IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE FOURTH APPELLATE DISTRICT

DIVISION TWO

SANG HOON LEE, Plaintiff and Respondent/Cross Appellant vs. MICHAEL P. NEWMAN Defendant and Appellant/Cross Respondent	**E073745** (Superior Ct. No. RIC1716036)

OPENING BRIEF

APPEAL from the judgment of the Superior Court of Riverside County

Honorable Superior Court Judge Daniel A. Otorlia

MICHAEL P. NEWMAN
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Appellant in Pro Per

TO BE FILED IN THE COURT OF APPEAL

APP-008

COURT OF APPEAL FOURTH APPELLATE DISTRICT, DIVISION TWO	COURT OF APPEAL CASE NUMBER: E073745
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NUMBER: NAME: Michael P Newman FIRM NAME: STREET ADDRESS: 2191 Sampson Ave., Suite 104 CITY: Corona STATE: CA ZIP CODE: 92879 TELEPHONE NO.: 951-547-4547 FAX NO.: 951-525-4491 E-MAIL ADDRESS: ATTORNEY FOR (*name*): Appellant in Pro Per	SUPERIOR COURT CASE NUMBER: RID1716036
APPELLANT/ PETITIONER: Michael P Newman RESPONDENT/ REAL PARTY IN INTEREST: Sang Hoon Lee	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS (*Check one*): [x] INITIAL CERTIFICATE [ ] SUPPLEMENTAL CERTIFICATE	

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1. This form is being submitted on behalf of the following party (*name*): Michael P Newman

2. a. [x] There are no interested entities or persons that must be listed in this certificate under rule 8.208.
   b. [ ] Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (*Explain):*
(1)	
(2)	
(3)	
(4)	
(5)	

[ ] Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: ~~March 1, 2020~~ February 25, 2020

Michael P Newman
(TYPE OR PRINT NAME)

(SIGNATURE OF APPELLANT OR ATTORNEY)

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APP-008 [Rev. January 1, 2017]

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

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III.
STATEMENT OF APPEALABILITY

This is an appeal of a "final judgment" entered and filed on January 7, 2020 in the Superior Court, County of Riverside, finding the Appellant committed conversion, and awarding the Respondent $130,000.00. The final judgment is appealable pursuant to California Rules of Court 8.104.

IV.
STANDARD OF REVIEW

Statute of limitations issues can involve mixed questions of law and fact, with different standards of review. The statutes at issue here are C.C.P. 340.6(a)–the one-year statute of limitations applicable to attorneys; and California Business and Professions Code ß 6147 (b).

The interpretation of the meaning and scope of a statute is a question of law, and the standard of review *is de novo*. *R & P Capital Recourses, Inc. v. California State Lottery* (1985) 31 Cal. App. 4th 1033, 1036.

Lee v. Hanley (2015) 61 Cal. 4th 1225, 1232 (hereinafter *"Lee"*), is the leading on point Supreme Court decision interpreting scope of section 340.6(a). The Court wrote that "[w]e review de novo questions of statutory construction."

The resolution of the statute of limitations defense as to the facts presented can involve factual questions, *City of San Diego v. U.S. Gypsum Co.* (1994) 30 Cal. App. 4th 575, 582, subject to the "substantial evidence" test. See *Bowers v. Bernards*, 150 Cal. App. 3d 870, 872-73 (1984).

The de novo standard of review also applies to mixed questions of law and fact when legal issues predominate. *Crocker National Bank v. City and County of San Francisco* (1989) 49 Cal. 3rd 881,888.

The application of the law to a set of facts is also the subject of independent review when the issue can have a practical significance beyond the confines of the case then before the court. *Ghirardo v. Antonioli* (1984) 8 Cal. 4th 791, 801.

It is Appellant's position that the applicable standard of review is *de novo*, because the statute of limitations issue here that "predominates" involves the interpretation of C.C.P. section 340.6(a), specifically the statutory language "arising in the performance of professional services"; as well as the statute California Business and Professions Code ß 6147 (b).

There is an admissibility of evidence, and sufficiency of the evidence issue raised on appeal in issues "B" & "D." below. [1] As to those issues, the standard of review is "abuse of discretion." See *Pannu v. Land Rover North America, Inc.* (2011) 191 Cal. App. 4th 1298, 1317.

V.
INTRODUCTION

The Appellant, Defendant below, Michael Newman (hereinafter "ATTORNEY") represented Appellee, Plaintiff below, Sang Hoon Lee (hereinafter "CLIENT), for personal injury damages arising out of an automobile accident which resulted in a 1-million-dollar settlement.

More than one year after ATTORNEY closed the case and the settlement proceeds were disbursed pursuant to a written 15% contingency retainer agreement, CLIENT brought a civil suit, including a cause of action for conversion, claiming that the

[1] "B"**:** Whether the elements of conversion were not proven by substantial evidence;

"D": Whether the trial court's admission of evidence of legal malpractice/breach of professional ethics was prejudicial error, warranting a new trial on findings of fact supporting a judgment for conversion?

15% contingency fee charged did not reflect his understanding. [2] ATTORNEY denied the allegations of the complaint, and raised the one-year statute of limitations—C.C.P. 340.6 (a)-- as an affirmative defense.

CLIENT also sought to declare the parties' contingency fee retainer agreement void over one-year after the attorney-client relationship ended, pursuant to California Business and Professions Code ß 6147 (b).

A bench trial followed, and the trial Court found that (a) the CLIENT exercised his option to declare the parties' retainer agreement "void", and (b) ATTORNEY committed "conversion", and issued a final judgment for $130,000.00. ATTORNEY appealed; and CLIENT filed a cross-appeal.

This issues on appeal are (a) whether an attorney-client fee dispute constitutes a "theft" or conversion that obviates the applicability of the one-year statute of limitations; (b) whether there is substantial evidence supporting the finding of "conversion'; (c) whether a client's exercise of the option to declare a retainer agreement "void" more than one-year after the attorney-client relationship ended, pursuant to California Business and Professions Code ß 6147 (b), is subject to the one-year statute of limitations; and (d) whether the court committed reversible error admitting evidence of malpractice and breaches of professional ethics which were time barred.

VI.

STATEMENT OF THE CASE: PROCEDURAL HISTORY [3]

References to the Appellant's Appendix and Reporters Transcript will be cited in this format:

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[2] The complaint also contained counts for malpractice and fraud. The malpractice cause of action was non-suited; and on the fraud count, the Court found the CLIENT failed to meet his burden of proof, and entered judgment for the ATTORNEY.

[3] In the first 3 paragraphs of the "Procedural History", to give the Court context, there is a short summary of some of the facts of the case without citations to the record, which are cited in the detailed "Statement of Facts" that follows.

1. Appellant's Index ("AA"), followed by the page number(s). The description may be included. For example: (AA 25) or (AA 7-10; Complaint).

2. Reporters Transcript ("RT"), preceded by the Volume Number, and followed by the page number(s), and starting and ending line number(s), if applicable. For example: (I RT 4-6) or (III RT 48, 8-17) or (II RT 12-13, line 2/line 8)

ATTORNEY worked as a contract attorney for the same logistics company, Arms Trans, Inc. (hereinafter "ARMS') as CLIENT, who operated a truck and was classified as an independent contractor by in a written agreement entered with ARMS. During and within the scope of his employment, CLIENT was involved in a motor vehicle accident. Lindy Park (hereinafter "PARK"), co-owner and operator of ARMS, referred CLIENT'S resulting personal injury case to ATTORNEY.

During the scope of ATTORNEY'S representation with the at fault insured's insurance carrier, a policy limits settlement offer of $1,000,000.00 (one million dollars) was made and accepted by CLIENT. The attorney-client relationship ended on August 2, 2016, when ATTORNEY hand-delivered to CLIENT a disengagement letter {AA -13; Disengagement Letter}, and he disbursed to CLIENT the net settlement proceeds, after payment of legal fees and medical expenses. ATTORNEY was paid a 15% contingency fee consistent with a retainer agreement the CLIENT both signed and initialed each page. {AA - 4; 15% Retainer}

On August 28, 2017, more than one year after the disengagement, CLIENT filed a civil complaint against ATTORNEY with 3 causes of action: Fraud, Legal Malpractice and Conversion {AA-16; Complaint}. He alleged that, notwithstanding the signed retainer agreement's terms, he only intended to pay ATTORNEY $20,000.00 {AA-16; page 36, paragraph # 13 of the Complaint}, and that ARMS, and not his ATTORNEY, was entitled to receive 15% of his settlement proceeds. At trial, CLIENT maintained that, based on his conversations he had with PARK, his employer--to which ATTORNEY was not privy--it was his understanding that ATTORNEY performed legal services on his behalf in his capacity as ARM'S corporate attorney, and they had no personal attorney-client relationship.

ATTORNEY filed an Answer, generally denying the complaint's allegations, and he raised the Statute of Limitations as his second affirmative defense {AA 17; Answer}

A 5-day bench trial was held before Riverside Superior Court Judge Daniel A. Ottolia (Dept. 4). At the close of CLIENT'S case-in-chief, ATTORNEY moved for non-suit on all 3 causes of action. The Court denied nonsuit on the Complaint's counts of Fraud and Conversion, and granted nonsuit on the claim of Legal Malpractice, based on three grounds: (1) the one year statute of limitations had run (See C.C.P. ß 340.6); (2) Plaintiff's failure to meet his burden of proof; and (3) absence of any expert witness testimony on the standard of care {II RT? 443, line 11 to 444, line 17}. The Court held:

> "With respect to the legal malpractice, I do think that defense has a good argument with respect to the statute of limitations. Mr. Lee ["Client"] obviously understood there was a problem well before one year of the filing of the complaint, which was filed on August 28, 2017. And in addition, I don't think the plaintiff has met his burden of proof with respect to the legal malpractice", also noting that there was no testimony of experts on the requisite standard of care." [bracketed word added]
> {II RT pages 443}

At trial, CLIENT testified that he considered suing ATTORNEY both *before* August 10, 2016 and before August 23, 2016, when he emailed ATTORNEY asking questions about his fee {AA 15; Letter dated August 23, 2016} {II RT Page 389, lines 16-26; page 401, lines 1-10}.

