Not Reported in Cal.Rptr.3d, 2010 WL 2677441 (Cal.App. 2 Dist.)
Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
(Cite as: 2010 WL 2677441 (Cal.App. 2 Dist.))

Court of Appeal, Second District, Division 7, California.
UNZIPPED APPAREL, LLC et al., Plaintiffs, Cross-defendants and Appellants,
v.
SWEET SPORTSWEAR, LLC et al., Defendants, Cross-complainants and Appellants.
No. B203995.
(Los Angeles County Super. Ct. No. BC319612).

July 7, 2010.

APPEALS from a judgment and orders of the Superior Court of Los Angeles County, James R. Dunn, Judge. Affirmed in part, reversed in part, vacated in part, and remanded.
Latham & Watkins, Kristine L. Wilkes and G. Andrew Lundberg; Blank Rome, James T. Smith, Brian S. Paszamant and Judd A. Serotta; Greenberg Traurig, George M. Belfield and Jordan D. Grotzinger for Unzipped Apparel, LLC, Iconix Brand Group, Inc., Michael Caruso & Co ., Inc. and IP Holdings, LLC.

SEGAL, J.[FN*]

FN* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

*1 Law Offices of Gary Freedman and Gary A. Freedman; Browne Woods George, Edward A. Woods, Peter W. Ross, Michael A. Bowse and Marta B. Almli for Apparel Distribution Services, LLC, Sweet Sportswear, LLC, Azteca Production International, Inc. and **Hubert Guez**.

After an 11-week jury trial on numerous claims and cross-claims between the parties, the jury returned verdicts in favor of plaintiffs and appellants on all of their claims, and against defendants and appellants on all of their claims. The parties filed numerous posttrial motions. The trial court granted some of the posttrial motions and denied others. The trial court had also dismissed some of the parties' claims before trial. Both sides appeal. We affirm in part and reverse in part.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Parties and their Contracts

Hubert Guez, in his words, is "a specialist of jeans, making jeans for everybody" and "for the whole world." Through his various companies, Guez manufactures and distributes designer jeans for brands such as Calvin Klein, Tommy Hilfiger, American Eagle, and Levi's. One of his companies is Azteca Production International, Inc. (Azteca), which Guez owns with his brother. Azteca through a Mexican subsidiary has a one million square foot facility in Mexico dedicated to manufacturing jeans. Azteca manufactures 100,000 pairs of jeans a day and 25 million pairs of girls junior jeans annually, and generates annual gross income of $250 to $350 million. Another one of Guez's companies is Apparel Distribution Services, LLC (ADS), which, as its name implies, provides warehousing, shipping, inventory, and distribution services for the jeans manufactured by Azteca. Sweet Sportswear, LLC (Sweet), another entity owned by Guez and his brother, provides management

Not Reported in Cal.Rptr.3d, 2010 WL 2677441 (Cal.App. 2 Dist.)
Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
(Cite as: 2010 WL 2677441 (Cal.App. 2 Dist.))

services for Guez-affiliated companies.

Iconix Brand Group, Inc., a publicly traded company formerly known as Candie's, Inc. (Candie's), is in the business of managing brands and licensing trademarks, including the Bongo and Candie's trademarks. Candie's has a wholly owned subsidiary, Michael Caruso & Co., Inc. (MC), which licenses these trademarks in exchange for royalty payments. Another wholly owned subsidiary of Candie's, IP Holdings, LLC (IPH), does what its name suggests: It is a holding company for intellectual property rights, and owns the Bongo trademark. Neil Cole is chairman of the board and chief executive officer of Candie's.

The parties' business relationship began in 1998 when they formed Unzipped Apparel, LLC (Unzipped), a joint venture among Candie's, MC, and Sweet, with MC and Sweet each owning 50 percent of the joint venture.[FN1] The 1998 joint venture agreement provided that MC would contribute to Unzipped $500,000 and royalty-free licenses for the Bongo and Candie's trademarks, and Sweet would contribute to Unzipped $500,000 and management services to supervise and operate Unzipped's business and affairs. The 1998 joint venture agreement also provided that Unzipped would be governed by a management committee, that Sweet would be the manager of Unzipped, and that Sweet would be responsible for maintaining and managing the "financial recordkeeping and accounting affairs" of the joint venture. The joint venture agreement was accompanied by two additional contracts: The 1998 Supply Agreement, pursuant to which Azteca agreed to manufacture and supply Bongo jeans for Unzipped at cost plus 7 percent, and the 1998 Distribution Agreement, pursuant to which ADS agreed to warehouse and distribute the jeans for Unzipped for $.50 per pair of jeans ($.35 for warehouse storage, shipping, tracking, labor and management services, and "maintenance of perpetual inventory," and $.15 for order entry, billing, "MIS" (presumably management information services), and office supplies).

