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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

UNITED STUDIOS OF SELF DEFENSE,  
INC.,

Plaintiff,

vs.

KRISTOPHER RINEHART ET AL.,

Defendant.

CASE NO. SA CV 18-1048-DOC (DFMx)

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW AND  
ORDER GRANTING IN PART  
MOTION FOR TERMINATING  
SANCTIONS [221]**

1 **I. INTRODUCTION**

2 A bench trial on this matter was held on October 29–31, 2019.

3 This action arises out of a dispute between United Studios of Self Defense (“USSD”  
4 or “Plaintiff”) over alleged franchise and license agreements with Kristopher Rinehart  
5 (“Rinehart”), Brent Murakami (“Murakami”) and entities owned wholly or partly by  
6 Rinehart and Murakami including Los Angeles Studios of Self Defense (“LASSD”), South  
7 Bay Studios of Self Defense (“SBSSD”), S.B. Ninja, LLC (“S.B. Ninja”), and Rolling  
8 Hills USSD (“RHSSD”) (collectively, “Defendants”).

9 Plaintiff alleges the following eight claims:

- 10 1. Breach of Contract as to the Redondo Beach Franchise Agreement
- 11 2. Breach of Contract as to the Beverly Hills Franchise Agreement
- 12 3. Declaratory relief as to the Redondo Beach Franchise Agreement
- 13 4. Intentional interference with contract against Murakami and S.B. Ninja
- 14 5. False designation/unfair competition under the Lanham Act
- 15 6. Unfair business practices under Cal. Bus. & Prof. Code §§ 17200 et. seq.  
16 (“UCL”)
- 17 7. Accounting of profits made from Lanham Act violation
- 18 8. Declaratory relief as to rights and obligations under the Redondo Beach and  
19 Beverly Hills Franchise Agreements

20 Defendants allege the following three counterclaims:

- 21 1. Declaratory relief as to lack of formation of the Redondo Beach Franchise  
22 Agreement
- 23 2. Declaratory relief as to right to rescind Rolling Hills License Agreement
- 24 3. Breach of contract as to Beverly Hills Franchise Agreement

25  
26 Defendants also request the Court allow them to amend their counterclaims to  
27 include the following three counterclaims they allege have been proven at trial:

- 1 4. Declaratory relief as to illegality of Redondo Beach License Agreement
- 2 5. Breach of contract as to Torrance and Rolling Hills License Agreements
- 3 6. Declaratory relief as to illegality of Beverly Hills Franchise Agreement

4 During trial, Defendants also requested terminating sanctions for alleged bad faith  
5 behavior of Charles Mattera. *See* Motion for Terminating Sanctions (“Motion”). Dkt. 221.

6  
7 The Court issues the following findings of fact and conclusions of law pursuant to  
8 Federal Rule of Civil Procedure 52. To the extent that any findings of fact are included in  
9 the conclusions of law section, they shall be deemed findings of fact, and to the extent that  
10 any conclusions of law are included in the findings of fact section, they shall be deemed  
11 conclusions of law. The Court incorporates its findings to **GRANT IN PART** Defendants’  
12 Motion, as explained below.

13  
14 **II. FINDINGS OF FACT**

15 **A. Background**

- 16 1. Plaintiff USSD is a corporation duly organized under the state of California, with its  
17 principal place of business in Irvine, California. USSD’s owner and CEO is Charles  
18 Mattera (“Mattera”).
- 19 2. Defendants are Rinehart, an individual; Murakami, an individual; SBSSD, a  
20 California limited liability company; LASSD, a California limited liability company;  
21 S.B. Ninja, a California limited liability company; and Counterclaimant RHSSD, a  
22 California limited liability company.
- 23 3. SBSSD and Archie Currin are members of LASSD. S.B. Ninja and Rinehart are  
24 members of SBSSD. Murakami is the sole member of S.B. Ninja. S.B. Ninja and  
25 Tomas Orzco are members of RHSSD.
- 26 4. At trial there was a factual dispute as to whether Murakami was a member of SBSSD  
27 individually, or whether S.B. Ninja was a member of SBSSD. The evidence at trial  
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1 was that SBSSD had an operating agreement dated July 1, 2011 listing Murakami as  
2 the member of SBSSD rather than S.B. Ninja. [Ex. 652]. Murakami testified at trial  
3 that there was another operating agreement dated August 5, 2011 [Ex. 653] for  
4 SBSSD postdating the July 1, 2011 SBSSD operating agreement [Ex. 652]. The  
5 August 5 agreement changed the membership in SBSSD from Murakami to S.B.  
6 Ninja. [10/30/2019 Trans. Vol. III at 86:3–89:14], [10/31/2019 Trans. Vol. III at  
7 15:24–16:11]. The Court acknowledges that the information on file with the  
8 California Secretary of State contradicts Murakami’s testimony of the purported  
9 August 5, 2011 operating agreement because it reflects Murakami being a member of  
10 SBSSD individually. [10/30/2019 Trans. Vol. II at 76:5–8]. However, the Court finds  
11 Mr. Murakami’s testimony and Exhibit 653 credible and determines that S.B. Ninja  
12 is a member of SBSSD along with Rinehart.

13  
14 **B. Charles Mattera**

- 15 5. Charles Mattera has no credibility with this Court.
- 16 6. The Court finds Mattera lied under oath in his responses to interrogatories wherein he  
17 claimed not to know about a critical witness, namely, Alejandro Corrales. [Exs. 508-  
18 509]. It was subsequently learned that Mattera knew exactly who Alejandro Corrales  
19 was because Mattera later admitted Alejandro Corrales is an alias of Luis Auza.  
20 [10/29/2019 Trans. Vol. III at 63:1–64:5], [10/29/2019 Trans. Vol. IV at 46:20–  
21 49:4]. Mattera’s explanation, namely that he “forgot,” is not credible.
- 22 7. Mattera was not forthright in a May 19, 2019 declaration to this Court when he said  
23 that he thought that all the information provided to him by Luis Auza regarding the  
24 “Jessica Allegations” up through Auza’s February 6, 2019 deposition was genuine.  
25 [Ex. 503 at 12]. Mattera later admitted he “stopped believing in Luis at the end of the  
26 year [2018] and into January [2019].” [10/29/2019 Trans. Vol. III at 79:24–80:9].
- 27 8. The Court finds that Mattera knowingly lied on the stand when he testified that he  
28