After ATTORNEY rested, the Court made the following observations:

> "Mr. Newman, I understand you were not very experienced in field of personal injury. In fact, this was your first case. I think you made a lot of rookie mistakes …I understand in this case it was very difficult because we're dealing with people whose primary language was not English, and that adds a layer of complexity, you know, you have to have everything translated…So with respect to the overall picture of the case, Mr. Lee was charged 15% …that is well below the standard for personal injury cases …So in that sense, Mr. Lee was probably paying under what the going rate was for a contingency fee contract …Mr. Lee is here … requesting that he be reimbursed the 150,000 that Mr. Newman has received; however, Mr. Lee needs to understand that 15% is really a very reasonable amount" {III RT pages 605-607}

The Court issued a 14-page Statement of Decision on July 25, 2019. A Final Judgment was entered on January 7, 2020, incorporating the statement of decision by reference. The final judgment was filed by the Appellant and Respondent in the Court of Appeals on January 17, 2020. {AA-21; Final Judgement}

The trial Court ruled and made the following findings:

1. During his representation, ATTORNEY committed various beaches of professional ethics including, (a) having a conflict of interest, and failure to obtain written disclosure and obtaining informed consent; (b) failing to provide client with a fully filled out contingency fee contract prior to obtaining his signature; failing to inform client that the fee was negotiable; failing to inform client that he did not carry malpractice insurance; and failing to inform client of the contingency fee that was applicable to his case {AA 20; Statement of Decision, page 89-92}. ATTORNEY filed a motion in limine to preclude the admission of evidence of legal malpractice and professional breaches committed "in the performance of professional services" on the grounds that the cause of action was time barred; and it would be prejudicial, which was denied. {AA 18; Motion in Limine} {AA 19; Minute Entry Denying Motion}

These findings of ethical rule violations were made notwithstanding that the Court previously non-suited the cause of action for professional malpractice {II RT @ Pages 443-444}. Moreover, there was no finding or evidence presented that any of these ethical breaches, which the Court characterized as "rookie errors" {III RT page 605, lines 7-8}, (a) proximately caused CLIENT damages; or (b) formed a basis to conclude that the ATTORNEY committed the requisite elements of "conversion." At trial, the ATTORNEY did not defend or deny that he committed breaches of the professional code of ethics; and he acknowledged that he did not understand the ethical rules which govern the clauses required in a contingency fee retainer agreement. {I RT page 47, line 20-22}

2. CLIENT, "by his actions and communications with NEWMAN after settlement, has exercised his option to declare the retainer agreement void pursuant to California Business and Professions Code ß 6147 (b)." {AA 20; Statement of Decision, page 92}

There is no "substantial evidence"—indeed no evidence—to support this finding, and many others in the Statement of Decision. This brief will not controvert each instance because it may not become a live issue, opting instead to see if the opposing counsel seeks to rely on unsupported conclusions in his briefing.

3. FRAUD.

The Court finds that Plaintiff failed to meet its burden of proof, by a preponderance of evidence, that NEWMAN committed fraud in this matter, and renders judgment in favor of Defendant on this cause of action. {AA 20; Statement of Decision, page 93}

4. CONVERSION.

"LEE PROVED at trial that NEWMAN agreed that ARMS would be paid reimbursement of $130,000 and NEWMAN would accept a flat fee of $20,000 from LEE's settlement. LEE adopted and agreed to this in executing the reimbursement agreement with ARMS and through various email communications and demanded the return of the $130,000. NEWMAN took $150,000 from the settlement proceeds while, at the same time, exposing LEE to liability to ARMS for $130,000. LEE demanded the return of the specifically identified sum of $130,000., and NEMAN refused. For the conversion claim, LEE proved (1) he had the right to possess the $130,000; (2) NEWMAN converted the $130,000 by wrongful act; and (3) LEE has suffered damages of $130,000. Defendant NEWMAN acted intentionally and wrongfully in acquiring and retaining LEE's money. {AA 20; Statement of Decision, page 93}

5. REASONABLE FEE

> LEE has opted to declare the contingency fee agreement as void pursuant to California Business Code ß 6147 (b), and the Court finds the agreement is void.
>
> The Court finds that NEWMAN's services did have value, and that he is entitled to receive the reasonable, quantum meruit value of his services.

The Court finds the reasonable value of his services to be $20,000.00. {AA 20; Statement of Decision, pages 93-94}

ATTORNEY appeals the Court's finding and judgment he in fact committed "conversion"; and, that CLIENT timely voided the retainer agreement pursuant to California Business and Professions Code ß 6147 (b). Alternatively, ATTORNEY seeks reversal because both the cause of action for conversion, and the relief of voiding the parties' written retainer, are barred by the applicable one-year statute of limitations. C.C.P. ß 340.6(a). CLIENT filed a cross-appeal.

VII.
STATEMENT OF FACTS [4]

As set forth below, while the testimony at trial is often in dispute, it is *undisputed* that: (1) ATTORNEY represented CLIENT in a personal injury claim that was settled for $1,000.000.00; (2) CLIENT agreed to pay 15% of the settlement proceeds for services rendered; and (3) there was a *genuine dispute* as to the amount of attorney's fees due, and owing and to whom the 15% would be paid:

A. ATTORNEY, per the 15% retainer agreement {AA-4; 15% Retainer Agreement}

B. ARMS, based on CLIENT'S conversation and agreement with PARK to which ATTORNEY was not privy.

PARK and David Hudrlik (hereinafter "HUDRLIK") were to co-owners and operators of two corporations that provided logistics services: Arms Trans d/b/a Arms Logistics and Caravan (hereinafter collectively referred to as "ARMS") {I RT page 191, line 11- page 192, line 2}.

[4] The statement of facts is extensive, including disputed facts and testimony, erring on the side of caution by being over-inclusive, seeking to avoid Respondent—whose evidence at trial went down many rabbit holes-- from genuinely controverting the completeness of the statement.

Before being admitted to practice law, ATTORNEY began to work for ARMS as an employee in human recourses/warehouse manager in 2008, earning $85,000.00 annually. He was laid off in 2012. Thereafter, (having previously graduated from law school, studied for, took the bar exam)[5] he was admitted to the California Bar in December 2013. HUDRLIK re-hired him as a contract-1099 attorney for ARMS in February 2014, as "in-house counsel", and he was paid $64,999.00 yearly {RT, pages 18-20; 106-107; 192-193; 321}. Because ATTORNEY would be earning substantially less than before he was laid off, it was agreed that while working for ARMS as an attorney, he could also represent private, paying clients. {II RT page 320, lines 4-19}

CLIENT operated a truck for ARMS, as an "independent contractor", pursuant to a written agreement prepared by ATTORNEY for ARMS before he represented CLIENT. As such, ARMS did not maintain worker's compensation insurance for CLIENT. Based on a subsequent Supreme Court decision, there was uncertainty whether CLIENT was misclassified and should have been deemed an "employee", requiring ARMS to provide him worker's compensation insurance. {I RT page 24, line 17-24, page 34, line 5-9;}.

CLIENT, while operating a truck in the scope of his employment, was involved in a serious motor vehicle accident on December 10, 2014. He was unable to work. {II RT page 284, lines 10-12; I RT, page 195}

CLIENT was concerned about his lost income, and he and PARK discussed his financial situation. PARK testified that they spoke--before ATTORNEY was retained--and per her testimony, she gave him two options.

First. He could hire an attorney, who she said would likely sue ARMS (presumably seeking to void the independent contractor agreement), and the at fault party for negligence.

Second. PARK offered to pay him $1000.00 a week, and the use of the company's in-house attorney with his personal injury claim, as well as providing him with

[5] The language in parenthesis is not in the record and stated to avoid time-frame confusion.

transportation to medical appointments and translation services, if he did not hire outside counsel. CLIENT said he didn't want to sue ARMS, and he agreed.

PARK testified that she did not discuss attorney's fees with CLIENT at that time {I RT page 199, lines 2-4}. PARK also claimed that it was mutually, orally agreed that CLIENT would reimburse ARMS for its expenses out of any personal injury proceeds he received.

{Generally, as to above facts: I RT, pages 195-198; 205-206}

At trial, CLIENT confirmed his agreement not to sue ARMS in consideration of the company's assistance, but he disavowed promising to reimburse ARMS any money in his initial conversation with PARK. {II RT page 341, line 27-page 342, line 19, page 399, line 22-25}

CLIENT testified that his agreement with PARK to pay any money to ARMS, in fact did not occur until about one year after ATTORNEY was retained, when the million-dollar settlement offer was made or just prior thereto. At that time, he agreed to pay ARMS 15% of his settlement proceeds {II RT page 347, lines 3-22}. PARK corroborated his testimony {II RT, pages 225-226}.

PARK testified that after her initial conversation with CLIENT, she met with ATTORNEY and asked him to represent CLIENT. She testified that attorney's fees were not discussed {IRT page 199, lines 2-4}at the outset, but that sometime thereafter, "there was some discussion about giving him compensation" {IRT page 198, pages 23-26}; and that the terms of the ATTORNEY'S retainer agreement with CLIENT and his compensation for his legal services were negotiated by HUDRLIK, and not her. {II RT page 298, lines 7-11}.

