

B300711

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION EIGHT**

HOLISTIC SUPPLEMENTS, LLC, et al.,
Plaintiffs and Appellants,

v.

CHRISTOPHER DANIEL STARK, et al.,
Defendants and Respondents.

APPEAL FROM LOS ANGELES COUNTY SUPERIOR COURT
HONORABLE RUPERT BYRDSOY, JUDGE • CASE No. BC599796

APPELLANTS' OPENING BRIEF

HORVITZ & LEVY LLP
LISA PERROCHET (BAR No. 132858)
*AARON HENSON (BAR No. 300696)
3601 WEST OLIVE AVENUE, 8TH FLOOR
BURBANK, CALIFORNIA 91505-4681
(818) 995-0800 • FAX: (844) 497-6592
lperrochet@horvitzlevy.com
ahenson@horvitzlevy.com

NELSON HARDIMAN LLP
SALVATORE J. ZIMMITTI (BAR No. 245678)
MARK S. HARDIMAN (BAR No. 136602)
1100 GLENDON AVENUE, 14TH FLOOR
LOS ANGELES, CALIFORNIA 90024
(310) 203-2807 • FAX: (310) 203-2727
szimmitti@nelsonhardiman.com
mhardiman@nelsonhardiman.com

ATTORNEYS FOR PLAINTIFFS AND APPELLANTS
HOLISTIC SUPPLEMENTS, LLC AND JAMIE KERSEY

COURT OF APPEAL SECOND APPELLATE DISTRICT, DIVISION EIGHT	COURT OF APPEAL CASE NUMBER: <p style="text-align: center; margin: 0;">B300711</p>
ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO.: 300696 NAME: Aaron Henson FIRM NAME: Horvitz & Levy LLP STREET ADDRESS: 3601 West Olive Avenue, 8th Floor CITY: Burbank STATE: CA ZIP CODE: 91505 TELEPHONE NO.: (818) 995-0800 FAX NO. (844) 497-6592 E-MAIL ADDRESS: ahenson@horvitzlevy.com ATTORNEY FOR (name): Holistic Supplements, LLC and Jamie Kersey	SUPERIOR COURT CASE NUMBER: <p style="text-align: center; margin: 0;">BC599796</p>
APPELLANT/ PETITIONER Holistic Supplements, LLC, et al. RESPONDENT / REAL PARTY IN Christopher Daniel Stark, et al. INTEREST	FOR COURT USE ONLY
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS (Check one): <input checked="" type="checkbox"/> INITIAL CERTIFICATE <input type="checkbox"/> SUPPLEMENTAL CERTIFICATE	
Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.	

1. This form is being submitted on behalf of the following party (name): Holistic Supplements, LLC and Jamie Kersey
2. a. 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) Jamie Kersey
(2)
(3)
(4)
(5) | Owns 10 percent or more of Holistic Supplements, LLC |
|---|--|

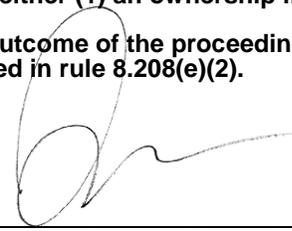
Continued on attachment 2

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: April 27, 2020

Aaron Henson

 (TYPE OR PRINT NAME)



 (SIGNATURE OF APPELLANT OR ATTORNEY)

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	6
INTRODUCTION	11
STATEMENT OF THE CASE	16
A. Holistic Supplements, LLC is formed in 2005 as a medical marijuana dispensary under state law. David Gold is the LLC’s sole owner. Brad Barnes finances and oversees management of the dispensary.....	16
B. The LLC obtains a Business Tax Registration Certificate from the City of Los Angeles and timely registers to operate as a medical marijuana dispensary under the city’s 2007 Interim Control Ordinance.....	17
C. Gold transfers his interest in the LLC to Christopher Stark, Barnes’s friend and employee.....	18
D. Stark’s relationship with Barnes deteriorates. A 2015 agreement bearing Stark’s signature transfers Stark’s interest in the LLC to Jamie Kersey, Barnes’s ex-wife. From that day forward, Stark ceases interactions with Kersey and Barnes regarding the dispensary.	19
E. Without notifying Kersey or Barnes, Stark files documents converting the LLC into a new corporation, Holistic (Inc.), for which he is the sole owner. Stark transfers the LLC’s BTRC to the new company, which he then agrees to sell to a third party for \$1.85 million.	22
F. Kersey learns of Stark’s plan and hires lawyers to regain possession of the LLC and the BTRC, suing Stark and Holistic (Inc.) in December 2015	

	on behalf of herself and the LLC for conversion, unfair competition, and declaratory relief.....	24
G.	The City of Los Angeles freezes the BTRC in 2017 because of the ownership dispute. Kersey is forced to shut down the dispensary.	26
H.	The court dismisses all of Kersey’s individual claims, all claims against Stark individually, and both plaintiffs’ UCL claims. The case goes to the jury only on the LLC’s claim for conversion against Holistic (Inc.).....	27
I.	At the final jury instruction conference, the court refuses to instruct the jury that the BTRC counts as “property” for purposes of the LLC’s conversion claim. When the jury later asks about whether the BTRC is “property,” the court instructs them it is <i>not</i> property.	31
J.	The jury returns a defense verdict on the LLC’s conversion claim. Plaintiffs voluntarily dismiss the LLC’s declaratory relief claim against Holistic (Inc.), and they timely appeal.....	33
	STATEMENT OF APPEALABILITY	34
	LEGAL ARGUMENT	34
I.	The trial court erred by dismissing plaintiffs’ claims.....	34
	A. The court reviews de novo the grant of a nonsuit motion or motion for directed verdict.	34
	B. The trial court erred by nonsuiting Kersey’s individual claims for lack of standing.....	35
	C. The trial court erred by granting a directed verdict on all claims against Stark in his individual capacity.....	39
	1. Corporate owners, officers, and directors can be held personally liable for torts	

when they participated in, directed, or authorized the tortious conduct.	39
2. Because Stark participated in, directed, and authorized the filings that reorganized the LLC and transferred the BTRC to a new entity owned solely by him, the jury could properly have found him personally liable for conversion.	40
D. The trial court erred by nonsuiting plaintiffs’ UCL claims.....	42
1. Plaintiffs introduced evidence from which a trier of fact could find violation of the UCL.....	42
2. The nonsuit on the UCL claims cannot be affirmed on the ground that plaintiffs and defendants were not “competitors.”	46
II. The trial court erroneously rejected the LLC’s instruction that the BTRC is “property” and then misinstructed the jury that the BTRC is not “property.”	48
A. The court reviews claims of instructional error de novo.....	48
B. “Property” includes protectable intangible interests in government privileges.	48
C. The BTRC is “property” that affords its holder substantial governmental privileges.	51
D. The trial court’s instructional rulings were prejudicial error, resulting in a defense verdict on the LLC’s conversion claim against Holistic (Inc.).....	56
CONCLUSION.....	57
CERTIFICATE OF WORD COUNT.....	58

TABLE OF AUTHORITIES

Cases	Page(s)
<i>420 Caregivers, LLC v. City of Los Angeles</i> (2012) 219 Cal.App.4th 1316	18
<i>Alcala v. Vazmar Corp.</i> (2008) 167 Cal.App.4th 747	48
<i>Candelore v. Tinder, Inc.</i> (2018) 19 Cal.App.5th 1138	43
<i>Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.</i> (1999) 20 Cal.4th 163.....	44
<i>Circle Click Media LLC v. Regus Management Group LLC</i> (N.D.Cal., Oct. 30, 2015, No. 3:12-CV-04000-SC) 2015 WL 6638929	47
<i>Citizens of Humanity, LLC v. Hass</i> (2020) 46 Cal.App.5th 589	47
<i>College Hospital Inc. v. Superior Court</i> (1994) 8 Cal.4th 704.....	48
<i>Crouch v. Trinity Christian Center of Santa Ana, Inc.</i> (2019) 39 Cal.App.5th 995	48
<i>Daugherty v. American Honda Motor Co., Inc.</i> (2006) 144 Cal.App.4th 824	44
<i>Denevi v. LGCC, LLC</i> (2004) 121 Cal.App.4th 1211	36
<i>Downing v. Municipal Court of City and County of San Francisco</i> (1948) 88 Cal.App.2d 345	49, 53

<i>Fountain Valley Chateau Blanc Homeowner’s Assn. v. Department of Veterans Affairs</i> (1998) 67 Cal.App.4th 743	34, 35
<i>Frances T. v. Village Green Owners Assn.</i> (1986) 42 Cal.3d 490	39, 40
<i>Fremont Indemnity Co. v. Fremont General Corp.</i> (2007) 148 Cal.App.4th 97	36
<i>G.S. Rasmussen & Associates, Inc. v. Kalitta Flying Service, Inc.</i> (9th Cir. 1992) 958 F.2d 896.....	49, 50, 51, 53, 55
<i>Golden v. State</i> (1955) 133 Cal.App.2d 640	50
<i>Gullick v. Interstate Drilling Co.</i> (1931) 111 Cal.App. 263	46
<i>Haro v. Ibarra</i> (2009) 180 Cal.App.4th 823.....	36, 37, 38
<i>Heller Ehrman LLP v. Davis Wright Tremaine LLP</i> (2018) 4 Cal.5th 467.....	49
<i>Hoopes v. Dolan</i> (2008) 168 Cal.App.4th 146.....	28
<i>Industrial Bank of Korea v. ASI Corporation</i> (C.D.Cal., Oct. 4, 2018, No. CV 17-7646-MWF (JPRx)) 2018 WL 6164317	47
<i>Jones v. H.F. Ahmanson & Co.</i> (1969) 1 Cal.3d 93	38
<i>Kowalsky v. Hewlett-Packard Co.</i> (N.D.Cal. 2011) 771 F.Supp.2d 1156	44
<i>Kremen v. Cohen</i> (9th Cir. 2003) 337 F.3d 1024.....	50, 51, 53
<i>Kwikset Corp. v. Superior Court</i> (2011) 51 Cal.4th 310.....	47

