JAMS ARBITRATION
CASE REFERENCE NO. 1110024169

Chen, Yuhui

Claimant,

vs.

Innogrit Corporation, et al.,

Respondents.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND INTERIM AWARD

The Parties arbitrated this case before the undersigned between December 10, 2020, and December 22, 2020. Claimant was represented by Leigh Anne St. Charles, Esq., Kevin Sharp, Esq., and Qiaojing Zheng, Esq., all of the firm Sanford Heisler Sharp, LLP. Respondents were represented by Jaideep Venkatesan, Esq., and Vincent I. Parrett, Esq., both of the Firm Bergeson, LLP.

The Arbitrator takes this opportunity to acknowledge and express his appreciation for the exemplary professionalism with which counsel conducted this proceeding. This is a challenging case about which the parties have very strong feelings and mutually exclusive perspectives. Despite the high stakes and strong emotions, counsel and the witnesses maintained their composure and treated one another with respect. Measured by their contribution to the quality and character of the process, all participants can justifiably be proud.[1]

This has been a very challenging case, requiring the Arbitrator to draw inferences, make findings, and pass judgments in a dense evidentiary setting that has featured squarely contradictory testimony about key events. None of this has been easy. All of it has required painstaking study, careful attention to evidence, and disciplined analysis.

Given the conflicting testimony of the principal witnesses, it has been necessary in

[1]This praise is well-earned even though the post-hearing briefing occasionally contains strained representations of the adversary's position or of the inferences the record 'compels.'

many instances for the Arbitrator to choose between mutually exclusive stories. This has compelled the Arbitrator to make judgments about credibility – not simply about the accuracy of testimony, but also, more painfully, about its honesty. The Arbitrator has not concluded that all the testimony by either Dr. Chen or by Dr. Wu was accurate – but has concluded that at legally critical junctures, Dr. Chen's testimony is more likely accurate than Dr. Wu's. Stated differently, the Arbitrator has concluded that Dr. Chen's evidence, assessed in full historical context, has been sufficiently reliable, at most of the legally significant junctures, to satisfy his burden of proof. Thus, the Arbitrator's findings of fact tend to favor Dr. Chen.

Separate and comparably challenging issues arise when the Arbitrator turns to determining what the damages are to which Dr. Chen has proved he is entitled. These issues are addressed in sections of this award that follow the sections devoted to the findings relevant to the liability determinations.

Was a Contract Formed on November 27, 2016?

The short answer to this question is "yes."

As detailed in the paragraphs that follow, both circumstances and language support an affirmative answer to this critical question.

At the outset, we must frame the question as the law poses it: Did Dr. Chen prove that it is more likely than not that an objective assessment of all the evidence (language, circumstances, etc.) results in a conclusion that there was a meeting of the minds between him and Dr. Wu that Dr. Chen's share of the employee equity pool would be 20%? Framed in terms used by one California Court, the Arbitrator has concluded that the evidence, considered comprehensively, establishes "the intention of the parties in material particulars." See *Bustamonte v. Intuit, Inc.*, 141 Cal.App.4th 199 (2006).

Because this issue is so important, the Arbitrator pauses here to remind the parties that a judgment about whether a contract was formed constitutes a legal factum – i.e., an object the law creates when the finder of fact draws inferences about an objective matter. The objective matter is centered in the following inquiry: given all the circumstances and

all the evidence, would an independent, objective mind conclude that a contractual commitment had been made? Thus, the character of the legal factum is not dictated by any one party's subjective intentions. Subjective intentions are virtually, or literally, irrelevant. What matters is objective, i.e., what was actually expressed and what a reasonable, objective person viewing the articulated expressions (orally and/or in writing) from a neutral distance would conclude about whether binding commitments had been made.

The direct evidence and the circumstances that support the Arbitrator's ultimate conclusion that a contract was formed on November 27, 2016, can be divided into two somewhat overlapping spheres. The first is the smaller of the two and encompasses the specific facts surrounding the conversation between Dr. Chen and Dr. Wu on November 27, 2016.

The day before the crucial conversation, Dr. Wu had informed Dr. Chen, for the first time, that Dr. Wu believed that he should receive 32% of the relevant equity pool but that Dr. Chen should receive only 8%. The Arbitrator finds, for reasons that will be set forth in some detail below, that Dr. Chen was in fact, and understandably, surprised and shocked by this proposed allocation of equity. See Tr. at 212-15. Dr. Chen had been led to believe that he and Dr. Wu would have about the same equity or that, if there was a difference, it would be nowhere nearly as radical as four to one. Tr. 210.

Without indicating any agreement with the four to one ratio Dr. Wu indicated, Dr. Chen went home. He returned the next day (November 27) to present a counter proposal in which Dr. Wu would receive 35% of the employee equity pool and Dr. Chen would receive 20%. Ex. 3 and Ex. 323.

Over the course of the meeting on the November 27, Dr. Wu articulated the reasons he felt that a 4 to 1 ratio was appropriate: his seniority at Marvell, his age, his responsibility for the most critical element of the new venture (the quality of its product), and his standing and relationships within the pertinent market sector. Tr. 1332–34. Dr. Wu also said it was important to preserve a large segment of the equity pool for other employees – both to lure highly qualified new hires and to reward employees who had proven to be especially valuable. *Id*. and Tr. 221.

But Dr. Chen remained adamant that anything less than a 20% share would be unfair – and that the difference between 35% and 20% sufficiently took into account the factors to which Dr. Wu pointing. Tr. 223-24. At least implicitly, he also suggested that it was sufficient to leave 45% of the equity pool available for other employees – or that Dr. Wu could reduce his share if he really believed it was essential to preserve more than that for future distributions.

The evidence suggests that toward the end of this pivotal conversation Dr. Wu had not been able to persuade Dr. Chen to accept less than 20% of the equity pool. So, with Dr. Chen remaining unmoved by Dr. Wu's arguments, Dr. Wu said "Fine. We'll work it out." In fact, at one point during the Arbitration Hearing, Dr. Wu testified that " . . . *at the end*, I said, 'Fine, we'll work it out.'" Tr. 1657 (emphasis added). There also was evidence that during their interactions at Marvell, Dr. Wu used the word "fine" to communicate his agreement to proceed on the terms most proximately articulated. Tr. 229.

It is important to emphasize what Dr. Wu did *not* say at the end of this meeting. While he testified that he told Dr. Chen repeatedly during this conversation that the 20% demand was "impossible," he did not testify that at the end of the meeting he continued to say that Chen's proposal was impossible. He did not say "No, I won't agree to 20%" or "No, I can't agree to 20%" or "No, I'll never agree to 20%" or "No, you just can't have that much."

Instead, with Dr. Chen remaining adamant about the 20% figure and its fairness, Dr. Wu concluded their discussion of this obviously sensitive and significant matter by saying "Fine. We'll work it out."

In context, including the considerations laid out below, the Arbitrator finds that, as a matter of objective reasonableness, these words by Dr. Wu constitute consent – not a mere invitation to keep talking, to keep negotiating. At this juncture, Dr. Chen fully committed to joining the new company and to accepting the founder's obligations – he was not merely agreeing to keep negotiating.

One significant contextual factor that supports these findings is the fact, hereby found, that Dr. Chen and Dr. Wu did *not* continue to negotiate about Dr. Chen's equity. Instead, the Arbitrator finds that 12 weeks passed (from November 27, 2016, until February

21, 2017) before either party again raised the subject of Dr. Chen's equity – and the party raising the subject was Dr. Wu.

Dr. Wu testified that he and Dr. Chen had many, many conversations/negotiations about Dr. Chen's share in the equity pool during the months of December, January, and February. Tr. 1346 - 52. Dr. Chen flatly denied that any such conversations or negotiations had occurred. Tr. 251-252; 1346

The Arbitrator credits Dr. Chen's version of these facts – in part because there is not a single word in any preserved written medium (email, letter, message, WeChat, minutes of meetings, etc.) that suggests that this important subject was still being negotiated. While Dr. Wu and Dr. Chen discussed many matters related to their plans for Innogrit during this period, there is no reference in the written record to the subject of Dr. Chen's equity for 12 weeks (See Ex. 1). It is implausible that something this important would not have been at least mentioned, or been the object of some oblique allusion, for this period – if it remained an open question. Surely both Dr. Chen and Dr. Wu would have continued pushing their positions – and just as surely neither would have been satisfied to leave the written record bare.

It also is counter-intuitive that this very significant subject would not have surfaced in the two most proximate meetings of the Innogrit "board" if the equity issue remained as thoroughly unresolved as Dr. Wu contends. The board first met shortly after the critical conversation of November 27, 2016. That early December meeting of the board was attended by its only putative members: Dr. Wu, Dr. Chen, and Mr. Pan – but the subject of the two principals' equity was not mentioned – just as it was not mentioned in the next meeting of the board in January 2017.

While SummitView did not have had the authority, acting alone, to fix allocations of equity, it clearly had a significant interest in how this matter was resolved – if for no other reason than it knew that the health of the new venture could turn in part on its ability to use equity in the employee pool to attract or retain talented and valuable employees. As significantly, SummitView felt strongly that having Dr. Chen in the new company in the key role of president was extremely important – so it would have expected to be informed

if a deep disagreement about Dr. Chen's equity threatened that objective. Moreover, if Dr. Chen was not confident that an agreement had been reached, he likely would have raised this subject with Mr. Pan or with Stanley Wu – as he did months later when he learned that Dr. Wu would contend that Dr. Chen's share of the employee equity pool was only 8%. Tr. 257-58.

There are many additional reasons for crediting Dr. Chen's version of the events of November 27 – and for finding that he reasonably concluded that he and Dr. Wu had in fact agreed on the 20% equity figure for him (even if the ultimate size of the pool that would be left for other employees might still be adjusted by Dr. Wu taking less than the 35% that Dr. Chen had suggested.)

Dr. Wu knew, before the conversations on November 26 and 27, that Dr. Chen had submitted his resignation at Marvell. Tr. 1638. Dr. Wu also knew that, after Dr. Chen submitted his resignation, Matt Murphy, the CEO of Marvell, tried to induce Dr. Chen to remain with the Company by offering him a promotion and a raise and promising him that his irksome boss would be replaced within a matter of months. Tr. 1639. Dr. Chen testified that Dr. Wu knew the raise would be 40%. Tr. 218-19. Dr. Wu testified that he did not know the size of the promised raise, but he knew a raise had been offered. Dr. Wu also testified that he did not know how soon after November 27, 2016, Dr. Chen had to respond to the retention offer, but he had to have inferred the clock was ticking. Thus, at the time they were negotiating between an 8% equity share and a 20% equity share, Dr. Wu knew that if Dr. Chen left Marvell, he would be giving up a prestigious, remunerative, and secure position with an industry-leading company – all to join a start-up that barely existed and had no secure sources of even short-term funding. Tr. 228-230.