ATTORNEY disputed PARK'S version of the events. He testified that when PARK first came to him to discuss his taking CLIENT'S case, she said she had another attorney who would do it for free. ATTORNEY told her that he would not take the case under those terms, and they agreed that, subject to CLIENT'S approval, he would represent CLIENT for a 15% contingency fee, which was less than one-half of a "normal" contingency fee. A few days later, she confirmed that CLIENT had agreed. At

that time, the 15% fee agreement was not reduced to writing, and ATTORNEY did not discuss his representation directly with CLIENT. {I RT page 35, lines 6- page 26 line 3; III RT page 506, lines 1-18; page 505, line 25 to page 506, line 24}

While CLIENT spoke English, Korean is his native language. He testified: "I understand basic English, but I didn't understand some-some legal terms" {II RT at page 340, lines 9-10)}. ATTORNEY relied on PARK who acted CLIENT'S agent or representative, and as a translator {I RT at page 34, lines 10-16}. PARK testified that the communications between ATTORNEY and CLIENT were conducted exclusively through her during the early part of his representation, and it was generally their ongoing practice during his representation of CLIENT {I RT page 199, lines 17-27; page 205, lines 27 to page 206, line 4}.

In instances cited in detail below, CLIENT communicated by email with ATTORNEY and letters to the California Bar Association in English, and responded to his communiques in English, through his own capacity, and or with the acknowledged assistance of PARK or other 3rd parties.

CLIENT confirmed PARK'S testimony and that he did in fact authorize PARK to act on his behalf, and as his representative with ATTORNEY {II RT page 367, line 26 to page 368, line 8}; and that he relied on and trusted her to always be truthful with him concerning ATTORNEY'S representation {II RT page 342, lines 24-page 343, line 5}.

When ATTORNEY undertook to represent CLIENT, it was his first personal injury and contingency fee case, and he had no prior trial experience. He admitted he didn't understand the ethical rules regarding contingency fee retainers. {I RT page 45, lines 19-23; page 47, line 20-22}

ATTORNEY sent the at-fault party's insurance company a demand letter on his "Law Office of Michael P. Newman" letterhead, offering to settle the case for 2.5 million dollars, after consulting with personal injury attorney, colleagues about properly valuing the case for settlement purposes. {AA-1; Demand Letter} {IRT page 134, lines 11-22}

The insurance company advised ATTORNEY they needed a "retainer letter" to continue settlement negotiations with him. ATTORNEY did not know what a retainer letter meant. {I RT page 47, line 27-page 48, line 8}

To satisfy the insurance adjuster, he prepared a *pro forma* retainer agreement {AA 3; Pro Forma Retainer} on his law office letterhead with the contingency fee percentage left blank intended as a "retainer letter', which CLIENT signed, for the sole purpose of his being able to negotiate with the insurance company on his behalf. {I RT page 48, lines 21-22; page 51, lines 28 to page 52, line 15}

ATTORNEY testified that he inserted a 5% (if settled before a law suit) and 10% as contingency fee (if litigation ensues) percentages because he had not previously, personally confirmed with CLIENT the prior, oral 15% agreement he had with PARK; and the *pro forma* retainer was only intended as an authorization to negotiate with the insurance company as they had requested. It was not intended as a binding agreement between the parties {I RT page 52, line 25 -page 53 line 10}. This point is undisputed.

Up until then, (a) there had been no written memorialization of the oral agreement that ATTORNEY testified he made with PARK to be paid a 15% contingency fee when he first agreed to undertake representation; and (b) he had not personally discussed the contingency, percentage term with CLIENT {IRT page 169, lines 16-21}.

The insurance company, while acknowledging fault of their insured, claimed that CLIENT was 50% comparatively negligent {I RT page 43 line 7 to page 44, line 3; III RT page 511, lines 14-23}. In anticipation of litigation, ATTORNEY began to prepare a rough draft of a civil complaint {I RT page 44, line 26 to page 45, line 11}.

As ATTORNEY'S settlement negotiations continued, he wanted to confirm in writing his prior 15% oral agreement with PARK (per his testimony) to represent CLIENT, with a duly executed retainer. He emailed another retainer to PARK on or about January 20, 2016. He testified that he left the percentages blank {III RT page 512, line 27 to page 513, line 1} because he wanted ARMS and CLIENT to confirm his 15%

oral agreement with PARK, by inserting the percentage themselves without his input {III RT page 566, line 14 to page 567, line 22}--which exactly what they did.

On January 21, 2016, PARK emailed Ilhwan (a/k/a Allen) Kim, a vice-president of ARMS), and Daniel Kim, the company's chief financial operator, a copy of the second retainer, and she wrote in pertinent part:

> "This is what I want done:
>
> 1. **In Newman's contract, put 15% …Newman keeps** and between Arms and Caravan, they will decide how to credit this amount.
>
> 2. Make a separate contract for Sang Hoon Lee and ARMS for the salary we've been giving him to be paid back to ARMS by Sang from the winnings …" {AA-7; Email from Park to Allen and Daniel, 1/21/2016} [Emphasis added]

PARK claimed at trial that "Newman keeps" meant that, because he was paid by Caravan (an Arms related company) and Lee was paid by Arms, if the case settled, they would have to reconcile the payments between the two companies. {I RT page 212}

The 15% retainer was prepared as requested by PARK, and translated for CLIENT by Ilhwan (a/k/a "Allen") Kim, the vice president of ARMS. CLIENT signed and initialed each page {AA 4; 15% retainer} {I RT page 58, line 22 to page 59, line 3; II RT page 449, lines 5-9}. Allen Kim testified that he told CLIENT that the retainer stated that ATTORNEY would receive 15% of the proceeds; and that CLIENT understood his translation {II RT page 449 line 28 to page 450, line 2; 452, lines 13-18}. The 15% retainer was signed before the insurance company made an offer to settle for one million dollars {I RT page 141, lines 13-15}. CLIENT claimed at trial that he: "had talks with Lindy Park about 15 percent. So—and I didn't really pay attention to the 15% in this particular retainer agreement." {II RT page 413, lines 19-22}

DAVID STRAIT, a private investigator since 1998 and who was retained by ATTORNEY, testified that he spoke with Allen Kim, who told him that CLIENT understood the translation; agreed to its terms; and when asked if he had any questions, the CLIENT said "no" {II RT page 468, lines 5-9; 13-21; 469, lines 15-27}.

At that time, there was an outstanding medical bill of $452,000.00 and lien, which had not been reduced. On February 25 (or 26th), 2016, PARK and ATTORNEY emailed each other in pertinent part:

PARK TO ATTORNEY: {AA 8; Email Park and Attorney Chain dated 2-25-26, 2016}

> Do we need to change the agreement between you and SANG as it currently says 15% on that agreement."

ATTORNEY replied: {AA 8; Email Park and Attorney Chain dated 2-25-26, 2016}

> "I wouldn't have taken the 15% anyways, better to leave to show discount"

Giving context to this email exchange, ATTORNEY testified he told PARK that he would consider reducing his fee if a substantial medical bill reduction wasn't achieved {I RT page 59, line 25- page 60, line 24}; and that he told HUDRLIK that, although he expected to be paid 15% of any recovery, he could end up with as little as a $20,000.00 fee if he wasn't unable to reduce the outstanding medical bills {III RT page 542, pages 5-18}. Thereafter, all medical bills were substantially reduced, and fee reduction was no longer an issue.

ATTORNEY'S work on the case resulted in an offer from the insurance company to settle for their policy limits of $1,000,000.00. CLIENT mulled the offer over for one week, and then accepted the offer on March 16, 2017 {II RT page 348, lines 1-3}.

The insurance company sent ATTORNEY a release to be signed by CLIENT. ATTORNEY met with CLIENT for him to sign the release, along with ARMS' vice-president, Allen Kim, who acted as a translator. After signing the release {AA 9; Insurance Co. Release}, ATTORNEY testified that Allen Kim slipped another document in front of CLIENT {AA 10; Reimbursement Contract $130,000}, and he spoke a few words in Korean. CLIENT signed the document titled "Repayment Agreement Between Sang Hoon Lee and Arms Trans, Inc., but ARMS did not. {III RT page 522 line 3 to page 523, line 1}

The reimbursement agreement states that, "in consideration of services from ARMS" ("salary, English to Korean translation, transportation"), CLIENT would make a "lump sum payment directly to ARMS from the settlement" in the amount of $130,000.00" (15% of the settlement). ATTORNEY testified that he asked, "what's that document", and seeking to protect his client's interests, he took possession of the original document. {I RT page 63; III RT Page 523, lines 1-2}.

David Strait, ATTORNEY'S investigator, testified that he spoke with Allen Kim. who told him that he submitted the document to CLIENT as a favor to HUDRLIK; and it was grabbed off the table {II RT page 469 line 28 to page 471, line 2}.

ATTORNEY testified that he never saw any agreement whereby CLIENT would pay ARMS $130,000.00 until it was handed to CLIENT by the translator, Allen Kim, at the insurance company's release signing {I RT page 88; pages 91-92; page 180}.