<i>Lawless v. Calaway</i> (1944) 24 Cal.2d 81	34, 46
<i>McKell v. Washington Mutual, Inc.</i> (2006) 142 Cal.App.4th 1457	42, 43
<i>Moore v. Wells Fargo Bank, N.A.</i> (2019) 39 Cal.App.5th 280	34
<i>PacLink Communications Intern., Inc. v. Superior Court</i> (2001) 90 Cal.App.4th 958	37, 38
<i>Payne v. Elliot</i> (1880) 54 Cal. 339	35
<i>People v. Pacific Landmark, LLC</i> (2005) 129 Cal.App.4th 1203	40
<i>Rankin v. Frebank Co.</i> (1975) 47 Cal.App.3d 75	38
<i>Safe Life Caregivers v. City of Los Angeles</i> (2016) 243 Cal.App.4th 1029	18
<i>Sandoval v. Bank of America</i> (2002) 94 Cal.App.4th 1378	56
<i>Scott v. County of Los Angeles</i> (1994) 27 Cal.App.4th 125	57
<i>Scripps Clinic v. Superior Court</i> (2003) 108 Cal.App.4th 917	44
<i>Smith v. State Farm Mutual Automobile Ins. Co.</i> (2001) 93 Cal.App.4th 700	44
<i>Soule v. General Motors Corp.</i> (1994) 8 Cal.4th 548	48, 56
<i>United States Liab. Ins. Co. v. Haidinger-Hayes, Inc.</i> (1970) 1 Cal.3d 586	39

<i>Welco Electronics, Inc. v. Mora</i> (2014) 223 Cal.App.4th 202.....	49, 50
<i>West v. JPMorgan Chase Bank, N.A.</i> (2013) 214 Cal.App.4th 780.....	43
<i>Wyatt v. Union Mortgage Co.</i> (1979) 24 Cal.3d 773.....	39
<i>Zhang v. Superior Court</i> (2013) 57 Cal.4th 364.....	43, 45

Statutes

Business & Professions Code	
§ 17200 et seq.....	13
§ 17200.....	43
§ 17201.....	47
§ 17204.....	47
City of Los Angeles	
Ordinance No. 185343.....	52, 53
Ordinance No. 185343, § 1.....	52
Civil Code, § 654.....	49
Code of Civil Procedure, § 904.1, subd. (a)(1).....	34
Corporations Code	
§ 17701.01 et seq.....	45
§ 17701.02, subd. (aa).....	35
§ 17701.02, subd. (r).....	35
§ 17702.03, subd. (a)(1).....	45
§ 17703.04, subd. (c).....	40
§ 17704.07, subd. (t).....	45
§ 17705.01.....	35
Government Code, § 12261.....	29
Health & Safety Code, § 11362.7 et seq.	16

Los Angeles Municipal Code

§ 21.01..... 55
§ 21.03, subd. (a) 17, 52
§ 21.06, subd. (a) 17, 52, 53
§ 21.08, subd. (a)(1) 54
§ 21.08, subd. (a)(3) 17, 54
§ 21.08, subd. (b) 54, 55
§ 21.09, subd. (a) 17, 52
§ 21.09, subd. (b) 17, 52
§ 45.19.6 et seq. (former) 52
§ 45.19.6.3 (former) 52
§ 45.19.6.3, subd. (A) (former) 53
§ 45.19.6.3, subd. (B) (former) 53
§ 45.19.6.3, subd. (D) (former)..... 53
§ 45.19.7.2, subd. (C)..... 52
§ 104.01, subd. (a)(12) 52
§ 104.01, subd. (a)(23)..... 52
§ 104.07, subd. (a) 52
§ 104.07, subd. (b) 53
§ 104.07, subds. (g), (h) 53

Medical Marijuana Dispensaries Interim Control

Ordinance No. 179027 17,53
Penal Code, § 115, subd. (a) 45

Miscellaneous

CACI No. 2100 31

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT, DIVISION EIGHT**

HOLISTIC SUPPLEMENTS, LLC, et al.,
Plaintiffs and Appellants,

v.

CHRISTOPHER DANIEL STARK, et al.,
Defendants and Respondents.

APPELLANTS' OPENING BRIEF

INTRODUCTION

Plaintiffs Jamie Kersey and her company sued defendants Christopher Stark and his company for failing to honor an agreement transferring Stark's ownership interest in a marijuana dispensary to Kersey and for stealing the government certificate that allowed Kersey's company to operate. In defense, Stark claimed that his signature on the transfer agreement was forged. The case went to trial before a jury, which should have been asked to decide which side's version of events was true. The trial court, however, made a series of rulings that took the core credibility issue away from the jury, ruling that the certificate wasn't "property" that could be stolen, regardless of what shenanigans Stark engaged in. The court erroneously nonsuited all of Kersey's

individual claims, barred all claims against Stark personally, and dismissed both plaintiffs' unfair competition claims against both defendants. A new trial is required so that both plaintiffs' claims can properly be heard on their merits.

Kersey presented witnesses supporting her claim that Stark engaged in an unlawful scheme to steal her dispensary, co-plaintiff Holistic Supplements, *LLC* (the LLC). The witnesses explained that after Stark had a falling out with Brad Barnes—the financial backer of the LLC—Stark entered into a written agreement transferring the LLC to Kersey, Barnes's ex-wife. Stark admits he filed documents with the State of California and the City of Los Angeles that converted the LLC into a new company—the confusingly-named co-defendant Holistic Supplements, *Inc.* (Holistic (Inc.))—in which Stark, not Kersey, was the sole owner. Stark also admits he made those filings without Kersey's knowledge or authorization. If, as Kersey contends, Stark had already transferred ownership of the LLC to Kersey, those filings were unlawful. But if, as Stark contends, the LLC was his all along, then those filings were not unlawful. Thus, the question for the jury should have been simple: did Stark sign the transfer documents?

The jury, however, was never able to make that determination. Instead, the trial court made a series of legal errors which, taken together, compelled a defense verdict in this case.

The first group of errors came when the trial court granted defendants' motions for nonsuit and directed verdict, thereby dismissing virtually all of plaintiffs' claims.

First, the court erred by dismissing all of Kersey's individual claims for lack of standing. Kersey's individual claims are based on the theft of her ownership interest in the LLC, and California courts have long held that, because an ownership interest in a company is the personal property of the individual owner and not an asset of the company, individuals can bring personal claims based on the theft of their ownership interest in a company. Kersey therefore had standing to bring individual claims.

Second, the trial court erred by dismissing all claims brought against Stark in his individual capacity. It is well-established that owners, officers, and directors of a corporate entity can be held personally liable when they personally participated in, directed, or authorized tortious conduct. And here, it is undisputed that, after Stark purportedly signed the agreement transferring his interest in the LLC to Kersey, Stark personally directed and authorized his attorney to file documents with the State of California and the City of Los Angeles that changed the corporate structure, ownership, and registered address for the LLC. Thus, if the jury were to find that the transfer agreement was valid, the filings were unlawful, and Stark would be personally liable for the harm caused by filing them.

Lastly, the trial court erred by dismissing plaintiffs' unfair competition law claims. Contrary to defendants' arguments at trial, plaintiffs need not base their Unfair Competition Law (UCL) (Bus. & Prof. Code, § 17200 et seq.) claims on violation of a specific constitutional, statutory, or regulation provision in order to show violation of the UCL. Rather, the UCL broadly prohibits any

business practice that is “unlawful,” “unfair,” or “fraudulent,” regardless of whether there is a predicate constitutional, statutory, or regulatory violation. In any event, defendants’ conduct in changing the corporate structure, ownership, and registered address for the LLC in fact violated numerous statutes, including state statutes prohibiting the filing of false corporate records, as well as statutes concerning the corporate governance of limited liability companies.

The next group of legal errors came during jury instructions.

After the trial court’s dismissal rulings, the sole claim that went to the jury was the LLC’s conversion claim against the newly formed corporation, Holistic (Inc.). This claim asserted that, as part of defendants’ scheme to steal the LLC from Kersey, defendants also stole the LLC’s “Business Tax Registration Certificate” (BTRC), a government document issued by the City of Los Angeles that enables businesses to operate within the city. The LLC thus requested that the court instruct the jury that the BTRC qualified as “property” for purposes of its conversion claim. The LLC explained that, under California’s expansive definition of “property,” the LLC has a protectable property interest in the BTRC because a BTRC is required to conduct business in the City of Los Angeles and possession of a BTRC confers various privileges onto its holder under the City of Los Angeles’s medical marijuana dispensary licensing ordinances.

The trial court, however, refused to instruct the jury that the BTRC was “property.” Instead, at the jury instruction conference, the court explained that whether the BTRC is legally considered

“property” is a question for the jury. Then, the court compounded its error by misinstructing the jury during deliberations: after the jury sent the court a note asking whether the BTRC was “property,” the court erroneously told the jury that the BTRC does *not* qualify as “property” as a matter of law.

These instructional errors compelled a defense verdict on the LLC’s conversion claim because the sole property interest at issue on that claim was the LLC’s possession of the BTRC. Indeed, the jury rendered its defense verdict just ten minutes after being instructed that the BTRC was not “property.”

The court should vacate the judgment and remand for a new trial on both plaintiffs’ claims for conversion and unfair competition against both defendants and Kersey’s claim for declaratory relief against both defendants.

STATEMENT OF THE CASE¹

- A. Holistic Supplements, LLC is formed in 2005 as a medical marijuana dispensary under state law. David Gold is the LLC's sole owner. Brad Barnes finances and oversees management of the dispensary.**

Holistic Supplements, LLC is a California limited liability company that was formed in 2005 to operate a medical marijuana dispensary in the San Fernando Valley in accordance with California's Medical Marijuana Program Act (Health & Saf. Code, § 11362.7 et seq.). (3 RT 315-316; 5 RT 953-954; AA 521, 531, 566.) David Gold was the LLC's sole owner. (5 RT 955, 1038; AA 521, 526, 531, 567.) The registered address for the LLC was on Canoga Avenue in Canoga Park. (3 RT 317; AA 521, 531, 567.)

Barnes, a local entrepreneur, financed the dispensary, acted as its strategic consultant, provided the dispensary with compliance services, and oversaw management of its day-to-day operations. (4 RT 660; 5 RT 954-955, 961-962, 983-984.) Through various holding companies, Barnes also owned three other businesses in the same shopping center: a strip club, a bar, and an adult entertainment store. (3 RT 313-315; 5 RT 952-953.)