> FN1. The parties generally refer to Candie's, Unzipped, MC, and IPH as "plaintiffs," and refer to Guez, Sweet, Azteca, and ADS as "defendants" or "the Guez parties." These general denominations, which we use in this opinion, are subject to the qualifications that the two groups of parties have a cross-complaint between them, and that not each plaintiff and not each defendant is a party to each cause of action.

***2** One of the terms of the 1998 Unzipped joint venture agreement was that Candie's would purchase Sweet's 50 percent interest in Unzipped on January 31, 2003. This term was intended to provide a mechanism for ending the joint venture and separating the parties. The agreement established a formula for calculating the sale price: 50 percent of 7.5 times EBITDA (earnings before interest, taxes, depreciation, and amortization) for fiscal year 2003 (February 1, 2002 to January 31, 2003). The parties, however, did not wait until January 31, 2003 to consummate the buyout by Candie's of Sweet's 50 percent interest in Unzipped. Instead, during April through October 2002 the parties negotiated an early buyout, documented by, among other agreements, a binding April 23, 2002 Term Sheet, and a more formal October 18, 2002 Equity Acquisition Agreement. Both aspects of this transaction, the formula for calculating the purchase price and the early purchase by Candie's of Sweet's 50 percent interest in Unzipped, created much of the dispute that eventually led to this litigation.

And here's why: The economic fundamentals of the transaction created uncertainties and incentives for each side to take advantage of the other side. For example, the purchase price was dependent on the financial performance of Unzipped for fiscal year 2003. Sweet had the incentive to report Unzipped's financial condition and performance as healthy and robust as possible; Candie's had the incentive to question and understate Unzipped's financial condition. Valuation issues, such as the subjective or discretionary component in determining the value of Unzipped's inventory at any point in time, contributed to the difficulty of valuing Unzipped's overall financial condition. The timing of the purchase also affected the parties' incentives, with each side gambling that the early purchase price in 2002 would be lower (Candie's) or higher (Sweet) than it would be in January 2003. The two sides' different levels of access to Unzipped's financial information created another significant potential for dispute. Candie's claimed that Sweet inflated Unzipped's financial figures so that Candie's paid more than it should have for Sweet's half of the joint venture and that Guez concealed financial information that would have affected the purchase price. Guez and Sweet claimed that Candie's "finagled" Unzipped's financial figures when it suited Candie's' purposes.

As part of the April 23, 2002 Term Sheet, Guez became a member of the board of directors of Candie's. As part of the October 18, 2002 Equity Acquisition Agreement, the parties entered into a new contract for the provision by Sweet of management services for Unzipped, the Management Services Agreement (MSA). Pursuant to this agreement, Sweet, although no

Not Reported in Cal.Rptr.3d, 2010 WL 2677441 (Cal.App. 2 Dist.)
Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
(Cite as: 2010 WL 2677441 (Cal.App. 2 Dist.))

longer a 50 percent owner of Unzipped, agreed to continue to serve as the manager of the Unzipped. Sweet also agreed to provide management services to Unzipped, including maintenance of Unzipped's financial records and preparation of its annual financial reports. The parties also entered into a new supply contract with Azteca, the Amended and Restated Supply Agreement (ARSA), which required Unzipped to pay Azteca cost plus 6 percent, and a new distribution agreement with ADS, the Amended and Restated Distribution Agreement (ARDA), which required Unzipped to pay ADS $.50 per pair of jeans.

***3** The October 2002 agreements contained several terms that became important to the parties' subsequent dispute. Pursuant to the Equity Acquisition Agreement, Candie's paid for Sweet's 50 percent interest in Unzipped with stock (which Guez subsequently sold for $18 million) and an $11 million note at 8 percent interest, which required Candie's to make quarterly interest payments of $220,000 until April 23, 2012, the maturity date of the note. In the Equity Acquisition Agreement, Sweet warranted that Unzipped's financial statements were true, correct, and accurate and that Sweet had prepared them in accordance with generally accepted accounting principles (GAAP). Sweet also warranted that there were no undisclosed adverse material circumstances, liabilities, changes, or losses. The MSA provided that Sweet would manage Unzipped "in a faithful manner and in the best interest of" Unzipped and that Sweet would continue to maintain Unzipped's books and records. Significantly, Sweet guaranteed in Paragraph 2.7 of the MSA that Unzipped would make an annual profit of at least $1.7 million, and agreed that if Sweet failed to realize this profit, as determined by Unzipped's accountants "at the time of the issuance of the audited results," then Sweet would not earn a management fee for that year. Sweet also agreed that if Unzipped's annual net income was less than the $1.7 million guarantee, Sweet would pay Unzipped the difference. Candie's could receive the "shortfall" (i.e., the amount less than $1.7 million in net income) in cash, or Candie's could offset the shortfall amount against interest and principal due under the $11 million note.