Thus, as Dr. Chen phrased it, Dr. Wu had to know that, when the two men were negotiating the equity figures, the stakes for Dr. Chen were very high – that it would make little sense for Dr. Chen to give up so much unless the promise for a return on the risk he would be taking was quite substantial. Dr. Wu should have understood, and very likely did understand, that eight percent of about half of the overall equity in a newborn company without a secure financial foundation or a new product to sell would not be viewed as

holding sufficient promise of reward to induce Dr. Chen to walk away from so much that was real and immediate.

There is more.

The evidence is overwhelming that, well before November 27, 2016, Dr. Chen and Dr. Wu understood that Dr. Chen would play a role in the new company that was indispensable and was unparalleled in significance when compared to the role that any other prospective employee (save Dr. Wu himself) might play. Dr. Wu understood that Dr. Chen was to be the *president* of Innogrit. Being president is a big deal (to use a phrase of refined legal art). Moreover, Dr. Wu understood that Dr. Chen joining the company as its president was extremely important to the company's primary investor, SummitView. See Ex. 15, at Bates 8386.

Dr. Wu had told Dr. Chen, and Dr. Chen understood, that Dr. Chen was to be the only "Key Person" in the new company as that term was used in [redacted] that SummitView had pulled the lead oar in drafting.[2] Tr. 1619-20. There were no other real candidates to be the Key Person contemplated in these documents – [redacted]. See Ex. 25; See also Ex. 76, [redacted]

[2]Respondents attempt to make much of the fact Dr. Chen is not identified by name in the iterations of this document. That fact, however, is attributable in large measure to Dr. Chen's communicated desire not to enable Marvell to know that he planned to leave its employ and join a competitor. Whether Dr. Wu and Mr. Pan shared any such sensitivity is debatable, on the record made in this proceeding, but it is very clear that Dr. Chen was almost obsessively focused on keeping his prospective role in the new company off Marvell's radar screen.

The Arbitrator does not mean to suggest the intensity of Dr. Chen's desire to keep his involvement in the new venture secret was irrational. Dr. Chen wanted to keep his relationships with Marvell customers and partners as strong as possible – in order to improve the prospects of the new venture. Thus, he wanted to preserve the opportunity to take a diplomatic farewell tour of important Marvell customers and partners as part of his departure from the Company – in order to encourage confidence in him personally. He knew maintaining that personal confidence would be important to his ability to perform key parts of his job for Innogrit. For the same ultimate reason, he wanted to attend the annual Kingston meeting in December – something Marvell very likely would have declined to support if it had known he was leaving to join a venture whose mission was to take customers away from Marvell.

[redacted] Ex. 29. [redacted]

[redacted] Ex. 10.

Moreover, Dr. Wu understood that the Key Person, Dr. Chen, would have the same obligations and the same *rights* as the "Founder" when Dr. Chen subscribed to the Founder's commitments. Dr. Wu knew that the obligations of the Founder and the Key Person were onerous – but he also knew that Dr. Chen was ready to make those commitments, to take on those obligations.

Dr. Wu also knew that none of the other 'founding' members of the Innogrit team were going to be asked to make commitments or assume risks of the character that were required for the Founder and the Key Person. These were qualitatively different circumstances that would come into play only for the CEO and the President of the company. They were in a league by themselves – a league of two, not quite equals, but with similar responsibilities and status.

And this is how [redacted], from the start through the finish,[3] portrayed Dr. Wu and Dr. Chen. They were set apart from all others. They came first. And they were presented [redacted] on parallel physical planes – connected to one another and spatially separated from everyone else. See, e.g., Ex. 76.

Moreover, Dr. Chen had in fact played a more significant role than any other early employee in designing the fledgling company and getting it off the economic ground. He was the only future Innogrit employee other than Dr. Wu who met or interacted with the representatives of key investors (Mr. Pan and Stanley Wu). He was the only one who contributed to the business plan or who helped negotiate [redacted] He was a key player from the outset – a player of significance short only of Dr. Wu, and not miles short, at that.

Given these circumstances, it was eminently reasonable for Dr. Chen to expect a significant equity share – much more than other employees and at least somewhere in the same zone as Dr. Wu's. As significantly, for present analytical purposes, Dr. Wu could

[redacted]

reasonably only have had the same sense. Eight percent was not even arguably in the same zone as 32%.

For all the reasons set forth above, the Arbitrator hereby finds that, as an objective legal matter, at the end of their conversation on November 27, 2016, Dr. Wu's and Dr. Chen's minds met at the 20%-35% place.

Dr. Chen's conduct immediately after November 27, 2016, is consistent with his conclusion that the two men had reached agreement that he would receive the 20% equity allotment he had insisted was his bottom line. One day after the conversation he believed ended with a mutual commitment at the 20% level, Dr. Chen turned down Marvell's offer to raise his salary and promote him – thus severing his ties to the industry leader and forsaking a handsome opportunity. Tr. 228. He also began planning a farewell tour of the businesses that had been his principal customers at Marvell – taking care that they felt they were being left in good hands and keeping relationships intact for the future. Tr. 228; 232-34.

Dr. Chen's last day at Marvell was December 16, 2026. Tr. 235. And knowing he was leaving Marvell before the end of the year, he knew he would be required to return the $75,000 retention bonus he had received early in 2016.

By this combination of actions, Dr. Chen demonstrated, graphically and irrefutably, that he was committed to Innogrit. To contend, as Dr. Wu persisted in doing, that Dr. Chen remained uncommitted, is unpersuasive in the extreme.

Nonetheless, Respondents advance the view that a failure of Dr. Chen's and Dr. Wu's minds to meet about the allocation of equity is evidenced by the fact that Dr. Chen did not press Dr. Wu to prepare the document that would formalize his status as the Key Person by [redacted] Ex. 25, at Bates 0491. Dr. Chen not pressing for this kind of formalization, however, is consistent with his understanding that the equity terms had been fixed, his long-standing respect for and trust in Dr. Wu, and his persistent anxiety about Marvell discovering he and Dr. Wu had been plotting for months to form a competing company. Dr. Chen had told Marvell he was leaving in order to join a venture capital firm. So, formalizing his

relationship with Innogrit before the end of 2016 was not consistent with the story line he was trying to spin out.

The fact that Dr. Wu did not meet his responsibility to draft the contract that would formalize Dr. Chen's commitment to, and key role in, Innogrit by [redacted], might be evidence that he did not believe he and Dr. Chen had reached an agreement about the allocation of equity – but it also might be evidence that he did not want to give Dr. Chen an opportunity to memorialize an agreement Dr. Wu hoped to escape.

The question here is not whether Dr. Wu hoped to push Dr. Chen to accept appreciably less than 20% equity, but whether, viewed objectively and in full context, the dynamic between these two men on November 27, 2016 yielded an enforceable agreement, i.e., an objective conclusion that their minds must be deemed to have met at the 20% figure. As stated, the law's answer to that question is yes.

What Happened
Between February 21 and March 10, 2017?

After having not discussed Dr. Chen's equity since November 27, 2016, this subject resurfaced during a luncheon conversation between Dr. Wu and Dr. Chen on February 21, 2017. As Dr. Wu was speaking about how much equity was being offered to new hires, Dr. Chen realized the model that was informing Dr. Wu's part of the conversation did not include the 35%-20% allocations Dr. Chen thought Dr. Wu had accepted the previous November. Tr. 252-255. When Dr. Chen asked about the equity shares for Dr. Wu and himself, Dr. Wu responded by saying "yours is 8 percent, it is." Tr. 253.

Dr. Chen was shocked. To use his word, he was "devastated" by this revelation. Tr. 254. He put his head down, shook it, quickly finished his food without engaging in additional conversation, then left the restaurant. *Id.*

When the two men met again on February 27, 2016, Dr. Chen felt he was pleading with Dr. Wu to honor the agreement Dr. Chen thought they had reached at the end of the previous November. Dr. Chen reiterated his view that the company was their dual brainchild and that he had put his blood and sweat into the enterprise just like Dr. Wu had. He said an 8% equity share was not fair. Dr. Wu, according to Dr. Chen's unrebutted

testimony, said nothing substantive in response. He declined, in passivity, to engage on this topic. Tr. 255-56

The next time the two men spoke about Dr. Chen's equity was on March 1, 2017. Dr. Chen pled his case again, emphasizing the sacrifices he had made by leaving Marvell and by taking an unpaid position with a venture capital fund for two months (in order to keep the whole plan for the joint enterprise below Marvell's radar). Again, Dr. Wu did not respond substantively – but moved the conversation to another subject. Tr. 257.

Later that day, Dr. Chen called Mr. Pan of SummitView to plead his case. Tr. 257-58. Mr. Pan appeared to be sympathetic and agreed to speak by phone with Dr. Wu. There is no evidence, however, that he pressed Dr. Wu to raise his offer – just as there is no evidence Dr. Wu ever told Mr. Pan about the conversation he had had with Dr. Chen the previous November.

On March 2, 2017, Dr. Wu sent an email to Dr. Chen. [redacted] He attached an offer letter, pointing out that, in addition to salary, [redacted]

Id.

Dr. Chen did not respond in writing to this email.

The next exchange between Dr. Wu and Dr. Chen about the latter's equity interest occurred on March 6, 2027. Dr. Chen again declared that an 8% equity share was fundamentally unfair. He also said he could not assume the obligations of a founder (as those obligations had been spelled out [redacted]), if his share of the employee equity pool was so small. Dr. Wu responded by saying "fine." But added that if Dr. Chen would not make the commitments of a founder, he would not be permitted to retain his seat on the board. Instead, he would be deemed only a "board observer." Tr. 260.

Toward the end of this conversation, Dr. Wu indicated that he would increase Dr.

Chen's equity to 10%, but would go no higher. Dr. Chen construed this declaration as a "take it or leave it" proposition. Without making a commitment, Dr. Chen left the meeting. After discussing the situation at length with his wife, he decided to sign the employment contract and the [redacted] Tr. 259-264. See also Tr. 1352-58; Exs. 339, 343.