- 1 did not state that his attorneys were going to bury evidence in this case. [10/29/2019  
2 Trans. Vol. IV at 86:1–24], [10/29/2019 Trans. Vol. V at 39:21–23].
- 3 9. Exhibit 561 shows Mattera speaking to Auza about how the “Jessica Allegations” can  
4 be used to leverage a settlement in this case because Rinehart would not want to lose  
5 his license to practice medicine.
- 6 10. Exhibit 566 shows Mattera discussing how he wants to go “all-in” on the allegations  
7 to “destroy” Rinehart.
- 8 11. Exhibit 573 shows Mattera discussing with Auza how Auza should testify at his  
9 deposition including implying Auza should perjure himself.
- 10 12. Exhibit 575 shows Mattera discussing with Auza how Auza should testify at his  
11 deposition including implying Auza should perjure himself.
- 12 13. The Court finds that the Plaintiff through Mattera suborned perjury of Luis Auza and  
13 witness tampered with Luis Auza prior to Luis Auza’s February 6, 2019 deposition.  
14 [See Exs. 561, 566, 573, 575]. The audio recordings capturing the conversations  
15 between Mr. Auza and Mattera referenced above confirm such.
- 16 14. The Court cannot make a finding that Mattera knew that the “Jessica Allegations”  
17 were false with certainty before the February 2019 deposition of Luis Auza.  
18 However, the Court finds that Mattera’s actions in the months leading to the February  
19 2019 deposition show, at minimum, a reckless disregard for the truth of the  
20 allegations given their extremely serious nature and given that Mattera was actively  
21 using the allegations as leverage to get Rinehart to settle the action.
- 22 15. The Court also finds that Mattera acted in reckless disregard to Rinehart’s livelihood,  
23 family life, and personal and professional reputation.
- 24 16. Finally, the Court makes no adverse findings on the actions of Plaintiff’s counsel.
- 25 17. Given the above actions, the Court will make all relevant factual findings requiring a  
26 credibility determination of Mattera against the Plaintiff.
- 27  
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1 **C. USSD’s Business**

2 18. USSD is a franchisor of martial arts franchised studios. [10/29/2019 Trans. Vol. II at  
3 8:22–24]. Its franchisees provide martial arts training and instruction in USSD’s  
4 system of “Shaolin Kempo Karate.” [10/29/2019 Trans. Vol. II at 9:1–4]. The  
5 franchisees also sell retail martial arts supplies approved by USSD at their USSD’s  
6 franchised studios. [10/29/2019 Trans. Vol. II at 9:5–7]. The services and goods  
7 provided by USSD’s franchisees are associated with USSD’s brand name, service  
8 marks, and registered trademarks (the “USSD Marks”) and its system of Shaolin  
9 Kempo Karate. [Ex. 52].

10 19. USSD has the following trademarks on the principal register with the United States  
11 Patent and Trademark Office in which the USSD brand name and the USSD Logo  
12 have been registered as both trademarks and service marks:

13 Registration No. 4232409, USSD, October 30, 2012;

14 Registration No. 3470475, USSD, July 22, 2008;

15 Registration No. 1758349, USSD, March 16, 1993; and

16 Registration No. 175295, USSD, February 16, 1992. [Ex. 52].

17 These registrations are part of the USSD Marks and are used by USSD and  
18 USSD’s franchisees and USSD’s trademark licensees in connection with the sale of  
19 martial arts goods and services.

20 20. USSD was registered to offer and sell franchise offerings in California with the  
21 Department of Corporations between approximately 1993 and 1998. [10/29/2019  
22 Trans. Vol. II at 26:20–27:20]. USSD sold franchises in California during this time.  
23 [10/29/2019 Trans. Vol. II at 27:21–23]. USSD did not re-register to sell franchises  
24 in California thereafter until 2012. [10/29/2019 Trans. Vol. II at 39:12–17].

25 21. USSD and Mattera are subject to a 1996 permanent injunction by the state of  
26 California, which states the following, in relevant part:

27 “IT IS THEREFORE ORDERED as follows: THE UNITED  
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1           STUDIOS OF SELF DEFENSE, INC. and CHARLES A. MATTERA  
2           and their directors, successors in interest, controlling persons,  
3           agents, employees, attorneys in fact, and all other persons acting in  
4           concert or participating with them, or any of them, are permanently  
5           enjoined from directly or indirectly:

6           1.       Offering to sell, selling, arranging for the sale,  
7           issuing, engaging in the business of selling, negotiating for the sale  
8           of, or otherwise in any way dealing or participating in the offer or  
9           sale of any franchise whether as part of the scheme complained of  
10          in the complaint or otherwise, which is not exempt from the  
11          registration requirements under the California Franchise Investment  
12          Law, unless and until they shall have first applied for and secured  
13          from the Commissioner, a registration pursuant to California  
14          Corporations Code Section 11111 authorizing the offer and sale of  
15          such franchises.

16          2.       Filing with the Commissioner any application, notice  
17          or report which contain an untrue statement of a material fact or  
18          omitting to state in such application, notice or report any material  
19          fact which is required to be stated therein, including, but not limited  
20          to the applications complained of in the complaint...” [Exs. 525,  
21          526]

22 22. USSD re-registered to offer and sell franchises in the State of California in 2012, and  
23       USSD renewed its registrations each year thereafter until 2017. [10/29/2019 Trans.  
24       Vol. II at 39:12–40:20]. USSD was registered with the State of California to offer and  
25       sell franchises at all times between 2012 and 2017. *Id.*

1       **D. Alleged Franchisees and Licensees**

2                               **The Torrance and Rolling Hills License Agreement**

3 23. On May 28, 2009, Max J., Inc., entered into a trademark license agreement with USSD  
4 (the “Torrance License Agreement”). [Ex. 633]. The Torrance License Agreement had  
5 a 20-year term. [Ex. 633 at 5, § 12; 10/29/2019 Trans. Vol. III at 54:6–15; 56:11–15].

6 24. Max J., Inc. thereafter transferred the Torrance License Agreement to S.B. Ninja, and  
7 USSD consented to the transfer on October 1, 2009. [Ex. 634].

8 25. Murakami, without any formal written agreement, operated the RHSSD location with  
9 express permission from USSD from 2016 until March of 2018. [10/30/2019 Trans.  
10 Vol. I at 56:22–58:16]. In March of 2018, the relationship as to the operation of the  
11 RHSSD location was formalized via the “Torrance and Rolling Hills License  
12 Agreement.” [Ex. 38].

13 26. The Torrance License Agreement was amended by the March 2018 Torrance and  
14 Rolling Hills License Agreement. [Ex. 38]. On March 19, 2018, Murakami signed the  
15 Torrance and Rolling Hills License Agreement on behalf of S.B. Ninja as it relates to  
16 Torrance, and on behalf of RHSSD as it relates to Rolling Hills. Therefore, S.B. Ninja  
17 is the licensee for the operation of a Torrance USSD location and RHSSD is the  
18 licensee for a USSD location in Rolling Hills. Mattera signed the agreement on behalf  
19 of the licensor, USSD. The governing agreement for the Torrance and Rolling Hills  
20 locations is the Torrance and Rolling Hills License Agreement. [Ex. 38].

21 27. Exhibit 38 has a three-year term set to expire on March 19, 2021.

22 28. The agreement requires Murakami to administer all brown and black belt testing at  
23 USSD headquarters and share the revenue with USSD. [Ex. 38].