The parties' relationship, which was never smooth, deteriorated in early 2004. Candie's owed quarterly interest payments on the $11 million note; Sweet would owe a shortfall payment if Unzipped's net income failed to reach $1.7 million; and neither side trusted the other side or its accountants and auditors. The issue of inventory reserves, which had a direct impact on Unzipped's profitability and therefore on whether Sweet would meet the $1.7 million guarantee and whether Candie's would have to make interest payments under the $11 million note, was one of the greatest points of controversy.[FN2] Plaintiffs claimed that defendants were artificially inflating Unzipped's financial performance by valuing the inventory reserve too low, and defendants claimed that plaintiffs were artificially depressing Unzipped's performance by valuing the inventory reserve too high.[FN3] Candie's also claimed that it could never get accurate financial information from Sweet or Guez, and Sweet claimed that Candie's was using accounting chicanery to conjure up excuses not to make interest payments on the $11 million note.

> FN2. Guez had his controller run internal pro forma analyses on the effect that different inventory reserve values would have on the $1.7 million guarantee. Candie's performed similar analyses of the relationship between the inventory reserve and the guarantee.
>
> FN3. The inventory reserve is the difference between the cost of a pair of jeans and the current estimated value. A low inventory reserve means that the jeans in the inventory are still near their original value, whereas a high inventory reserve means that the jeans in the inventory have declined in value. Essentially, Sweet and Guez believed that the jeans in the inventory could be sold for more than Candie's did. Each side consulted Unzipped employees and auditors in support of their different inventory reserve values. Sweet and Guez initially set the inventory reserve at $1,854,000; Candie's set the inventory reserve at $4.1 million. As Guez testified: "There is no right and wrong in inventory reserve. It's a carrying value. It's a management estimate." The auditors ultimately sided with Candie's on this issue.

In addition to the fact that the personal relationship between the principal individuals, Cole and Guez, had deteriorated to the point that they were not on speaking terms, tension between the two sides increased as they began to look toward the future. The MSA expired on January 31, 2005. In February 2004 plaintiffs began exploring new license agreements with potential new licensees, even though the sublicense agreement between MC and Unzipped, according to defendants, prohibited plaintiffs from doing so until August 1, 2004.[FN4] Defendants claimed that the premature license negotiations by Candie's were not

Not Reported in Cal.Rptr.3d, 2010 WL 2677441 (Cal.App. 2 Dist.)
Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
(Cite as: 2010 WL 2677441 (Cal.App. 2 Dist.))

only a breach of contract, but also damaged Unzipped's operations and impeded Sweet's ability to maximize Unzipped's performance and meet the $1.7 million guarantee.

> FN4. Paragraph 20 of the sublicense agreement between MC as licensor and Unzipped as licensee provides: "During the last six (6) months of the final Contract Year, Licensor shall have the right to design and manufacture merchandise of the types covered by this Agreement and to negotiate agreements which grant a license to a party of any of the rights herein mentioned." The purpose of this provision was disputed and unclear. Because the sublicense agreement between MC and Unzipped was a non-exclusive license, there should have been no reason for the parties to agree that MC could start looking for new licensees during the last six months of the term of the sublicense.

***4** Meanwhile, Guez had approached Candie's with a proposal to sell several other brands of jeans, including brands called Hippie (the predecessor to True Religion), Hint, and Private Label. Guez was unable to interest Candie's in these new ventures, primarily because Candie's wanted to concentrate on selling Bongo jeans rather than starting "new business ventures with Mr. Guez." So Guez did the next best thing: He started a new business (actually, he reactivated a dormant company owned by him and members of his family called Commerce Clothing) to sell Hippie jeans using Unzipped resources, such as current and former Unzipped employees, business contacts, and showroom space. Guez, while he was still on the board of directors of Candie's and while Sweet was still the manager of Unzipped, hired Unzipped employees to arrange for the leasing of office and showroom space for the Hippie project in the same building that had the Bongo showroom, and for access by the new venture's computers to Unzipped's computers. One of these individuals, Gary Bader, whom the parties refer to as the "president" of Bongo jeans, conducted Hippie business for Guez on Unzipped time, using Unzipped email addresses, and working in Unzipped offices and showrooms. Guez testified that he did not feel that he had to disclose his new jeans businesses to Candie's because he believed that Hippie jeans, which would be priced higher, would not compete with Bongo jeans, and in fact would help and support the Bongo line of jeans. Plaintiffs presented evidence that Hippie and Bongo jeans were competitive.

