (Id. ¶ 8.) The vast majority if not all
11 of IBLC’s communications with Mr. Bracamonte were sent via email
12 and/or hand delivered to Mr. Bracamonte in San Diego, and all are in
13 English. (Id. ¶ 9.) Most of the meetings between Mr. Andere and
14 Mr. Bracamonte and other members of the Bracamonte Trust Family
15 occurred in San Diego. (Id. ¶ 10.) Defendant acknowledges that the
16 subject matter of the services provided by Plaintiff IBLC was legal
17 services relating to property in the state of Baja, Mexico. (Def. Mtn.
18 at 6.) The Court recognizes that IBLC’s performance of the contract
19 included rendering attorney services related to legal issues in Mexico.
20 (FAC ¶ 2.) However, the undisputed facts show that much of the
21 legal advice communicated to Mr. Bracamonte took place in
22 California.

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Meanwhile, the record shows that a part of the contract was to be performed
in Mexico:

a. The IBLC’s legal representation of Mr. Bracamonte and Jimsair was carried out in Mexican courts. From 2004 to 2011, IBLC “conducted a wide-ranging litigation in the Mexican civil, criminal and administrative courts on the Bahia Properties matter.” (FAC ¶ 25.) This work included surveying of the land and resolving border issues, identification and prosecution of squatters on the land, litigation in Mexican courts to acquire full legal title over the Bahia Properties, and litigation against Jim’s former Mexican business partner, Vitta. (FAC ¶ 20, 26-27.)

b. The obstacles IBLC and Mr. Andere encountered throughout legal representation occurred in Mexico. Plaintiff IBLC notes several difficulties in representing Mr. Bracamonte on the Bahia Properties matter, including challenges interacting with Jim’s former partner Vitta and her family, dealing with the local authorities and

1 residents of Bahia de los Angeles, travel distance from Tijuana to
2 Bahia (a 10 hour drive), lack of judicial authorities in Bahia de los
3 Angeles, disorganization and lack of transparency at the Public
4 Registry of Property and Commerce, and frequent threats and
5 intimidation from certain corrupt Mexican officials and interested
6 Mexican citizens. (FAC ¶ 21.)

6 Given these undisputed facts regarding the nature of the contract and the
7 surrounding circumstances, the Court concludes that the primary place of contract
8 performance is California. As such, Civil Code § 1646 requires application of
9 California law to the “interpretation” of the contract. Plaintiff argues that § 1646
10 has been supplanted by the governmental interest analysis which was developed in
11 Reich. Ultimately, the Court finds that either under § 1646 or under the
12 governmental analysis test, addressed below, California provides the applicable
13 law for the interpretation of the contract.

14 **ii. “Governmental Interest” Test**

15 The fact that § 1646 requires application of California law to govern the
16 “interpretation” of the contract does not answer the related question as to whether
17 California or Mexican law provides the applicable statute of limitations in this
18 case. As recognized in McCann v. Foster Wheeler LLC, 48 Cal. 4th 68
19 (Cal.2010), a question whether the relevant California statute of limitations or,
20 instead, another jurisdiction's statute of limitations should be applied in a
21 particular case must be determined through application of the governmental
22 interest analysis that governs choice-of-law issues generally. See also, Ashland
23 Chemical Co. v. Provence, 129 Cal.App.3d 790, 793–794 (Cal.App.1982)
24 [holding that under California law, governmental interest analysis is applicable to
25 resolve a choice-of-law issue relating to the statute of limitations]; Nelson v.
26 International Paint Co., (9th Cir.1983) 716 F.2d 640, 644 [same].)

1 In adopting the “governmental interest” test to determine choice of law, the
2 California Supreme Court stated that “in a complex situation involving multistate
3 contacts . . . no single state alone can be deemed to create exclusively governing
4 rights.” Reich, 37 Cal. 2d at 553. As such, “the forum must search to find the
5 proper law to apply based upon the interests of the litigants and the involved
6 states.” Id. Since Reich, the California Supreme Court has summarized the
7 approach as a three-step process.