The document was, *in part*, consistent with ATTORNEY'S understanding that ARMS agreed to pay CLIENT $1000.00 weekly in consideration of his promise not to sue the company because, *before* he was retained to represent CLIENT, per PARK'S instructions, he drafted the original document whereby ARMS agreed to a $1000.00 weekly salary continuation. {AA 2; Salary Continuation Agreement-Original}

Subsequently, also at PARK'S request, ATTORNEY testified that he amended the document to include a hold harmless (CLIENT'S promise not to sue ARMS), but that both iterations did not provide for repayment of any specific amount of money by CLIENT to ARMS. {I RT page 61, line 12 to page 62, line 10; Pages 145-147; III RT page 508}.

Apparently, PARK wanted the agreement to be amended to include the specific amount she expected CLIENT reimburse ARMS. On February 25, 2016, PARK emailed ATTORNEY asking for copy of the first salary continuation agreement the he drafted {AA 5; Salary Continuation Agreement-Amended}.

The email states in pertinent part:

> "Can you please send me a copy of the agreement that Sang Lee originally refused to sign I will need to change the amount etc. ...but I need the contract please."

Up until then, CLIENT refused to sign the "original repayment agreement" to repay ARMS for salary continuation. {I RT page 61, line 8 to page 62, line 6}. PARK and HUDRLIK both testified that they did not know why CLIENT refused to sign the agreement. {I RT page 216, line 21 to page 217, line 3; II RT page 329, lines 2-3}

Thereafter, on January 21, 2016, PARK emailed Allen Kim and Daniel Kim, ARM'S vice president and CFO respectively, instructing them to "make a separate contract for the salary to be paid back from the winnings." {AA 7; Email from Park to Allen and Daniel dated January 21, 2016}

ATTORNEY was concerned the clause requiring CLIENT'S payment of $130,000.00 to ARMS submitted by the translator at the insurance company's release signing, did not reflect his CLIENT'S intention and understanding. He wanted to ascertain if CLIENT knowingly agreed to pay both him 15% for legal services pursuant to their retainer agreement; and $130,000.00 more to ARMS. {I RT pages 63-64}

ATTORNEY testified that, under the circumstances, he could no longer trust PARK as an intermediary, so he wrote a letter to CLIENT dated March 28, 2016 {AA 11; Letter dated March 28, 2016 from Attorney to Client}

ATTORNEY wanted to get CLIENT'S reaction {I RT page 63-64}. He listed 12 different claims (mostly medical lienholders) against the settlement proceeds, including both his 15% attorney's fee, and the $130,000.00 ARMS inserted in the document presented at the release's signing:

Item # 11: Arm Trans, 130,000.00 (item # 11; and

Item # 12: The Law Offices of Michael P. Newman, 15%" (item # 12)

The gambit worked. ATTORNEY testified that, after receiving the March 28, 2016 letter, CLIENT came to ATTORNEY'S office to discuss the letter. Steve Kim, the operations manager for ARMS, was present as a translator. ATTORNEY testified that at the meeting CLIENT instructed him not to pay ARMS because he didn't owe them the

money. CLIENT said that he had only received about $60,000.00 in salary advances, and he didn't have to pay it back; and he did not object to the 15% contingency fee ATTORNEY charged. {I RT pages 235; III RT pages 524-527}

The translator, Steve Kim, testified that he knew HUDRLIK for over 20 years and was a friend of the family {III RT page 493, line 6-8}. He corroborated ATTORNEY'S account of what occurred and testified that (a) he translated the March 28, 2016 letter breakdown of the claims against the CLIENT'S recovery; (b) ATTORNEY explained the medical bills and his 15% legal fee; and (c) ARMS claim to entitlement to $130,000.00.

Steve Kim testified that CLIENT did not object to the ATTORNEY'S legal fee and said "okay"; and that CLIENT said that he had only been paid about $60,000.00 by ARMS, and instructed ATTORNEY not to pay ARMS because he wanted to speak with PARK before authorizing any payment to ARMS. {III RT page 477, lines 24-28; 481, lines 1-25; page 482, lines 16-27; page 483, lines 21-28; II RT page 373}.

CLIENT testified that ARMS attempt to be paid $130,000 was overreaching:

> "I had a lot of questions, how the $130,000 came up …I mean it would be $60,000 (referring to the weekly $1000 salary payments), but—plus rides and medical expenses. To put it all together, it would have been much less than $130,000." {II RT page 373, lines 2-8}

Thereafter, ATTORNEY testified that he told PARK & HUDRLIK that CLIENT had disavowed having to pay both ARMS and him, and they responded "don't worry about it" and "yeah, whatever" {I RT page 64; page 95, lines 14-19; page 154, lines 11-24; II RT page 372, lines 16-20; page 373, lines 1-17; III RT page 525, lines 18-26; page 526, lines 12-21; page 527, lines 2-9 & 16-22; page 95, lines 10-19}.

PARK testified that she and CLIENT discussed the March 28, 2016 letter. She confirmed that, as testified by ATTORNEY, CLIENT acknowledged that he instructed ATTORNEY not to pay ARMS, because he objected having to pay both ARMS $130,000.00 and ATTORNEY 15%. PARK told CLIENT that she considered that to be a "mistake" and a "miscommunication" {I RT page 235, lines 6-28}.

PARK testified how and when she got CLIENT to agree to pay ARMS $130,000.00 out of the 15%, he agreed to pay ATTORNEY in the retainer: [6]

> **"As we were getting closer to a settlement and we finally found out that it was a million dollars—I'm sorry—right before we found out it was a million dollars, Sang ["Client"] and I and Allen Kim were in my office at Arms.** And I said, Okay. So far we can tally up all the advanced payments that we've made for you; all the expenses we've put out with people helping you with transportation, translation, talking to the hospital, getting your groceries for you. All this. I said we're going to have to come up with a number. And he said. Okay. What is the number? I said, I have no clue what that number would be. **Now, if you had gone to a lawyer, my understanding is they charge anywhere from 30 to 35 percent. So would 15% work out for you? You know I do have to pay Newman ["Attorney"] as well. He did kind of work on your case. He said, Yeah, 15% is fine. That's how we got that 15 percent.** That 15% is different from the 15% that Newman put on his second retainer agreement. I don't know how he came to 15% on that, but that was that 15 percent. And my 15 percent that I spoke to Sang about are two completely different 15 percents (sic) {I RT page 225, line 17 to page 226, line 9} …we never really sat there and calculated everybody's time taken to translate, and transport, and, you know, their lunches, the gas that they spent. We never actually did all that. We never really needed to because Mr. Lee didn't have a problem with the $130,000. [bracketed words "client" and "attorney", and emphasis added]
>
> {II RT page 287, lines 17-21}

CLIENT confirmed the substance and his reliance on this conversation:

> "I remember her ("Park") saying that normally attorney's charge 30 percent or more. But this time, because we are using Michael ("Attorney"), 15 percent would include everything." {II RT page 369, lines 7-10}

PARK testified that she never discussed ATTORNEY'S fee with CLIENT {II RT page 337, lines 6-8; I RT page 210, line 3 to page 211, line 5; page 221, lines 17 to page 222-18}, but she did discuss his fee with ARMS co-owner, HURDLIK. She testified that

[6] PARK'S testimony is cited in full because it tellingly explains the material, underlying issue in the litigation: how and when CLIENT came to understand to whom and for what the 15% would be paid, and the basis for his belief that the retainer's 15% covered both ARMS and ATTORNEY'S competing claims to the $130,000.00.

HUDRLIK told her to put in 15% in the retainer, and that ATTORNEY agreed to accept a $20,000.00 fee of that amount {II RT page 298, lines 7-11; page 300, lines 9-12}.

PARK testified she told CLIENT that the 15% in the retainer agreement was to authorize ATTORNEY to negotiate with the insurance company, and did not tell him how or why they arrived at 15%. {II RT page 211, line 18 to page 212, line 9}

HUDRLIK corroborated that aspect of PARK'S testimony, and further testified that the 15% figure was suggested by ATTORNEY for insurance company purposes, who indicated that he was appreciative to receive a $20,000.00 fee {II RT page 305, lines 2-20; page 311, lines 10-12}. ATTORNEY denied agreeing to accept less than the 15% in his conversation with HUDRLIK. {III RT pages 528-529}

In an email to ATTORNEY ON July 11, 2015, HUDRLIK acknowledged that CLIENT'S understanding as to whom the 15% would be paid was based on a conversation CLIENT had with PARK, *after* ATTORNEY sent CLIENT the March 28, 2016 letter (which he refers to as "account of statement").

The July 11, 2016 email states in pertinent part {AA 12; Email dated July 11, 2016 from Hudrlik to Attorney}

> "Mike, meeting with Sang Hoon today and I think communication (sic) misunderstanding.
>
> **Below is what was discussed with Sang Hoon Lee Back (sic) in March/April. Per your response below, Lindy discussed the following with Sang Hoon:**
>
> 1. Arms to receive 130K
>
> 2. Newman to receive 20K (You did not want to write a new contract. you (sic) just to show a discount)
>
> 3. Sang Hoon to receive Balance of funds after all medical bills paid. Confusion happened when you showed Sang Hoon something called a (sic) "account of statement"
>
> In your "account of statement you showed Sang Hoon Lee that you (Newman) charged him $150,000.00 (15% of total settlement) plus Arms $130,000.00 plus medical bills.

That is not what he understood based on the below e-mail and what was explained to him in Korean …" [Emphasis added]

HUDRLIK is the only person other than ATTORNEY who claimed to have any personal knowledge as to what attorney's fee was agreed upon, based on one disputed conversation he had with ATTORNEY. CLIENT'S understanding as to ATTORNEY'S compensation—to the extent it differs from his signed retainer--is solely based on his conversation at the time of settlement with PARK; and PARK testified that she never spoke to ATTORNEY about fees, relying solely on what she was allegedly told by HUDRLIK.