On August 5, 2004 Candie's terminated the MSA, the ARSA, and the ARDA, and filed this action. In an anticipatory action to mitigate their claimed damages and to collect some of the money that defendants believed plaintiffs owed them, defendants sold the remaining Bongo-trademarked jeans in their possession, despite plaintiffs' demand for the return of all of the Bongo jeans.

B. The Claims

Plaintiffs' 72-page (excluding hundreds of pages of exhibits), 293-paragraph, first amended complaint asserted 19 causes of action in four general categories: (1) fraud claims primarily against Guez and Sweet in connection with the April 23, 2002 Term Sheet and the October 18, 2002 Equity Acquisition Agreement (the first, second, third, fourth, fifth, sixth, and seventh causes of action); (2) breach of contract claims against Sweet and Azteca (the eighth (for breach of the MSA) and tenth (for breach of the Supply Agreement) causes of action); (3) breach of fiduciary duty claims against Sweet and Guez (the ninth and twelfth causes of action); and (4) trademark, conversion, and unfair competition claims against all four defendants (the eleventh, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, and nineteenth causes of action). Defendants' more modest 28-page, 135-paragraph, first amended cross-complaint asserted 11 causes of action also in four general categories: (1) breach of contract claims against Unzipped in connection with the MSA, the ARSA, and the ARDA (the first, second, and third causes of action); (2) interference claims against Cole (the fourth, fifth, and sixth causes of action); (3) breach of contract and fraud claims against Candie's in connection with the $11 million note (the seventh, eighth, ninth, and tenth causes of action); and (4) an indemnification claim by Guez against Candie's for failure to indemnify and defend Guez, as a board member of Candie's, for this action (the eleventh cause of action).

C. The Trial Court's Pretrial Rulings

***5** Prior to trial, the trial court granted defendants' motion for summary adjudication on plaintiffs' original fraud claims in the first amended complaint. Plaintiffs subsequently filed a motion for leave to amend in order to allege five new (or at least new

Not Reported in Cal.Rptr.3d, 2010 WL 2677441 (Cal.App. 2 Dist.)
Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
(Cite as: 2010 WL 2677441 (Cal.App. 2 Dist.))

versions of their) fraud causes of action based on four new allegations of fraud. The trial court denied leave to amend as to three of plaintiffs' new fraud allegations and allowed plaintiffs to file a second amended complaint containing the five new causes of action based on the remaining new fraud allegation. The trial court, however, ultimately granted defendants' motion for summary adjudication on these five fraud causes of action as well. The trial court also sustained Cole's demurrer to the interference claims in defendants' first amended cross-complaint without leave to amend.

D. The Trial

The parties tried the remaining claims to the jury, over approximately two and a half months from January to April 2007. To keep track of the various claims arising out of the various contracts, duties, and relationships, the parties gave names to the claims, such as "Sylvain," "Belts and Sarongs," and "Perpetual Inventory." The trial court adopted these names, and the April 9, 2007 jury verdicts consist of findings on those claims.

Plaintiffs prevailed on all of their claims, including their punitive damages claim against Guez. Defendants prevailed on none of their claims. The jury awarded plaintiffs more than $50 million, although some of this amount required adjustment for duplicative awards on the trademark and conversion claims.

On June 4, 2007 defendants filed motions for judgment notwithstanding the verdict (JNOV) and a motion for a new trial. On November 16, 2007 the trial court issued its final order ruling on defendants' motions for JNOV and for a new trial. Also on November 16, 2007 the trial court entered judgment on the complaint as to defendants Guez and ADS only, and on the cross-complaint as to all parties. Both sides appeal.

JURISDICTION

Because the existence of an appealable judgment or order is a jurisdictional prerequisite for an appeal, "whenever a doubt exists as to whether the trial court has entered a final judgment or other order or judgment made appealable by Code of Civil Procedure section 904.1,[FN5] a reviewing court must raise the issue on its own initiative." (*First Security Bank of Cal., N.A. v. Paquet* (2002) 98 Cal.App.4th 468, 472; see *Harrington-Wisely v. State of California* (2007) 156 Cal.App.4th 1488, 1494; *Jennings v. Marralle* (1994) 8 Cal.4th 121, 126.) Even where none of the parties raises "the threshold issue of whether the judgment is appealable," this court is "dutybound" to consider it because the question of appealability goes to jurisdiction. (*Nguyen v. Calhoun* (2003) 105 Cal.App.4th 428, 436.)

FN5. Statutory references are to the Code of Civil Procedure unless otherwise indicated.