Before he signed [redacted], Dr. Chen had expressed considerable concern to Dr. Wu about several of its terms, the most significant being (1) how and by whom the value of shares would be determined in the context of the Company exercising its right of first refusal, and (2) whether vesting of shares would be accelerated if Dr. Chen was terminated without cause. Tr. 267-73; Tr. 1360-61.

Responding to these concerns, Dr. Wu told Dr. Chen the fair market value of vested shares would be determined by "a third party." Tr. 1360. Dr. Wu also said he was negotiating, or would negotiate, with SummitView for the purpose of trying to change the provision about vesting shares on an accelerated basis if Dr. Chen was terminated without cause. Tr. 270-71 and 1360-61.

Dr. Wu may have given Dr. Chen the impression he hoped SummitView would execute a document within a couple of weeks that would override or replace the terms about which Dr. Chen was so concerned, but the evidence does not support a finding that Dr. Wu represented that he had already secured SummitView's commitments on these issues – or that he was in a position to promise how SummitView would respond when he negotiated for these purposes. Instead, the record supports a finding that both Dr. Wu and Dr. Chen understood these matters were controlled by SummitView – and that Dr. Wu did not make representations that SummitView already had made, or was obligated to make, the kinds of changes Dr. Chen sought. See Tr. 1360-61; 270-272; 1715-1718.

In a WeChat message on March 10, 2017, before he signed the Founder's Restricted Share Purchase Agreement, Dr. Chen asked Dr. Wu directly "Will those terms be modified?" Dr. Wu promptly responded, "Those terms will be negotiated over separately." To this statement, Dr. Chen responded by asking: "Is it true that I just sign this [the Agreement] first and later sign a new one after those few terms are finalized." Dr Wu wrote

back saying "That is correct. I don't think the negotiation over the executive terms will finish in two weeks." After Dr. Chen indicated he "Understood," Dr. Wu wrote: "[Mr. Pan] said he will respond to me next week. There will have to be quite a few times of going back-and-forth afterwards." To the final substantive message on this subject from Dr. Wu, Dr. Chen replied: "Okay. As long as the new *executive agreement* can *over ride* this stock share agreement, I will sign it first." Ex. 1, Bates DC0008721-22 (emphasis in original).

While it is not clear that Dr. Wu actively tried to persuade SummitView to reverse its position against accelerating vesting when an employee was fired without cause,[4] it is clear no such change was ever made in the Founder's Share Purchase Agreement that Dr. Chen signed on March 10, 2017.

More to the disputed point, the Arbitrator finds that Dr. Wu's communications on this subject, given the parties' understanding of SummitView's power, cannot be construed as making an enforceable promise about accelerating the vesting of founder's shares – or as making a false representation about what the outcome of negotiations with SummitView would be. Nor has Dr. Chen's evidence proven that it would have been reasonable for him to infer either that Dr. Wu had the authority to accelerate the vesting of unvested shares or that SummitView would in fact agree to any such acceleration. Mr. Pan testified unequivocally, and persuasively, that he never would have agreed to such a change. Tr. 854-859. Moreover, after Dr. Chen began working at Innogrit, he never meaningfully followed up to press for any change in the vesting schedule. He essentially let the matter drop.

In sum, the Arbitrator concludes (1) Dr. Wu's statements, viewed holistically, were too equivocal to constitute an express promise, and (2) it would have been unreasonable for Dr. Chen to rely on Dr. Wu being positioned to secure such a significant concession from SummitView.

[4]When asked during the Hearing, neither Mr. Pan nor Stanley Wu remembered being asked by Dr. Wu even to consider changing the provision that would enable the Company to repurchase unvested shares at par value. See, e.g., Tr. at 859.

What Are the Legal Implications of What Happened Between February 21 and March 10, 2017?

Dr. Wu's Conduct Constituted a Breach of the November 27, 2016 Contract

Before turning to Dr. Chen's contentions that his signatures on the employment agreement and on the Founder's Restricted Share Purchase Agreement were procured by fraud and duress, it is important to articulate a more fundamental finding. Through his conduct between February 21 and March 10, 2017, Dr. Wu breached the contract that he and Dr. Chen had entered on November 27, 2016. Instead of honoring his enforceable promise to deliver 20% of the equity in the employee pool to Dr. Chen when Dr. Chen formally joined Innogrit, Dr. Wu proceeded as if no such contract had been entered and pressed Dr. Chen, successfully, to accept only 10% of that equity.

Because this conduct constituted a material breach of the November 27, 2016 contract, it cannot serve as the basis for the formation of a new contract on terms that were decidedly less favorable to Dr. Chen. Dr. Wu has not contended that the March 10, 2017contract was a novation of the earlier agreement – nor would any such contention, if made, have any evidentiary support. Under the law, the terms of the November 27, 2016 contract remained intact through the entire period of Dr. Chen's employment – and Dr. Wu's conduct between late February and early March 2017 constituted a severe breach of those terms.

This being the case, the March 10, 2017 employment contract is unenforceable. So is the Founder's Restricted Share Purchase Agreement to the extent that it purported to memorialize or that it allegedly evidences an equity interest of Dr. Chen's that was less than 20% of the employee equity pool. Ex. 343.

Were Dr. Chen's Signatures on the Employment Contract and the Founder's Restricted Share Purchase Agreement Procured by Economic Duress?

This is a challenging question, but the Arbitrator finds that Dr. Chen has met his burden of proving that his signatures on the employment contract and on the Founder's Restricted Share Purchase Agreement of March 10, 2017, were procured by economic

duress.

To prove economic duress, a party must show, by a preponderance of the evidence, that the other party "has done a wrongful act which is sufficiently coercive to cause a reasonably prudent person, faced with no reasonable alternative, to agree to an unfavorable contract." *CrossTalk Productions, Inc. v. Jacobson*, 65 Cal.App.4th 631, 644 (1998). The *CrossTalk* court elaborated this test in the following words: "Whether the party asserting economic duress had a reasonable alternative is determined by examining *whether a reasonably prudent person would follow the alternative course*, or whether a reasonably prudent person might submit." *Id*. (emphasis added)

The key qualifier in these pronouncements is "reasonable." The test is not absolute. A party invoking this doctrine need not prove he or she had literally no alternative but to submit. Everyone always has some alternative. Going on welfare is an alternative. The law says the alternative must be "reasonable" and must so appear to a "reasonably prudent person." And whether an alternative would so appear depends, always, on all the relevant circumstances.

Before assessing these reasonableness considerations, we must address the first element of the test: did Dr. Chen prove that Dr. Wu engaged in wrongful conduct that was coercive to some substantial degree? As Respondents note in their closing brief, "Wrongful acts may include 'the assertion of a claim known to be false, a bad faith threat to breach a contract or a threat to withhold a payment.'" Respondents' Response to Claimant's Opening Post-Hearing Brief, at 47, citing *Chan v. Lund*, 188 Cal.App.4th 1159, 1174 (2010).

Under the Arbitrator's findings of fact, above, Dr. Wu committed a wrongful act when he knowingly breached the contract he had entered with Dr. Chen on November 27, 2016. Given all the circumstances described earlier, the Arbitrator finds the breach by Dr. Wu was in bad faith. Surely Dr. Wu knew what Dr. Chen reasonably thought the terms of their agreement were – and just as surely, Dr. Wu did nothing to alert Dr. Chen that he felt no agreement was in place and that he would continue to press for the rejected 8% equity figure.

Instead, Dr. Wu stood by as Dr. Chen forsook a generous alternative business

opportunity (with Marvell), continued to devote time and energy to building Innogrit, and worked for two months without compensation at a friendly venture capital fund in order to dispel Marvell's suspicions or alert Marvell to the likely emergence of a serious competitor. Dr. Wu certainly should have known, and very likely did know, that Dr. Chen was proceeding on the good faith premise that Dr. Wu had made a commitment to him at the 20% level. But Dr. Wu did nothing to cause Dr. Chen to question their agreement. Instead, he bided his time, waiting for a moment of truth that he knew would not come until Dr. Chen had burned his bridges and was even more deeply tied, emotionally and financially, to Innogrit.

Before examining the circumstance into which Dr. Wu's breach pushed Dr. Chen, it is important to emphasize the primary policy that informs the economic duress doctrine. "The underlying concern of the economic duress doctrine is the enforcement in the marketplace of certain minimal standards of business ethics . . . . They include equitable notions of fairness and propriety which preclude the wrongful exploitation of business exigencies to obtain disproportionate exchanges of value." *Rich & Whillock, Inc. v. Ashton Development, Inc.*, 157 Cal.App.3d 1154, 1159 (1984), as quoted with approval in *CrossTalk Productions, Inc. v. Jacobson, supra.*

The Arbitrator finds that Dr. Wu's conduct strikes at the heart of the policy objective of the economic duress doctrine. It represented the "wrongful exploitation of business exigencies" in order to obtain a disproportionate exchange of value from Dr. Chen.

Was it reasonable for Dr. Chen to feel he had no *reasonable* alternative but to submit to what he perceived as Dr. Wu's last, "take it or leave it," offer? The short answer is yes.

As Respondents point out, Dr. Chen was well educated, well-connected, rich in relevant experience, and sophisticated. It is because of these attributes that SummitView and Dr. Wu determined he would be the "Key Person" in the fledgling enterprise and were so intent on bringing him into the Innogrit fold as its president. It is also because he could bring all these qualifications to a job search that Dr. Chen could have walked away from the Innogrit opportunity and found another (if not fully comparable) position. But that fact does not defeat Dr. Chen's claim.

Instead, we are required under the law to take into account all of the relevant circumstances when we decide whether a reasonably prudent person in Dr. Chen's situation would "follow the alternative course, or whether a reasonably prudent person might submit." *CrossTalk, supra*.

To address this question in the manner the law requires, we must compare Dr. Chen's alternatives. On the one hand, he could accept the dispiriting final offer made by Dr. Wu, play out the dream of starting a new company that had occupied so much of his emotional space for at least a year and a half, capitalize on the considerable investment of time and energy that he had devoted, *gratis*, to help lay the foundation for the new company's success, and hope, not unreasonably, that this major new step not only would yield significant financial rewards over time, but, as important, would become the defining and shining centerpiece of his professional life.

It would have appeared to a reasonable person in Dr. Chen's position that it was only by accepting the 10% figure that he would retain a reasonably decent chance of securing these objectives. It also bears noting here that Dr. Chen understood Dr. Wu to be promising to increase Dr. Chen's equity if Innogrit got successfully off the ground. Tr. 261.

