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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

EMBOTELLADORA ELECTROPURA
S.A. de C.V., an El Salvador corporation,

Plaintiff,

v.

ACCUTEK PACKAGING EQUIPMENT
COMPANY, INC., a California
corporation; and DOES 1 through 25,
inclusive,

Defendant.

Case No.: 3:16-cv-00724-GPC-MSB

**ORDER GRANTING DEFENDANT’S
RENEWED MOTION FOR
JUDGMENT AS A MATTER OF
LAW**

[ECF No. 158]

On February 13, 2020, Defendant Accutek Packaging Equipment Company (“Accutek”) filed a Renewed Motion for Judgment as a Matter of Law pursuant to Federal Rule of Civil Procedure 50(b). (ECF No. 158.) On March 20, 2020, Plaintiff Embotelladora Electropura (“Electropura”) filed an opposition to Accutek’s motion. (ECF No. 163.) Accutek filed a reply on March 30, 2020. ECF No. 164. Based on the parties’ papers, the applicable law, and the reasons set forth below, the Court **GRANTS** Accutek’s Renewed Motion for Judgment as a Matter of Law.

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1 **I. Background**¹

2 The parties' dispute arises out of Accutek's sale of an allegedly defective Biner
3 Ellison water bottling machine (the "Monoblock") to Electropura. Accutek is a
4 California corporation that develops and manufactures complete packaging solutions, and
5 offers a wide variety of filling machines, capping machines, labeling machines, and
6 complete packaging systems. (ECF No. 157.) Electropura is a bottled water corporation
7 in El Salvador. (*Id.*) Due to the Monoblock's alleged deficiencies and defects,
8 Electropura filed an action, alleging seven claims against Accutek. (*Id.* at 2-3.)

9 **A. Trial**

10 From October 28 to November 7, 2018, the Court conducted a seven-day trial.
11 (ECF No. 116.) On November 5, 2018, at the close of Electropura's case-in-chief and
12 prior to the jury returning a verdict, Accutek moved orally for judgment as a matter of
13 law pursuant to Federal Rule of Civil Procedure 50(a). (ECF No. 110.) The Court
14 requested that the motion be briefed in writing and deferred ruling on the motion until
15 after the jury completed its deliberation and issued its special verdicts. (*Id.*) That same
16 day, Accutek filed a written Motion for Judgment as a Matter of Law, arguing
17 Electropura's fraud claims, including its intentional misrepresentation claim, failed as a
18 matter of law and that the lack of fraud required dismissal of Electropura's unjust
19 enrichment claim. (ECF No. 111.) This written motion addressed "out of pocket" and
20 consequential damages (ECF No. 111-1 at 7-8), but did not address the issue of punitive
21 damages.

22 On November 9, 2018, the jury returned a verdict in favor of Electropura for
23 intentional misrepresentation, among others. (ECF No. 118.) After the return of the
24 verdict, Electropura, for the first time during the litigation of the case, requested current
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27 ¹ The Court assumes the parties' familiarity with the facts of this case, and includes only a summary of
28 relevant facts and procedural developments necessary to decide Accutek's Renewed Motion for
Judgment as a Matter of Law. The Court has previously recounted in full the factual and procedural
background. *See* ECF No. 157.

1 financial statements from Accutek to ascertain Accutek's current net worth to introduce
2 at the punitive damages phase for the jury's assessment of the appropriate amount of
3 punitive damages. (ECF No. 158-2 at 5-6.) Accutek argued it was not Accutek's burden
4 to produce these financial statements given that Electropura had failed to request the
5 financial statements during discovery. (*Id.* at 6.) In addition, Accutek reported that it
6 would need time to contact the corporation's president to obtain the requested financial
7 statements. (*Id.*)

8 The Court found that Electropura would have been entitled to the financial
9 statements during discovery because it had requested punitive damages in its complaint.
10 (*Id.*) However, since Electropura had failed to seek these documents, the Court
11 concluded that it would proceed with the punitive damages phase on November 9, 2018
12 and not reopen discovery or delay the proceedings. (*Id.* at 8.)