¹ Consistent with the applicable standards of review (see pp. 34-35, 48, *post*), plaintiffs summarize the evidence bearing on the challenge to the dismissal orders in the light most favorable to plaintiffs, and plaintiffs summarize both sides' evidence bearing on the instructional error challenge.

Gold did not invest cash in the dispensary, but he had an oral agreement with Barnes under which Gold would serve as the owner and sole member of the LLC in exchange for receiving 10 percent of the dispensary's net revenue. (5 RT 956, 960-961.) Barnes did not want to put his own name on the LLC for fear it might put the licenses and permits of his other businesses at risk in the event the LLC was ever charged with violating the new and evolving state and local marijuana laws. (5 RT 955-957, 1010.)

B. The LLC obtains a Business Tax Registration Certificate from the City of Los Angeles and timely registers to operate as a medical marijuana dispensary under the city's 2007 Interim Control Ordinance.

Shortly after formation in 2005, the LLC obtained a BTRC from the City of Los Angeles. (AA 484.) The BTRC gives its holder a unique tax account number that the holder must use when paying business taxes to the city. (See *ibid.* [identifying LLC's account number as 0002072981-0001-4].) All companies (not just dispensaries) must obtain a BTRC to conduct business within the city. (L.A. Mun. Code, § 21.03, subd. (a); see *id.*, §§ 21.06, subd. (a), 21.09, subds. (a), (b).) The registered address for the BTRC was the LLC's Canoga Avenue address. (AA 484; see L.A. Mun. Code, § 21.08, subd. (a)(3).)

In 2007, the City of Los Angeles enacted the Medical Marijuana Dispensaries Interim Control Ordinance No. 179027, which prohibited medical marijuana dispensaries from operating

in the city unless the dispensary had been operating in compliance with state law before the effective date of the ordinance (i.e., September 14, 2007) and had previously obtained a BTRC from the city. (*420 Caregivers, LLC v. City of Los Angeles* (2012) 219 Cal.App.4th 1316, 1324-1327 & fn. 3; see *Safe Life Caregivers v. City of Los Angeles* (2016) 243 Cal.App.4th 1029, 1034-1035.)

As required under the ordinance, the LLC timely registered with the city to operate as a legal medical marijuana dispensary. (5 RT 959-960.)

C. Gold transfers his interest in the LLC to Christopher Stark, Barnes's friend and employee.

Between 2005 and April 2014, Gold was the sole member of the LLC. (3 RT 319, 321; 4 RT 659-660; see AA 526, 531, 553.)

In April 2014, Gold transferred his interest in the LLC to defendant Christopher Stark, Barnes's friend and an employee at Barnes's strip club. (3 RT 322-326; 4 RT 660, 665; 5 RT 966; AA 553.) Gold did so because he no longer wanted to work with Barnes (5 RT 1048), and, after the dispensary was raided by the police in 2011,² he was concerned he would be arrested if he continued his involvement with the dispensary (5 RT 965-966).

² The police raided the dispensary based on false statements made to the police by Gold's brother after he and Gold had a personal dispute over an unpaid debt. (5 RT 1034.) All charges arising from the raids were dismissed before a preliminary hearing was held. (5 RT 1011; see 4 RT 434.)

In July 2014, after Gold transferred his interest to Stark, the LLC filed an updated “Statement of Information” with the California Secretary of State. (3 RT 326-328; 4 RT 663-664; AA 558.) The filing was signed by Stark, and it identified Stark as the new sole member of the LLC. (AA 558.)

D. Stark’s relationship with Barnes deteriorates. A 2015 agreement bearing Stark’s signature transfers Stark’s interest in the LLC to Jamie Kersey, Barnes’s ex-wife. From that day forward, Stark ceases interactions with Kersey and Barnes regarding the dispensary.

Between April 2014 and March 2015, Stark was the sole member of the LLC. (3 RT 326, 328; 4 RT 664-665; see AA 553.) Barnes remained in his role as consultant and continued his responsibilities advising the dispensary on compliance issues and overseeing operations at the dispensary. (See 4 RT 665; 5 RT 967.)

Stark’s agreement with Barnes was the same as Gold’s—to be paid 10 percent of the dispensary’s net revenue in exchange for being the LLC’s sole member. (5 RT 967.) But the dispensary was not profitable during this time. (5 RT 1007.) And, by the beginning of 2015, Stark’s relationship with Barnes had deteriorated. (4 RT 670-671; 5 RT 948-949.) In March 2015, Stark quit working at the

club due to conflicts with Barnes, including a dispute over alleged unpaid wages.³ (4 RT 671, 725-726; 5 RT 968-969, 977.)

In April 2015, Stark told Jamie Kersey (Barnes's ex-wife) and Robert Manuwal (the dispensary's corporate attorney) that he no longer wanted to be the owner of the dispensary because he no longer wanted to work with Barnes, the dispensary was not profitable, and it still owed significant amounts to Barnes for financing the opening of the dispensary in 2005 and for fixing property damage caused by the 2011 raids. (3 RT 328-329, 418-419; 4 RT 636-637; 5 RT 969-970.)

Around the same time, Barnes asked Stark to transfer ownership of the dispensary to Kersey, as Stark's behavior had become erratic and Barnes was concerned that Stark was putting the dispensary's legal status at risk. (5 RT 947-948, 968-970.) Kersey said she talked to Stark, who agreed to transfer ownership of the dispensary to Kersey in exchange for her agreeing to personally repay the amounts that the dispensary owed to Barnes. (3 RT 418-421; 4 RT 617; 5 RT 969-970; see AA 464-465, 466.)

The parties dispute the provenance of an April 23, 2015 agreement bearing Stark's signature that purports to transfer ownership of the dispensary from Stark to Kersey.

Kersey, Manuwal, and Barnes say that on the night of April 23, Stark and Kersey signed documents at Manuwal's house that

³ Stark later sued Barnes for alleged wage and hour violations, alleging, as he does here (see pp. 21, 27, *post*), that Barnes forged his signature on company-related documents (4 RT 725-726; 5 RT 977). The lawsuit was unsuccessful, with the court rejecting Stark's forgery allegations at trial. (4 RT 726.)

transferred Stark's interest in the dispensary to Kersey, leaving her with both the debts and the assets of the company. (3 RT 330-336, 419-424; 5 RT 970-973; AA 463, 464-465, 466, 555, 563.) Manuwal and Barnes say that they both personally witnessed Stark sign the transfer documents that night.⁴ (3 RT 330-336; 5 RT 970-973, 1016-1017; AA 555, 563.) Manuwal and Barnes also say that, after Stark signed the transfer documents, he turned over his keys to the dispensary. (3 RT 336; 5 RT 971, 1016.)

Stark flatly denies ever signing any documents transferring ownership of the dispensary to Kersey. (4 RT 671.) Although Stark admits he went to Manuwal's house that night to pick up dispensary-related documents from Barnes (4 RT 672-673), Stark says that the only documents he signed that night were checks relating to a separate business venture between Barnes, Stark, and Gold (*ibid.*), and that his signatures on the transfer documents are forgeries (4 RT 674-677). However, it is undisputed that, after leaving Manuwal's house that night, Stark had no further involvement with the dispensary's management or operations. (3 RT 429-430; 4 RT 618, 691-693, 700; 5 RT 974.) Stark also does not dispute that, after that night, he never returned to the dispensary to pick up any of its physical assets, including cash, medical marijuana product, and security and computer equipment. (3 RT 429-430; 4 RT 699-700.)

⁴ Kersey did not witness Stark sign the transfer documents because she did not arrive at Manuwal's house until after Stark left. (3 RT 449-451.)

The next day, Kersey met with the dispensary's employees to advise them of the change in ownership and continued to operate the dispensary as normal. (3 RT 425; 4 RT 617-618.) A few weeks later, on May 11, 2015, the LLC filed an updated "Statement of Information" with the California Secretary of State. (3 RT 353-354; AA 468.) The document was signed by Kersey, and it identified Kersey as the new sole member of the LLC. (AA 468.)

E. Without notifying Kersey or Barnes, Stark files documents converting the LLC into a new corporation, Holistic (Inc.), for which he is the sole owner. Stark transfers the LLC's BTRC to the new company, which he then agrees to sell to a third party for \$1.85 million.

Beginning in May 2015, Stark, through newly retained counsel, sought to move the location of the dispensary, filing documents with the City of Los Angeles changing the registered address for the dispensary and the BTRC from the LLC's Canoga Avenue address to the address of a different dispensary located on East 15th Street near downtown Los Angeles. (3 RT 454-455; 4 RT 695-697, 708-709, 714, 719-720; 5 RT 904-905; AA 561; see AA 494-501.)

This second dispensary (doing business under the name "Union Collective") was unaffiliated with Kersey or Barnes. (See 4 RT 715-717.) As Stark explained, the dispensary was instead affiliated with a third-party investor who has agreed to buy Holistic (Inc.) from Stark for \$1.85 million in the event he wins this

lawsuit and is found to be the owner of the dispensary and the BTRC. (4 RT 714-715, 722-725; 5 RT 948; AA 580-581.)

Stark admits he changed the registered address for the BTRC in order to conceal from Barnes that he was moving the location of the dispensary. (5 RT 935.) As Stark explained, he “just wanted to get away from [Barnes]” (*ibid.*), and so, without telling Barnes (5 RT 948), he “picked up and took [the BTRC] and left” (5 RT 935-936). Stark’s attempts to change the address for the BTRC were successful. The BTRC is currently registered to the 3401 East 15th Street address. (3 RT 455.)

Then, beginning in September 2015, Stark, through counsel, filed documents with the California Secretary of State changing the ownership and corporate structure of the dispensary. (4 RT 694-697, 704-705; 5 RT 918, 928-929; see AA 473-477, 481-482, 574-579.) For example, on September 2, 2015, Stark filed “Articles of Incorporation With Statement of Conversion” with the California Secretary of State. (4 RT 695-696; AA 574-575.) Although Stark concedes he had no knowledge or awareness of the dispensary’s ongoing operations or management at that time (4 RT 710), the filing nonetheless stated that Stark—not Kersey—was the managing member of the LLC, and that he was converting the dispensary from a limited liability company into a new corporation named “Holistic Supplements, Inc.,” for which he would be the sole shareholder. (4 RT 695-696; AA 574-575; see AA 475-476.) The filing listed the dispensary’s address as Stark’s residence in Ventura County, not the address for the dispensary’s location on Canoga Avenue. (4 RT 696; AA 574.)