What about the alternatives? Realistically, he could not return to Marvell. And Marvell was the biggest player in the only space he knew well in the industry. He might have secured a position in a company that competed with Marvell, or that otherwise participated in the solid-state arena, but serious questions would be asked about why he had left Marvell in the first place – and his answers (filtered by skeptical listeners) might have closed, at least partially, doors that otherwise might have remained open. Bottom line: his future in the solid-state controller space was uncertain – but likely would have involved taking at least a few resumé-steps backwards.

Dr. Chen also could have left the solid-state space and turned to full time to work in a venture capital or hedge fund – as he did a year after he separated from Innogrit. But that path offered none of the promise of fulfilling his emotional and professional goals that accompanied the position of president of Innogrit – and, in March of 2017, Dr. Chen could not be sure, rationally, how successful (financially) he might be in that very different

calling.

The applicable law (really equity) also requires us to take into account the residual, but real, emotional shock Dr. Chen was in when he learned in late February that he was not going to receive 20% equity and would have to fight to get anything more than the face-shredding 8% he had been allocated by Dr. Wu in November 2016. As Dr. Chen testified, he was "devastated" when Dr. Wu backtracked to the 8% figure. Tr. 254. It was desperation that drove Dr. Chen to call Mr. Pan to plead for help securing a fairer division of equity between the two men who would be the primary players in the Innogrit drama. Tr. 258.

The devastation and desperation Dr. Chen felt in these moments likely had roots that went well beyond surprise. The sources of these feeling must have included a severe assault on the trust and confidence he had felt in Dr. Wu. For years he had considered Dr. Wu a trusted and close friend, an older brother and mentor. That trust and friendship is powerfully evidenced by the dense history of positive and intimate WeChat messages the two men shared over the eight months before Dr. Wu disclosed, perhaps inadvertently, that he was not agreeing to an equity allocation to Dr. Wu that came anywhere near 20%. So, the 'devastation' was not just to a financial expectation, but also to Dr. Chen's confidence in the man who, more than any other, would affect the fate of the new company and his fate in it. This experience also must have challenged Dr. Chen's confidence in his own judgment about other people – a confidence that was crucial to his success on the business side of any venture.

Given all of these considerations and circumstances, the Arbitrator concludes that a reasonably prudent person in Dr. Chen's situation would not have decided to follow some unclear alternative course, but would have decided to "submit."

This finding means Dr. Chen has proved that his agreement to become the president of Innogrit, and to sign the Founder's Restricted Share Purchase Agreement, were procured by economic duress. With this finding, Dr. Chen is free to rescind the two contracts he signed on March 10, 2017.[5]

[5]As discussed in an earlier section of the text, Dr. Chen did not prove that his signature on the

Was Dr. Chen Fired or Did He Resign?[6]

This, too, is not an easy issue to resolve.

The Arbitrator makes the following findings of fact *en route* to resolving this issue.

In December 2017 Dr. Wu conducted a performance review of Dr. Chen. At this point, Dr. Chen had been with the new company for about nine months. Even though other employees had been with the company for up to five months longer, it appears that Dr. Chen was the first to receive a performance review. See Tr. at 1727.

[redacted]. See EX. 123. Dr. Wu opined that, during his first six months with the company, Dr. Chen had not performed [redacted] Dr. Wu proceeded to criticize Dr. Chen for [redacted]. He also criticized Dr. Chen for [redacted].

There are several aspects of this review process that are relevant to the issues addressed in this section. All these aspects of the process lend some indirect support to an inference that Dr. Wu already was laying the groundwork to downgrade Dr. Chen's role in the Company – or perhaps even to press him to leave.

The first curious aspect of the process has already been noted: this performance review was the first any employee had received. Tr. 1727. It came as a surprise – and it

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Founder's Restricted Share Agreement was procured by fraud. As noted in the text, Dr. Wu did not clearly promise to secure a commitment from SummitView to change the terms of this contract – and Dr. Chen failed to prove it would have been reasonable for him to rely on the representations Dr. Wu did make (which were to negotiate with SummitView) as a guarantee that the terms of this contract would be overridden by a new instrument that would have permitted acceleration of vesting if a founder was terminated without cause.

Moreover, a rescission of the Founder's Restrictive Share Purchase Agreement does not result in the creation of an acceleration entitlement. The rescission merely erases the terms of this particular contract; it does not interject new terms into the relationship between Dr. Chen and Innogrit.

[6]Whether Dr. Chen was fired and whether he was fired wrongfully or in retaliation for engaging in protected activity are separate questions. It does not necessarily follow from a finding that Dr. Chen was fired that he was fired wrongfully.

was conducted after Dr. Chen had been on the job for well less than a year, a job with a brand-new company that had no product to sell. And it came without a hint in advance that it might be negative. More specifically, Dr Wu had not given Dr. Chen any negative feedback or constructive criticism before he issued this review. In short, he had given Dr. Chen no reason to worry that he felt Dr. Chen's performance was falling short.

It also is noteworthy that Dr. Wu had no experience assessing performances on the business side of any company; his expertise and experience had been developed entirely on the technical side at Marvell. For all these reasons, it is not at all clear that the negative assessments were fairly made. It is not clear that it was reasonable to purport to pass judgment so soon on performance that was to occur at such a high level – especially in such an embryonic environment.

Moreover, while it is difficult to judge the substantive accuracy of the criticisms in this review, it is not at all difficult to see the absence of any tone of mutual respect Dr. Chen might well have reasonably expected from Dr. Wu, especially given the high quality of their collaborative working relationship at Marvell.

In particular, [redacted] made Dr. Chen feel that, through this review process, he had, in effect, been demoted. Tr. 291. This feeling had to have been reinforced by the way Dr. Wu communicated the central thrust of his assessment. In several places, Dr. Wu accused Dr. Chen of [redacted] Most threateningly, Dr. Wu declared: [redacted] Ex. 123.

Perhaps not surprisingly, Dr. Chen disagreed with almost all the substance of the views Dr. Wu expressed in the written review. More troubling, he felt the assessments were not simply inaccurate, but so unfair that they signaled more fundamental problems. Sensing deep rifts in the relationship he thought had brought the two men together in this venture, Dr. Chen told Dr. Wu "there is no performance issue here. There is a trust issue." Tr. 289. More ominously, this experience made Dr. Chen feel that Dr. Wu was untrustworthy and

that he was using the review process "as a tool to squeeze me out." Tr. 289.

It was only two months after delivering the set of distressing assessments of Dr. Chen's performance that Dr. Wu actively took the steps the performance review foreshadowed.

In late February 2018 Dr. Wu asked Dr. Chen to interview a possible candidate for a position on the business side of the Company. Tr. 1424. Dr. Chen enthusiastically agreed to do so, assuming that if the Company hired a person with relevant marketing and sales experience it would improve the ability of his side of the Company to achieve its goals. Tr. 357-358; 1984. So, in the last days of February, Dr. Chen interviewed Keita Kitahama, who was then the vice president of sales at CNEX Labs, another startup in the same space as Innogrit that had been selling its design services independently of product sales. Tr. 1366-67. Dr. Wu led Dr. Chen to believe that if Mr. Kitahama was hired, he would be responsible for marketing and sales in the United States and Japan and would report directly to Dr. Chen. Tr. 1984.

Shortly after completing this interview and sending a 'thumbs up' message about him to Dr. Wu, Dr. Chen left on a lengthy and long-scheduled business trip. Promptly after Dr. Chen left, Dr. Wu hired Mr. Kitahama – and invited him to start work not shortly after Dr. Chen returned, but while he was gone.

What Dr. Wu had not told Dr. Chen, however, was that Mr. Dr. Wu intended Mr. Kitahama to replace Dr. Wu as head of worldwide sales and that, going forward, Dr. Chen would be reporting not to Dr. Wu, but to Mr. Kitahama.

By March 1, 2018, when Dr. Chen was still on his business trip, Mr. Kitahama began work in this new position. Simultaneously, and without any advance warning or hint, Dr. Wu demoted Dr. Chen from President of the Company to Vice President for sales in China. Tr 1424-25. The Arbitrator is aware of no evidence that SummitView was informed in advance that these significant changes were underway or that Dr. Wu sought approval to make the changes from the Innogrit board – [redacted] See Ex. 29, Bates no. 20594, and Ex. 33. Bates no. 2402. Stated more directly, Dr. Wu imposed these changes not only entirely on his own

initiative and unilaterally, but also without warning to Dr. Chen and without the knowledge of or permission from the firm's lead investor.[7]

It wasn't until he returned from his business trip and reported back to work, about March 8, 2018, that Dr. Chen learned any of this. Dr. Wu had not told him that he (Dr. Chen) had been asked to interview someone to replace him. Dr. Wu had not told him that he was to be stripped of his status as president and moved down the organization chart to become a vice president for regional sales and marketing. In fact, Dr. Wu had not even indirectly intimated that any change in Dr. Chen's position or responsibilities was even under consideration, was even a possibility.

When Dr. Chen finally was informed, after the fact, about these dramatic changes in his job, he went into an emotional tailspin that took him a week to partially escape. Ex. 196. He was not merely deeply "insulted," "upset," and "angry." He felt betrayed and disoriented. Tr. 307; see also Tr. 357-58; see also Exs. 196 and 199. He had to struggle for days to regain his ability to consider his radically changed circumstances with a modicum of rationality. Ex. 196.

By March 15, 2018 he finally felt ready to address the scrambled situation directly with Dr. Wu. [redacted]

Several translations of this critical conversation have been made, but there is consensus among them about significant matters. Dr. Chen told Dr. Wu that he thought the appropriate and most constructive resolution of the situation was to have Mr. Kitahama assume primary responsibility for sales and marketing in the U.S. and Japan and, in that capacity, to report to Dr. Chen. He quickly added, however, that he understood Dr. Wu felt the decision to put Mr. Kitahama at the top of the organization chart on the business side

[7]On April 3, 2018, Dr. Wu finally informed the Board [redacted]. There is no indication Dr. Wu informed the Board at this time that [redacted]. Ex. 92; Tr. 1440-43. According to the minutes of its meeting on April 3, 2018, the Board was "[redacted]." Ex. 92.

had already been made and would be extremely difficult to reverse.

This is the first juncture at which Dr. Wu could have interrupted and indicated that he was at least somewhat open to reconsidering, but he didn't.