13 Before Plaintiff began presenting evidence at the punitive damages phase, the
14 parties and the Court discussed the issue of Accutek's net worth. Electropura claimed the
15 Ninth Circuit model jury instructions did not require evidence of Accutek's net worth for
16 purposes of the jury assessing punitive damages. (*Id.* at 9.) Accutek, on the other hand,
17 asserted that evidence of Accutek's net worth was required for the jury to assess punitive
18 damages. (*Id.*) The Court did not decide the issue and invited counsel to brief the issue
19 after relieving the jury. (*Id.*)

20 During the punitive damages phase of trial, Electropura asked questions of one
21 witness, Electropura's employee Orlando Perla. (ECF No. 157 at 24.) Perla
22 acknowledged he had no personal knowledge of Accutek's financial condition. (*Id.*)
23 Perla also admitted he had been told nothing about Accutek's financial strength. (*Id.*)
24 Electropura's proof about Accutek's financial condition consisted of Accutek's financial
25 wherewithal to be a company that Electropura would conduct business with. (ECF No.
26 158-2 at 17:24-18:4.) Specifically, Perla testified that he had seen Accutek at
27 international shows, including Mexico. (*Id.* at 18:2-4.) Accutek did not renew its
28 challenge to the sufficiency of evidence in the punitive damages phase or at the close of

1 the presentation of evidence during this phase. The jury awarded Electropura \$525,000
2 in punitive damages on November 9, 2018. (ECF No. 119 at 2.)

3 **B. Post-Trial**

4 On December 3, 2018, Electropura filed its opposition to Accutek's Motion for
5 Judgment as a Matter of Law. (ECF No. 126.) On December 5, 2018, Accutek filed a
6 reply. (ECF No. 129.) On December 9, 2018, Accutek filed a Motion for a New Trial.
7 (ECF No. 130.) In moving for a new trial, Accutek contended that Electropura's
8 intentional misrepresentation claim failed as a matter of law and that Electropura failed to
9 present sufficient evidence to justify the jury's punitive damages award. (*Id.*) On
10 December 26, 2018, Electropura filed an opposition to Accutek's motion for a new trial.
11 (ECF No. 134.) On January 4, 2019, Accutek filed a reply. (ECF No. 135.)

12 The Court denied Accutek's Motion for Judgment as a Matter of Law and granted
13 in part Accutek's Motion for a New Trial. (ECF Nos. 141, 157.)² Construing Accutek's
14 Motion for Judgment as a Matter of Law as a post-verdict motion for judgment as a
15 matter of law under Rule 50(b), the Court concluded that there was sufficient evidence to
16 support the jury's verdict in Electropura's favor on the intentional misrepresentation
17 claim and respective "out of pocket" and consequential damages. (ECF No. 157 at 20-
18 21.) On the same basis, the Court denied Accutek's Motion for a New Trial regarding the
19 intentional misrepresentation claim and respective "out of pocket" and consequential
20 damages. (*Id.* at 21.)

21 However, the Court further found that the jury's finding of punitive damages was
22 legally invalid under California law and should be vacated, warranting a new trial on
23 punitive damages. (*Id.*) The Court observed that California state law would have
24 permitted entry of judgment as a matter of law in favor of Accutek on a finding of
25 _____

26 ² On July 24, 2019, the Court issued an original order, denying Accutek's Motion for Judgment as a
27 Matter of Law and granting in part Accutek's Motion for a New Trial on the issue of punitive damages.
28 (ECF No. 141.) On February 13, 2020, the Court issued an amended order, again denying Accutek's
Motion for Judgment as a Matter of Law and granting in part Accutek's Motion for a New Trial on the
issue of punitive damages. (ECF No. 157.)