PARK, HUDRLIK and CLIENT all testified that ATTORNEY did not have an attorney-client relationship with CLIENT, and that he was acting as ARMS' attorney. {II RT page 221, lines 17- page 13; page 337 lines 6-8; and page 385 lines 2-10}

While ARMS, through PARK & HUDRLIK, disavowed ever agreeing on behalf of CLIENT to pay ATTORNEY 15%, Steve Kim, the company's operations manager, confirmed ATTORNEY'S testimony that the 15% oral agreement was made before any interested party had a motive to say otherwise.

Steve Kim testified that *prior to* ATTORNEY agreeing to represent CLIENT, they spoke about the circumstances of his engagement and the amount of his contingency fee. He said under oath that ATTORNEY told him that (a) he said he was approached by PARK and HUDRLIK to undertake the case; (b) he was reluctant to do so because he was too busy with other company work; (c) attorneys normally charge 30%, which PARK and HUDRLIK balked at; and (d) they settled on 15%. {III RT page 480 line 22 to 481 line 24}

Rajenera Karki, an employee of ARMS who notarized the insurance release, testified that ATTORNEY told him he wasn't going to get paid money from the one-million-dollar settlement; that he was just helping; and he only made a couple of phone calls. {I RT page 185, lines 3-5}

When ATTORNEY realized that ARMS expected a 15% fee from CLIENT'S settlement proceeds, he vehemently objected and confronted both PARK and HUDRLIK,

because he believed what they were asking constituted "fee splitting" with a non-attorney, which would jeopardize his law license. ATTORNEY argued with HUDRLIK who told him that he would never have gotten the case but for "us" and that he didn't speak Korean {page 510, lines 19-27}. ATTORNEY refused to abide to "fee splitting." {I RT page 85; page 141-142; page 226; II RT page 315, lines 3-14}

To overcome ATTORNEY'S unwillingness to engage in "fee splitting", HUDRLIK offered to create an invoice for non-existent expenses. He testified:

> "I said, Well, why don't I just invoice you $130,000 for office rent (sic) supplied, things of that nature, and you can just pay ARMS. I'll invoice you, you pay ARMS $130,00.00. The conversation just abruptly ended, and mike left. The next morning, he shows up at 8:00 in the morning and he says, 'I'm not coming back.'" {II RT page 315, lines 19-26}

HUDRLIK admitted that, in fact, ATTORNEY did not owe any "back rent" {II RT page 333, lines 7-8}, but claimed that invoicing him for $130,000.00 was absolutely "legitimate" because:

> "Absolutely. I would invoice, and I would bill him. And if he paid me $130,000, I would pay the federal taxes on that, and I would pay city taxes on it, and, yes, it would have been a legitimate invoice." {II RT age 333, lines 16-23}

PARK testified that CLIENT'S agreement with her to pay ARMS 15% of the settlement proceeds, applied to whatever the amount of the settlement {page 296}, even if the case settled for 10-million dollars {II RT page 296, lines 1-9}. [7]

ATTORNEY hand-delivered to CLIENT a "settlement and disengagement of personal injury claim" letter dated August 2, 2016 {AA 13; Disengagement Letter}, which stated:

> Dear Mr. Lee,

[7] The admission to hypothetically entitle ARMS to up to 3-million dollars without regard to actual expenses to which they could justify reimbursement, on its face, constitutes unethical "fee splitting."

> It was a pleasure to represent you in your personal injury claim of December 10, 2014 through conclusion. Accordingly, the attorney-client relationship between us is now over and myself and this office is unable to render future legal advice on this, or any other matter, without specifically being retained to do so.
>
> This office is closing the file pertaining to this matter and returning to you, under cover of this correspondence, the final settlement check related to your case. Specifically, you will find a cashier's check in the amount of $608,808.45. A check for $100,000.00 was given to you on April 7, 2016, making the total for your settlement after all liens were paid $708,809.45. Should you request a final accounting, one will be provided to you.

ATTORNEY testified that, at the disengagement meeting on August 2, 2016, CLIENT again confirmed that he didn't have to pay ARMS $130,000.00; he did not object to him taking his 15% fee; and that he was happy with the outcome. {I RT page 99-100; page 158; page 159, lines 2-7; III RT page 532, lines 14-18} After disengagement and disbursement of the settlement proceeds, on August 23, 2016, the following email exchange occurred between CLIENT and ATTORNE {AA 15; Email from Client to Attorney dated August 23, 2016}:

"Dear Attorney Newman:

> I have some questions that have come up now that my case was settled. I would appreciate your giving me answers.
>
> As part of the settlement, I understood that Arms was to be repaid $130,000 from the settlement proceeds. After I received your breakdown, I noticed that you had deducted 15%, or $150,000, as legal fees. I always understood that from that money Arms would be repaid.
>
> Lately, I have learned otherwise. Arms tells me that they did not receive any money from you from the settlement funds. As I signed an agreement to repay them, I have done so myself from the money I received from your office.
>
> It seems to me, however, that that (sic) money should have been paid by you and therefore you need to reimburse me $130,000.

I recall that I signed a letter which was notarized and given to you authorizing you to pay Arms from the settlement proceeds. I therefore do not understand why they were not paid by you and why I was forced to pay them.

Please give me your explanation as quickly and clearly as you can."

"Dear Mr. Lee,

Sorry that you feel there is a problem with the fees. I would suggest that you Contact (sic) the fee arbitration services that is provided through the California bar. If you request it, it would be mandatory for me to participate and they would be able to answer your questions. They can be reached at 415-538-2020." {AA 14, page 33; Email from Attorney to Client dated August 23, 2016}:

ATTORNEY testified that HUDRLIK threatened to file a bar complaint against him {I RT page 161}, which Steve Kim, ARMS' operations manager, confirmed {III RT at page 487}

CLIENT filed a Bar complaint and supplemental correspondence (hereinafter "bar complaint) against ATTORNEY. CLIENT testified that he did not write it; Park wrote the bar complaint with his "help." {I RT page 273, lines 19-21; II RT page 395, lines 14-20; page 398, lines 17-22}. And together at times they did so with the participation of ARMS new in-house counsel in the company's offices [II RT 399-400]: [8]

Q. Did you write this letter to the state bar?
A. No. I received help.
Q. Who helped you?
A. I discussed it with the Lindy Park.
Q. And she drafted this document for you?
A. My understanding is, yes, she drafted this letter after discussion with me. [II RT 395, lines 14-20]
…
A. I guess she wrote this because she wrote this letter

[8] Appellant does not have a legible copy of the bar complaint correspondence that was admitted into evidence, and therefore cannot include it in the appendix. He made a good faith effort to timely obtain a copy from opposing counsel which was unsuccessful.

on my behalf.
Q. Is she an attorney?
A. Not just Lindy Park, but there's a -- there's a company counsel. So I believe they discussed all together they providing this.
Q. Okay. So you didn't really have a part in writing the bar complaint; is that correct?
A. I did participate. So I gave my opinions while we were discussing on this.

[II RT 398-399]

Pursuant to a discovery demand, CLIENT produced Exhibit "57" {AA 6; Unexecuted contract between Arms and Client} which he "verified under penalty of perjury" {II RT page 370, line 25 to page 371 line 4}. The document, titled "Contract between Sang Hoon Lee and Arms Trans Inc.: $130,000 FOR Advanced Pay and Miscellaneous Services." It purports to be an itemization and accounting of the $130,000.00 ARMS sought from his settlement.

The document includes line items of $74,209.00 (salary advances), and $55,791.00 for "Miscellaneous services, Translation, transportation (medical and personal) and insurance processing assistance." The sum of the two items (salary advances and "services") equals $130,000.00.

At trial, CLIENT testified that although he produced the document in discovery, he didn't know when this document it was prepared or by whom {II RT page 371, lines 5-15}. PARK testified the document wasn't created by her {I RT page 275, lines 24-28}; that she never itemized any of the actual expenses that would justify a 15% or $130,000.00 {II RT page 287, lines 17-21}; and that she didn't know what "insurance processing assistance" was for. {I RT page 278, line 19 to page 279 line 4}

There was no documentary evidence or testimony presented at trial that:

1. CLIENT didn't understand the 15% retainer agreement's terms, or there was a problem with the 3rd party's translation of the retainer at the time he signed it and initialed each page.

2. CLIENT never instructed ATTORNEY not to pay himself $130,000.00 or objected to him doing so when he clearly had the opportunity to do so on the three separate occasions that the 15% attorney's fee was discussed: (1) when he signed the 15% retainer which was translated for him; (2) when he discussed ATTORNEY'S March 28, 2017 letter in the presence of a translator; and (3) when he met with ATTORNEY on August 2, 2017 when received his net proceeds.

Indeed, ATTORNEY, Steve Kim (the translator) and CLIENT (per PARK) all testified that CLIENT only instructed ATTORNEY not to pay ARMS, and he did not object to the payment 15% to ATTORNEY prior to or at the time of disbursement.

3. ATTORNEY never made any misrepresentation or omitted any material fact in his communications with CLIENT concerning his 15% attorney's fee, or any other aspect of their attorney-client relationship.

4. ARMS never confirmed or memorialized in any writing that ATTORNEY agreed to work for CLIENT for free (or for $20,000.00) in his capacity as the company attorney. Indeed, PARK claimed that she never even discussed the payment of attorney's fees with ATTORNEY when she engaged his services on behalf of CLIENT, or anytime thereafter.

5. ATTORNEY was privy to or ever made aware of PARK and CLIENT'S oral agreement they made on the eve of the insurance company's settlement that ARMS would be paid 15%.