So, Dr. Chen proceeded. He said he and Mr. Kitahama had [redacted]

This is the second juncture at which Dr. Wu could have taken some step to move the conversation and the underlying situation into more positive territory. But he didn't. Instead, he simply said "[redacted]"

So, Dr. Chen responded by saying this "[redacted]"

It was at this juncture that Dr. Wu finally said something substantive – sort of. He said, "[redacted]" Ex. 196, emphasis added. Notably, Dr. Wu only admitted that having Dr. Chen leave was not [redacted] – he did not say what his matured intention had become or what his current intention was. Perhaps even more notably, Dr. Wu encouraged Dr. Chen to proceed along the path Dr. Chen had clearly foreshadowed: toward saying it was he, Dr. Chen, who would have to leave.

So, Dr. Chen continued – saying it was clear to him that if Dr. Wu had to choose between Dr. Chen or Mr. Kitahama, "[redacted]."

The entirety of Dr. Wu's response was "[redacted]" – a sphinx like affirmation of the accuracy of Dr. Chen's assessment of Dr. Wu's sentiments.

Not surprisingly, Dr. Chen clearly interpreted Dr. Wu's "[redacted]" response as an agreement that if he, Dr. Wu, had to choose between Dr. Chen and Mr. Kitahama, he would choose the latter. Dr. Chen said "[redacted]" *Id.*

At this juncture, Dr. Wu finally offered some substantive thoughts. He started by saying "[redacted]" Then he proceeded to try to justify his decision to place Mr. Kitahama in the higher position by claiming that Mr. Kitahama

had more sales or marketing experience and by arguing, at some length, that Dr. Chen had handled a recent conversation with a potential client or partner in a way that Dr. Wu disapproved. Dr. Wu also described how Dr. Chen could handle the Chinese market without taking Mr. Kitahama, who is Japanese, with him. But he concluded this segment of the conversation by saying "[redacted]." *Id.*

Thereafter, Dr. Chen moved the conversation to subjects even more difficult for him. He talked first about how much face he would lose with potential customers and potential clients when they learned he had been demoted and that Innogrit's leaders no longer had confidence that he could fulfill the role of president of the company. He also talked about the questions he would have to encounter if he re-entered the job market – where he feared he would be considered a failure. He knew his resumé would show that for a year he had been the president of the Company but then "[redacted]." This glaring fact would make his "[redacted]." All of this, Dr. Chen explained, left him in an embarrassing and "[redacted]." *Id.*

So, he suggested that he and the Company come to terms on a transition plan. He said he was placing three conditions on making an amicable departure: (1) [redacted] (2) [redacted] and (3) [redacted] Ex. 196. Tr. 314-318.

Dr. Wu responded by saying it would not be a problem to keep Dr. Chen employed with the Company for several months – but he actively encouraged Dr. Chen to reconsider his other two conditions, strongly implying that Dr. Chen should not assume the Company would agree to those conditions. Dr. Wu also reiterated his view that Dr. Chen's demotion and reduced scope of responsibilities "[redacted]." *Id.* Clearly Dr. Wu had either missed the main emotional and professional point – or had chosen to bury it and wait it out, perhaps hoping Dr. Chen would revise his conditions quite substantially and leave peacefully.

That didn't happen.

Instead, Dr. Chen essentially stuck to his guns, never abandoning the three conditions he had laid out during the meeting on March 15, 2018. His only major concession over the next five weeks was to suggest the Company could pay for his unvested shares over time, perhaps over a two-year period – instead of all at once when he and Innogrit parted ways.

On March 26 and March 27, 2018 Dr. Chen and Dr. Wu directly exchanged emails that laid out their positions, exposing the size of the gap between their positions. Dr. Chen repeated his three conditions: [redacted] Ex. 198.

Dr. Wu countered with an offer of [redacted] Ex. 198.

As neither man was about to agree to the terms set forth by the other, they turned negotiations over to their lawyers.

On April 11, 2018, Dr. Chen's counsel at the time, Elizabeth Thompson, wrote to David Healy, Respondents' counsel, outlining her client's case and proposing terms of settlement, i.e., terms on which Dr. Chen would agree to separate amicably from Innogrit. Ex. 199. These terms included, among several others, [redacted].[8]

[8]On April 13, 2018, two days after receiving Ms. Thompson's first demand letter, Dr. Wu emailed Dr. Chen, saying that [redacted] Ex. 200.

[redacted] *Id.*

It is safe to say that this proposal was viewed as a non-starter by Innogrit. See Ex. 212. In response, on April 16, 2018, counsel for Innogrit communicated its proposed terms of settlement. They included a [redacted]. The fifth business day after April 16 was either April 23 or 24, 2018 depending on whether one begins counting the day the offer is made or the day after.

In response to the rejection of her proposal of April 11, 2018, Dr. Chen's counsel wrote to Innogrit's counsel again on April 19, 2018. She asserted that "[redacted]" and had been "[redacted]." She also flatly rejected what she characterized as "[redacted]"

Ms. Thompson's letter included some modest adjustments in Dr. Chen's demand – but the core requirement [redacted] She also indicated she would be traveling over the next several days and would not be back in her office until Monday, April 23, 2018 – so she asked for the "professional courtesy" of accommodating her schedule. Apparently, she assumed negotiations would continue even after Innogrit's offer expired (by its own terms) at the close of business on April 23 or 24, 2018.

Ms. Thompson's assumption proved misplaced.

During the morning of April 23, 2018, before Innogrit's most recent settlement offer expired, Dr. Wu summoned Dr. Chen to meet with him in an empty room within Innogrit's offices. Upon arrival in the room, Dr. Chen saw that Dr. Wu was accompanied by Tao Kuang, who was the Vice President in Charge of Finance and who was primarily responsible for human resources. Dr. Wu presented to Dr. Chen, and asked him to sign on the spot, a formally prepared letter that would purport to confirm the terms on which Dr. Chen was resigning, effective this same date. Ex. 126; Ex. 389.

None of the terms of settlement that Innogrit's counsel had proposed the preceding Monday were included in this document – making the Arbitrator suspect it was not prepared by counsel, but by Dr. Wu and Mr. Kuang on their own initiative. The "terms of your resignation" included no severance payment, no additional stock, no accelerated

vesting, no additional period of transition employment, and no agreed statement to be sent to customers, partners, and employees. It would have been a bare bones resignation that called only for payment of salary earned through April 23, 2018.

Dr. Chen refused to sign the resignation letter Dr. Wu presented. When he asked to call his lawyer, Dr. Wu at first refused, but then reconsidered and permitted Dr. Chen to make the call.

After speaking to his lawyer (by phone, in private), Dr. Chen hand wrote a statement saying that he would not sign the resignation letter. Ex. 126, Bates no. 0411. His lawyer then sent him a typed statement which he signed, then printed and copied in the office. In the typed statement, Dr. Chen repeated his refusal to sign the letter he had been presented "this morning for the first time" and declared unequivocally that he had "not resigned from InnoGrit" and that he was being fired "against [his] will." Ex. 124; Ex. 390. He also wrote that he disagreed with the statements in the proffered resignation letter about what Innogrit owed him and about what his "equity rights" were. *Id.*

Some of the details about what happened next are disputed, but there is no dispute about the big pieces. Dr. Wu asked Dr Chen to leave immediately. And he and Mr. Kuang stood by while, in front of many other employees, Dr. Chen went to his desk and packed his personal property into boxes as Dr. Wu and Mr. Kuang watched to make sure Dr. Chen did not take any of the Company's property. Then, in full view of other employees, Dr. Wu and Mr. Kuang escorted Dr. Chen out of the office and to his car. Dr. Wu and Mr. Kuang carried the boxes of Dr. Chen's personal belongings as they walked him, each on one side, out of the premises. See Tr. 329 -33; 1404-05; 1455-57

It was in this decidedly unceremonious manner that Dr. Chen was separated from Innogrit. To a person like Dr. Chen who cared so much about saving face, it would hardly be surprising to learn that the manner in which he was separated from the Company so publicly, with such visible manifestations of the Company's distrust, was a source of deep embarrassment and humiliation. It was, after all, only a month earlier that he had been president of the Company.

With respect to the issue of resignation or termination, what is the legal upshot of

all this?

The Arbitrator finds, on the facts outlined above and the record made, that what Dr. Chen did on March 15, 2018, was to offer to resign if three quite specific conditions were met. He did not resign that day – or any day thereafter. Over the ensuing few weeks, he modified the conditions he had imposed on March 15 to some degree — but they remained intact at their core. Dr. Wu refused to meet two of the three conditions, even as modified, on which Dr. Chen hinged his offer to resign. Because the core conditions he set never were met, Dr. Chen never resigned. Instead, after Dr. Wu became impatient with what he perceived as Dr. Chen's unreasonable demands, Dr. Wu fired Dr. Chen on April 23, 2018. Stated differently, the Arbitrator finds that Dr. Chen was terminated from his job involuntarily, against his will.

Dr. Chen testified that if Dr. Wu failed to agree to terms of separation that Dr. Chen felt were appropriate, he would simply have remained on the job at Innogrit – presumably indefinitely. While it is difficult to imagine such a scenario playing out over time, what mattered at this juncture was who flinched first and decisively. Dr. Wu could have called Dr. Chen's bluff by declining to meet Dr. Chen's terms but continuing to employ him. If Dr. Chen could not stand to work in a less prestigious position or really could not abide working with Mr. Kitahama, he might well have resigned. But Dr. Wu's decision on April 23, 2018, deprived Dr. Wu of the opportunity he otherwise would have had to test Dr. Chen's resolve. Instead of waiting to see how things might play out, he pulled the plug – firing Dr. Chen precipitously.

Was the Termination "Wrongful"?

Dr. Chen contends he was fired in retaliation for complaining to Innogrit that Dr. Wu's conduct constituted civil fraud – thereby violating California law. Dr. Chen alleges he registered these complaints through two letters his lawyer sent to Innogrit's lawyers, [redacted].

The [redacted] letter accuses Dr. Wu of [redacted]. The obvious implication of the narrative laid out in this letter is that [redacted]

[redacted]. Ex. 195.

The [redacted] letter contains more explicit assertions of wrongdoing by Dr. Wu. It accuses him of [redacted] Ex. 197.

These are accusations of civil wrongs and it was reasonable for Dr. Chen to believe these letters, written on his behalf and based on information he provided, disclosed wrongful activity. It also is significant that these letters were delivered to counsel for Innogrit itself, not to counsel for Dr. Wu in a personal capacity. Thus, it was reasonable for Dr. Chen to believe these allegations of wrongdoing would reach the Board of Directors that at least nominally controlled Innogrit, a body that under the law had the authority and ability to investigate the allegations and to take remedial actions.