1 insufficient evidence to support punitive damages. (*Id.* at 25.) (citing *Baxter v. Peterson*
2 (2007) 150 Cal. App. 4th 673, 692 (where plaintiff had a full opportunity to present his
3 case, and failed to introduce evidence of defendant's financial condition, the evidence was
4 insufficient, punitive damage award reversed, and no retrial of the issue was required)).
5 However, the Court further held that, while California substantive law applies as to
6 determining punitive damages, Federal Rules of Civil Procedure 50 and 59 govern the
7 procedures required in post-trial proceedings in federal court. Since Accutek only moved
8 for a new trial on this issue, the Court could not rule in favor of Accutek as a matter of
9 law on punitive damages. (*Id.*)

10 In response to the Court's order, on February 13, 2020, Accutek filed a Renewed
11 Motion for Judgment as a Matter of Law on the issue of punitive damages. (ECF No.
12 158.) On March 20, 2020, Electropura filed an opposition to Accutek's motion. (ECF
13 No. 163.)

14 **II. Discussion**

15 **A. Legal Standard**

16 Rule 50(a) governs motions for judgment as a matter of law, and Rule 50(b)
17 governs renewed motions for judgment as a matter of law. *Xiong v. Chavez*, 2015 WL
18 345609, at *2 (E.D. Cal. Jan. 28, 2016). A Rule 50(b) motion "is properly granted 'if the
19 evidence, construed in the light most favorable to the nonmoving party, permits only one
20 reasonable conclusion, and that conclusion is contrary to the jury's verdict.'" *Escriba v.*
21 *Foster Poultry Farms, Inc.*, 743 F.3d 1236, 1242 (9th Cir. 2014) (citing *Pavao v. Pagay*,
22 307 F.3d 915, 918 (9th Cir. 2002)). "A jury's verdict must be upheld if it is supported by
23 substantial evidence, which is evidence adequate to support the jury's conclusion, even if
24 it is also possible to draw a contrary conclusion. *Pavao*, 307 F.3d at 918. The court
25 "must review the entire evidentiary record." *Harper v. City of Los Angeles*, 533 F.3d
26 1010, 1021 (9th Cir. 2008). "[T]he court must not weigh the evidence, but should simply
27 ask whether the [nonmoving party] has presented sufficient evidence to support the jury's
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1 conclusion.” *Id.* (citing *Johnson v. Paradise Valley Unified Sch. Dist.*, 251 F.3d 1222,
2 1227-28 (9th Cir. 2001)).

3 A Rule 50(b) motion for judgment as a matter of law “is not a freestanding
4 motion[,]” but “a renewed Rule 50(a) motion.” *E.E.O.C. v. Go Daddy Software, Inc.*,
5 581 F.3d 951, 961 (9th Cir. 2009). Indeed, a “renewed [Rule 50(b)] motion . . . must be
6 preceded by a [Rule 50(a)] motion . . . that sets forth the specific grounds raised in the
7 renewed [Rule 50(b)] motion.” *Wallace v. City of San Diego*, 479 F.3d 616, 631 (9th Cir.
8 2007). “The ‘procedural requirement of filing a Rule 50(a) motion before filing a Rule
9 50(b) motion’ is construed ‘strictly,’ and the ‘failure to file a Rule 50(a) motion precludes
10 consideration of a Rule 50(b) motion for judgment as a matter of law.” *Century Sur. Co.*
11 *v. Saidian*, 2016 WL 6440140, at *17 (C.D. Cal. Mar. 16, 2016) (quoting *Tortu v. Las*
12 *Vegas Metro. Police Dep’t*, 556 F.3d 1075, 1082 (9th Cir. 2009)).

13 A party may renew a properly made Rule 50(a) motion pursuant to Rule 50(b) “[i]f
14 the judge denies or defers ruling on the motion, and if the jury then returns a verdict
15 against the moving party[.]” *Go Daddy*, 581 F.3d at 961. But, a Rule 50(b) motion is
16 limited to the grounds asserted in its predicate Rule 50(a) motion. *Id.* In other words, “a
17 party cannot properly ‘raise arguments in its post-trial motion for judgment as a matter of
18 law under Rule 50(b) that it did not raise in its preverdict Rule 50(a) motion.’” *Id.*
19 (quoting *Freund v. Nycomed Amersham*, 347 F.3d 752, 761 (9th Cir. 2003) (citations
20 omitted)).