24 29. On September 7, 2018, Murakami appeared on behalf of LASSD at the USSD  
25 headquarters and was advised by counsel for USSD that Murakami was required to  
26 leave USSD premises due to the pending litigation or be charged with trespassing. [Ex.  
27 580], [10/31/2019 Trans. Vol. II at 39:11–40:05].



1 30. The Court finds that asking Murakami to leave USSD premises due to pending  
2 litigation may have seemed reasonable given the circumstances. However, given that  
3 the underlying agreement required Murakami to conduct all testing for brown and black  
4 belts at headquarters, refusing Murakami access to headquarters may have breached the  
5 agreement.

6 31. USSD was not authorized to sell franchises in 2018. [10/29/2019 Trans. Vol. II at  
7 39:12–40:20].

8 32. The Torrance and Rolling Hills License Agreement is a *de facto* franchise. On its face  
9 it (1) allows Murakami to use the USSD trademark; (2) requires Murakami to  
10 administer brown and black belt testing at USSD headquarters and share the revenue of  
11 those tests; and (3) requires a fee of \$750 per month. [Ex. 38].

12 33. Furthermore, there are external indicators that a common marketing plan or system was  
13 required for the Torrance and Rolling Hills License Agreement. USSD communicated  
14 to S.B. Ninja that it must use a standardized pricing scheme. [Ex. 552-12]. Mattera  
15 testified that the standardized pricing scheme was provided to those in attendance at a  
16 First Friday meeting and that both licensees and franchisees attend First Friday  
17 meetings. Mattera testified that there was no effort to advise those in attendance that  
18 the standardized pricing scheme was required only of the franchisees in attendance and  
19 not the licensees in attendance. [10/30/2019 Trans. Vol. I at 48:21–51:24]. Mattera’s  
20 testimony that the pricing was not a “requirement” is not credible. This is indicative of  
21 a franchise.

### 22 **The Redondo Beach License Agreement**

23 34. In March 2011, Murakami executed a trademark license agreement with USSD on  
24 behalf of S.B. Ninja (the “Redondo Beach License Agreement”). [Ex. 37].

25 35. The Redondo Beach License Agreement provided S.B. Ninja with the right to open and  
26 operate up to two USSD-licensed martial arts schools in the areas of Redondo Beach,  
27 Manhattan Beach, and Hermosa Beach, with all schools being opened within 18  
28

1 months of April 16, 2011. [Ex. 37 at 1, 10].

2 36. Pursuant to the Redondo Beach License Agreement, in or around August 2011, a  
3 USSD-licensed studio began operating at 1728 Aviation Blvd., Redondo Beach,  
4 California (the “Redondo Beach Studio”). [10/30/2019 Trans. Vol. II at 84:23–85:11].

5 37. The evidence demonstrated that S.B. Ninja did not operate the Redondo Beach Studio  
6 alone. [10/30/2019 Trans. Vol. II at 84:5–7]. Instead, the Redondo Beach Studio at all  
7 times was operated jointly by S.B. Ninja and SBSSD. *Id.* However, SBSSD managed  
8 the day-to-day operations of the studio. [10/30/2019 Trans. Vol. II at 84:12–15]. [Ex.  
9 40]. Nevertheless, there was not a transfer (explicit or *de facto*) of the Redondo Beach  
10 License Agreement from S.B. Ninja to SBSSD.

11 38. The Redondo Beach License Agreement requires the following:

- 12 a. The Redondo Beach License Agreement required S.B. Ninja to  
13 provide its students with an extensive student manual outlining  
14 techniques and cultural aspects of the USSD system. [Ex. 37 at 4].  
15 The student manual provision constitutes a requirement placed upon  
16 S.B. Ninja as to how it was to operate its martial arts studio which is  
17 indicative of a franchise. *Id.*; *see also* Ex. 553.
- 18 b. The Redondo Beach License Agreement required S.B. Ninja to use its  
19 best efforts to buy martial arts equipment from a single vendor–  
20 Bushido. [Ex. 37 at 4]. This requirement substantially hampered S.B.  
21 Ninja’s ability to operate its martial arts studio utilizing its own  
22 independent business judgment. This is indicative of a franchise.
- 23 c. USSD communicated to S.B. Ninja that it must use a standardized  
24 pricing scheme. [Ex. 552-12]. Mattera testified that the standardized  
25 pricing scheme was provided to those in attendance at a First Friday  
26 meeting and that both licensees and franchisees attend First Friday  
27 meetings. Mattera testified that there was no effort to advise those in  
28

1 attendance that the standardized pricing scheme was required only of  
2 the franchisees in attendance and not the licensees in attendance.  
3 [10/30/2019 Trans. Vol. I at 48:21–51:24]. Mattera’s testimony that  
4 the pricing was not a “requirement” is not credible. This is indicative  
5 of a franchise.

6 **The so-called Redondo Beach Franchise Agreement**

7 39. USSD re-registered to offer and sell franchises in the State of California in 2012, and  
8 USSD renewed its registrations each year thereafter until 2017. [10/29/2019 Trans.  
9 Vol. II at 39:12–40:20]. USSD was registered with the State of California to offer and  
10 sell franchises at all times between 2012 and 2017. *Id.*

11 40. Ex. 533 is an unexecuted franchise agreement. There are no signatures on page 23 of  
12 the agreement. [Ex. 533-29].

13 41. Plaintiff seeks to pass off the last page of Ex. 1 as evidence of the supposed execution  
14 of the so-called Redondo Beach franchise agreement. [Ex. 1-30, Ex. 501].<sup>1</sup> The last  
15 page of Ex. 1 is an “Addendum.” *Id.* Of note, the Addendum makes no reference to the  
16 document it is related to, it is not dated, and the purported franchisee is not anywhere  
17 identified on the Addendum. *Id.*

18 42. Rinehart signed the Addendum in response to Mattera’s insistence that he needed the  
19 Addendum signed for “compliance.” However, Mattera later sought to use the  
20 Addendum as evidence of the actual execution of a franchise agreement, in direct  
21 contradiction of the presentation he previously made to Rinehart. [10/31/2019 Trans.  
22 Vol. III at 26:04–21]. Mattera’s testimony to the contrary is not credible.

23 43. Mattera made the exact representation that he made to Rinehart to another licensee, Jeff  
24 Handley. Mattera urged Mr. Handley to sign an Addendum, claiming he needed it for  
25 compliance. Mattera then later sought to use the signed Addendum by Mr. Handley as  
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27 <sup>1</sup> Exhibit 501 is the same document as the last page of Exhibit 1. Exhibit 533 together with  
28 Exhibit 501 as a last page equate to Exhibit 1.

1 evidence that Mr. Handley entered into a franchise agreement. This establishes a  
2 pattern and further bolsters Rinehart's testimony. [10/31/2019 Trans. Vol. I at 24:04–  
3 25:23].