F. Kersey learns of Stark’s plan and hires lawyers to regain possession of the LLC and the BTRC, suing Stark and Holistic (Inc.) in December 2015 on behalf of herself and the LLC for conversion, unfair competition, and declaratory relief.

In September 2015, Barnes filed a temporary restraining order against Stark because he had been informed and believed that Stark was planning an armed robbery of Barnes’s club. (4 RT 689-690; 5 RT 978-979.)

On September 30, 2015, at the hearing on the TRO, Kersey and Barnes learned for the first time that Stark had still been representing himself as the owner and manager of the dispensary. (3 RT 430; 5 RT 978-979, 1020.) At the hearing, Stark’s counsel also told Barnes’s counsel that Stark had converted the dispensary from a limited liability company into a new corporation and had put the new entity into Stark’s name. (5 RT 979.) Shortly after the hearing, Kersey and Barnes also learned that Stark had changed the address on the BTRC from the dispensary’s Canoga Avenue address to the East 15th Street address of the second dispensary. (3 RT 430; 4 RT 648; 5 RT 979-980.)

After the hearing, Kersey and the LLC hired attorneys to undo the conversion of the dispensary from a limited liability company into a corporation and to reacquire the BTRC (5 RT 1020), incurring “hundreds of thousands” of dollars in costs in its

attempt to regain control of the dispensary and the BTRC (5 RT 982).

About a month later, in November 2015, Kersey and the LLC sued Stark and Holistic (Inc.), alleging that defendants engaged in an unlawful and fraudulent scheme to steal the dispensary and the BTRC through the filing of fraudulent corporate documents with state and local government agencies that changed the corporate structure, ownership, and registered address for the dispensary.⁵ (AA 15-17, 68-69; see 3 RT 430.)

In support of their claims, plaintiffs alleged that defendants violated their property rights in two ways. First, defendants stole Kersey's membership interest in the LLC by unlawfully converting the dispensary from a limited liability company into a corporation and then naming Stark as the sole owner of the newly formed entity. (See AA 19-20, 71.) Second, defendants violated the LLC's property interest in the BTRC by changing the registered address for the BTRC from the LLC's Canoga Avenue address to the East 15th Street address, leaving the LLC without the BTRC necessary to operate. (See *ibid.*)

On the basis of these allegations, plaintiffs brought claims for common law conversion, violation of the UCL, and declaratory relief,⁶ and sought compensatory damages; punitive damages;

⁵ In addition to this lawsuit, Kersey also filed a police report in May 2016 alleging that Stark committed corporate identity theft. (3 RT 430-431; 4 RT 635, 648.)

⁶ The complaint asserted two additional claims for corporate identity theft and trade name infringement. (AA 14, 17-19.) The

disgorgement; declaratory relief as to the ownership of the dispensary and the BTRC; and injunctive relief to reinstate the LLC and Kersey's membership interest in the LLC, return the BTRC to the LLC, and undo the conversion of the LLC into Holistic (Inc.). (AA 17-22, 70-72.)

Stark's efforts to change the ownership structure of the dispensary continued even after plaintiffs filed this lawsuit. On December 9, 2015, Stark filed with the State of California "Restated Articles of Incorporation." (4 RT 704-705; AA 481-482, 576-577; see AA 473-476.) The document was signed by Stark in his purported capacity as "president and secretary" of Holistic (Inc.), and memorialized a purported subsequent conversion of Holistic (Inc.) from a for-profit corporation into a nonprofit mutual benefit corporation. (4 RT 704-705; AA 481-482, 576-577; see AA 473-476.)

G. The City of Los Angeles freezes the BTRC in 2017 because of the ownership dispute. Kersey is forced to shut down the dispensary.

In December 2017, as two years of litigation were leading towards trial, the City of Los Angeles placed a "freeze" on the BTRC due to the number of requests to change the address on the BTRC. (3 RT 454-455; see 5 RT 980-981.) The City of Los Angeles later informed the parties that a court must determine who is the

trial court dismissed both claims at trial (5 RT 1052; 6 RT 1214), and neither claim is at issue in this appeal.

proper owner of the BTRC, and that the BTRC will remain frozen pending that determination. (3 RT 455.)

Because a BTRC is required to operate a business in the City of Los Angeles, Kersey shut down the dispensary, which remains closed to this day. (3 RT 433-434; 4 RT 622-623, 629, 632-633; 5 RT 981-982.)

H. The court dismisses all of Kersey's individual claims, all claims against Stark individually, and both plaintiffs' UCL claims. The case goes to the jury only on the LLC's claim for conversion against Holistic (Inc.).

The trial began in May 2019. (2 RT 1.)

Initially, the central issue for trial was a factual dispute over whether Stark signed the documents transferring ownership of the LLC to Kersey: if he did, he had no right to subsequently change the corporate structure, ownership, and registered address for the LLC. (AA 79; 2 RT 23, 25-26.) Defendants did not dispute that Stark, without Kersey's knowledge or authorization, converted the dispensary from an LLC into a corporation owned solely by Stark and then changed the registered address for the BTRC from the LLC's Canoga Avenue location to the East 15th Street address. (See 2 RT 24-27.) Instead, defendants denied Stark had ever transferred his interest in the LLC to Kersey. (2 RT 25.) According to defendants, Barnes forged Stark's signatures on the transfer documents, and Kersey, Barnes, and Manuwal were lying that Stark signed the documents. (2 RT 25-26.) Thus, trial would boil

down to a credibility contest between plaintiffs' witnesses (who would testify that Stark signed the transfer documents) and Stark (who would testify that he did not).

Moreover, because plaintiffs asserted legal and equitable claims, the trial was to proceed in two concurrent phases.

In one phase—a legal phase—the jury was to decide plaintiffs' claims for conversion; these claims would require the jury to determine whether defendants' conduct interfered with (1) Kersey's property interests in her ownership of the LLC, and (2) the LLC's property interests in its possession of the BTRC. (See AA 159-160.)

In another phase—an equity phase—the trial court was to decide plaintiffs' equitable claims for unfair competition and declaratory relief; these claims required the court to resolve issues that were largely coterminous with the questions the jury was to resolve: namely, who owned the dispensary, including whether Stark transferred ownership of the LLC to Kersey, and whether Stark had the authority as the alleged sole member of the LLC to subsequently convert the LLC into Holistic (Inc.) and then transfer the BTRC to the newly formed entity. (See AA 159-160; see also 2 RT 34, 41.)

Contrary to the “equity first” rule (see *Hoopes v. Dolan* (2008) 168 Cal.App.4th 146, 156-157), the trial court rejected plaintiffs' recommendation that the court first resolve the equitable claims and instead deferred ruling until after the jury verdict (6 RT 1205, 1208-1209, 1307-1308).

The parties made their opening statements (2 RT 17-27), in which both parties explained to the jury that the case turned on whether Stark signed the transfer documents (2 RT 25 [defendants' counsel: "Did he or did he not sign the documents to transfer it over? It's going to come down to that"]; see 2 RT 23 [plaintiffs' counsel: Stark had "no right to claim ownership of [the LLC] and [its] B.T.R.C., because he transferred a hundred percent of his interest to Ms. Kersey," and "no one forged Mr. Stark's signatures"]).

Nonetheless, after opening statements, defendants moved to nonsuit the entire action, arguing for the first time that all of plaintiffs' claims failed as a matter of law. (2 RT 28-39; AA 168-180; see AA 144-153.)

As relevant here,⁷ defendants raised two arguments in their nonsuit motion. First, defendants argued that all of Kersey's individual claims must be dismissed for lack of standing because members of an LLC do not have standing to bring claims based on injury to the assets of the LLC; instead, such claims must be brought in a derivative action on behalf of the LLC. (2 RT 29; AA 170, 173-174.) Second, defendants argued that plaintiffs' UCL claims failed because they were not predicated on violation of a

⁷ Defendants raised numerous additional arguments for nonsuiting plaintiffs' claims (AA 174-179; 2 RT 28-39), including, for example, that all of the LLC's claims must be dismissed for lack of capacity and for failure to exhaust legal remedies because plaintiffs purportedly failed to seek an order of reinstatement under Government Code section 12261 (AA 174-175, 178-179; 2 RT 29-32). The trial court rejected those arguments (see 6 RT 1214; AA 430), and they are not at issue in the present appeal.

specific constitutional, statutory, or regulatory provision. (2 RT 34; AA 176.)

In opposition, plaintiffs explained that members of an LLC have standing to bring individual claims based on the *theft of their membership interest* (as distinct from *injury to LLC assets*) because ownership interest in an LLC is the personal property of the individual member, not an asset of the LLC. (AA 277-280.) Plaintiffs also explained that (1) the UCL prohibits any business practice deemed “unlawful,” “unfair,” or “fraudulent” under the statute, regardless of whether there is a predicate violation of a specific constitutional, statutory, or regulatory provision; and (2) in any event, plaintiffs identified specific statutes that defendants violated. (AA 289-292.)

The court heard initial argument from counsel (2 RT 28-45), but reserved ruling until after the close of evidence (see 2 RT 45; AA 184; see also 6 RT 1201).

The parties continued their presentation of the evidence, which focused primarily on the “central issue” of whether Stark signed documents transferring his interest in the LLC to Kersey. (4 RT 725.)

After close of evidence, and after further argument from counsel (6 RT 1201-1214), the court granted nonsuit on all causes of action except for two—the LLC’s claims for conversion and declaratory relief (6 RT 1214; AA 430). Further, in response to a passing comment from defendants that they were entitled to a directed verdict on all claims brought against Stark in his individual capacity (see 6 RT 1206-1207), the court also dismissed

all claims against Stark individually as a matter of law (6 RT 1216-1217; see AA 430).

Thus, after these rulings, the only remaining claim for the jury was the LLC's conversion claim against Holistic (Inc.). (6 RT 1214, 1216-1219; AA 430-432.) The only remaining claim for the court was the LLC's declaratory relief claim against Holistic (Inc.). (6 RT 1214, 1216-1219; AA 430, 432.) Both claims arose out of the LLC's claimed property interest in the BTRC.