8 First, the court determines whether the relevant
9 law of each of the potentially affected jurisdictions
10 with regard to the particular issue in question is the
11 same or different. Second, if there is a difference,
12 the court examines each jurisdiction’s interest in
13 the application of its own law under the
14 circumstances of the particular case to determine
15 whether a true conflict exists. Third, if the court
16 finds that there is a true conflict, it carefully
17 evaluates and compares the nature and strength of
18 the interest of each jurisdiction in the application
19 of its own law ‘to determine which state’s interest
20 would be more impaired if its policy were
21 subordinated to the politic of the other state’
22 [citation] and then ultimately applies the ‘law of
23 the state whose interest would be more impaired if
24 its law were not applied.’” Kearney v. Salomon
25 Smith Barney, Inc., 39 Cal. 4th 95, 107 (2006)

21 In Reich, the Supreme Court dealt with a complex tort case involving three
22 different states. 37 Cal. 2d at 551. The Court reversed a judgment that the law of
23 Missouri applied to limit recovery in a wrongful death action. Reich, 37 Cal. 2d at
24 553. The Court adopted the “governmental interest” test because the narrower
25 “place of the wrong” test would defeat the interests of the litigants and of the
26 states concerned.” Id. at 554. Here, there are only two possible state laws at
27 issue, and Plaintiff IBLC selected the California forum to litigate its breach of

1 contract claim. Unlike Reich, the Plaintiff here is not a California citizen, nor a
2 survivor of an automobile accident seeking to recover in a wrongful death action.
3 Rather, Plaintiff is Mexican law firm with a clear understanding of the law in both
4 Mexico and the United States.

5 **a. Mexican and California Law Differ**

6 The Court finds that Mexican and California law differ in a number of
7 important aspects. IBLC’s expert declaration of Jorge Alberto Silva-Silva,
8 undisputed by Defendant, states that there are at least six main differences
9 between California and Mexican law regarding contracts. (Dkt. No. 51-3, “Silva
10 Decl.” ¶ 10.) Those include: (i) whether contracts for legal services are required
11 to be in writing; (ii) whether the statute of limitations for enforcing the payment of
12 fees and costs under a Mexican contract for legal services is affected by it being in
13 writing or oral; (iii) when that statute of limitations commences to run; (iv) the
14 rights of the lawyer against the non-paying client, including whether the fees and
15 costs incurred by a law firm suing a client for payment are recoverable; (v) the
16 importance of the powers of attorney given by the client to the lawyer undertaking
17 legal services in Mexico; and (vi) the statute of limitations, and time for bringing
18 the action, of the counterclaims against IBLC. (Id.)

19 **b. Mexico and California have a strong interest in the**
20 **application of its own law and a true conflict exists.**

21 “If application of a foreign decisional rule will not significantly advance
22 the interests of the foreign state, a California court will conclude that the conflict
23 is ‘false’ and apply its own law. Strassberg v. New England Mut. Life Ins. Co.,
24 575 F.2d 1262, 1264 (9th Cir. 1978). The Court finds that there is a true conflict
25 between the laws of Mexico and California as to the applicable statute of
26 limitations and the availability of attorney fees and costs.
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1 Plaintiff argues there is no true conflict because only Mexico has an
2 important interest in seeing its law applied. Plaintiff asserts Mexico has a strong
3 interest because the case “arises out of years of Mexican litigation in Mexico by
4 Mexican lawyers seeking to recover unpaid fees and costs, and their litigation
5 expenses, from a client who has counterclaimed for legal malpractice and other
6 torts that purportedly transpired in Mexico.” (Pl. Mtn. at 10.) As such, Plaintiff
7 contends that Mexico “has an interest in regulating its legal [sic], having them
8 paid if they earned it, and having them compensate their client if they did not.”
9 (Dkt. No. 51-1 at 14).

10 Defendant argues Plaintiff has failed to state a significant interest for
11 Mexican law to govern and contends that California has fundamental interests in
12 enforcing its bar of one-way fee shifting in contract litigation (Cal. Civil Code §
13 1717) and applying its statute of limitations to protect parties from defending stale
14 claims. (Dkt. 52 at 13).

15 The Court finds that both California and Mexico have a significant interest
16 in enforcement of their respective laws. The subject laws demonstrate
17 fundamental differences in approach as to the amount of recovery that is available
18 in a contract action. Ultimately, California and Mexico share a fundamental
19 interest in defining the parameters of available recovery.

20 **c. The nature and strength of the interest of each**
21 **jurisdiction**

22 Under the third factor of the governmental interest analysis, the Court is
23 required to compare the nature and strength of the interest of each jurisdiction in
24 the application of its own law to determine which state’s interest would be more
25 impaired if its policy were subordinated to the politic of the other state and then
26 ultimately applies the “law of the state whose interest would be more impaired if
27 its law were not applied.” Kearney v. Salomon Smith Barney, Inc., 39 Cal. 4th at
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1 107. Undergoing this analysis results in a determination that California’s interest
2 would be more impaired if its law were not applied as to the issues of the
3 applicable statute of limitations and recoverable fees and costs.