4 44. Furthermore, the parties to the Redondo Beach License Agreement are S.B. Ninja, LLC  
5 and USSD. [Ex. 37]. There is no evidence that S.B. Ninja ever consented to its license  
6 rights under the Redondo Beach License Agreement being superseded and replaced by  
7 the so-called Redondo Beach Franchise Agreement. [Ex. 37, 501].

8 45. The so-called Redondo Beach Franchise Agreement purports to grant to SBSSD  
9 exclusive rights to open franchises within the territory which is defined as a two and  
10 one half (2.5) air miles of the franchise location located at 1728 Aviation Blvd.,  
11 Redondo Beach, CA 90278. [Ex. 1 at § 3.8].

12 46. The same territory that the so-called Redondo Beach Franchise Agreement purports to  
13 grant to SBSSD had previously been granted to S.B. Ninja, LLC pursuant to the 2011  
14 license agreement between S.B. Ninja and USSD. [Ex. 37 at § 3]. USSD cannot grant  
15 exclusive rights to the same territory to two different entities at the same time.

16 47. The so-called Redondo Beach Franchise Agreement fails to convey any consideration  
17 to SBSSD because the exclusive territory that is central to the alleged franchise  
18 agreement being granted to SBSSD had already been granted to S.B. Ninja, LLC  
19 pursuant to the 2011 license agreement. [Ex. 37, § 3].

20 48. The Court also finds that evidence that Rinehart referred to himself as a franchisee (or  
21 the Redondo Beach studio as a franchise) does not alter the above analysis.

22 49. For the above reasons, the Court finds that there is no valid Redondo Beach Franchise  
23 Agreement.

#### 24 **The Beverly Hills Franchise Agreement**

25 50. On July 16, 2015, Rinehart executed a franchise agreement with USSD on behalf of  
26 LASSD (the "Beverly Hills Franchise Agreement") to operate a USSD licensed studio  
27 located at 250 South Robertson, Beverly Hills, California (the "Beverly Hills Studio").  
28

1 [Ex. 3].<sup>2</sup>

2 51. The Beverly Hills Franchise Agreement names SBSSD as a party, but the signature  
3 page of the agreement shows LASSD is the operative franchisee. [Ex. 3 at 7, 39]. There  
4 is no dispute between the parties that the actual franchisee is LASSD. In fact, the  
5 Plaintiff pled as much. [Ex. 599 ¶ 22].

6 52. Rinehart executed the franchise agreement on behalf of LASSD and not on behalf of  
7 himself personally, just as Mattera signed the agreement on behalf of USSD and not on  
8 behalf of himself personally. [Ex. 3 at 29].

9 53. As part of the Beverly Hills Franchise Agreement, Rinehart signed an Addendum on  
10 July 15, 2015 which purported to change the terms of the franchise by replacing the  
11 \$75,000 franchise fee with a dollar. [Ex. 3 at 30].

12 54. The Beverly Hills Franchise Agreement was also altered via a Promissory Note  
13 between LASSD and Pirooz Nourizad dated July 16, 2015. [Ex. 530]. The  
14 consideration paid by LASSD for the Beverly Hills franchise is not the \$75,000  
15 franchise payment that was a part of the then-registered franchise, but rather, the  
16 consideration outlined in the Promissory Note. *Id.*

17 55. These are material negotiated changes to the Beverly Hills Franchise Agreement from  
18 the franchise agreement that was then-registered with the California Department of  
19 Business Oversight (“CA DBO”).

20 56. The franchise agreement registered with the CA DBO as of July 2015 included a  
21 franchise payment of \$75,000. [Ex. 645 at 312].

22 57. The Court makes no factual finding as to whether the Beverly Hills Franchise  
23 Agreement was a transfer or a new franchise agreement, as it is not consequential to its  
24 legal determinations.

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27 <sup>2</sup> Exhibit 3 and Exhibit 639 are almost the same document. Exhibit 3 contains a “receipt” as a  
28 last page that Exhibit 639 does not have.

1 **Alleged Breaches of Franchise Agreements**

2 ***Tournaments***

3 58. In 2017, Rinehart and Murakami announced to Mattera that they intended to host their  
4 own independent tournament without USSD’s approval. [10/29/2019 Trans. Vol. III at  
5 40:6–41:1]. Though Rinehart pitched the tournament to Mattera in July 2017, Mattera  
6 informed Rinehart that USSD would not endorse or approve of the independent  
7 tournament. [Ex. 7].

8 59. Rinehart and Murakami pressed forward with their independent tournament preparation  
9 over USSD’s objection. [10/29/2019 Trans. Vol. III at 41:2–15]. Approximately two  
10 days prior to the tournament, Mattera informed other USSD franchisees that USSD was  
11 not going to act to prevent the September 2017 independent tournament from  
12 proceeding forward. *Id.*

13 60. Section 6.2.7 of the Franchise Agreements requires SBSSD and LASSD to recommend  
14 to all of their students that they participate in USSD’s tournaments, competitions, and  
15 demonstrations. [Ex. 1 at 13; Ex. 3 at 13].

16 61. Section 3.10 of the Franchise Agreements states USSD “reserves all rights not  
17 specifically granted to the franchisee.” Plaintiff takes this to mean that (1) the right to  
18 conduct inter-studio tournaments and (2) the right to host “open” tournaments where  
19 non-USSD martial artists are able to compete are not granted as a right to SBSSD or  
20 LASSD under the Franchise Agreements.

21 62. The Court finds that sponsoring, endorsing, or hosting martial arts tournaments is  
22 included as part of the operations of a martial arts studio.

23 63. The Court rejects Plaintiff’s argument that Section 3.10 can be read to suggest that  
24 Plaintiff reserves the right to prohibit franchisees from hosting or sponsoring martial  
25 arts tournaments because the right to do so is not specifically granted. Instead, section  
26 3.10 speaks to intellectual property rights and not to activity that is or is not restricted.

27 64. In order to restrict franchisees from hosting or sponsoring martial arts tournaments, and  
28

1 because martial arts tournaments as noted above are a service that is part of the  
2 operation of a martial arts studio, it would have been incumbent on Plaintiff as the  
3 drafter of the franchise agreement to clearly articulate such a restriction.

4 65. The Court finds that there is nothing in the franchise agreements that prohibits  
5 franchisees from hosting or sponsoring tournaments.

6 ***Bushido Goods***

7 66. Section 6.2.14 of the Franchise Agreements lists the designated vendor from which  
8 SBSSD and LASSD are required to purchase martial arts supplies. [Ex. 1 at 14; Ex. 3 at  
9 14]. This vendor is designated as Bushido. *Id.*

10 67. The Franchise Agreements also provide a mechanism for SBSSD and LASSD to  
11 request in writing for USSD to approve a supplier other than Bushido within Sections  
12 6.2.14.1 through 6.2.14.5. *Id.* Section 6.2.14.5 of the Franchise Agreements provides  
13 that USSD's approval of any non-Bushido martial arts supplier must first be approved  
14 in writing by USSD. *Id.*

15 68. The Court finds that Bushido frequently ran out of inventory of needed equipment and  
16 also did not offer equipment of the quality needed by the franchisees. [10/30/2019  
17 Trans. Vol. III at 120:23–121:24], [10/31/2019 Trans. Vol. II at 27:06–19].