I. At the final jury instruction conference, the court refuses to instruct the jury that the BTRC counts as “property” for purposes of the LLC’s conversion claim. When the jury later asks about whether the BTRC is “property,” the court instructs them it is *not* property.

After ruling on the nonsuit motion, the court held its final jury instruction conference. (AA 430; 6 RT 1215-1233.) The parties agreed to a modified version of the CACI No. 2100 instruction, which asked the jury to determine five elements:

- (1) the LLC had a right to possess the property;
- (2) Holistic (Inc.) intentionally and substantially interfered with the LLC's property by taking possession of the property, or assuming control or ownership over the property, or by applying the property to its own use;
- (3) the LLC did not consent;
- (4) the LLC was harmed; and

- (5) Holistic (Inc.)’s conduct was a substantial factor in causing the LLC’s harm.

(AA 367.)

To supplement that instruction, plaintiffs requested that the jury also be instructed that the BTRC qualifies as “property” for purposes of the conversion claim.⁸ (6 RT 1219; AA 254.) Plaintiffs explained orally and in extensive briefing that they had a protectable property interest in the BTRC because businesses must obtain a BTRC to conduct business in Los Angeles and holders of a BTRC enjoy special privileges under local law when applying for a license to operate a medical marijuana dispensary in Los Angeles. (6 RT 1210-1213, 1219-1221; AA 281-287.)

The court rejected the instruction. (6 RT 1221; AA 411.) Instead, the court punted the issue to the jury, stating that whether a BTRC is “property” is a factual issue to be decided by the jury and that the parties were “free to argue” the issue at closing arguments. (6 RT 1221.)

The jury began its deliberations that same day. (6 RT 1233-1234, 1287; AA 431.) About an hour after deliberations started, the jury sent a note to the court asking whether the BTRC can be “legally considered property.”⁹ (6 RT 1288; see AA 431.)

⁸ Specifically, plaintiffs requested an instruction stating that, “A Business Tax Registration Certificate or BTRC issued by the City of Los Angeles to a medical marijuana dispensary is property.” (AA 254, 411.)

⁹ The jury also asked “what does ‘property’ refer to?” for purposes of the conversion claim. (6 RT 1288.) The parties stipulated that “property refers to things under the control of the party” claiming

Plaintiffs reiterated to the court their prior arguments that a BTRC qualifies as a protectable property interest. (6 RT 1289-1298.) The court again rejected these arguments, but this time found as a matter of law—and so instructed the jury—that a BTRC is *not* “property.” (6 RT 1298-1299.)

Plaintiffs objected, explaining that, given “the state of the evidence,” this instruction would be tantamount to a directed verdict for the defense on the LLC’s claim. (6 RT 1299.) The court dismissed those concerns out of hand, telling plaintiffs’ counsel, “You don’t know what [the jury is] considering,” and speculating that “maybe [the jury is] figuring something else out.” (*Ibid.*)

J. The jury returns a defense verdict on the LLC’s conversion claim. Plaintiffs voluntarily dismiss the LLC’s declaratory relief claim against Holistic (Inc.), and they timely appeal.

Ten minutes later, the jury returned a defense verdict on the conversion claim. (AA 427, 431-432; 6 RT 1304-1305.) The jury found that although the LLC had the right to possess unidentified “property,” Holistic (Inc.) did not convert any such “property” because it did not “tak[e] possession” of the LLC’s property, “assum[e] control or ownership” of such property, or apply such property “to its own use.” (AA 427, 432; 6 RT 1304-1305.) Apparently, having been told the BTRC was not property, the jury was left to assume that the only property at issue was tangible

ownership. (6 RT 1299-1301.) Plaintiffs do not challenge this aspect of the instruction on appeal.

property such as cash, medical marijuana product, and equipment at the dispensary, which plaintiffs did not claim had been stolen.

In light of the trial court's legal rulings and the jury's verdict, plaintiffs voluntarily dismissed with prejudice the LLC's declaratory relief claim against Holistic (Inc.), the only claim then-remaining in the case. (AA 435, 445.) The court entered judgment (AA 443-446), and plaintiffs timely appealed (AA 449-450).

STATEMENT OF APPEALABILITY

The judgment is appealable under Code of Civil Procedure section 904.1, subdivision (a)(1).

LEGAL ARGUMENT

- I. The trial court erred by dismissing plaintiffs' claims.**
 - A. The court reviews de novo the grant of a nonsuit motion or motion for directed verdict.**

The court reviews the grant of a motion for nonsuit de novo, viewing the evidence in the light most favorable to the appellant and resolving all conflicts and inferences in its favor. (*Moore v. Wells Fargo Bank, N.A.* (2019) 39 Cal.App.5th 280, 295; *Fountain Valley Chateau Blanc Homeowner's Assn. v. Department of Veterans Affairs* (1998) 67 Cal.App.4th 743, 750-751.) Moreover, unless it is "clear" that there is an incurable defect in the appellant's case, an order granting a motion for nonsuit may be upheld only on the grounds stated in the motion and ruled on by the trial court. (*Lawless v. Calaway* (1944) 24 Cal.2d 81,

94 (*Calaway*.) Motions for a directed verdict are analytically the same as nonsuit motions, and courts apply the same standards when reviewing the grant of a directed verdict motion. (*Fountain Valley*, at p. 750.)

B. The trial court erred by nonsuiting Kersey's individual claims for lack of standing.

Kersey's individual claims allege that defendants stole her individual ownership interest in the dispensary by converting it from a limited liability company into a corporation and naming Stark as the sole owner of the newly formed entity. (AA 18-21, 70-72.) The trial court erred in finding that Kersey lacked standing to assert these individual claims.

An individual's ownership interest in a corporate entity is personal property that belongs to the individual, not the company. For example, by statute, the "[m]embership interest" in a limited liability company is defined to include the "member's rights in the limited liability company, including the member's transferable interest." (Corp. Code, § 17701.02, subd. (r); see *id.*, § 17701.02, subd. (aa) [defining "[t]ransferable interest" as the "right . . . to receive distributions from a limited liability company"].) In turn, the same statute provides that such a "transferable interest is *personal property*." (*Id.*, § 17705.01, emphasis added.) By the same token, corporate stock is the personal property of the individual shareholder, not the corporation. (*Payne v. Elliot* (1880) 54 Cal. 339, 342.)

Because an ownership interest in a company is the property of the individual owner, courts routinely allow individuals to bring individual claims based on the theft of such ownership interests. (See *Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 122 [“It is the uniform rule of law that shares of stock in a company are subject to an action in conversion”].) Moreover, individuals may bring such individual claims even if the defendant’s conduct would also give rise to a separate derivative claim on behalf of the company. (See *Denevi v. LGCC, LLC* (2004) 121 Cal.App.4th 1211, 1221 [“it is settled that one who has suffered injury both as an owner of a corporate entity and in an individual capacity is entitled to pursue remedies in both capacities”].)

Haro v. Ibarra (2009) 180 Cal.App.4th 823 (*Haro*) provides a straightforward application of these principles. In *Haro*, former shareholders of a medical corporation brought individual claims for conversion and derivative claims for breach of fiduciary duty against officers, directors, and other shareholders of the company, alleging that defendants unlawfully “forfeited” (i.e., stole) the plaintiffs’ shares as part of a scheme to force the plaintiffs out of the company. (*Id.* at pp. 826-830, 835.) The court allowed the shareholders to proceed on their individual claims without controversy, holding that the plaintiffs adequately stated a claim for conversion because the defendants’ alleged theft of the plaintiffs’ shares violated their individual property rights in those shares. (*Id.* at p. 835.)

The same principles apply here.

Like *Haro*, Kersey’s individual claims allege that defendants stole her ownership interest in the LLC by converting the LLC into a corporation without Kersey’s knowledge or authorization and then naming Stark the sole owner of the newly formed corporation. (See *Haro, supra*, 180 Cal.App.4th at p. 835 [alleging that “[a]ppellants owned . . . shares and [defendants] engaged in a scheme to deprive [a]ppellants of their shares”].) Kersey thus had standing to bring her individual claims.

Defendants nonetheless argued that, under *PacLink Communications Intern., Inc. v. Superior Court* (2001) 90 Cal.App.4th 958 (*PacLink*), Kersey lacks standing to bring any individual claims. (AA 170, 173-174.) *PacLink* does not apply.

In *PacLink*, minority members of an LLC brought individual claims against the defendants for transferring the LLC’s assets to a new company without obtaining adequate compensation for those assets, which caused the LLC to become insolvent and in turn diminished the value of the plaintiffs’ membership interests in the existing LLC. (*PacLink, supra*, 90 Cal.App.4th at pp. 961-962.) The court held that the plaintiffs lacked standing to bring those individual claims—and were instead required to bring a derivative action on behalf of the LLC—because, at bottom, the wrongdoing concerned the disposition of company assets in which only the LLC itself had an interest. (*Id.* at pp. 964-965.) Specifically, the defendants were not alleged to have *stolen* the plaintiffs’ ownership interest; rather, they were alleged to have merely *harmed the value of* that ownership interest indirectly through an undercompensated transfer of assets. (*Ibid.*) It is in

that context that the court said the plaintiffs' injury was only "incidental to the injury suffered by [the LLC]" and was therefore insufficient to establish individual standing. (*Id.* at pp. 964, 966-967; see *Jones v. H.F. Ahmanson & Co.* (1969) 1 Cal.3d 93, 106 [an action is derivative if "it seeks to recover assets for the corporation or to prevent the dissipation of its assets'"]; *Rankin v. Frebank Co.* (1975) 47 Cal.App.3d 75, 95 [individual stockholder " 'may not maintain an action in his own right . . . for destruction of or diminution in the value of the stock'"].)

For purposes of her *individual* claims, Kersey is not claiming that defendants' conduct left her with an ownership interest in the LLC that had diminished value.¹⁰ (See AA 19-20, 71.) Rather, Kersey's claims are based on the defendants' wholesale theft of her ownership interest in the LLC by reorganizing the dispensary without her knowledge and authorization and naming Stark as sole shareholder—a violation of Kersey's personal property rights that indisputably gives rise to individual standing. (See *Haro, supra*, 180 Cal.App.4th at p. 835.)