A. The November 16, 2007 Judgment

On November 16, 2007 the trial court entered judgment on the complaint in favor of plaintiffs and against defendants Guez and ADS. The trial court refused (over plaintiffs' objections) to enter judgment in favor of plaintiffs and against Sweet and Azteca, because it had ordered a new trial on certain issues as to Sweet and Azteca. The court on November 16, 2007 also entered judgment in favor of plaintiffs and against defendants on all causes of action in the first amended cross-complaint. The trial court's decision to enter judgment on the complaint against only two of the four defendants raises issues under the one judgment rule of whether and how much of the judgment is appealable, and as to which parties, even though the judgment resolves all claims and issues in the cross-complaint.

***6** The one judgment rule, effectively codified in section 904.1, subdivision (a), provides that only final judgments are appealable. (*Otay River Constructors v. San Diego Expressway* (2008) 158 Cal .App.4th 796, 803.) It is this finality that makes a judgment appealable. (*Sullivan v. Delta Air Lines, Inc.* (1997) 15 Cal.4th 288, 304; see *Walton v. Mueller* (2009) 180 Cal.App.4th 161, 172, fn. 9 ["Under this rule, an appeal lies only from a final judgment that terminates the trial court proceedings by completely disposing of the matter in controversy"].)

In multi-party, multi-claim actions, a "judgment is not final and not appealable when it decides the issues in a cross-complaint but not the issues in a complaint, unless the cross-complaint sought separate and independent relief by or against different parties, or the judgment or order on the cross-complaint leaves no issues to be determined as to one party." (*Westamerica Bank v. MBG Industries, Inc.* (2007) 158 Cal.App.4th 109, 132; see *ECC Construction, Inc. v. Oak Park Calabasas Homeowners Assn.* (2004) 122 Cal.App.4th 994, 1002; *American Alternative Energy Partners II v. Windridge, Inc.* (1996) 42 Cal.App.4th 551, 557.) The rule requiring dismissal of an appeal "does not apply when the case involves multiple parties and a judgment is entered which leaves no issue to be determined as to one party." (*Nguyen v. Calhoun, supra,* 105 Cal.App.4th at p. 437.) Thus, a judgment that decides the issues in a cross-complaint but not the issues in the complaint may still be final and appealable if it decides all of the issues as to some of the parties. (*First Security Bank of Cal. v. Paquet, supra,* 98 Cal.App.4th at p. 473; see *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 724, 741 (*Morehart*) ["Judgments that leave nothing to be decided between one or more parties and their adversaries ... have the finality required by section 904.1, subdivision (a)"].) The reason for this exception to the one judgment rule is "that it better serves the interests of justice to afford prompt appellate review to a party whose rights or liabilities have been definitively adjudicated than to require him to await the final outcome of trial proceedings which are of no further concern to him." (*Justus v. Atchison* (1977) 19 Cal.3d 564, 568, disapproved on another point in *Ochoa v. Superior Court* (1985) 39 Cal.3d 159, 171.)

1. Sweet and Azteca

The November 16, 2007 judgment does not resolve all of the claims and issues as to Unzipped, Candie's, MC, and IPH, on the one hand, and Sweet and Azteca, on the other hand. True, the judgment on the cross-complaint resolves all claims and issues in the cross-complaint against Sweet, Azteca, ADS, and Guez, and in favor of Unzipped, Cole, Candie's, MC, and IPH. But there is no judgment on the complaint in favor of or against Sweet and Azteca, and therefore there are still unresolved claims and issues against Sweet and Azteca in the complaint. In fact, not only are there unresolved claims against Sweet in the complaint, but the judgment against Sweet on the cross-complaint does not fully resolve Sweet's cross-claims. Although the judgment provides that Sweet "shall recover nothing on its cross-claims against any and all cross-defendants," it also provides that "[t]his judgment does not affect any amounts due on the 8 percent Senior Subordinated Note" between Sweet and Candie's.

*7 Therefore, the exception to the one judgment rule for fully resolved claims and issues does not apply, and this court does not have jurisdiction to hear appeals from the November 16, 2007 judgment as to Sweet and Azteca. As to Guez and ADS, the issue is whether this court has jurisdiction to consider the appeal from the November 16, 2007 judgment in the absence of a judgment on plaintiffs' claims against Sweet and Azteca on the complaint.

2. Guez

In the second amended complaint, Guez is named as a defendant in 13 causes of action, including claims for fraud, breach of fiduciary duty, trademark infringement, conversion, and unfair competition. The trial court granted Guez's motions for summary adjudication on the fraud claims, and the jury found against Guez on the breach of fiduciary duty, trademark infringement, conversion, and unfair competition claims. The jury also found by clear and convincing evidence that Guez's infringement was intentional, and that he had acted with malice, fraud, or oppression. The trial court on November 16, 2007 entered judgment against Guez in the amount of $6,441,000 in compensatory damages, $4 million in punitive damages, and $523,730 in prejudgment interest. The trial court also entered judgment in favor of Guez on all of the fraud causes of action dismissed prior to trial, and entered judgment against Guez on the cross-complaint.[FN6]

> FN6. The first amended cross-complaint includes a cause of action by Guez against Candie's, the eleventh, for breach of the indemnification agreement. In this cause of action Guez alleged that he had an indemnification agreement with Candie's that required Candie's to indemnify and defend him for the claims asserted in this action by Candie's, Unzipped, MC, and IPH. Plaintiffs filed a motion for nonsuit on this cause of action, but the record does not indicate the trial court's ruling on the motion. The November 16, 2007 judgment does not mention this claim, and the parties represent that Guez withdrew it.