21 **B. Analysis**

22 **1. Accutek’s Statements Addressing the Necessary Basis for Punitive** 23 **Damages Qualify as an Inartful Rule 50(a) Motion for Judgment** 24 **as a Matter of Law**

25 Accutek’s original Motion for Judgment as a Matter of Law did not address
26 punitive damages. (ECF No. 111.) Instead, Accutek first presented the issue of punitive
27 damages in a Motion for a New Trial filed on December 9, 2018. (ECF No. 130.) In that
28 motion, Accutek challenged the sufficiency of evidence during the punitive damages

1 phase only as a Motion for a New Trial, not as a Motion for Judgment as a Matter of
2 Law. It was not until February 13, 2020, that Accutek first raised the issue of punitive
3 damages within the context of a Renewed Motion for Judgment as a Matter of Law.
4 (ECF No. 158.)

5 Accutek argues that the statements made during the colloquy on the issue of
6 punitive damages constitute a Rule 50(a) motion which permits the filing of this renewed
7 motion. (ECF No. 158-1 at 5.) Accutek submits that these statements informed Plaintiff
8 of its positions on the law and facts required to support a punitive damage award and that
9 regardless of the failure to cite Rule 50(a), the Ninth Circuit has accepted “ambiguous or
10 inartfully” made motions under Rule 50(a). (ECF 158-1 at 4.) Electropura disagrees,
11 contending that nowhere in the colloquy did Accutek make an oral or written motion for
12 judgment as a matter of law on the issue of punitive damages. (ECF No. 163 at 10-14.)

13 A Rule 50(a) motion “must specify the judgment sought and the law and facts that
14 entitle the movant to the judgment.” Fed. R. Civ. P. 50(a). “The purpose of Rule 50(a) is
15 to preserve the question of the sufficiency of the evidence as a question of law so the trial
16 court can review its initial denial of judgment as a matter of law and it calls to the
17 attention of the court and the opposing party the alleged deficiencies in the evidence
18 while there is still the opportunity to correct them.” *In re Taco Bell Wage & Hour*
19 *Actions*, 2016 WL 950775, at *2 (E.D. Cal. Mar. 14, 2016) (citing *Freund v. Nycomed*
20 *Amersham*, 347 F.3d 752, 761 (9th Cir. 2003)). The moving party may make the Rule
21 50(a) motion orally. *See Nitco Holding Corp. v. Boujikan*, 491 F.3d 1086, 1088 (9th Cir.
22 2007) (accepting party’s “orally entered motion under Fed. R. Civ. P. 50(a)”). An
23 “‘ambiguous or inartfully made motion’ under Rule 50(a)” after the close of all evidence
24 may be sufficient. *Go Daddy*, 581 F.3d at 961 (quoting *Reeves v. Teuscher*, 881 F.2d
25 1495, 1498 (9th Cir. 1989)).

26 Prior to the punitive damage phase of trial, the Court held a hearing to address the
27 evidence that the Plaintiff intended to offer to prove its case on punitive damages. At
28

1 issue was whether Plaintiff was required to offer evidence regarding Accutek's net worth.

2 The colloquy is as follows:

3 Electropura's Counsel: I am advised or informed the Ninth Circuit model jury
4 instructions do not require evidence of net worth of the
5 defendant for purposes of punitive damages.

6 The Court: All right. I am not sure if anyone is of the view that you
7 have to have evidence of net worth.

8 Accutek's Counsel: Well, I would simply state, to preserve the record, that
9 we believe that that would be required as a predicate to
10 being able to consider punitive damages; otherwise, it is
11 just pulling out of thin air, and you never know what they
12 will come up with.

13 The Court: And it may very well be that is the case, but we will have
14 time afterwards for briefing, and then we can get this jury
15 done, which I am sure they are looking forward to being
16 done with by today.

17 (ECF No. 158-2 at 9:4-18.). Here, Accutek maintains it preserved the right to bring a
18 Rule 50(b) motion on the issue of punitive damages based on statements made during the
19 colloquy discussing the essential elements for a punitive damage award. (*Id.* at 5:9-11.)