Dr. Chen's evidence also shows that Dr. Wu took adverse employment action against Dr. Chen within three working days of receipt of the [redacted] letter. In fact, as found above, Dr. Wu fired Dr. Chen before the time had expired for Dr. Chen to respond to the most recent settlement proposal Innogrit had made.

Based on these facts, the Arbitrator concludes that Dr. Chen made a *prima facie* showing that he was terminated in retaliation for accusing Dr. Wu of committing actionable civil wrongs. That showing shifts the burden of going forward to Respondents, who must "provide a legitimate, nonretaliatory explanation for [their] acts." *Roadrunner Intermodal Services, LLC v. T.G.S. Transportation, Inc.*, 2019 EL 39446895 (E.D. Cal. Aug. 21, 2019).

Respondents have come forward with such an explanation. In fact, they have identified two non-retaliatory reasons for terminating Dr. Chen. The first is their alleged considerable dissatisfaction with his performance as president of the Company. The second is that his presence in the offices of the Company was a source of substantial distraction and tension in the ranks – as other employees knew he had been demoted and that negotiations to determine whether he would leave Innogrit were actively underway.

Because Respondents have met their burden of going forward, the burden of proof

resurfaces in Claimant's court. He must prove, by a preponderance of the evidence, that both the proffered reasons for the termination are unworthy of credence or that a retaliatory motive was in fact a substantial factor in motivating Dr. Wu/Innogrit to terminate him. *Id.*

This is so close a question that the Arbitrator cannot conclude that Dr. Chen has met his burden of proof on this claim. While the value and quality of Dr. Chen's performance during the year he served as president is the subject of conflicting evidence and hotly contested argument, the Arbitrator has not been persuaded that Dr. Wu was not in fact quite displeased with that performance. The question here is not whether that displeasure was justified, but whether, justified or not, fair or not, it was in some meaningful sense real. Actually, the question is whether Dr. Chen has proved by a preponderance of the evidence that the displeasure was not real, or that despite its reality, retaliation nonetheless was a substantial factor in the decision to terminate. This Dr. Chen has not done.

Dr. Wu clearly was unhappy with the demands Dr. Chen was making in the negotiations about separation. But it is at least as likely as not that he viewed the letters from Dr. Chen's lawyers not as threats to disclose unlawful activity, but as the kind of posturing that accompanies sensitive, high stakes negotiations like these. The letters came from a lawyer – and Dr. Wu could reasonably believe a lawyer would couch her client's complaints, and justify her client's negotiating position, in legal terms and with a little more legal 'umph' than an objective assessment might warrant. So, it would not have been unreasonable for Dr. Wu to view the letters as little more than negotiation posturing – not real threats to expose wrongdoing.

There also is evidence that Dr. Wu was a very demanding executive, with very high expectations and little patience, that he was not the kind of leader who would tolerate any softness in an employee's performance. The record could support findings that he was very ambitious and self-impressed, in a hurry to make it big. He wanted his startup to boom into the field. And it is arguable, on the evidence, that he actually felt Dr. Chen's performance was far short of booming.

For the reasons set forth in the preceding paragraphs, the Arbitrator has concluded Dr. Chen has failed to carry his burden of proving that the reasons for his termination were

pretextual, i.e., a self-conscious cover for firing him wrongfully in retaliation for complaining about Dr. Wu's allegedly unlawful conduct.

Does Dr. Chen Have a Basis for Relief Under a Theory of Unjust Enrichment?

The short answer to this question is no.

Under well-established California law, relief under an unjust enrichment theory is available, in theory, only when the subject matter in issue is not addressed in a contract. See, e.g., *Melchoir v. New Line Productions, Inc.,* 106 Cal.App.4th 779 (2003)*; California Medical Association, Inc. v. Aetna U.S. Healthcare of California, Inc., et al.* 94 Cal.App.4th 151, 172 (2001); *Hedging Concepts, Inc. v. First Alliance Mortgage Co., 41 Cal.App.4th 1410, 1419-1420 (1996); Willman v. Gustafson,* 63 Cal.App.2d 830 (1944).

In the case at bar, the Arbitrator has concluded that Dr. Wu and Dr. Chen entered an enforceable contract on November 27, 2016, and that this covered Dr. Chen's prospective employment relationship with Innogrit and provided for the lion's share of the consideration he was to receive for his work for the Company. In addition, his compensation as president of the Company was the subject of a contract he signed (under duress) with Innogrit on March 10, 2017. While the second of these two contracts is voidable, it was the basis on which Dr. Chen was compensated and received benefits for more than a year.

Thus, two contracts spoke to his entitlements – with the result that there is no need for equity to intervene (by recognizing a claim for unjust enrichment) in order to right the fairness ship.

Are Respondents Liable to Dr. Chen on a Fraud Theory?

Dr. Chen contends Dr. Wu intentionally engaged in three instances of actionable fraud – and that he, Dr. Chen, reasonably relied to his detriment on these intentional deceptions on each occasion.

Dr. Chen claims that the first of these alleged intentional deceptions occurred on November 27, 2016, when Dr. Wu, according to Dr. Chen, communicated, falsely, that he

agreed to grant Dr. Chen 20% of the employee equity pool.

As the Arbitrator already has found, Dr. Chen reasonably understood Dr. Wu to commit to the grant of 20% equity on November 27th. The Arbitrator also has concluded that, in reasonable reliance on that understanding, Dr. Chen forsook the opportunity to remain at Marvell with an increase in compensation and a promotion.

The pivotal new and challenging question here is whether Dr. Chen has proved, by a preponderance of the evidence, that Dr. Wu intended to deceive Dr. Chen when he appeared to agree to the 20% figure. When all the evidentiary and analytical dust settles, the Arbitrator answers this question in the affirmative.

Dr. Wu had multiple opportunities to correct any misunderstanding reached by Dr. Chen about what Dr. Wu was promising or had promised on November 27, 2016, but he took advantage of none of these. Dr. Wu could have stated clearly at the end of the conversation on the November 27 that he was not then agreeing, and he would not in the future agree, to grant Dr. Chen 20% of the equity pool. Because it should have been clear to Dr. Wu that, at a bare minimum, there was a substantial likelihood Dr. Chen believed Dr. Wu had agreed to the 20% figure, Dr. Wu should have immediately and clearly made his intentions clear. But he didn't.

It also is pertinent that the Arbitrator has concluded Dr. Wu did not testify truthfully when he insisted he and Dr. Chen revisited the equity issue multiple times and kept negotiating fruitlessly about it during December and January 2017. Despite Dr. Wu's testimony, the Arbitrator has concluded that he did nothing between November 27, 2016 and February 21, 2017, to check on or correct Dr. Chen's understanding. It wasn't until late February 2017 that the issue of Dr. Chen's equity resurfaced, and when it did, Dr. Wu did not bring it up directly. Instead, it arose only indirectly when he was showing Dr. Chen information about grants of equity that were being given to, or that were being contemplated for, other employees.

Dr. Wu's studied passivity in these circumstances, when the most reasonable course would have been to be sure Dr. Chen understood that no agreement had been reached, is one element of the evidence that supports a finding of intentional deceit. As noted, this

element is reinforced by the finding that Dr. Wu did not testify truthfully during the Hearing about this critical issue.

Another element in the evidentiary record can be construed as pointing in the same direction. Stanley Wu of SummitView testified in deposition that Dr. Wu had told him that he (Dr. Wu) had initially offered Dr. Chen 12% of the employee equity pool, apparently on the condition Dr. Chen make the same Founder's commitments that Dr. Wu had made. This understanding by Stanley Wu is evidenced by [redacted] Ex. 156. But Dr. Wu testified during the Arbitration Hearing that Stanley Wu must have misunderstood him – because, according to Dr. Wu, he had at that time only offered Dr. Chen 8% and had told Stanley Wu the most he would be willing to offer Dr. Chen was 12%. Tr. 1697-1700.

Of course, Dr. Wu never told Dr. Chen he was willing to offer him a 12% equity stake if he would accept the Founder's obligations. Instead, allegedly in return for Dr. Chen giving up any claim to membership on the Board, Dr. Wu agreed to the 10% equity share even though Dr. Chen persisted in refusing to make the Founder's commitments.

Among the curiosities in the path of travel taken by Dr. Wu here is this: since protection through the Founder's commitments was so important to SummitView, why would Dr. Wu agree to a 10% equity figure without the Founder's obligations, but not even offer Dr. Chen the 12% share if he would take on those obligations? And how did Stanley Wu get the impression Dr. Wu's "Initial Offer" was for 12%?

These kinds of questions, coupled with the finding that Dr. Wu did not testify truthfully when he claimed he and Dr. Chen had continued to negotiate about the latter's equity share "multiple times in December, January, February,"[9] tend to support an inference that Dr. Wu intentionally engaged in a pattern of conduct between November 2016 and early March 2017 that was designed, by deception, to lead Dr. Chen into feeling trapped and essentially powerless to secure the 20% equity he reasonably understood he

[9]Tr. 1681.

had been promised.

The Arbitrator also notes that Dr. Wu has taken mutually exclusive positions about whether Dr. Chen was the "Key Person" for which such important provisions were made in the [redacted] On one hand, Dr. Wu has insisted Dr. Chen was only one of several real candidates for the Key Person role. The Arbitrator has found, however, that this version of the story is implausible – and that both Dr. Wu and, importantly, SummitView, always understood there was only one Key Person, and that person was Dr. Chen. In fact, Dr. Wu finally admitted, under cross-examination, he told Dr. Chen that he (Dr. Chen) was the Key Person. Tr. 1619-1621.

This evidence is significant not only because it raises serious questions about Dr. Wu's veracity, but also because being the "Key Person" understandably led Dr. Chen to assume he would be entitled to a very substantial portion of the employee equity pool – a portion somewhere in the vicinity of the portion allotted to Dr. Wu. The 'key' here is that Dr. Wu knew (1) Dr. Chen was the Key Person, (2) Dr. Chen knew he was the Key Person, and (3) Dr. Wu knew that, given all the circumstances, Dr. Chen expected an equity share much closer to Dr. Wu's than 8% or 10%. Knowing all this, Dr. Wu actively enabled Dr. Chen to proceed on the basis of a reasonably drawn understanding that he would be granted 20% of the employee equity pool.