18 69. Further, the Court finds that there was no financial damage done to USSD even if there  
19 was any alleged breach of this provision of the franchise agreements. First, Mattera  
20 admitted that the failure to purchase goods from Bushido does not cause any financial  
21 harm to USSD. [10/30/2019 Trans. Vol. I at 17:14–21]. Though Mattera claims that  
22 there is a damage to brand reputation because Bushido “provides all of our brand logo  
23 goods. And the quality of Bushido has to be excellent,” his testimony is not credible.  
24 [10/30/2019 Trans. Vol. I at 17:10–12]. In fact, Mattera admitted that not all Bushido  
25 goods are branded with the USSD logo. [10/30/2019 Trans. Vol. I at 23:16–24:8]. And  
26 the Court has already found that Bushido frequently ran out of inventory and the goods  
27 were not of good quality. The Court finds that there is no damage even if any alleged  
28



1 breach of this provision did occur.

2 ***Belt Testing***

3 70. Section 6.2.8 of the Franchise Agreements provides:

4 Franchisee agrees that Franchisor will test for brown and black belt degrees  
5 at Franchisor's headquarters, or at any other location selected Franchisor.

6 [sic] Franchisor shall receive one hundred percent (100%) of all testing fees  
7 for the brown and black belt degrees. [Ex. 1 at 13; Ex. 3 at 13].

8 71. Section 6.2.4 of the Franchise Agreements require SBSSD and LASSD to only  
9 offer products and services that have been approved by USSD. *Id.* Section  
10 6.2.4 also requires SBSSD and LASSD to "discontinue selling and offering for  
11 sale any services or products as Franchisor may, in its discretion, disapprove in  
12 writing at any time." *Id.*

13 72. Notably, neither section explicitly prohibits a franchisee from testing for brown  
14 and black belt degrees. Instead, a strict reading of Section 6.2.8 requires (1)  
15 Franchisees to allow *Franchisor* to test at Headquarters (or any other location  
16 selected by the Franchisor) and (2) Franchisor receive 100% of all testing fees.  
17 The agreements do not explicitly prohibit *Franchisees* from testing, even if  
18 such a prohibition may arguably be inferred from the language.

19 73. The Court finds that brown and black belt testing is a service that is a part of  
20 operating a martial arts studio. Even Mattera testified that black and brown belt  
21 testing are an inherent service of a martial arts studio. [10/29/2019 Trans. Vol. II at  
22 23:08–13].

23 74. Given that testing is an inherent part of operating a studio, the Court finds that  
24 ambiguous language in Section 6.2.8 and Section 6.2.4 does not explicitly prohibit a  
25 franchisee from offering a student of its martial arts studio a brown or black belt test.  
26 The Court rejects Plaintiff's argument that these clauses (or the residual Section 3.10  
27 clause) must be interpreted as reflecting a prohibition of brown and black belt testing  
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1 by a franchisee.

2 75. Further, the Court finds that if Plaintiff intended to preclude black and brown belt  
3 testing in such a manner, as the drafter of the franchise agreement Plaintiff should  
4 have more clearly set forth such prohibition in the franchise disclosure document  
5 (“FDD”) and in the operative franchise agreement.

6 ***Payment via ACH***

7 76. Section 4.2 of the Franchise Agreements requires SBSSD and LASSD to make a  
8 monthly payment of \$750 to USSD, and 4.5.1 provides that this must be via an  
9 automated clearing house (“ACH”) system if USSD so specifies. [Ex. 1 at 9–10; Ex. 3  
10 at 9–10].

11 77. The Court finds that there was no evidence that ongoing monthly dues payments were  
12 not made. In fact, LASSD and SBSSD have paid via check instead of payment via  
13 ACH. [10/29/2019 Trans. Vol. III at 43:12–25].

14 78. Payments made via checks and not through ACH did not cause any damage. Further,  
15 the Court finds that the momentary lapse of dues payments by Defendants is immaterial  
16 and did not cause any damage because the payments were made. The additional time  
17 and administrative expenses complained of by Mattera are insignificant, and in any  
18 event, Mattera is not credible. [10/29/2019 Trans. Vol. III at 44:6–9]. The Court finds  
19 that there is no damage even if any alleged breach of this provision did occur.

20 ***Zen Billing Company***

21 79. Section 6.2.13 of the Franchise Agreements provides that SBSSD and LASSD are  
22 required to use a billing company that USSD may designate from time to time for all  
23 students’ billing contracts. [Ex. 1 at 14; Ex. 3 at 14].

24 80. The evidence at trial was that USSD’s current designated billing company is Zen  
25 Billing, Inc. (“Zen Billing”). [10/29/2019 Trans. Vol. III at 44:18–22].

26 81. SBSSD and LASSD stopped using USSD’s designated billing company in 2018.  
27 [10/29/2019 Trans. Vol. III at 44:10–22]. However, there was no evidence produced at  
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1 trial that Plaintiff ever informed Defendants of the new designated billing company.  
2 Furthermore, the old billing company that Defendants stopped using in 2018  
3 improperly aggregated the funds of franchised studios into a single account. *See* Dkt.  
4 165. Finally, there was no evidence produced at trial that failure to use this billing  
5 company resulted in any damages to the Plaintiff.

6  
7 **III. CONCLUSIONS OF LAW**

8 82. This Court has original subject matter jurisdiction over this case pursuant to §§ 32 and  
9 43 of the Lanham Act, 15 U.S.C. § 1125(a) pursuant to 15 U.S.C. § 1121 and 28 U.S.C.  
10 § 1338(a). This Court has supplemental jurisdiction over the related state claims  
11 pursuant to 28 U.S.C. § 1338(b) and 28 U.S.C. § 1367.

12 83. Venue is proper because the franchise agreements at issue require disputes pertaining  
13 thereto to be litigated in Orange County, California in a court of competent jurisdiction.

14  
15 **A. Plaintiff's Claims**

16 **1. Breach of Contract as to the Redondo Beach Franchise Agreement**

17 84. To establish a valid contract there should be (1) parties capable of contracting; (2)  
18 consent; (3) a lawful object; and (4) a sufficient cause or consideration. Cal. Civ. Code  
19 § 1550.