4 The primary issue here is whether the statute of limitations will limit
5 Plaintiff’s recovery. Under California law, a two year statute of limitations
6 applies and under Mexican law IBLC’s claims dating back to 2004 are not time-
7 barred. (Silva Decl. ¶¶ 34-36; Cal. Code. Civ. Pro. § 339.) Statutes of limitation
8 are designed to protect the enacting state's residents and courts from the burdens
9 associated with the prosecution of stale cases in which memories have faded and
10 evidence has been lost. Ashland v. Provence, 129 Cal.App. 790, 794 (1982);
11 Davies v. Kransa, 14 Cal. 3d 502, 512(1975). Here, Defendant, currently a
12 resident of Nevada, is reported to have been a resident of California at the time
13 that the legal services were provided. California has a public policy interest in
14 seeing the Defendant has an opportunity to gather evidence while facts are still
15 fresh. See Davies, 14 Cal. 3d at 512. Mexico would appear to side with a
16 Plaintiff’s right to recover the entirety of a contract obligation without regard to
17 the staleness of the claim and the likely loss of evidence and testimony. Given the
18 due process concerns that are implicated by a lengthy statute of limitations, the
19 Court finds that California’s interests would be more impaired if its’ law were not
20 applied.

21 In addition, California Code § 1717 has barred the one-way fee shifting in
22 contract litigation that is otherwise available under Mexican law. Pursuant to
23 Mexican civil procedure, IBLC could recover unpaid fees under the contract in
24 addition to outside and internal attorney costs and fees incurred to bring the
25 litigation. (Silva Decl. ¶¶ 26.iii-iv, 27; see also n. 3, “a lawyer [can be]
26 compensated for fees and costs suffered during his own litigation collecting for his
27 work.”) California courts have found that §1717(a) barring one-way fee shifting

1 represents a strongly held public policy. “One-way sided attorney’s fees clauses
2 can [sic] be used as an instrument of oppression to force settlement of dubious or
3 unmeritorious claims. Section 1717 was obviously designed to remedy this evil.”
4 Ribbens International, S.A. de C.V. v. Transp. International Pool, Inc., 47 F. Supp.
5 2d 1117, 1123 (C.D. Cal. 1999) (citing Coast Bank v. Holmes, 19 Cal.App.3d
6 581, 596–97 (1971)(citation omitted); Milman v. Shukhat, 22 Cal.App.4th 538,
7 543 (1994) (“Section 1717 was enacted in 1968. It is one of several similarly
8 worded statutes which are recognized as being part of an overall legislative policy
9 designed to enable consumers and others who may be in a disadvantageous
10 bargaining position to protect their rights through the judicial process by
11 permitting recovery of attorney's fees in the event they prevail.”) (citations and
12 quotations omitted)). Thus, California’s strong interest in applying and enforcing
13 Section 1717 also weighs in favor of applying California law to this matter.

14 Finally, California has an additional significant interest in this case that
15 Mexico does not. The fact that the proceeding is taking place in California is
16 important to the choice of law issue. California has an interest in applying its own
17 law to this case. Rosenthal v. Fonda, 862 F.2d 1398, 1402 (9th Cir.1988) (citing
18 Strassberg v. New Eng. Mut. Life Ins. Co., 575 F.2d at 1264). Plaintiff, as a firm
19 of learned lawyers, had the choice of filing their action in a court in Mexico or in
20 California. Plaintiff chose the California court understanding that that action
21 would be taken into account in favor of applying California law.

22 For these reasons, the Court concludes that California has a greater interest
23 in having its laws applied to the contract actions. Consequently, California law
24 will be applied to the substantive and procedural issues related to the contract
25 causes of action.
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B. Application of California Law to Plaintiff’s Contract Claims

Having found California law applies to the instant action, the Court makes the following determination. Pursuant to Cal. Code. Civ. Pro. § 339, a two year statute of limitations applies to the oral contract between Plaintiff IBLC and Defendant Bracamonte. As Plaintiff IBLC filed this action on October 13, 2011, the operative date for two year statute of limitations is October 13, 2009. Based on the statute of limitations and the undisputed record, Plaintiff may seek recovery for the unpaid “regular” fees for the billing period beginning in September 2009. Regarding “deferred” fees, the Court shall leave the trier of fact to determine when the parties finalized the modified payment arrangement. The record indicates the temporary discount agreement was based on Mr. Andere’s best recollection, and the arrangement changed various times over the course of the agreement. Given these uncertain facts, the Court finds there is a genuine issue for trial as to when the parties finalized the temporary discount arrangement.

V. CONCLUSION

For the reasons stated above, the Court hereby **GRANTS** Defendant’s motion for partial summary judgment and **DENIES** Plaintiff’s motion for partial summary judgment. (Dkt. Nos. 41, 51.)

IT IS SO ORDERED.

DATED: July 23, 2013


HONORABLE GONZALO P. CURIEL