6. ARMS or CLIENT never itemized any of the items or expenses that would justify the payment by CLIENT of $130,000.00 to ARMS.

7. CLIENT never sought to void the retainer agreement before he filed his civil complaint pursuant to California Business and Professions Code ß 6147 (b).

8. CLIENT never demanded or requested that ATTORNEY return the $130,000.00 before he filed his civil complaint.

At the close of the evidence, the Court noted that the $130,000.00 payment to ARMS by CLIENT were for benefits the company was probably obligated to provide to him under worker's compensation law; and questioned the motivation of ARMS:

> "Now as far as the reimbursement of the $130,000, it's clear to the Court that Arms and Canopy ran a real risk of being sued for worker's compensation; that Mr. Lee was probably misclassified …So I don't think the employer was doing this [referring to Arms' salary advances, translation and transportation services that would have been otherwise provided under worker's comp] out of the goodness of the employer's heart and the motive were not as pure as the driven snow or appeared to be" [bracketed text added] {III RT at 606, lines 8-26}

The trial court did not find that the fee dispute he had with ATTORNEY was not genuinely in dispute.

VIII.

ARGUMENT

A. The one-year statute of limitations in C.C.P. 340.6 time-bars a former client's fee dispute arising out of an attorney's disbursement of legal fees out settlement proceeds pursuant to a written retainer in a personal injury case for professional services rendered.

1. The instant fee dispute alleges a wrongful act or omission arising in the scope of professional services rendered and subject to the one-year statute of limitations.

Lee v. Hanley (2015) 61 Cal. 4th 1225 (hereinafter *"Lee"*) is the leading California Supreme Court case interpreting C.C.P. ß 340.6, and its application to a former client's claim against an attorney for conversion.

The California Code of Civil Procedure, Section 340.6 (a) provides in part:

> "An Action against an attorney for **wrongful act** or omission, other than for actual fraud, **arising in the performance of professional services** shall be commenced within one year after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission …" [Emphasis added]

In *Lee*, the plaintiff advanced her lawyer fees and costs in litigation. After the relationship ended, the plaintiff demanded the return of the unused fees and costs. The

attorney replied by letter stating that the client had a "credit balance" of $46,321.85, but he refused to return most of the money.

More than one year later, the plaintiff filed suit asserting breach of contract, unjust enrichment and breach of fiduciary duties. The attorney demurred, arguing that the plaintiff's claims were barred by the one-year statute of limitations—C.C.P. ß 340.6. The trial court sustained the demurrer, and the attorney appealed.

The Court of Appeals reversed, finding that the complaint could be construed to advance a claim for conversion; and a claim for conversion is not relevantly different from a claim for garden variety theft …[thus] section 340.6(a) might not bar Lee's lawsuit. (*Lee*, *supra.* 61 Cal. 4th 1225, 1232). The plaintiff appealed to the Supreme Court. On review, in *Lee* the California Supreme Court held:

> "section 340.6's time bar applies to claims whose merits necessarily depend upon proof that an attorney violated a professional obligation in the course of providing professional services." (*Lee*, 61 Cal. 4th 1225, 1237)

The Court further explained that a "professional obligation" is:

> "an obligation that an attorney has by virtue of being an attorney, such as fiduciary obligations, the obligation to perform competently, the obligation to perform the services contemplated in the legal services contract into which an attorney has entered, and the obligations embodied in the Rules of Professional Conduct" (*id.* at 1225, 1237)

Over ATTORNEY'S objection in his denied motion in limine, the trial court admitted evidence of "acts and omissions" of professional ethics and malpractice allegedly committed "in the performance of professional services"; and the Statement of Decision is replete with findings of breaches of "professional obligations", although they were not probative of or material to the ruling of conversion.

In *Lee*, the Court framed the issue:

> "…the question is whether the claim, in order to proceed, necessarily depends on proof the attorney violated a professional obligation." (*id.* at 1225, 243)

The examples provided by *Lee* of wrongful conduct that violates both an attorney's professional obligations and generally applicable nonprofessional obligations involve conduct that is merely incidental to the provision of professional services: sexual battery and "garden-variety theft." (*id.* at 1238, 1240)

The trial court found that that ATTORNEY committed multiple violations of "professional obligations", including:

> During his representation, ATTORNEY committed various beaches of professional ethics including, (a) having a conflict of interest, and failure to obtain written disclosure and obtaining informed consent; (b) failing to provide client with a fully filled out contingency fee contract prior to obtaining his signature; failing to inform client that the fee was negotiable; failing to inform client that he did not carry malpractice insurance; and failing to inform client of the contingency fee that was applicable to his case {AA ?; Statement of Decision, page 12}

These breaches are not "incidental" to the provision of professional services like theft or sexual assault; they are inextricably part of attorney's professional obligations to his client and, as such, are governed by section 340.6(a).

The findings of enumerated professional breaches in the Statement of Decision, are not probative or relevant to conversion. The findings is indicia that the trial court considered the alleged acts and omissions to be "professional obligations" committed "in the performance of professional services."

The fee dispute here--both on its face and because of the lower court's own findings of professional violations unrelated to conversion--arose out of alleged breaches of professional obligations committed in the performance of professional services, and is time-barred.

2. <u>An attorney's collection and distribution of settlement funds is part of the performance of the legal service of settling a lawsuit.</u>

In *Prakashpalan v. Engstrom, Lipscomb & Lack (2014)* 223 Cal. App. 4th 1105 (hereinafter "*Prakashpalan*), the client alleged the attorney failed to properly and fully distribute settlement funds collected in the performance of professional services.

The Court of Appeals held that the claim the attorney misappropriated settlement funds, was time-barred, because the attorneys' conduct in holding settlement funds "arise out of the provision of professional services namely the settlement of the case on plaintiff's behalf." (*Prakashpalan*, 223 Cal. App. 4th 1105, 1123 fn4)

The Supreme Court in *Lee* favorably cited *Prakashpalan* (*Lee*, 61 Cal. App. 4th 1225,1237). The Court of Appeals in *Lee v. Hanley*, whose decision was affirmed by the Supreme Court, framed the issue in *Prakashpala*n as "the attorney's alleged failure to properly or fully distribute settlement funds", and quoted the decision favorably, writing that:

> "An attorney's collection of **settlement funds and distribution** of those funds to the litigants entitled thereto **is clearly** part of the **performance of the legal service** of settling a lawsuit." *Lee v. Hanle*y (2014) 174 Cal. Rptr. 3d 489, 496.

The instant fee dispute, as did *Prakashpalan*, involves the distribution of settlement funds to a litigant which was part of the performance of legal services in settling a lawsuit, and is time-barred.

3. A genuine fee dispute does not give rise to a claim of conversion because the property does not clearly belong to the client.

One of the elements of conversion is that the property at issue must clearly belong to the plaintiff. See CACI 2100.

The *Lee* holding should not be misunderstood to conflate a genuine fee dispute, like the one at bar, with "conversion" or a garden-variety theft.

The *Lee* Supreme Court, favorably citing the below Court of Appeals rationale and affirming its decision, noted that that the court below analogized that "a claim for conversion is not relevantly different from a claim for garden-variety theft." (*Lee*, 61 Cal. App. 4th 1225, 1232)

Conversion is the civil counterpart to criminal, garden-variety theft which, like "fraud" (expressly excluded from section 340.6(a) applicability), are serious wrongdoing not subject to the one-year statute of limitations. However, a garden-variety fee dispute does not constitute conversion.

The attorney in *Lee* was alleged to have knowingly refused to return money belonging to his former client, which he himself had characterized as her "credit balance" (*Lee*, *supra*. At 1231-1232). In other words, if the allegations are proven, the "credit balance" was property which belonged to the plaintiff, and its wrongful retention could constitute conversion.

The Supreme Court cautioned that ordinary fee disputes are not factually "conversion" and, therefore, are subject to the one-year statute of limitations:

> "To be sure, a plaintiff in an ordinary fee dispute could attempt to evade dismissal by omitting the underlying factual basis for a conversion claim" (*id.* at 1225, 1239)

CLIENT, seeking to avoid the one-year statute of limitations, mischaracterized his claim as "conversion." However, a review of the underlying factual basis, reveals the fee dispute he had with ATTORNEY was an "ordinary fee dispute" which arose in the performance of legal services and, therefore, the subject to the one-year statute of limitations.

Shortly after the *Lee* opinion was published, the Second Appellate District, in a case directly on point, followed *Lee's* rationale, and time-barred the fee dispute.

In *Foxen v. Carpenter* (2016) 6 Cal. App. 5th 284 (hereinafter "*Foxen*"), the plaintiff hired the defendant attorneys to represent her in a personal injury lawsuit for damages sustained in an automobile accident. The retainer agreement—like the one at bar—did not meet the requirements of the Business and Professional Code Section 6147 (*Foxen*, *supra.* At 288)

In a lawsuit filed more than one year after services ended, plaintiff alleged that the attorney committed conversion (and other causes of action) by wrongfully and

fraudulently charging $944,141.95 in improper litigation costs. The attorney raised the one-year statute of limitations as an affirmative defense.

Following and applying the *Lee* case, the Court of Appeals in *Foxen* held that the one-year statute of limitations barred the conversion claim because—like the case at bar and in *Prakashpala*n —the fee dispute arose out of the attorney's performance of professional duties as lawyers. The court wrote:

> "Under no fair reading of the facts alleged in plaintiff's first amended complaint can it be inferred that the defendants wrongfully converted an identifiable sum of **money which was undisputedly owed** to plaintiff." [Emphasis added] (*Foxen, supra* at 292)

The holding and the qualifying language "undisputedly owed" is telling. In addition to time-barring the fee dispute because it arose "in the performance of professional services" by following *Lee*, the Court of Appeals in *Prakashpala*n also seems to have concluded that there can be no "conversion" unless the money is "indisputably owed." In other words, conversion does not lie where, as here, there is a genuine fee dispute, because the ownership of the property does not necessarily belong to the former client—an element of proving conversion.