20 85. To establish a breach of contract, the Plaintiff must show: (1) Plaintiff and Defendants  
21 entered into a valid, binding contract; (2) Plaintiff performed all obligations under the  
22 contract, except those excused; (3) that conditions required by the contract for  
23 Defendants' performance had occurred or were excused; (4) that Defendants breached  
24 the terms of the contract; (5) Plaintiff was harmed; (6) Defendant's breach of contract  
25 was a substantial factor in causing the harm; (7) the parties were capable of contracting;  
26 (8) the parties consented to the terms of the contract; (9) the contract has a lawful  
27 purpose; and (10) there was sufficient consideration. Cal. Civ. Code § 1550 *et. seq.*  
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1 86. Under California Law, “when it is clear that both parties contemplate that acceptance of  
2 a contract’s terms would be signified in writing, the failure to sign the agreement  
3 means that no binding contract is created.” *Goodworth Holdings Inc. v. Suh*, 239 F.  
4 Supp. 2d 947, 958 (N.D. Cal. 2002), aff’d, 99 F. App’x 806 (9th Cir. 2004).

5 87. The Court finds there is no valid Redondo Beach Franchise Agreement because (1)  
6 there is no consent to enter a franchise agreement as Rinehart never signed the  
7 franchise agreement; (2) even if Rinehart had signed the agreement, there is no  
8 evidence that S.B. Ninja, which held the Redondo Beach License Agreement, ever  
9 agreed to curtail its rights under a franchise agreement; and (3) the alleged agreement  
10 fails for lack of consideration.

11 88. There is no consent to enter a franchise agreement because Rinehart signed an  
12 Addendum that makes no reference to the document it is related to, it is not dated, and  
13 the purported franchisee is not anywhere identified on the Addendum. [Ex. 501].

14 89. There is also no consent because S.B. Ninja, which held rights under the Redondo  
15 Beach License Agreement, never consented to a franchise agreement.

16 90. Even if there was consent, the agreement fails for lack of consideration because the  
17 same territory that the so-called Redondo Beach Franchise Agreement purports to grant  
18 to SBSSD had previously been granted to S.B. Ninja pursuant to the 2011 license  
19 agreement between S.B. Ninja and USSD. [Ex. 37 at § 3]. USSD cannot grant  
20 exclusive rights to the same territory to two different entities at the same time.

21 91. Plaintiff has not shown that there is a breach of contract. Instead, no valid contract was  
22 formed. *See* Cal. Civ. Code § 1550 (requiring consent and consideration for a valid  
23 contract).

## 24 **2. Breach of Contract as to the Beverly Hills Franchise Agreement**

25 92. Plaintiff argues that Defendants LASSD and Rinehart breached the Beverly Hills  
26 Franchise Agreement by (1) selling brown and black belts; (2) buying non-Bushido  
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1 products; (3) planning to host independent tournaments; (4) paying fees outside of the  
2 ACH system; and (5) failing to use Zen Billing.

3 93. The Court finds that Defendants did not breach the Beverly Hills Franchise Agreement  
4 by selling brown and black belts at the location because the agreement does not  
5 explicitly prohibit such testing. *See* ¶¶ 70–75.

6 94. The Court finds that Defendants did not breach the Beverly Hills Franchise Agreement  
7 by buying non-Bushido goods because there is no proof of any damages as it relates to  
8 purchasing non-Bushido goods. *See* ¶¶ 66–69. If Plaintiff is not damaged, then there is  
9 no breach. *See* Cal. Civ. Code § 1550 (requiring damages to prove breach of contract).  
10 Furthermore, Bushido frequently ran out of inventory and did not offer equipment of  
11 the quality needed by the franchisees.

12 95. The Court finds that Defendants did not breach the Beverly Hills Franchise Agreement  
13 by planning to host independent tournaments because there is nothing in the franchise  
14 agreements that prohibits franchisees from hosting or sponsoring tournaments. *See* ¶¶  
15 58–65.

16 96. The Court finds that Defendants did not breach the Beverly Hills Franchise Agreement  
17 by paying fees outside of the ACH system because there is no proof of any damages as  
18 it relates to monthly dues payments paid via check and not through ACH. *See* ¶¶ 76–  
19 78. If Plaintiff is not damaged, then there is no breach. *See* Cal. Civ. Code § 1550  
20 (requiring damages to prove breach of contract).

21 97. The Court finds that Defendants did not breach the Beverly Hills Franchise Agreement  
22 by failing to use Zen Billing. Though the agreement required payment through a billing  
23 company designated by Plaintiff, Plaintiff did not prove that Plaintiff ever informed  
24 Defendants of the new designated billing company. Further, Plaintiff did not show any  
25 damages associated with the failure to use the billing system. *See* ¶¶ 79–81. Finally, the  
26 old billing company that Defendants stopped using in 2018 improperly aggregated the  
27 funds of franchised studios into a single account. *See* Dkt. 165.

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1 98. Accordingly, Plaintiff has not shown that the Beverly Hills Franchise Agreement was  
2 breached.

3 **3. Declaratory relief as to the Redondo Beach Franchise Agreement**

4 99. The Court has found that the Redondo Beach Franchise Agreement is invalid.  
5 Therefore, the Court does not grant declaratory relief and does not find that the  
6 Redondo Beach License Agreement was superseded by the so-called Redondo Beach  
7 Franchise Agreement.

8 **4. Intentional interference with contract against Murakami and S.B.  
9 Ninja**

10 100. To show intentional interference with contractual relations, USSD must show: (1) A  
11 valid contract between plaintiff and a third party; (2) defendant's knowledge of the  
12 contract; (3) defendant's intentional acts designed to induce a breach or disruption of  
13 the contractual relationship; (4) actual breach or disruption of the contractual  
14 relationship; and (5) resulting damage. *Pacific Gas & Electric Co. v. Bear Stearns &*  
15 *Co.*, 50 Cal.3d 1118, 1126 (1990) (internal citations omitted).

16 101. Plaintiff limits its claim for intentional interference with contract to the Redondo  
17 Beach Franchise Agreement and Beverly Hills Franchise Agreement as to the  
18 provisions for brown and black belt testing.

19 102. First, the Court notes that the Redondo Beach Franchise Agreement is invalid.  
20 Second, the Court notes that the agreements did not explicitly foreclose brown and  
21 black belt testing outside of headquarters.

22 103. There can be no intentional interference with contract when there is no breach or  
23 disruption in the contractual relationship.

24 104. Accordingly, Plaintiff has not shown any intentional interference with contract.

25 **5. False designation/unfair competition under the Lanham Act**

26 105. "In order to prevail on a suit under [15 U.S.C. 1125(a)], a plaintiff must prove two  
27 basic elements: (1) it has a valid, protectable trademark, and (2) [the defendant's] use  
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1 of the mark is likely to cause confusion.” *S. Cal. Darts Ass’n v. Zaffina*, 762 F.3d 921,  
2 929 (9th Cir. 2014) (citation and internal quotations omitted).