In short, Kersey has standing to pursue her individual claims, and the court erred by dismissing those claims.

¹⁰ Plaintiffs do not dispute that, because the BTRC is an asset of the LLC, claims based on theft of the BTRC must be brought on behalf of the LLC, which plaintiffs have done. (AA 14, 68, 71.)

C. The trial court erred by granting a directed verdict on all claims against Stark in his individual capacity.

1. Corporate owners, officers, and directors can be held personally liable for torts when they participated in, directed, or authorized the tortious conduct.

Owners, officers, and directors of a corporation can be held liable in their personal capacity when they have personally participated in, directed, or authorized tortious conduct. (*United States Liab. Ins. Co. v. Haidinger-Hayes, Inc.* (1970) 1 Cal.3d 586, 595 [directors or officers of a corporation incur personal liability for torts of the corporation if they “participate in the wrong or authorize or direct that it be done”]; see *Wyatt v. Union Mortgage Co.* (1979) 24 Cal.3d 773, 785 [“Shareholders of a corporation are not normally liable for its torts, but personal liability may attach . . . when the shareholder specifically directed or authorized the wrongful acts” (citation omitted)].)

Moreover, when an individual has been found personally liable based on its direct involvement in tortious conduct, such liability will apply “regardless of whether [the individual] acted on behalf of the corporation and regardless of whether the corporation is also liable.” (*Frances T. v. Village Green Owners Assn.* (1986) 42 Cal.3d 490, 504.) This is because, under such circumstances, the defendant’s “liability does not depend on” theories of vicarious liability, such as agent-principal or alter ego liability, but instead

depends “on the [defendant’s] *personal participation or specific authorization* of the tortious act.” (*Ibid.*, emphasis added.)

These same principles apply to members and managers of limited liability companies. (See *People v. Pacific Landmark, LLC* (2005) 129 Cal.App.4th 1203, 1216 [“consistent with analogous principles of corporate law,” managers of limited liability companies may not be held liable for wrongs committed by the company merely because of their status as managers, “but may be personally liable for their participation in those wrongs”]; see also Corp. Code, § 17703.04, subd. (c) [“Nothing in this section shall be construed to affect the liability of a member of a limited liability company to third parties for the member’s participation in tortious conduct”]).

2. Because Stark participated in, directed, and authorized the filings that reorganized the LLC and transferred the BTRC to a new entity owned solely by him, the jury could properly have found him personally liable for conversion.

It is undisputed that Stark personally participated in, directed, and authorized the filing of documents with the California Secretary of State that converted the LLC into Holistic (Inc.) and named Stark the sole shareholder of the newly formed entity. (4 RT 694-697, 704-705; 5 RT 918, 928; see AA 473-476, 477-478, 481-482, 573-579.) It is also undisputed that Stark personally participated in, directed, and authorized the filing of

documents with the City of Los Angeles changing the registered address for the BTRC from the LLC's Canoga Avenue address to the East 15th Street address. (4 RT 708-709, 711-714, 719-720; 5 RT 904-905, 914-917, 932, 936; see AA 494-501, 560, 561.)

If Stark never transferred his ownership interest in the LLC to Kersey, these filings may have been permissible. But if—as plaintiffs contend—Stark did transfer his ownership interest in the LLC to Kersey, then these filings were unlawful and would give rise to personal liability against Stark. The court was therefore incorrect to dismiss all claims brought against Stark in his individual capacity.

At trial, defendants argued that all claims against Stark in his individual capacity must be dismissed because, they say, he did not “personally benefit[]” from converting the LLC into Holistic (Inc.) and transferring the BTRC to Holistic (Inc.). (6 RT 1206.) Defendants are wrong on both the law and the facts.

As an initial matter, it is irrelevant whether Stark “personally benefited” from converting the LLC and transferring the BTRC. Plaintiffs assert claims against Stark in his individual capacity based on the undisputed evidence that he personally participated in, authorized, and directed the filing of documents that changed the corporate structure and ownership of the LLC and transferred the BTRC from the LLC to Holistic (Inc.). (AA 15-17, 68-70; see AA 288-289.) As just explained (*ante*, pp. 39-40), this is sufficient to establish personal liability against Stark.

Moreover, even if plaintiffs were required to show that Stark “personally benefited” from his conduct to establish personal

liability (they are not), the undisputed evidence at trial shows that Stark in fact “personally benefited” from converting the LLC and transferring the BTRC. It is undisputed that an individual’s ownership interest in a company is the personal property of the individual, not the company. (See *ante*, pp. 35-36.) And it is undisputed that Stark did not reorganize and change ownership of the LLC merely for sport; rather, he has agreed to sell his ownership interest in Holistic (Inc.) for \$1.85 million to an investor in the event he is found to be the owner of the dispensary and the BTRC in this litigation. (4 RT 722-725; 5 RT 948; AA 580-581.)

In short, Stark personally participated in, directed, and authorized the conversion of the LLC and the transfer of the BTRC. This is sufficient to establish personal liability against Stark in the event there is a finding that he signed away his interest in the LLC to Kersey. The trial court therefore erred in dismissing, as a matter of law, all claims brought against Stark in his individual capacity.

D. The trial court erred by nonsuiting plaintiffs’ UCL claims.

1. Plaintiffs introduced evidence from which a trier of fact could find violation of the UCL.

“The purpose of the UCL . . . ‘is to protect both consumers and competitors by promoting fair competition in commercial markets for goods and services.’” (*McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1470, citation omitted.) To that

end, the UCL does not prohibit specific acts, but instead broadly prohibits any business practice that is either “[1] unlawful, [2] unfair, or [3] fraudulent.” (Bus. & Prof. Code, § 17200.) “Because the statute is framed in the disjunctive, a business practice need only meet one of the three criteria to be considered unfair competition.” (*McKell*, at p. 1471.)

Here, defendants argued that plaintiffs’ UCL claims failed as a matter of law because they were not predicated on violation of a specific constitutional, statutory, or regulatory provision. (AA 171, 176; 2 RT 34.) But the UCL does not require that plaintiffs base their UCL claim on violation of a specific constitutional, statutory, or regulatory provision. For example:

Unlawful prong. The unlawful prong borrows violations of other laws—including the common law—and makes those unlawful practices actionable under the UCL. (See *Candelore v. Tinder, Inc.* (2018) 19 Cal.App.5th 1138, 1155 [“ ‘ “[V]irtually any law or regulation—federal or state, statutory or common law—can serve as [a] predicate” ’ ” (emphasis added)]; accord, *Zhang v. Superior Court* (2013) 57 Cal.4th 364, 384 (*Zhang*) [UCL action will lie upon a showing that defendants engaged in conduct that violates obligations imposed by the common law].)

Unfair prong. Courts have applied several tests for determining whether conduct satisfies the unfair prong, none of which requires a predicate constitutional, statutory, or regulation violation. (See *West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 806.)

Under one test, the defendant's conduct is "unfair" if the plaintiff is substantially injured by the conduct, the injury is not outweighed by benefits to consumers or competition, and it is not an injury that consumers could reasonably avoid. (*Daugherty v. American Honda Motor Co., Inc.* (2006) 144 Cal.App.4th 824, 839, superseded in part by statute on another ground as stated in *Kowalsky v. Hewlett-Packard Co.* (N.D.Cal. 2011) 771 F.Supp.2d 1156, 1159, fn. 1.) Under another test, conduct is "unfair" if it " " "offends an established public policy" " " or is " " "immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers." " " (*Smith v. State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, 719.) Neither test requires violation of a constitution, statute, or regulation.

A third test imposes liability if " " "the public policy which is a predicate to the action [is] "tethered" to specific constitutional, statutory or regulatory provisions." " (*Scripps Clinic v. Superior Court* (2003) 108 Cal.App.4th 917, 940.) This "tethering" requirement confirms that the defendant need not have violated the letter of a specific constitutional, statutory or regulatory law to show violation of the unfair prong; rather, it is enough to show that the defendant's conduct violates some "legislatively declared policy." (*Cel-Tech Communications, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 186-187.) Otherwise, the unfair prong would be subsumed under the unlawful prong. (See *id.* at p. 180 [UCL "makes clear that a practice may be deemed unfair even if not specifically proscribed by some other law"].)

Plaintiffs presented evidence that was more than sufficient to satisfy the UCL under these standards.

For example, plaintiffs' claims for common law conversion may serve as a predicate under the unlawful prong. (See *Zhang, supra*, 57 Cal.4th at p. 384.) And, as shown below, the conversion claims were meritorious but for the court's instructional errors regarding the definition of "property." (See pp. 48-57, *post*.)

In any event, defendants violated numerous statutes, including state statutes governing the filing of corporate records, as well as the governance of LLCs. (E.g., Pen. Code, § 115, subd. (a) [felony to knowingly file a false document with a government office]; Corp. Code, §§ 17702.03, subd. (a)(1) ["record signed on behalf of a limited liability company shall be signed by a person authorized by the limited liability company"], 17704.07, subd. (t) [providing LLC members a right to vote on the conversion of the LLC to another entity]; see AA 290-291.)

Likewise, plaintiffs' unfair prong claims are tethered to violations of specific public policy, as California and Los Angeles have legislatively declared policy interests in regulating limited liability companies generally (see Corp. Code, § 17701.01 et seq.) and medical marijuana dispensaries specifically (see pp. 17-18, 51-53, *post*). This includes, for example, comprehensive regulation over the formation, ownership, registration, licensure, and operation of medical marijuana dispensaries. (See pp. 17-18, 51-53, *post*.)

In short, plaintiffs were not required to show that defendants violated a specific constitution, statute, or regulation

to establish liability on their UCL claims, and the trial court erred in dismissing plaintiffs' UCL claim on that ground.

2. The nonsuit on the UCL claims cannot be affirmed on the ground that plaintiffs and defendants were not “competitors.”

The day before ruling on the nonsuit motion, the trial court issued a tentative oral ruling in which he stated, *sua sponte*, that he was inclined to grant nonsuit on plaintiffs' UCL claims because, in his words, “[t]here was no evidence regarding whatever business Mr. Stark was trying to set up was in competition or unfair competition [with plaintiffs].” (5 RT 1052.) Although it is unclear whether the trial court actually granted nonsuit on this ground, any such ruling would have been error for two independent reasons.