20 (ECF No. 158-1 at 4.) Electropura counters that Accutek never presented an oral motion
21 for judgment as a matter of law on the issue of the sufficiency of Electropura's punitive
22 damages. (ECF No. 163 at 10, 14.)

23 Electropura is correct that Accutek never specifically invoked Rule 50(a) in raising
24 its position on punitive damages. Despite the inartful motion by Accutek, the Court finds
25 that the above exchange reflects Accutek's factual and legal position that Accutek's
26 financial condition was an essential element for a punitive damage award and that
27 Plaintiff did not have evidence to offer on financial condition since Electropura had failed
28 to request and obtain Accutek's financial information and, further, had claimed that it
was not required to submit financial information. The Court agrees with Accutek that it
specified the law and facts that entitled Accutek to judgment in its favor and that the sum

1 of these actions was a sufficient approximation of a Rule 50(a) to support the renewal of
2 the Rule 50(b) motion. *Cf. Villanueva v. McInnis*, 723 F.3d 414, 418 (5th Cir. 1984) (the
3 sum of motion for a directed verdict at the end of the nonmoving party’s case and
4 objections to party’s failure to present sufficient evidence “were a sufficient
5 approximation of a renewed motion for directed verdict to support [the moving party’s]
6 later motion for judgment notwithstanding the verdict.”)

7 The reason for requiring a motion for a directed verdict at the close of the evidence
8 “is to avoid making a trap of the motion for judgment notwithstanding the verdict, either
9 at the trial stage or on appeal.” *Quinn v. Southwest Wood Products, Inc.*, 597 F.2d 1018,
10 1025 (5th Cir. 1979). The *Quinn* court noted:

11 When a claimed deficiency in the evidence is called to the attention of the trial
12 judge and of counsel before the jury has commenced deliberations, counsel still
13 may do whatever can be done to mend his case. But if the court and counsel learn
14 of such a claim for the first time after verdict, both are ambushed and nothing can
15 be done except by way of a complete new trial. It is contrary to the spirit of our
16 procedures to permit counsel to be sandbagged by such tactics or the trial court to
17 be so put in error.

18 *Id.* Here, the parties addressed the factual predicate for a punitive damage award before
19 Electropura presented its evidence. Accutek maintained that Electropura was required to
20 offer evidence of net worth in order to avoid a situation where the jury would, otherwise,
21 pull a number out of the air. This statement reveals a correct recitation of California law,
22 *i.e.*, that evidence of Accutek’s net worth was required for the jury to assess punitive
23 damages against Accutek.³ Meanwhile, Electropura took the position that it was not
24 required to introduce evidence of Accutek’s net worth to support a punitive damage
25 award and failed to offer such proof because it had none. Certainly, Accutek’s argument
26 drew both the Court and Electropura’s attentions to the alleged deficiencies in the

27 ³ Plaintiffs must demonstrate three factors to uphold an award of punitive damages: (1) reprehensibility
28 of the conduct; (2) the amount of punitive damages must be proportional to the compensatory damages;
and (3) the financial condition of the defendant. *Neal v. Farmers Ins. Exchange*, 21 Cal.3d 910, 928
(1978). To prove punitive damages, all three factors must be satisfied by evidence at trial.

1 evidence regarding Accutek’s net worth while Electropura still the opportunity to correct
2 them.

3 There is nothing in the record to suggest that Accutek ambushed or sandbagged
4 Electropura, and Electropura cannot complain that it was lulled into complacency
5 regarding the sufficiency of the evidence which it intended to offer. *See Splitt v. Deltona*
6 *Corp.*, 662 F.2d 1142, 1143–45 (5th Cir. 1981) (Unit B) (objection to jury charge on
7 punitive damages sufficed as predicate to motion for judgment notwithstanding the
8 verdict “[s]ince all parties had notice of the basis for [movant’s] concern, Rule 50’s
9 purpose had been served.”). The Court finds that Accutek’s statements during the
10 colloquy qualify as a Rule 50(a) motion for judgment as a matter of law on punitive
11 damages.