The "undisputedly owed" rationale in *Foxen* dovetails with the *Lee's* decision, where the Supreme Court wrote:

> "We do not suggest that Hanley is in fact liable for conversion. At this stage, **we do not know whether Hanley disputes that he owes Lee the money** she claims …**or decided to keep it for no good reason**." (*Lee*, *supra*. at 1240) [Emphasis added]

At bar, we know that ATTORNEY genuinely "disputed" CLIENT'S claim for money; and he disbursed it pursuant to a written retainer agreement for a "good reason."

It is undisputed that CLIENT agreed to pay a 15% fee out of his settlement proceeds to someone. The ATTORNEY genuinely claimed he was entitled to the 15% attorney's fee, *and not ARMS*, because that was his agreement with PARK, it was consistent with a 15% written retainer PARK prepared and her email "Newman keeps", and the retainer was translated to and knowingly and voluntarily signed by CLIENT.

The fee dispute must be *genuine* to prevent an attorney from seeking to time-bar a true conversion claim by characterizing it as a "fee dispute." Only if the property is proven to clearly belong to the client at the time of demand *i.e.* where there was an admitted "credit balance" as in *Lee*, or the money is "undisputedly owed" as in *Foxe*n, does conversion lie.

The fee dispute at bar was genuine. The money claimed did not clearly belong to the CLIENT. There was no conversion.

Moreover, the trial court's finding of conversion, had the unintended effect of legitimizing the payment $130,000.00 to ARMS, which would constitute the fee splitting ATTORNEY vociferously and properly sought to avoid.

B. Conversion was not proven by substantial evidence.

1. The evidence does not prove conversion; only that CLIENT may have been misled by PARK, or he is the victim of his own mistakes.

The parties had a fee dispute which, at best, was the product of a mistake or misunderstanding of CLIENT based on a conversation he had with PARK, or caused by his own mistakes and omissions, based on the evidence:

1. ATTORNEY testified that he agreed orally with PARK to 15% as a condition to representing CLIENT—and it was ultimately reduced to a 15% written retainer by her and pursuant to her instructions ("Newman keeps"), and signed by CLIENT in the presence of a translator. ATTORNEY'S 15% fee agreement with ARMS was corroborated by Steve Kim, the company's operations manager, and longtime family friend of HUDRLIK.

2. CLIENT did not have any personal knowledge as to what fee was agreed upon between ATTORNEY and PARK, who he acknowledged had express authority to retain ATTORNEY and to communicate with him on his behalf.

3. PARK testified that she did not have any conversation with ATTORNEY about fees at the time she retained him to represent CLIENT or thereafter; and that the amount of attorney's fees were first discussed between ATTORNEY and HUDRLIK, of which she was not privy.

4. The only testimony that contradicted the existence of ATTORNEY'S 15% fee retainer and agreement was by HUDRLIK, who claimed that he had a conversation with ATTORNEY after the case settled. That meeting followed CLIENT'S coming to PARK, questioning the payment of both paying 15% in attorney's fees and $130,000.00 to ARMS, which was triggered by ATTORNEY'S March 28, 2016 letter.

HUDRLIK'S testimony is not credible, nor impartial. His company, ARMS, was the real party of interest in the joint-effort with CLIENT to be paid $130,000.00.

HUDRLIK sought to engage in "fee splitting" by seeking payment of 15% of the settlement, even if it was for ten million dollars, without any itemization or legal justification beyond ARMS salary advances—which CLIENT refused to agree to pay throughout ATTORNEY'S representation, *until* he signed the document to pay ARMS $130,000.00 in the document slipped to him when he signed the insurance company release. When just a few days earlier, he and PARK met and mutually agreed for the first time that he would pay ARMS 15% of settlement, and the company would pay ATTORNEY $20,000.00.

HURDRLIK'S was so eager to get paid $130,000.00, he admitted offering to create a fraudulent rent invoice to overcome ATTORNEY'S unwillingness to engage in attorney fee splitting.

2. Failure to prove the allegation in Paragraph 8 of the Complaint.

CLIENT'S complaint in paragraph # 8 alleged the essential element of conversion that the property (money) belonged to him:

> "Defendant Newman assured Plaintiff he would accept a fee of $20,000.00 for the services provided, which Plaintiff agreed to pay from the settlement proceeds. " {AA 16; Complaint, page 35 paragraph 9}

The trial found that, as alleged in the Complaint, ATTORNEY agreed represent CLIENT for a flat fee of $20,000.00. There was no evidence of any such agreement or assurance between the parties; and no substantial evidence of any such agreement between ATTORNEY and ARMS. On the contrary, CLIENT testified that his understanding what ATTORNEY would be paid was based solely on his conversation

with PARK at the time of settlement, when they agreed that ARMS would receive 15% the company would pay attorney $20,000.00.

The greater and most credible weight of the evidence establishes that ATTORNEY never agreed to work on CLIENT'S case without compensation or for a fixed fee; and that he reasonably believed that he would be paid a 15% contingency fee.

3. The elements of conversion were not proven.

The jury instruction for conversion, CACI 2100, sets forth the elements necessary to prove collusion:

(a) the plaintiff must have a right to the possession of property that it belonged to him/her;

(b) the plaintiff demanded return of the property;

(c) the plaintiff did not consent; and,

(d) defendant (and not the plaintiff) was a substantial factor in causing the harm.

In the fee dispute here, there was no proof of conversion, because the CLIENT:

(1) did not have an established right to possession of money, and the money did not clearly belong to him. A "generalized claim for money [is] not actionable as conversion." *PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glasre, Weil & Shapiro* (2010) 150 Cal. App. 4th 384, 395. All he had was an inchoate and disputed claim. The facts at bar do not establish anything akin to conversion's twin sibling: a "garden variety of theft."

(2) he never demanded the return of the property until he filed his lawsuit;

(3) he expressly and impliedly consented to the fee payment. CLIENT never instructed ATTORNEY not to pay himself $130,000.00 or objected to him doing so when he clearly had the opportunity on the three separate occasions that the 15% attorney's fee was discussed: when he signed the 15% retainer which was translated for him; when he discussed ATTORNEY'S March 28, 2017 letter in the presence of a translator; and when he met with ATTORNEY on August 2, 2017 and received his net proceeds.

Moreover, ATTORNEY, Steve Kim (the translator), CLIENT and PARK all testified that CLIENT only instructed ATTORNEY not to pay ARMS, and he did not object to the payment 15% to ATTORNEY prior to or at the time of disbursement of funds.

There can be no conversion where—as it did here--an owner either expressly or impliedly CLIENT assents to the taking or disposition of the property. *Farrington v. Smith Booth Usher Co.* (1942) 56 Cal. App. 2d. 23, 27-28.

CACI No. 2100 [plaintiff must prove it "did not consent"]; Civ. Code, § 3515 [one "who consents to an act is not wronged by it"].) Consent " 'is not, strictly speaking, a privilege, or even a defense, but goes to negative the existence of any tort in the first instance.' " *Tavernier v. Maes* (1966) 242 Cal.App.2d 532, 552.

Under the totality of the circumstances, CLIENT expressly and or impliedly consented and ratified the payment of 15% pursuant to their written contract. Alternatively, he did not prove the absence of consent.

Therefore, there was no conversion.

(4) CLIENT'S conduct--more so than ATTORNEY--was a "substantial factor" causing his alleged "harm." CLIENT chose to become closely aligned with ARMS against ATTORNEY—even relying on PARK to draft a bar complaint on his behalf. CLIENT'S alliance and undeserving loyalty with ARMS invited and created the fee dispute.

CLIENT did not prove any of the elements of conversion: he had no undisputed right to the property (it did not clearly belong to him); he never demanded the money until he filed suit; he expressly consented to (and never objected) to ATTORNEY'S disbursement; and the CLIENT (not ATTORNEY) was a substantial factor in any harm that he may have suffered through his alliance with ARMS. [9]

[9] Not only did PARK draft the language of the Bar complaint, ARMS' influence infected the pleadings. CLIENT'S complaint in paragraph # 5 (AA 16; page 35, Paragraph 5) gratuitously states that **"Arms generously agreed** to pay Plaintiff's salary during the pendency of the claim, and agreed to provide their in-house counsel …to represent

4. Parol Evidence Considerations.

CLIENT'S attempt to avoid the consequences of his blind reliance on PARK, his own unilateral mistakes, and his signed & translated 15% retainer agreement, arguably violates the *parol* evidence rule, which provides that "when parties enter an integrated written agreement, extrinsic evidence may not be relied upon to alter or add to the terms of the writing. *Riverisland Cold Storage, Inc. v. Fresno-Madera Production Credit Association* (2013) 55 Cal. 4th 1169,1174.

Here there is no proof of fraud, alteration, duress, undue influence, lack of consideration or contract illegality—other than those possibly committed by ARMS' officers-- that would support an exception to the rule.

While the rule violation may not be dispositive on appeal, it could be considered a factor in balancing the parties' respective interests, militating in favor of giving effect to the parties' 15% written retainer, rather than alter it based on questionable and disputed oral testimony.