3 106. In analyzing likelihood of confusion, “Eight factors are weighed to determine  
4 whether confusion is likely: (1) the strength of the mark; (2) the proximity of the  
5 goods; (3) the similarity of the marks; (4) evidence of actual confusion; (5) the  
6 marketing channels used; (6) the type of goods and the degree of care likely to be  
7 exercised by the purchaser; (7) the defendant’s intent in selecting the mark; and (8) the  
8 likelihood of expansion of the product line.” *Zaffina*, 762 F.3d at 930. “No factor is  
9 determinative. Rather, it is the totality of facts in a given case that is dispositive.” *Id.*

10 107. The Court finds that independent belt testing and use of USSD certificates did not  
11 exceed the scope of the license given. *See* ¶¶ 70–75. Further, even if the scope of the  
12 license was exceeded, the Court finds that this is likely not to have caused confusion.

13 108. The Court finds that the use of non-Bushido goods is not likely to cause confusion,  
14 especially given that some Bushido goods were not branded with the USSD logo. *See*  
15 ¶¶ 66–69.

16 109. The Court notes that Plaintiff voluntarily dismissed its trademark dilution claim at  
17 trial. The claim is dismissed with prejudice.

18 110. Accordingly, Plaintiff has not shown any violation of the Lanham Act.

19 **6. Unfair business practices under Cal. Bus. & Prof. Code §§ 17200 et.**  
20 **seq. (“UCL”)**

21 111. As there were no breach of contract or Lanham violations, Plaintiff has not shown  
22 any UCL violation.

23 **7. Accounting of profits made from Lanham Act violation**

24 112. As there was no Lanham violation, the Court will not require an accounting.

25 **8. Declaratory relief as to rights and obligations under the Redondo**  
26 **Beach and Beverly Hills Franchise Agreements**

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1 113. The Court does not exercise its discretion to grant declaratory relief and will not  
2 declare rights and obligations under the Redondo Beach and Beverly Hill Franchise  
3 Agreements other than to the extent already declared above.

4  
5 **B. Defendants' Affirmative Defenses**

6 114. As Plaintiff has not prevailed on any claim, the Court does not address Defendants'  
7 affirmative defenses.

8  
9 **C. Defendants' Counterclaims**

10 **1. Declaratory relief as to lack of formation of the Redondo Beach  
11 Franchise Agreement**

12 115. Declaratory relief requires a showing of: (1) an actual justiciable controversy within  
13 the Court's jurisdiction regarding rights or legal remedies; and (2) that Defendants are  
14 interested in those rights or legal relations. 28 U.S.C. § 2201.

15 116. "Since its inception, the Declaratory Judgment Act has been understood to confer  
16 on federal courts unique and substantial discretion in deciding whether to declare the  
17 rights of litigants." *Wilton v. Seven Falls Co.*, 515 U.S. 277, 286 (1995).

18 117. As discussed above, the Court finds that there is no valid Redondo Beach Franchise  
19 Agreement.

20 **2. Declaratory relief as to right to rescind Torrance and Rolling Hills  
21 License Agreement**

22 118. In order to prove a CFIL violation, S.B. Ninja must establish that the Torrance and  
23 Rolling Hills License Agreement meets all of the elements of a franchise.

24 119. Pursuant to California Corporations Code § 31005, a "franchise" means a contract  
25 or agreement, either expressed or implied between two or more persons where:

- 26 a. A franchisee is granted the right to engage in the business of offering,  
27 selling, or distributing goods or services under a marketing plan or  
28 system prescribed in substantial part by a franchisor; and

- 1                   b. The operation of the franchisee’s business pursuant to such plan or
- 2                   system is substantially associated with the franchisor’s trademark,
- 3                   service mark, trade name, logotype, advertising or other commercial
- 4                   symbol designating the franchisor or its affiliate; and
- 5                   c. The franchisee is required to pay, directly or indirectly, a franchise
- 6                   fee.

7 120. The Court finds that the Torrance and Rolling Hills License Agreement is a *de facto*  
8 franchise.

9 121. It is unlawful “for any person to offer or sell any franchise in [California] unless the  
10 offer of the franchise has been registered under this part or exempted under Chapter 1 .  
11 . . .” Cal. Corp. Code § 31110.

12 122. Plaintiff was not registered to sell franchises in 2018, when the franchise at issue  
13 was sold.

14 123. “Any person who offers or sells a franchise in violation of Section 31101, 31110,  
15 31119, 31200, or 31202, or in violation of any provision of this division that provides  
16 an exemption from the provisions of Chapter 2 . . . shall be liable to the franchisee or  
17 subfranchisor, who may sue for damages caused thereby, and if the violation is willful,  
18 the franchisee may also sue for rescission.” Cal. Corp. Code § 31300.

19 124. Plaintiff willfully violated the provision by selling the franchise without registering  
20 and willfully including restrictions on the “license agreement” in violation of the law.

21 125. Accordingly, the *de facto* franchise agreement referred to as the Torrance and  
22 Rolling Hills License Agreement is rescinded.

23                   **3. Breach of contract as to Beverly Hills Franchise Agreement**

24 126. Defendants argue Plaintiff has materially breached the Beverly Hills Franchise  
25 Agreement by prohibiting Defendants from participating in company events, receiving  
26 training and assistance, and excluding Defendants from company communications.

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1 127. The Court finds that there is no breach of the Beverly Hills Franchise Agreement, as  
2 Defendants have not shown that Plaintiff has prohibited Defendants from participating  
3 in events, ceased training and assistance, or excluded Defendants from company  
4 communications other and apart from the reasonable choice to prohibit Murakami and  
5 Rinehart *individually* from attending events during active litigation. Other members of  
6 LASSD, including students and instructors, were not excluded.

7 128. Accordingly, Defendants have not shown any breach of the Beverly Hills Franchise  
8 Agreement.

9 **4. Declaratory relief as to illegality of Redondo Beach License**  
10 **Agreement**

11 129. The Court denies Defendants' request to allow it to amend its counterclaims to  
12 include declaratory relief as to the illegality of Redondo Beach License Agreement.

13 130. The Court notes that under CFIL rescission is timebarred and makes no finding as  
14 to whether any alleged violation of the injunction at issue in this case would provide for  
15 an alternative pathway to rescind the agreement as illegal. *See* Dkt. 55 at 9.

16 **5. Breach of contract as to Torrance and Rolling Hills License**  
17 **Agreements**

18 131. The Court grants Defendants' request to allow it to amend its counterclaims to  
19 include breach of contract as to Torrance and Rolling Hills License Agreement  
20 according to the proof presented at trial.