Not Reported in Cal.Rptr.3d, 2010 WL 2677441 (Cal.App. 2 Dist.)
Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
(Cite as: 2010 WL 2677441 (Cal.App. 2 Dist.))

The parties tried four breach of fiduciary duty claims asserted by Candie's against Guez to the jury. These claims were that (1) Guez failed to make certain disclosures to the board of directors of Candie's prior to the board's decision to invest $4.4 million in Unzipped, for which the jury awarded Candie's $6,441,000; (2) Guez diverted Unzipped's resources to set up the Hippie, Hint, and Private Label businesses, for which the jury awarded Candie's $8.1 million; (3) Guez allowed Azteca to overcharge Unzipped, for which the jury awarded Candie's $11,238,000; and (4) Guez allowed ADS to overcharge Unzipped, for which the jury awarded $4,256,000.

This court has jurisdiction to hear Guez's appeal from the judgment on claims (1) and (2) because the judgment resolves those claims as to Guez. The judgment also resolves claim (4) as to Guez, because Guez's liability for "allowing" ADS to overcharge Unzipped depends on whether and how much ADS overcharged Unzipped, and, as explained below, this court has jurisdiction to hear the appeal from the judgment as to ADS. It is possible that Azteca's exposure for overcharging Unzipped may change after a new trial, and, as explained below, this court does not have jurisdiction to hear the appeal from the judgment as to Azteca. The November 16, 2007 judgment against Guez, however, forecloses the possibility that Guez would face additional exposure on claim (3), even if Azteca's liability for overcharging Unzipped changes. Therefore, the judgment resolves claim (3) as to Guez.

Therefore, this court has jurisdiction to hear the appeals from the November 16, 2007 judgment by Guez, on the one hand, and Candie's, MC, IPH, and Unzipped, on the other hand. (See *Morehart, supra,* 7 Cal.4th at p. 740 ["[j]udgment in a multiparty case determining all issues as to one or more parties may be treated as final even though issues remain to be resolved between other parties"]; *Tinsley v. Palo Alto Unified School Dist.* (1979) 91 Cal.App.3d 871, 880 ["when there is a several judgment resolving all issues between a plaintiff and one defendant, either party may appeal from an adverse judgment, although the action remains pending between the plaintiff and other defendants"].) This is true even though some of the legal issues with respect to these parties are the same as the legal issues that remain in the action among the other parties. (*Tinsley,* at pp. 880-881 [rejecting the contention that the exception to the one judgment rule does not apply because the legal issues raised and relief sought by the remaining parties were identical to those raised and sought by the appealing parties]; see *Oakland Raiders v. National Football League* (2001) 93 Cal.App.4th 572, 578 [following *Tinsley* and rejecting the contention that "entry of judgment in favor of defendants was improper because they are indispensable parties whose interests are identical to those of the remaining defendants"].)

3. ADS

***8** The November 16, 2007 judgment does resolve all claims and issues between ADS, on the one hand, and Candie's, MC, IPH, and Unzipped, on the other hand. In the second amended complaint, ADS is named as a defendant in eight causes of action, including a conversion claim and trademark/unfair competition claims. The jury found against ADS on all of these claims. The trial court entered judgment on the complaint against ADS in the amount of $1,210,000.

In the first amended cross-complaint, ADS asserted causes of action against Unzipped for breach of the ARDA, and against Cole, MC, and Candie's for inducing Unzipped to breach its contract with ADS. The trial court dismissed ADS's claims against Cole on demurrer, and the jury found against ADS on its remaining claims in the first amended cross-complaint. The court on November 16, 2007 entered judgment in favor of "any and all cross-defendants" and against ADS. Thus, the judgment decides all of the claims and issues between plaintiffs and ADS.[FN7] Therefore, this court has jurisdiction to hear the appeals from the November 16, 2007 judgment by ADS, on the one hand, and Candie's, MC, IPH, and Unzipped, on the other hand.