C. A client's option to declare an attorney's retainer agreement void, pursuant to California Business and Professions Code Section 6147(b), exercised over one year after the attorney-client relationship ended, was untimely and bared by the one-year statute of limitations.

1. The attempt to exercise the option to void the 15% retainer over one year after the attorney-client relationship ended was untimely, and time-barred.

The CLIENT never sought to void the 15% retainer, until he filed his complaint over one year after the attorney-client relationship ended. The complaint alleged that the retainer did not state that attorney fees are not set by law and are negotiable, as required

plaintiff." [Emphasis added] The court noted that the company acted out of its own self-interests to avoid being sued for not having worker's compensation insurance; and CLIENT accepted ARMS' offer of assistance because he didn't want to sue the company.

by Section 6147(b) and, therefore, the retainer is voidable under the statute. {AA 16; Complaint, page 35 paragraph 8}.

The trial court found that the ATTORNEY'S retainer agreement did not comport with the California Business and Professions Code Section 6147(b)—although there was no finding that the retainer's deficiencies caused CLIENT harm; and concluded that the CLIENT exercised his statutory option to void the retainer, and awarded him $130,00.00. {AA 20; Statement of Decision, page 92}. The finding and award was gratuitous in that it duplicated the same monetary relief based on its finding of conversion.

ATTORNEY did not dispute the retainer did not include the statutory language. He argues that the remedy was time-barred.

2. The statutory exercise to void the retainer was triggered by a breach of professional ethics—failure to include language that attorney's fees are negotiable—occurred in "performance of professional ethics", and squarely a wrong or omission governed by section 340.6(a), and *Lee.*

The failure to include language in the retainer that attorney's fees are negotiable is a breach of professional ethics, which is a "wrongful act or omission … arising in the performance of professional services" and, therefore, squarely within the scope of section 340.6(a).

The remedy of voiding the retainer was time-barred.

D. The trial court's admission of evidence of legal malpractice and breaches of professional ethics, and making gratuitous findings of professional errors in the final judgment, was prejudicial error, tainting the findings of fact supporting the judgment for conversion, warranting a new trial.

ATTORNEY filed a motion in limine to preclude admission of evidence of legal malpractice because the cause of action was both time-barred, and it would be highly prejudicial to the remaining claim of conversion, which was denied.

In determining whether the trial court committed prejudicial, evidentiary error, the inquiry is whether "it appears reasonably probable that were it not for the trial court's incorrect evidentiary rulings, a result more favorable to the appellant could have been obtained." *Winfred D. v. Michelin North America, Inc.* (2008) 165 Cal. App. 4th 1011, 1040.

After the close of CLIENT'S case, the court non-suited the malpractice cause of action as time-barred. At the conclusion of the trial, the court characterized ATTORNEY'S professional and ethical breaches as benign "rookie errors."

The Statement of Decision that followed is replete with gratuitous findings of ATTORNEY'S professional and ethical breaches that are not relevant or material to its findings of fact that ATTORNEY committed conversion.

The trial court wrote:

> "During his representation, ATTORNEY committed various beaches of professional ethics including, (a) having a conflict of interest, and failure to disclosure and obtaining informed consent; (b) failing to provide client with a fully filled out contingency fee contract prior to obtaining his signature; failing to inform client that the fee was negotiable; failing to inform client that he did not carry malpractice insurance; and failing to inform client of the contingency fee that was applicable to his case."
>
> {AA 20; Statement of Decision, page 89-92}

The only undisputed, ethical breach alleged in the complaint, was the retainer's failure to state language that attorney fees are negotiable which, if timely exercised, would be grounds to void the retainer pursuant to the California Business and Professions Code ß 6147 (a)(4). (AA 16; page 35, paragraph 8)

The erroneous admission of evidence of other professional breaches, was followed by the trial court making findings of other multiple other professional breaches, which were not relevant or material to the elements of conversion. The fact that the court made

numerous findings of irrelevant professional breaches, is dispositive of the prejudicial effect the error had on the verdict of conversion. It is reasonably probable that but for the trial courts incorrect evidentiary rulings, a result more favorable outcome would have occurred.

Why else would the trial court include numerous ethical breaches that caused no harm if they were not considered by the trier of fact to be material to and probative of conversion?

The prejudicial findings of professional ethical violations, which morphed from "rookie errors", was not harmless because it impaired ATTORNEY'S credibility—the very reasons he stated in his motion in limine for precluding the admission of the prejudicial testimony.

If the Court of Appeals concludes that conversion was not time-barred, or that the evidence supports the conversion finding, a new trial is warranted to ensure the verdict was based on admissible evidence, and not tainted by prejudicial error.

IX.
CONCLUSION

The CLIENT never sought fee arbitration proposed by ATTORNEY in his August 28, 2016 email. Instead he waited more than one year to file a lawsuit alleging "conversion" and "fraud", hoping to circumvent the one-year statute of limitations.

The preparation of and entry into a retainer agreement, and disbursement of settlement funds, is undeniably part of an attorney's professional acts and omissions arising in the performance of professional services. "But for" the professional relationship and rendering professional services, there would be no dispute over the amount of attorney fees owing.

Any decision that would allow another statute of limitations to resolve attorney-client fee disputes like the one at bar would fly in the face of the holdings and rationales in *Lee, Prakashpalan* and *Foxen*, undermine and distort Section 340.6(a), and foster the very uncertainty the statute was designed to eliminate.

Moreover, the CLIENT'S exercise of voiding the retainer agreement pursuant to California Business and Professions Code Section 6147(b) (requiring a breach of professional ethics) was time-barred.

Finally, CLIENT did not prove all the elements of conversion.

Alternatively, the Court of Appeals should reverse and remand for a new trial based on the trial court's prejudicial error of admitting evidence of professional malpractice and ethical breaches, which resulted in numerous, specific findings of professional breaches not relevant or material to conversion.

It is unfortunate that CLIENT may have suffered damages, because they were avoidable. He could have refused to pay ARMS $130,000.00, for which there was no consideration, and given its bad faith.

ATTORNEY alerted CLIENT about what he thought might be ARMS' exercise of undue influence in his letter dated May 28, 2016, which led to their meeting with a translator to discuss the $130,000.00 ARMS claim & 15% attorney fee matter.

Thereafter, the parties met again when the ATTORNEY disbursed the money to client on August 2, 2016, and they again discussed the settlement deductions of attorney fees and medical liens. On both occasions, the only instruction CLIENT gave ATTORNEY was not to pay ARMS, and no objection was made to payment of his 15% attorney's fees.

CLIENT was clearly made aware of the fee issue from the March 28, 2016 letter, and the meeting with the ATTORNEY and translator that followed. Indeed, shortly thereafter, CLIENT went to PARK and discussed his concerns. He sat back and did nothing to protect his interests for two months through the conclusion of the attorney-client relationship on August 2, 2016.

What CLIENT did, instead, was to align himself with ARMS, at his peril. He could have timely instructed ATTORNEY not to disburse his fee rather than just instruct him not to pay ARMS. He could have sought judicial relief. He could have opted for mandatory fee arbitration, as ATTORNEY suggested. He could have refused to sign the 15% retainer agreement or sought clarification if it varied from his understanding. He

could have filed his lawsuit within one year. He could have accepted some responsibility for his own actions.

There should be consequences for his own conduct.

ATTORNEY prays that the Court of Appeals:

1. Reverse the trial court's findings of conversion; and that the retainer was timely voided under California Business and Professions Code Section 6147(b);

2. Enter judgment in favor of ATTORNEY;

3. Award ATTORNEY his appellate costs;

4. Remand for further proceedings to permit ATTORNEY to recover his taxable costs in the court below.

5. The findings of fact in support of conversion are tainted by prejudicial error. Alternatively, if conversion is not deemed time-barred, or the Court of Appeals finds there is substantial evidence the cause of action was proven, ATTORNEY prays for a new trial because of the prejudicial error of admitting evidence of malpractice and ethical breaches.

Dated: February 26, 2020

Respectfully submitted:

MICHAEL P. NEWMAN
Appellant and Defendant

X.
CERTIFICATE OF WORD COUNT

I, Michael P. Newman, pro se Appellant, certify that, pursuant to Rule 8.205 of the California Rules of Court, the opening brief was produced using New Times Roman 13-point type, and contains approximately 13,619 words, inclusive of footnotes and excluding the cover, tables & certificates, which is less than the 14,000 words permitted. I relied on the word count of the computer program used to prepare this brief.

Dated: February 26, 2020

MICHAEL P. NEWMAN
Appellant and Defendant

XI.
DECLARATION OF SERVICE

I, Marilyn Newman, hereby declare:

I am employed in the city of Corona and county of Riverside, California in the office of a member of the bar of this court at whose direction the following service was made. I am over the age of eighteen years and not a party to the within action. My business address is Law Office of Michael P Newman, PC., 2191 Sampson Ave., Suite 104, Corona, CA 92879.

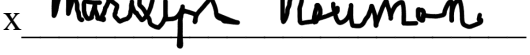
On February 26, 2020, I served the **APPELANTS BRIEF** on the interested parties in this action by electronic transmission via TrueFiling whose e-filing system will automatically serve the following attorneys of record who have consented to receive electronic service of documents in this manner.

- Richard A. Lucal (ral@looral.com)

On February 26, 2020, I also served the APPELANAT'S BRIEF via mail on the persons listed below by placing a true copy thereof, enclosed in a sealed envelope following the ordinary business practice

Superior Court of California, Riverside County
Honorable Daniel A. Ottolia, Dept 4
4050 Main Street
Riverside, California 92501

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on February 26, 2020, at Corona, CA.

x 

Marilyn Newman