The fact that all of this was so readily foreseeable supports an inference that Dr. Wu intentionally deceived Dr. Chen about his equity share. That deception began with the way their conversation ended on November 27, 2016, and continued at least through February 21, 2017.

It follows from the above findings that Dr. Wu intentionally deceived Dr. Chen about the equity he would be granted. Stated differently, Dr. Wu's deceitful (fraudulent) course of action led Dr. Chen into the corner in which he felt he had no reasonable option but to accept the 10% equity Dr. Wu seemed to present as a "take it or leave it" figure.

Dr. Chen also contends that his signature on the Founder's Restricted Share Purchase Agreement was procured by fraud. As findings of fact earlier made indicate, it was not reasonable for Dr. Chen to assume Dr. Wu would be able, through negotiations, to persuade

SummitView to make the significant concessions Dr. Chen hoped would be made.

There is some evidence that Dr. Wu might never have raised this subject with Mr. Pan or Stanley Wu – so Dr. Wu might have deceived Dr. Chen about his intentions. See Tr. 640-642. But even if Dr. Chen proved that Dr. Wu intended to deceive him about the efforts Dr. Wu would make, Dr. Chen has not proved that he reasonably relied on any such deceitful conduct. Dr. Chen also has failed to prove he suffered injury because of any deceit in this arena by Dr. Wu. Mr. Pan made it clear he never would have agreed to the changes Dr. Chen sought even if they had been the subject of forceful advocacy by Dr. Wu. Tr. 858-59. Mr. Pan insisted, plausibly, that SummitView could not protect its investment in a company like Innogrit if it agreed to an acceleration of a founder's significant equity whenever a founder might be separated from a company without cause.

Dr. Chen's third and final claim sounding in fraud revolves around his contention that when he agreed to the 10% equity figure Dr. Wu falsely promised him, he would share some of his common shares with Dr. Chen if the Company did well. This claim suffers from several shortcomings. Perhaps the most significant of these is that, at best, Dr. Wu's alleged statement was a contingent promise that, by its own terms, could become a commitment only if events occurred in the future that were outside the promisor's control. In fact, at the time Dr. Chen was terminated, no one could know whether the Company was doing well – or would do well in the future. So, the condition Dr. Wu imposed on his promise, even if made as Dr. Chen alleges, never materialized. In other words, even if Dr. Wu made the promise as Dr. Chen alleges, a fact Dr. Wu vigorously contests,[10] that promise would not be actionable on the facts of this case.

Did Dr. Wu Actionably Interfere
with Dr. Chen's Economic Relationship with Marvell?

[10]Dr. Wu contends that when he alluded to the possibility Dr. Chen would get additional shares in the Company in the future, Dr. Wu was referring to the 'evergreen' program under which the Company could make grants of additional shares to employees to reward them for exemplary performance or to induce them to remain with the Company, e.g., instead of accepting more immediately lucrative offers from other entities.

Dr. Chen presses a cause of action for tortious interference with his economic relationship with Marvell.

"To prevail on a cause of action for intentional interference with prospective economic advantage in California, a plaintiff must plead and prove (1) an economic relationship between the plaintiff and some third party, with the probability of future economic benefit to the plaintiff; (2) the defendant's knowledge of the relationship; (3) the defendant's intentional acts designed to disrupt the relationship; (4) actual disruption of the relationship; and (5) economic harm to the plaintiff proximately caused by the defendant's acts." Footnote 6 in *Reeves v. Hanlon*, 33 Cal.4th 1140 (2004), citing *Youst v. Longo*, 43 Cal.3d 64 (1987).

The Arbitrator finds that Dr. Chen has proved all but the fifth and final element of this claim. Dr. Chen had an economic relationship with Marvell about which Dr. Wu well knew when Dr. Wu induced Dr. Chen to sever that relationship in favor of joining Innogrit. The Arbitrator finds that on November 26 and November 27, 2016, Dr. Wu encouraged Dr. Chen, both implicitly and explicitly, to sever his ties with Marvell so he could join Innogrit. See, e.g., Tr. 218-222. Moreover, Dr. Chen had told Dr. Wu that Marvell had offered him a promotion and a 40% increase in salary to try to induce Dr. Chen not to resign. *Id.*

Dr. Wu fraudulently induced Dr. Chen to abandon his relationship with Marvell, and the promised enhancements in that relationship, by leading Dr. Chen to believe that he would be granted a 20% share of the employee equity pool in Innogrit, even though Dr. Wu had no intention, then or ever, of granting Dr. Chen that much equity. Based on his reasonable understanding that he had been promised a 20% equity share, Dr. Chen left Marvell, giving up the promised promotion and 40% increase in salary.[11]

[11]While Respondents attempt to make much of the fact that Dr. Chen did not call Matt Murphy as a witness or produce a document to confirm the fact that Marvell offered Dr. Chen a promotion and a 40% raise if he would remain with that company, Dr. Chen's testimony about these facts is unrebutted and competent. As such, that testimony is sufficient to support the findings of fact on this issue that are set forth in the text.

Of course, Respondents also could have called Mr. Murphy – had they believed he would contradict

To establish a right to recover under an intentional interference theory, however, a claimant also must prove the wrongful conduct by the defendant proximately caused the claimant to suffer economic harm. Causing emotional distress is not sufficient. In the last substantive section of this Interim Award the Arbitrator will explain why he has concluded that Dr. Chen has failed to prove this last essential element of this claim.

Did Dr. Wu Have a Fiduciary Duty to Dr. Chen?

Dr. Chen alleges that Dr. Wu owed him a fiduciary duty, as a minority shareholder, because Dr. Wu exercised "control over the business affairs of the corporation." *Kahn v. Lynch Communications Systems, Inc.*, 638 A.2d 1110, 1113 Del. 1994. Dr. Wu owned more shares of Innogrit, by far, than any other individual, but he did not own a controlling percentage of the Company's equity. So, to show he had a fiduciary duty to minority shareholders, Dr. Chen must show that Dr. Wu exercised control over the business affairs of the corporation.

In addressing this question, the period on which we focus is October 2016, when Innogrit was incorporated in the United States, and April 2018, when Dr. Wu terminated Dr. Chen's employment.

The evidence is overwhelming that Dr. Wu exercised control over the business affairs of the Company (Innogrit, then Shanghai Innogrit) during this period. He was the CEO and Founder. He controlled upwards of four times the amount of stock as was controlled by the individual (Dr. Chen) with the next highest percentage of the equity pool set aside for employees. He negotiated, without control by SummitView, the amount of equity Dr. Chen would receive. Dr. Wu also controlled the amount of equity that would be granted to other founding members, as well as to employees hired later by the Company.

Dr. Wu was the only director of Innogrit when it was incorporated in Delaware.

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or undermine Dr. Chen's testimony. It is noteworthy that Dr. Wu and Mr. Murphy spoke by telephone around the time Dr. Chen was deciding whether or not to leave Marvell – so Dr. Wu at least had an opportunity to try to determine what incentives, if any, Marvell was offering Dr. Chen. The fact that Dr. Wu clearly had this opportunity, but elected not to call Mr. Murphy, certainly does nothing to incline the Arbitrator to be moved by Respondents' challenges to Dr. Chen's testimony on this subject.

When the joint venture that produced Innogrit Shanghai was consummated, [redacted]. Tr. 1299-1300; see also Ex. 33 and Tr. 643-644. He was the Board's chairman and called its meetings – of which there were only two during a substantial portion of the period in issue here. In fact, [redacted]. Ex. 212. Dr. Wu was also one of only two members of the Board of SPV II, which, until late summer 2017, was the body that approved grants of equity from the employee equity pool. Tr. 1326-31.

With virtually no external constraints, Dr. Wu controlled the internal business affairs of the Company – and the range of matters that were deemed 'internal' by SummitView was very large. All the heads of the key units in the company reported directly and only to Dr. Wu. Dr. Wu hired, assessed the performances of, and could fire the key employees. He fixed their compensation, determined how they fared in performance reviews, and played the leading role (through his own power on the relevant SPV Board as its Chair, supplemented by the power of his appointee to that Board) in determining the size of their equity grants. He also either controlled or played the most influential role in controlling how much, if any, stock was granted to employees to reward exemplary performances or to retain people who might otherwise be tempted by other offers to leave (the "evergreen" program). While the Boards of the SPVs nominally made these determinations,[12] Dr. Wu, as chair of each board and with the power to appoint another member, remained, for all practical purposes, in control.

Evidence of the scope of Dr. Wu's powers, and his freedom to run the Company as he saw fit, surfaces most tellingly in what happened to Dr. Chen. Even though SummitView considered Dr. Chen's joining Innogrit essential to its success, Mr. Pan and Stanley Wu left the negotiations with Dr. Chen in Dr. Wu's hands and deferred to Dr. Wu's decision about the percentage of equity to offer Dr. Chen. Further evidence of SummitView's passivity is visible in the fact that it did nothing to assure that Dr. Wu honored the commitment he had

[12]Tr. 577-579; 1327-1329.

in the [redacted] came and went, with no such contract even in the works, yet SummitView did nothing.

When Dr. Wu decided to demote Dr. Chen from his position as *president* of the Company, [redacted] Tr. 621; 1439-43; Ex. 92. Dr. Wu also did not secure permission from the Board to hire Dr. Chen's replacement, Keita Kitahama. And while Dr. Wu contends that Dr. Chen resigned on March 15, 2018, he did not inform the Board about this decision, [redacted] Ex. 92. It is not clear that the Board played any role in trying to negotiate terms on which Dr. Chen might separate amicably from the Company – or even that the Board approved the 'final' offer made to Dr. Chen. Nor is there any evidence the Board approved in advance Dr. Wu's decision to force Dr. Chen to leave the Company on April 23, 2018, before negotiations about terms of separation had even arguably come to a close. See Tr. 621.

Given the scope and depth of Dr. Wu's authority over the business of Innogrit, both his formal authority as CEO and Chairman of the Board, and his informal authority as he ran all aspects of the enterprise, the Arbitrator finds that Dr. Wu owed a fiduciary duty to minority shareholders, including Dr. Chen.

Did Dr. Wu Breach His Fiduciary Duty to Dr. Chen?