First, defendants properly did not move to nonsuit plaintiffs' UCL claims on the ground that plaintiffs were not business competitors with defendants. (See AA 171, 176; 2 RT 28-45; 5 RT 1051-1053; 6 RT 1201-1214.) The trial court thus erred to the extent it *sua sponte* nonsuited the UCL claims on this ground. (See *Gullick v. Interstate Drilling Co.* (1931) 111 Cal.App. 263, 267 [court may not bring nonsuit motion *sua sponte*]; see also *Calaway, supra*, 24 Cal.2d at p. 94 [order granting motion for nonsuit may be upheld only on specific grounds stated in motion].)

Second, the UCL—despite its title—is by no means strictly limited to unfair “competition.” The UCL permits claims to be brought by any “person who has suffered injury in fact and has lost

money or property” because of the defendant’s wrongful conduct.¹¹ (Bus. & Prof. Code, § 17204.) Thus, to satisfy the UCL’s standing requirements, the plaintiff need show only two elements: (1) the plaintiff suffered an economic injury-in-fact (i.e., “lost money or property”), and (2) the economic injury was caused by the defendant’s wrongful conduct. (*Kwikset Corp. v. Superior Court* (2011) 51 Cal.4th 310, 322-327, superseded in part by statute on another ground as stated in *Citizens of Humanity, LLC v. Hass* (2020) 46 Cal.App.5th 589, 594, fn. 2.) Beyond these baseline standing requirements, nothing in the UCL further limits standing to business competitors. (See *Industrial Bank of Korea v. ASI Corporation* (C.D.Cal., Oct. 4, 2018, No. CV 17-7646-MWF (JPRx)) 2018 WL 6164317, at p.*19 [nonpub. opn.] [rejecting argument that “Plaintiffs lack standing to sue under the UCL because Plaintiffs are neither consumers nor competitors”]; *Circle Click Media LLC v. Regus Management Group LLC* (N.D.Cal., Oct. 30, 2015, No. 3:12-CV-04000-SC) 2015 WL 6638929, at p. *4 [nonpub. opn.] [same].)

The trial court thus erred to the extent it dismissed plaintiffs’ UCL claims on this ground.

¹¹ The UCL broadly defines “person” to include any “natural persons, corporations, firms, partnerships, joint stock companies, associations and other organizations of persons.” (Bus. & Prof. Code, § 17201.)

II. The trial court erroneously rejected the LLC’s instruction that the BTRC is “property” and then misinstructed the jury that the BTRC is not “property.”

A. The court reviews claims of instructional error de novo.

The court reviews claims of instructional error de novo. (*Crouch v. Trinity Christian Center of Santa Ana, Inc.* (2019) 39 Cal.App.5th 995, 1021.) In determining whether an instructional error was prejudicial, the court considers the entire record, and the evidence is viewed in the light most favorable to the appellant. (*Alcala v. Vazmar Corp.* (2008) 167 Cal.App.4th 747, 754.)

The court must reverse for instructional error if, when viewing the entire record, there is a “reasonable probability” it affected the outcome of the case. (*Soule v. General Motors Corp.* (1994) 8 Cal.4th 548, 570-571 (*Soule*)). “Reasonable probability” does not mean a different outcome was more likely than not—rather, it means only there is “merely a reasonable chance, more than an abstract possibility” that the appellant would have achieved a better outcome but for the error. (*College Hospital Inc. v. Superior Court* (1994) 8 Cal.4th 704, 715.)

B. “Property” includes protectable intangible interests in government privileges.

To prove a claim for conversion, the plaintiff must, as a threshold matter, establish the existence of a protectable property

interest. (See *Welco Electronics, Inc. v. Mora* (2014) 223 Cal.App.4th 202, 208 (*Welco*) [requiring plaintiffs to establish “ ‘ ownership or right to possession of the property ” ’ ”].)

California defines property broadly to include both tangible and intangible things—anything that one has the exclusive right to possess and use. (See Civ. Code, § 654 [defining “property” as “the thing of which there may be ownership,” and stating that “[t]he ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others”]; see also *Heller Ehrman LLP v. Davis Wright Tremaine LLP* (2018) 4 Cal.5th 467, 476 [“Both the common law and provisions of California law codifying the nature of property associate a property interest with a specific bundle of rights to control the use and disposition of a particular asset”].) This definition is “ ‘ all-embracing, ” ’ ” and includes “ ‘ every intangible benefit and prerogative susceptible of possession or disposition, ” ’ ” and “ ‘ any valuable right or interest protected by law. ” ’ ” (*Downing v. Municipal Court of City and County of San Francisco* (1948) 88 Cal.App.2d 345, 350 (*Downing*).)

Under this expansive definition, the general rule is that a person has a protectable property interest in a government-issued document if possession and use of the document affords its holder a governmental privilege. (See *G.S. Rasmussen & Associates, Inc. v. Kalitta Flying Service, Inc.* (9th Cir. 1992) 958 F.2d 896, 902 (*Rasmussen*) [applying California law].)

Although the usual example of a governmental privilege is an operational license or permit such as a state liquor license (see

Golden v. State (1955) 133 Cal.App.2d 640, 643-645), “property” includes *any* governmental privilege, so long as three elements are met:

- (1) the interest is “ ‘capable of precise definition’ ”;
- (2) the interest is “ ‘capable of exclusive possession or control’ ”; and
- (3) the holder has established a “ ‘legitimate claim to exclusivity.’ ”

(*Kremen v. Cohen* (9th Cir. 2003) 337 F.3d 1024, 1030 (*Kremen*) [applying California law]; see *Welco, supra*, 223 Cal.App.4th at p. 211 [applying three-part *Kremen* test].)

Under the *Kremen* test, the “key question” in determining whether something is property is “whether there is any reason, in public policy or otherwise, [to] deny a party the full benefit of its efforts [to obtain the governmental privilege] where exclusive rights are reasonably easy to define and protect.” (*Rasmussen, supra*, 958 F.2d at p. 903, fn. 14.)

The Ninth Circuit’s application of this test in *Rasmussen* is instructive. In *Rasmussen*, the plaintiff, an aeronautical engineer, obtained a “Supplemental Type Certificate[]” from the Federal Aviation Administration (FAA) that authorized him to make certain design modifications to his airplane without having to first prove to the FAA that the modifications met certain safety standards. (*Rasmussen, supra*, 958 F.2d at p. 899.) The defendant, a cargo aircraft operator, photocopied the plaintiff’s certificate and, without the plaintiff’s permission, submitted it to the FAA as part of his own application to make design

modifications to an airplane that he owned. (*Id.* at p. 900.) The plaintiff sued the defendant under California law for conversion of the certificate. (*Ibid.*)

Applying California law, the court held that the plaintiff had a protectable property interest in the certificate. (*Rasmussen, supra*, 958 F.2d at pp. 902-903.) First, the privileges conferred by the certificate were capable of precise definition because the certificate grants its holder specific “preferential rights” in the FAA’s certification process when seeking to make design modifications to an airplane. (*Id.* at p. 903.) Second, the certificate was capable of exclusive possession or control because federal regulations restrict the privileges conferred by the certificate to its holder or the holder’s transferee or licensee. (*Ibid.*) Third, the plaintiff had a legitimate claim to exclusivity because he expended significant resources to obtain the certificate, including research and design costs. (*Ibid.*)

C. The BTRC is “property” that affords its holder substantial governmental privileges.

The BTRC qualifies as “property” for purposes of the LLC’s conversion claim against Holistic (Inc.) because it satisfies all three elements of the *Kremen* test.

Interest Capable of Precise Definition. Possession of a BTRC confers substantial privileges and benefits on its holder, and the “nature and extent” of these privileges and benefits are “capable of precise definition.” (*Rasmussen, supra*, 958 F.2d at p. 903.)

As a general matter, businesses like the LLC must possess a BTRC to operate in the City of Los Angeles. (L.A. Mun. Code, § 21.03, subd. (a); see *id.*, §§ 21.06, subd. (a), 21.09, subds. (a), (b).) And with regards to medical marijuana dispensaries specifically, BTRC holders are afforded various privileges when applying for a license to sell medical marijuana in the City of Los Angeles.

For example, City of Los Angeles Ordinance No. 185343 provides “priority processing” privileges¹² to applicants who can show they are in compliance with the “limited immunity” provisions in Proposition D (former L.A. Mun. Code, § 45.19.6 et seq.; AA 294-307),¹³ a prior medical marijuana licensing ordinance. (L.A. Mun. Code, § 104.01, subd. (a)(12), (23); *id.*, § 104.07, subd. (a).) To do so, an applicant must show, among other things,¹⁴ that

¹² Specifically, Proposition D-compliant BTRC holders are entitled to the “‘Proposition M Priority Processing’” privileges set forth in Los Angeles Municipal Code section 45.19.7.2, subd. (C). (See L.A. Mun. Code, § 104.01, subd. (a)(23).) This section provides that “[t]he City’s designated licensing or permitting agency shall give priority in processing applications of [medical marijuana dispensaries] that can demonstrate to the City’s designated licensing or permitting agency that the [dispensary] has operated in compliance with the limited immunity and tax provisions of Proposition D.” (L.A. Mun. Code, § 45.19.7.2, subd. (C).)

¹³ Proposition D was effective from 2013 to January 1, 2018, when it was repealed by Ordinance No. 185343. (See City of Los Angeles Ordinance No. 185343, § 1; AA 308.) As explained in the text, Proposition D granted dispensaries limited immunity from criminal prosecution if they satisfied certain requirements.

¹⁴ The full requirements for Proposition D immunity are set forth in former section 45.19.6.3 of the Los Angeles Municipal Code. (AA 301-304.) At trial, defendants did not dispute that the LLC satisfied these requirements. (See 6 RT 1212-1213.) Indeed, Stark

it has possessed a BTRC since 2007 in accordance with the 2007 Interim Control Ordinance (*ante*, pp. 17-18), and it has operated a dispensary at the address indicated on the BTRC since that time (former L.A. Mun. Code, § 45.19.6.3, subds. (A), (B) & (D)); AA 301-302). Under City of Los Angeles Ordinance No. 185343, Proposition D-compliant BTRC holders are also entitled to limited immunity from criminal prosecution pending the outcome of their licensing applications (L.A. Mun. Code, § 104.07, subd. (b)), as well as exemptions from certain pre-licensing inspection and zoning requirements (*id.*, § 104.07, subds. (g), (h)).