21 132. To establish a breach of contract, the Plaintiff must show: (1) Plaintiff and  
22 Defendants entered into a valid, binding contract; (2) Plaintiff performed all obligations  
23 under the contract, except those excused; (3) that conditions required by the contract  
24 for Defendants' performance had occurred or were excused; (4) that Defendants  
25 breached the terms of the contract; (5) Plaintiff was harmed; (6) Defendant's breach of  
26 contract was a substantial factor in causing the harm; (7) the parties were capable of  
27 contracting; (8) the parties consented to the terms of the contract; (9) the contract has a  
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1 lawful purpose; and (10) there was sufficient consideration. Cal. Civ. Code § 1550 *et.*  
2 *seq.*

3 133. Until formally rescinded by order of this Court, the Torrance and Rolling Hills  
4 License Agreement was a valid binding contract. As explained below, Plaintiff has  
5 materially breached the contract, but Defendants have not been harmed.

6 134. The Court finds that Defendants have shown that Plaintiff has prohibited Defendant  
7 Murakami, S.B. Ninja, or RHSSD from performing under the agreement.

8 135. The agreement requires Murakami to administer brown and black belt testing at  
9 USSD headquarters. [Ex. 38]. However, Murakami has not been allowed to enter  
10 headquarters since September of 2018. The Court finds this is a breach. *See* ¶¶ 23–33.

11 136. However, these actions have not harmed Defendant Murakami, S.B. Ninja, or  
12 RHSSD. At trial, Murakami admitted he has chosen not to send his students to USSD  
13 headquarters for testing. [10/30/2019 Trans. Vol. III at 99:6–100:2]. Further, Murakami  
14 admitted he still performs tests at his studios away from headquarters. *Id.* Thus, the  
15 Court finds that Defendants have not been harmed by any breach.

16 137. Accordingly, Defendants have not shown any breach of the Torrance and Rolling  
17 Hills License Agreements. *See* Cal. Civ. Code § 1550 (requiring damages to prove  
18 breach of contract).

19 **6. Declaratory relief as to illegality of Beverly Hills Franchise Agreement**

20 138. The Court denies Defendants’ request to allow it to amend its counterclaims to  
21 include declaratory relief as to illegality of Beverly Hills Franchise Agreement.

22 139. The Court notes that under CFIL rescission is timebarred and makes no finding as  
23 to whether any alleged violation of the injunction at issue in this case would provide for  
24 an alternative pathway to rescind the agreement as illegal. *See* Dkt. 55 at 10.

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1           **D. Attorneys’ Fees**

2 140. § 1717 of the California Civil Code governs attorney fees awards authorized by  
3 contract and incurred in litigating claims sounding in contract. “Under that statute,  
4 when a contract provides for an award of fees ‘incurred to enforce that contract,’ ‘the  
5 party prevailing on the contract ... shall be entitled to reasonable attorney’s fees.”  
6 *Douglas E. Barnhart, Inc. v. CMC Fabricators, Inc.*, 211 Cal. App. 4th 230, 237 (2012)  
7 (internal citations omitted).

8 141. “[W]hen a party litigant prevails in an action on a contract by establishing that the  
9 contract is invalid, inapplicable, unenforceable, or nonexistent, section 1717 permits  
10 that party’s recovery of attorney fees *whenever the opposing parties would have been*  
11 *entitled to attorney fees under the contract had they prevailed.*” *Id.* (internal citations  
12 omitted).

13 142. The Franchise Agreements provide for attorneys’ fees in any action to enforce or  
14 interpret provisions of the Franchise Agreements under Section 15.11. [Ex. 1 at 28; Ex.  
15 3 at 28]. The Court finds that Defendants are the prevailing party and are entitled to an  
16 award of reasonable attorney’s fees and costs.

17  
18           **E. Defendants’ Motion for Terminating Sanctions**

19 143. On October 30, 2019, Defendants made an oral motion for terminating sanctions. At  
20 the request of the Court, on November 11, 2019, Defendants submitted a written  
21 Motion for Terminating Sanctions (“Motion”). Dkt. 221. Plaintiff opposed on  
22 November 12, 2019 (“Opp’n”). Dkt. 225.

23 144. The Court’s inherent power to assess sanctions requires a showing that a party  
24 “acted in bad faith, vexatiously, wantonly, or for oppressive reasons.” *Chambers v.*  
25 *NASCO, Inc.*, 501 U.S. 32, 45–46 (1991) (recognizing inherent power of courts to  
26 impose appropriate sanctions where conduct disrupts judicial process). However,  
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1 “[b]ecause of their very potency, inherent powers must be exercised with restraint and  
2 discretion.” *Id.* at 44.

3 145. “[I]f a court finds ‘that fraud has been practiced upon it, or that the very temple of  
4 justice has been defiled,’ it may assess attorney’s fees against the responsible party.”  
5 *Id.* at 46.

6 146. Defendants request “that (1) the Court terminate Plaintiff’s case in its entirety by  
7 striking its FAC and (2) striking Plaintiff’s answer to the Counterclaim and thus treat  
8 Plaintiff as if it has defaulted on the [Counterclaim; and] (3) declare Defendants the  
9 prevailing party so that Defendants may proceed with an appropriate motion for  
10 attorney’s fees.” Mot. at 2.

11 147. Given Mattera’s conduct, including lying on the stand, encouraging Auza to lie in  
12 his deposition, and continuing to pressure (expressly or impliedly) Rinehart to settle  
13 even after Mattera had at some doubts as to whether the “Jessica Allegations” were  
14 genuine, the Court finds that Mattera has acted in bad faith. *See* ¶¶ 5–17. Therefore, the  
15 Court finds it appropriate to exercise its inherent authority to issue appropriate  
16 sanctions in this case.

17 148. The Court declines to terminate Plaintiff’s case in its entirety. However,  
18 independent of the determination that Defendants are the prevailing party on the merits,  
19 the Court declares that Defendants are the prevailing party given the bad faith conduct  
20 of Mattera in the instant case.

21 149. Defendants are awarded all attorneys’ fees and costs paid to Defendants’ counsel  
22 for the entirety of this action subject to a reasonable accounting given to the Court. *See*  
23 *Chambers*, 501 U.S. at 55 (upholding a grant of attorney’s fees as a sanction for bad  
24 faith conduct for the entire amount of [the opposing party’s] attorney’s fees).

25 150. The fraud on the Court perpetuated by Mattera cannot go unpunished given the  
26 many people who have suffered from his actions including Dr. Rinehart, Mr.  
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1 Murakami, and the various family members, friends, and loved ones who have been  
2 impacted by this litigation.

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**IV. CONCLUSION**

After considering the parties' arguments, for the reasons explained above, the Court **HOLDS** that Plaintiff has not met its burden on any of its claims. The Court also **HOLDS** that Defendants have prevailed on counterclaims one and two as explained above. The Court **GRANTS IN PART** Defendants' Motion for Terminating Sanctions and awards all attorneys' fees and costs to Defendants subject to a reasonable accounting given to the Court. Defendants shall submit a proposed judgment in accordance with this Court's ruling **on or before December 10, 2019.**

DATED: December 4, 2019

*David O. Carter*  
\_\_\_\_\_  
DAVID O. CARTER  
UNITED STATES DISTRICT JUDGE