12 **i. Timing of Accutek’s Statements**

13 Prior to the 2006 amendment of Rule 50, a Rule 50(a) was required at the close of
14 all of the evidence. *See Farley Transportation Company, Inc. v. Santa Fe Trail*
15 *Transportation Company*, 786 F.2d 1342, 1347 (9th Cir. 1985). However, in 2006, Rule
16 50(b) was amended “deleting the requirement that a motion be made at the close of all the
17 evidence.” Rule 50, advisory committee’s note to 2006 amendment. It was recognized
18 that an earlier motion “informs the opposing party of the challenge to the sufficiency of
19 the evidence and affords a clear opportunity to provide additional evidence that may be
20 available.” *Id.*

21 Even before the 2006 amendment, there was one recognized exception to the
22 requirement for a Rule 50(a) motion at the close of all of the evidence – namely, where
23 an earlier motion for a directed verdict has been taken under advisement by the trial
24 judge. The trial court’s reservation of a ruling on a motion for a directed verdict made
25 before the close of all the evidence maintains the motion as a continuing objection to the
26 sufficiency of the evidence, provides notice to the opposing party of the challenge, and
27 constitutes a judicial indication that renewal of the motion is not necessary to preserve the
28 moving party’s rights. *See, e.g., Ebker v. Tan Jay International, Ltd.*, 739 F.2d 812, 823

1 (2d Cir. 1984). *See generally* 5A Moore, Federal Practice ¶ 50.08, at 50–79. Here,
2 during the colloquy, the Court advised Accutek that “we will have time afterwards for
3 briefing” (ECF No. 158-2 at 9) and then after the jury returned its punitive damage
4 award, the Court again told the parties that the pending motions were under submission.
5 (ECF No. 128 at 38.) These statements taken together had the effect of taking Accutek’s
6 position as a continuing objection and taking it under submission.

7 In any event, the policies underlying a Rule 50(b) renewed motion for judgment as
8 a matter of law have been abundantly satisfied in this case. Electropura had notice of
9 deficiencies in its punitive damages case before it presented its punitive damages case
10 and the Court took Accutek’s arguments regarding these deficiencies under submission to
11 permit Accutek to amplify its arguments following trial. *Cf. Farley Transportation*
12 *Company, Inc. v. Santa Fe Trail Transportation Company*, 786 F.2d 1342, 1347 (9th Cir.
13 1985) (a proper Rule 50(a) motion may be based on a “request for a jury instruction
14 directing the jury to return a verdict in favor of the moving party” or “an objection to a
15 jury instruction on the ground that insufficient evidence was presented on an issue to
16 allow it to be submitted to the jury”).

17 In view of the above, the Court finds that Accutek’s statements during the colloquy
18 qualify as a Rule 50(a) motion; that the present Rule 50(b) motion is timely⁴; and that
19 Electropura failed to provide proof on Accutek’s financial condition, an essential element
20 in supporting a claim for punitive damages.⁵

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26 ⁴ Accutek asserts that its Renewed Motion is timely because no judgment has been entered, and Rule
27 50(b) requires that a renewed motion be made “[n]o later than 28 days after the entry of judgment.”
(ECF No. 158-1 at 5:22-27.) Electropura does not dispute this assertion.

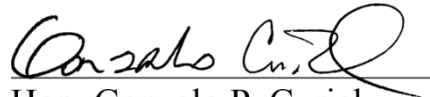
28 ⁵ The Court incorporates by reference its discussion in its earlier order regarding the necessary elements
required to support a punitive damages award. *See* ECF No. 157 at 22-24.

1 **III. Conclusion**

2 Accordingly, the Court **GRANTS** Accutek's Renewed Judgment as a Matter of
3 Law on the issue of punitive damages.

4 **IT IS SO ORDERED.**

5 Dated: April 23, 2020

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7 Hon. Gonzalo P. Curiel
8 United States District Judge
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