In short, the privileges and benefits afforded by the BTRC are “well-defined” (*Kremen, supra*, 337 F.3d at p. 1030) and give rise to protectable property interests under California’s expansive definition of “property” (see *Downing, supra*, 88 Cal.App.2d at p. 350 [property includes “ ‘ “every intangible benefit” ’ ” and “any valuable right or interest protected by law”]; *Rasmussen, supra*, 958 F.2d at pp. 899, 903 [plaintiff had property right in certificate allowing holder to “shortcut” federal regulatory approval process]).

Exclusive Possession and Control. The BTRC is also capable of exclusive possession or control, as local law restricts possession of the BTRC to the specific person and address to whom the BTRC is issued. (L.A. Mun. Code, § 21.06, subd. (a) [“Each [BTRC] so obtained . . . shall authorize the person named upon the [BTRC] to engage only in the business specified at the location for which the

submitted an affidavit to the City of Los Angeles in which he swore that the dispensary (which Stark referred to as “HOLISTIC SUPPLEMENTS, INC.”), including the BTRC, complied with Proposition D’s immunity provisions. (AA 565.)

[BTRC] has been issued”]; see *id.*, § 21.08, subd. (a)(1), (3) [requiring each BTRC to state the “name of the person to whom issued” and the “address of the location from which the business is conducted”].)

Legitimate Claim to Exclusivity. Lastly, the LLC has established a legitimate claim for exclusively possessing and using the BTRC at issue here. Local law requires persons seeking a BTRC to individually register with the City of Los Angeles (L.A. Mun. Code, § 21.08, subd. (b) [“This [BTRC] signifies that the person named on the face hereof has fulfilled the requirements of . . . the Los Angeles Municipal Code by registering with the Director of Finance for the purpose of paying business tax for the . . . business for which this certificate is issued” (citation omitted)]), and it is undisputed that, notwithstanding defendants’ repeated attempts to change the registered address for the BTRC, the LLC registered for a BTRC at its Canoga Avenue address every year from the LLC’s formation in 2005 (AA 484) until it was notified that the BTRC was “frozen” pending the outcome of this litigation (3 RT 454-455).

In summary, the BTRC affords its holder substantial, well-defined governmental privileges and benefits; the BTRC is by law restricted to the possession of one holder at one specific place of business; and the LLC has established a legitimate claim to the exclusive possession of the BTRC at its Canoga Avenue location.

Notwithstanding this showing, defendants argued at trial that because the BTRC serves as a tax computation document, it is not the same as an operational license or permit, and thus does

not qualify as “property” under California law. (6 RT 1212, 1220, 1294-1295.) In support, defendants argued that the BTRC itself includes disclosures stating that it is “not a license, permit, or land use authorization” and it does not “ ‘authoriz[e] the conduct or continuance of any legal business or illegal business in any illegal manner.’ ” (E.g., AA 488, original formatting omitted; see also L.A. Mun. Code, §§ 21.01, 21.08, subd (b).)

But nothing limits intangible property to operational “license[s], permit[s], or land use” and business authorizations. (AA 488; see *Rasmussen, supra*, 958 F.2d at p. 902 [“That the interest in question is limited to obtaining a governmental privilege . . . does nothing to diminish its status as a property interest for purposes of state law”].) Rather, as explained above (see *ante*, pp. 17-18, 52-53), a BTRC is required to conduct business in the City of Los Angeles and possession of a BTRC confers various privileges to its holder under local medical marijuana licensing ordinances. And for that reason, a BTRC has significant commercial value, notwithstanding the fact that it is not per se an operational license, permit, or authorization. This is confirmed by the fact that Holistic (Inc.)’s principal asset is the BTRC (see 6 RT 950), which Stark has agreed to sell to an investor for \$1.85 million pending the outcome of this litigation (4 RT 722-725; 5 RT 948; AA 580-581). This is sufficient to give rise to a protectable property interest in the BTRC.

D. The trial court’s instructional rulings were prejudicial error, resulting in a defense verdict on the LLC’s conversion claim against Holistic (Inc.).

The trial court erred by refusing to instruct the jury that the BTRC is “property” (6 RT 1221; AA 411) and then misinstructing the jury that the BTRC is not “property” (AA 1298-1299). Further, those errors were plainly prejudicial because there is a more than “reasonabl[e] probab[ility]” they affected the verdict. (*Soule, supra*, 8 Cal.4th at p. 570.)

The only claim the jury considered was the LLC’s claim against Holistic (Inc.) for conversion of its property. (AA 426-429.) And the sole property right asserted in connection with that claim was possession of the BTRC. (See 6 RT 1257 [“Mr. Stark intentionally interfered with that right, and interfered with the B.T.R.C. and in effort to take that away”], 1258 [“We’re seeking the right to control this B.T.R.C. . . . That’s what we want. We want the thing that’s ours”].)

Thus, by instructing the jury that the BTRC did not qualify as “property,” the trial court effectively compelled a defense verdict on the LLC’s conversion claim. The fact that the jury affirmatively asked whether the BTRC was “property”—and then rendered its defense verdict ten minutes after being instructed that the BTRC was not “property” (*ante*, pp. 32-33)—confirms that the court’s instructional errors affected the verdict (see *Sandoval v. Bank of America* (2002) 94 Cal.App.4th 1378, 1388 [instructional error prejudicial when jury question “reflected the jurors’ confusion”

over applicable law]; *Scott v. County of Los Angeles* (1994) 27 Cal.App.4th 125, 152 [courts may consider “whether the jury requested a rereading or clarification of the erroneous instruction” when determining prejudice]).

CONCLUSION

The court should vacate the judgment and remand for a new trial on both plaintiffs’ claims for conversion and unfair competition against both defendants and Kersey’s claim for declaratory relief against both defendants.

April 27, 2020

HORVITZ & LEVY LLP
LISA PERROCHET
AARON HENSON

NELSON HARDIMAN LLP
SALVATORE J. ZIMMITTI
MARK S. HARDIMAN

By: _____



Aaron Henson

Attorneys for Plaintiffs and Appellants
**Holistic Supplements, LLC and
Jamie Kersey**

**CERTIFICATE OF WORD COUNT
(Cal. Rules of Court, rule 8.204(c)(1).)**

The text of this brief consists of 11,229 words as counted by the Microsoft Word version 2016 word processing program used to generate the brief.

Dated: April 27, 2020

A handwritten signature in black ink, appearing to read 'Aaron Henson', is positioned above a horizontal line.

Aaron Henson

PROOF OF SERVICE

Holistic Supplements, LLC, et al. v. Stark, et al.
Case No. B300711

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 3601 West Olive Avenue, 8th Floor, Burbank, CA 91505-4681.

On April 27, 2020, I served true copies of the following document(s) described as **APPELLANTS' OPENING BRIEF** on the interested parties in this action as follows:

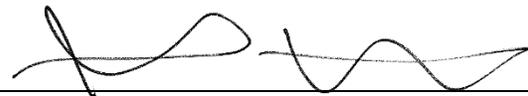
SEE ATTACHED SERVICE LIST

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Horvitz & Levy LLP's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling) as indicated on the attached service list:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 27, 2020, at Burbank, California.



Justin A. Volk

SERVICE LIST
Holistic Supplements, LLC, et al. v. Stark, et al.
Case No. B300711

COUNSEL OF RECORD	PARTY REPRESENTED
<p>Lisa Perrochet Aaron Henson Horvitz & Levy LLP 3601 West Olive Avenue, 8th Floor Burbank, California 91505 (818) 995-0800 • Fax: (844) 497-6592 Email: lperrochet@horvitzlevy.com ahenson@horvitzlevy.com</p>	<p>Holistic Supplements, LLC Plaintiff and Appellant</p> <p><i>Served via TrueFiling</i></p>
<p>Salvatore John Zimmitti Mark S. Hardiman Nelson Hardiman LLP 1100 Glendon Avenue, 14th Floor Los Angeles, California 90024 (310) 203-2807 • Fax: (310) 203-2727 Email: szimmitti@nelsonhardiman.com mhardiman@nelsonhardiman.com</p>	<p>Holistic Supplements, LLC Plaintiff and Appellant</p> <p><i>Served via TrueFiling</i></p>
<p>Lisa Perrochet Allison Meredith Aaron Henson Horvitz & Levy LLP 3601 West Olive Avenue, 8th Floor Burbank, California 91505 (818) 995-0800 • Fax: (844) 497-6592 Email: lperrochet@horvitzlevy.com ahenson@horvitzlevy.com</p>	<p>Jamie Kersey Plaintiff and Appellant</p>

<p>Salvatore John Zimmitti Mark S. Hardiman Nelson Hardiman LLP 1100 Glendon Avenue, 14th Floor Los Angeles, California 90024 (310) 203-2807 • Fax: (310) 203-2727 Email: szimmitti@nelsonhardiman.com mhardiman@nelsonhardiman.com</p>	<p>Jamie Kersey Plaintiff and Appellant</p>
<p>Arthur Donaldson Hodge 701 Palomar Airport Road, Suite 300 Carlsbad, CA 92011 (760) 814-7398 • Fax: (877) 847-3690 Email: adhlaw@gmail.com</p>	<p>Christopher Daniel Stark Defendant and Respondent <i>Served via TrueFiling</i></p>
<p>Arthur Donaldson Hodge 701 Palomar Airport Road, Suite 300 Carlsbad, CA 92011 (760) 814-7398 • Fax: (877) 847-3690 Email: adhlaw@gmail.com</p>	<p>Holistic Supplements Defendant and Respondent <i>Served via TrueFiling</i></p>
<p>Honorable Rupert Byrdsong Los Angeles Superior Court 111 North Hill Street Department 28 Los Angeles, CA 90012</p>	<p>Trial Court Judge Trial Court Case Number: BC599796 <i>Served via U.S. Mail</i></p>