> FN7. The judgment against ADS also provides: "This judgment is joint and several with any liability by Azteca Production International, Inc. and Sweet Sportswear, LLC in connection with IP Holdings, LLC, Michael Caruso & Co. and Unzipped Apparel, LLC's claims for conversion and trademark infringement." There is no judgment yet on plaintiffs' claims against Sweet and Azteca for conversion and trademark infringement, although presumably it will be for $1,210,000. The trial court denied defendants' motion for JNOV on this claim, and presumably any future en-

Not Reported in Cal.Rptr.3d, 2010 WL 2677441 (Cal.App. 2 Dist.)
Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
(Cite as: 2010 WL 2677441 (Cal.App. 2 Dist.))

try of judgment on plaintiffs' trademark infringement and conversion claims will be for the same amount, exclusive of prejudgment interest.

4. Cole

The November 16, 2007 judgment also resolves all claims between Sweet, Azteca, and ADS, on the one hand, and Cole, on the other hand. In the first amended cross-complaint, Sweet asserted a cause of action against Cole for interference with the MSA between Sweet and Unzipped, and Azteca and ADS asserted causes of action against Cole for inducing breach of the ARSA and the ARDA between Azteca and ADS, respectively, and Unzipped. On October 25, 2005 the trial court sustained Cole's demurrer to these claims without leave to amend. The court entered judgment on November 16, 2007 against Sweet, Azteca, and ADS and in favor of "any and all cross-defendants," which includes Cole. The trial court's ruling is reviewed through the November 16, 2007 judgment. (*I.J. Weinrot & Son v. Jackson* (1985) 40 Cal.3d 327, 331; *Selleck v. Globe International, Inc.* (1985) 166 Cal.App.3d 1123, 1127, fn. 1.)

B. The November 16, 2007 Orders Granting a New Trial

The November 16, 2007 orders grant motions by Sweet, Azteca, and Guez for a new trial on seven claims. The notices of appeal filed by Unzipped, Candie's, MC, and IPH on November 26, 2007 include an appeal from these orders. The joint notice of appeal expressly states that these plaintiffs are appealing from the September 27, 2007 and November 16, 2007 rulings and corresponding orders. [FN8] We have jurisdiction to review these orders granting the motions for a new trial pursuant to section 904.1, subdivision (a)(4). The November 16, 2007 orders denying the motions for a new trial are not appealable. (See *Walker v. Los Angeles County Metropolitan Transp. Authority* (2005) 35 Cal.4th 15, 18; *Sole Energy Co. v. Petrominerals Corp.* (2005) 128 Cal.App.4th 212, 240.)

FN8. The September 27, 2007 order was a "ruling" that allowed the parties to file suggestions or proposed modifications. In other words, it was a tentative ruling that the parties treat as a precursor to the November 16, 2007 final ruling on the parties' posttrial motions.

Sections 629 and 660 provide for a 60-day limit on the trial court's jurisdiction to grant a motion for a new trial and an accompanying motion for JNOV. (See *Fischer v. First Internat. Bank* (2003) 109 Cal.App.4th 1433, 1451; *Pratt v. Vencor, Inc.* (2003) 105 Cal.App.4th 905, 907; *Catania v. Halcyon Steamship Co.* (1975) 44 Cal.App.3d 348, 351-352.) The 60-day period starts to run at the earliest of the following three occurrences: (1) when the court clerk mails a notice of entry of judgment pursuant to section 664.5, (2) when any party serves written notice of the entry of judgment on the moving party, or (3) when the moving party files the first notice of intention to move for a new trial. (See § 660.) The 60-day time limit is mandatory and jurisdictional. (*Dodge v. Superior Court* (2000) 77 Cal.App.4th 513, 517-518.)

***9** The 60-day period starts to run at the filing of the notice of intent to move or a new trial, regardless of when the judgment is entered, or when notice of entry of judgment is mailed or served, if ever. (See *Fischer v. First Internat. Bank, supra,* 109 Cal.App.4th at p. 1451 ["where there has been no notice of entry of judgment, 'section 660 unambiguously provides that the filing of the first notice of intention to move for a new trial is the operative event for determining the 60-day period' "]; *In re Marriage of Liu* (1987) 197 Cal.App.3d 143, 151 [same]; *Bunton v. Arizona Pacific Tanklines* (1983) 141 Cal.App.3d 210, 214-215 [if the notice of intent to move for a new trial is filed before notice of entry of judgment is served, the 60-day period runs from the earlier date that notice of intent was filed]; accord, *Worth v. Asiatic Transpacific, Inc.* (1979) 93 Cal.App.3d 849, 854; see also *Catania v. Halcyon Steamship Co., supra,* 44 Cal.App.3d at p. 352 ["[t]he fact that a formal judgment comporting with the court's decision to grant a motion for judgment notwithstanding the verdict is not signed or filed until after the expiration of the 60-day period does not alter the situation"].) [FN9]

FN9. Where, unlike here, a motion for JNOV is unaccompanied by a notice of intention to move for a new trial, the time deadline is different, because event (3) does not occur. (See *Pratt v. Vencor, Inc., supra,* 105 Cal.App.4th at p. 910.)

Not Reported in Cal.Rptr.3d, 2010 WL 2677441 (Cal.App. 2 Dist.)
Nonpublished/Noncitable (Cal. Rules of Court, Rules 8.1105 and 8.1110, 8.1115)
(Cite as: 2010 WL 2677441 (Cal.App. 2 Dist.))

In this case, the first of these occurrences was (3), when defendants filed a pleading entitled "Defendants' and Cross-Complainants' Joint Notice of Motion and Motion for Intent to Move for New Trial," on Monday, June 4, 2007. The sixtieth day thereafter was Friday, August 3, 2007, after which the trial court lost jurisdiction. The trial court did not issue its tentative rulings on the motions for JNOV and a new trial until September 27, 2007, and did not issue its final rulings until November 16, 2007, both of which were long after the August 3, 2007 jurisdictional deadline. Therefore, both orders are void. (See *Siegal v. Superior Court* (1968) 68 Cal.2d 97, 101; *Davcon, Inc. v. Roberts & Morgan* (2003) 110 Cal.App.4th 1355, 1362 (*Davcon*); *Westrec Marina Management, Inc. v. Jardine Ins. Brokers Orange County, Inc.* (2000) 85 Cal.App.4th 1042, 1048.) Defendants do not contend otherwise, but argue that their arguments on appeal are nevertheless "at issue" and reviewable by this court.

The November 16, 2007 orders granting the motions by Sweet, Azteca, and Guez for a new trial are void and therefore vacated.

C. The November 16, 2007 Orders Denying JNOV

The November 16, 2007 orders deny motions by Sweet, Azteca, and Guez for JNOV on some of the claims against them. The notices of appeal filed by Sweet, Azteca, and Guez include an appeal from these orders. We have jurisdiction to review these orders denying the motions for JNOV pursuant to section 904.1, subdivision (a)(4). The orders granting the motions for JNOV are not appealable. (*Cobb v. University of So. California* (1995) 32 Cal.App.4th 798, 803-804; *Walton v. Magno* (1994) 25 Cal.App.4th 1237, 1240.) As explained above, the November 16, 2007 orders denying the motions by Sweet, Azteca, and Guez for JNOV are void and therefore vacated.

D. The November 16, 2007 Order Denying Plaintiffs' Motion To Treble Damages on Their Trademark Claims

***10** On November 16, 2007 the trial court denied plaintiffs' motion to treble damages on their trademark claims pursuant to title 15 United States Code section 1117(b). This order is not separately appealable. (Cf. *Smith v. TCI Communications, Inc.* (Colo.App.1999) 981 P.2d 690, 695 [order denying request for treble damages under Colorado Antitrust Act is not appealable].) This order is reviewable as to ADS and Guez, however, through the November 16, 2007 judgment against ADS and Guez.

E. The August 3, 2007 "Orders" Denying JNOV by Operation of Law

The motions by Sweet, Azteca, ADS, and Guez for JNOV were all denied by operation of law on August 3, 2007. We have jurisdiction to review those denials pursuant to section 904.1, subdivision (a)(4). The August 3, 2007 "orders" denying defendants' motions for a new trial by operation of law are not appealable. (See *Walker v. Los Angeles County Metropolitan Transportation Authority, supra,* 35 Cal.4th at p. 18; *Sole Energy Co. v. Petrominerals Corp., supra,* 128 Cal.App.4th at p. 240.) [FN10]

> FN10. Plaintiffs' motion for a new trial was also denied by operation of law, and any issue involving plaintiffs and ADS would be reviewable through the November 16, 2007 judgment as to ADS. (See *Greer v. Buzgheia* (2006) 141 Cal.App.4th 1150, 1152, fn. 1; *Dominguez v. Pantalone* (1989) 212 Cal.App.3d 201, 215.) Plaintiffs' motion for new trial, however, sought a new trial on the fraud causes of action on which the trial court had granted summary adjudication and denied leave to amend before trial. ADS is not a named defendant in those causes of action. Plaintiffs' appeal from the denial by operation of law of plaintiffs' motion for a new trial as to Guez raises the same issues as plaintiffs' appeal from the November 16, 2007 judgment regarding the trial court's pretrial rulings on plaintiffs' fraud claims, and is reviewable as to Guez through the judgment.

None of the November 21, 2007 notices of appeal filed by the parties specifically mentions an appeal from the August 3, 2007 denial by operation of law of defendants' motions for JNOV. Nevertheless, the notices of appeal filed by Sweet, Azteca,