Dr. Chen contends, broadly, that Dr. Wu breached his fiduciary duty to him by contriving his ouster from the Company. While this contention is by no means vapid, the Arbitrator finds Dr. Chen has failed to prove it. Dr. Chen has not shown that it is more likely than not that Dr. Wu schemed to oust him solely or primarily because Dr. Chen had been granted the second largest percentage of the employee equity pool,[13] or because Dr. Chen, nominally and on the organizational chart, was the second most powerful person at Innogrit. There is no reason to believe Dr. Wu ever felt that Dr. Chen posed a serious threat

[13]At most, Dr. Chen owned one third or less of that pool than Dr. Wu owned – and Dr. Wu, not Dr. Chen, sat in the catbird seat with respect to decisions about additional grants of equity from that pool.

to Dr. Wu's authority or role, just as there is no reason to infer Dr. Wu ever expected Dr. Chen to be in a position to challenge his command of the Company's direction and future.

Dr. Chen has proved Dr. Wu's conduct was consistently self-serving. But it appears there was a solid alignment in Dr. Wu's mind between serving his own best interests and serving the best interests of the Company – and, therefore, the best interests of the Company's shareholders.

Dr. Chen also contends, more specifically, that Dr. Wu breached his fiduciary duties by (1) offering Dr. Chen, during the separation negotiations, only an 'adulterated' or 'diluted' value of Dr. Chen's vested stock, and (2) dishonoring Dr. Chen's entitlement to have 50% of his equity in SPV I (as opposed to having all that equity in SPV II).

Dr. Wu admits that, during the separation negotiations, he took the position that the fair market value of Dr. Chen's vested stock (apparently consisting, in Dr. Wu's mind, [redacted] Ex. 182. Dr. Chen's expert witness, on the other hand, would place a substantially greater value on that stock. But even if Dr. Wu's valuation was way below an objective assessment of market, it was made only as part of a negotiation process and never became part of a consummated transaction. Nor is it clear that merely taking this position during the early stages of a negotiation would offend the spirit of the business judgment doctrine.[14] Given these circumstances and considerations, the Arbitrator cannot conclude that Dr. Chen has proved Dr. Wu violated his fiduciary duty by [redacted] for Dr. Chen's vested shares.

For reasons that will be set forth below, the Arbitrator also has concluded that Dr. Wu was under no duty to offer to buy back Dr. Chen's unvested shares. Thus, for purposes of determining whether Dr. Wu breached his fiduciary duty to Dr. Chen by offering [redacted] for his equity, it would not be appropriate to assume that that equity consisted of all five million of Dr. Chen's vested and unvested shares.

[14]It is not clear to the Arbitrator that the more demanding "entire fairness" standard would apply in these circumstances. No self-dealing is involved, except under a theory of indirection that is too strained to meet a burden of proof. And there appears to have been at least some quasi-empirical basis for the [redacted] – even though there were other potentially usable bases for figures that would have yielded appreciably higher values.

What about the contention that Dr. Wu has dishonored Dr. Chen's entitlement to have 50% of his equity in SPV I (as opposed to having all of that equity in SPV II)? The Arbitrator finds, here, that Dr. Wu made a contractually enforceable commitment pursuant to which Dr. Chen was entitled to have [redacted] (as soon as it was created). Tr. 1324-28; 1358-59; 1732-33; Ex. 343. See also Ex. 343, [redacted].

Dr. Wu admitted he never issued Dr. Chen any shares in SPV I, even though he caused [redacted] shares in that SPV to be issued to himself before Dr. Chen was separated from Innogrit. *Tr. 1732-33.* By not causing Dr. Chen's [redacted] shares to be issued in SPV I – when that was clearly feasible – Dr. Wu breached his contractual promise to Dr. Chen.[15]

Was this breach of contract also a breach of Dr. Wu's fiduciary duty to Dr. Chen?

Although not free from doubt, the Arbitrator answers this question in the negative, meaning that the Arbitrator has concluded Dr. Chen has not carried his burden of proof on this issue. It is possible Dr. Wu simply hadn't gotten around to issuing Dr. Chen his shares in SPV I by March 15, 2018, at which juncture, Dr. Wu contends, he believed Dr. Chen began the process of resigning from Innogrit. While it is clear Dr. Wu made sure that he (Dr. Wu) was issued [redacted] promptly after that entity was formed (in January or February 2018), it is not clear whether employees other than Dr. Chen also were

[15]Respondents' attempt to escape their obligation to move half of Dr. Chen's shares into SPV I by pointing out that after Dr. Chen was terminated, he was offered an opportunity, through Respondents' counsel, to [redacted] Respondents purported to give Dr. Chen three business days to choose between the two options presented. If he failed to respond within that unilaterally fixed period, Respondents announced [redacted] Ex. 202.

Dr. Chen's counsel responded within the three-day period but indicated Dr. Chen needed additional information. She did not commit him to either alternative.

Respondents seem to contend that this unilaterally devised process somehow resulted in Dr. Chen being bound to have all his stock remain in SPV II. The Arbitrator rejects this contention. A self-serving procedure that one side purports to impose on another cannot create a contract or replace contractually enforceable commitments earlier made.

entitled to have shares issued to them from SPV I – or that Dr. Wu expeditiously caused that to happen. In other words, while it is clear that Dr. Wu looked out for himself, it is not clear he intentionally attempted to frustrate Dr. Chen's specific (and legitimate) expectations in this arena.

The inference Dr. Wu might well not have intentionally attempted to deprive Dr. Chen of a right to have [redacted] was reinforced by the fact that on [redacted], after Dr. Wu had terminated Dr. Chen, Respondents' counsel formally offered Dr. Chen [redacted]. Ex. 202. Had Dr. Wu intended to deprive Dr. Chen completely of this opportunity, he presumably would not have permitted his counsel to make the [redacted] offer.

Because Dr. Chen has not met his burden of proving that Dr. Wu breached his fiduciary duty in his dealings with Dr. Chen, there is no basis for granting Dr. Chen any of the remedies that would be available to him only on proof of a breach of this duty.

Damages

Breach of Contract

Dr. Chen proved that he acquired a contractual entitlement to 20% of the employee equity pool – vesting over a period of four years. Dr. Chen failed to prove he had a contractual entitlement to accelerate the vesting of his equity.

Dr. Chen was employed at will. Ex. 337. Innogrit could terminate his employment at any juncture it chose – as long as in doing so it did not violate any California statute, public policy, or common law proscription. The Arbitrator has concluded Dr. Chen failed to prove that an unlawful motive (e.g., retaliation for engaging in statutorily protected activity) was a substantial factor in the decision to terminate him. Moreover, the evidence clearly shows that Innogrit imposed [redacted] on every employee who received equity – including Dr. Wu. So, there is no basis for concluding the [redacted] were somehow the product of an unlawful motive or discrimination. They were uniformly applied, and Dr. Chen is contractually bound by them.

The contractual vesting schedule called for [redacted]. Ex. 343

The employee equity pool consisted of [redacted] shares of common stock. Because Dr. Chen was employed at Innogrit for only a little more than 13 months, only 20% of his shares vested, i.e., 20% of 20 million shares. Twenty percent of twenty million shares is four (4) million shares. Thus, Dr. Chen is entitled to an award that includes either four million shares of Innogrit common stock or the value thereof.

Dr. Chen may elect to have one-half of his vested shares (2,000,000) in each SPV or all of them in SPV II.

The date for valuing the shares in issue is *not* within 90 days of the termination of his employment because the contract that would otherwise fix the Company's right to repurchase shares within that period was procured by duress and may be rescinded. In May 2019, Dr. Chen was forced to initiate this arbitration to secure his entitlements because Respondents wrongly refused to recognize and honor them. Since that date, Respondents have continued to wrongfully deprive Dr. Chen of his entitlements. It has been foreseeable since April 23, 2018, that breaches of duties (in contract or tort) owed to Dr. Chen would expose Respondents to damages extending past any date fixed in an unlawfully secured contract. Equity will not reward Respondents for electing to follow a wrongful path.

Instead, after taking into account all the pertinent circumstances, including most significantly the intentional conduct by Dr. Wu that breached the contract and subjected Dr. Chen to duress, the Arbitrator hereby exercises his equitable discretion to fix September 15, 2020, as the date on which the value of Dr. Chen's shares shall be determined. While some six months earlier than issuance of this Award, the September date strikes an appropriate balance between the parties' positions and has been the subject of submitted evidence that enables the Arbitrator to fix a valuation on rational grounds.

Should a DLOM apply to valuation of Dr. Chen's shares?

The first step in answering this question is determining whose law to apply to it. Earlier in this proceeding, the Arbitrator ruled that California law would apply to all claims except the claim for breach of fiduciary duty. Because Dr. Chen did not prove that Dr. Wu breached the fiduciary duty he owed Dr. Chen, California law must determine whether a DLOM is to apply in this case. But California law includes its choice of law doctrine. While it is not clear there is a material difference between California law and Delaware law with respect to the valuation issue in the circumstances of this case, the Arbitrator has concluded that, under California choice of law principles, if there were a conflict, he should apply Delaware law – as Delaware has such a strong interest in controlling the internal affairs of its corporations. See, e.g., *Nedlloyd Lines B.V., et al. v. Superior Court*, 834 P.2d 1148 (Cal. 1992).

The question thus becomes: would Delaware courts apply a DLOM in the circumstances here presented? Respondents cite authorities that can be read as suggesting that using a fair value (as opposed to a discounted value) of shares has been limited to cases involving appraisals and quasi-appraisals,[16] e.g., in cases where owners of minority interests petition to dissolve a corporation because persons with controlling interests have taken self-interested actions that unlawfully reduce the value of the minority's interests. It is not clear, however, how strictly Delaware courts limit the fair value approach to appraisal and quasi-appraisal situations.

What is clear is that in Delaware this action would be in Chancery Court – a court in which determinations are ultimately controlled by principles of equity. Equity courts in Delaware have broad discretion to fashion remedies that are fundamentally fair and that cause a sanction to be imposed on a wrongdoer for engaging in conduct that benefits himself or itself at the expense of the victims of the wrongdoing. For a substantial discussion of the breadth of the range of discretion that equity courts command in

[16] *Doft & Co. v. Travelocity.com Inc*, 2004 Del.Ch. LEXIS 75 (May 21, 2004); *In re Staples, Inc. Shareholders Litigation*, 792 A.2d 934 (Del. Ch. 2001).

Delaware, see *Union Illinois v. Korte*, 2001 Del. Ch. LEXIS 173 (Nov. 28, 2001).

Thus, Delaware courts have endorsed the notion that in fraud cases, it is the actual fair value (not the discounted value) of shares of stock that should be used to determine how much damage a deceived plaintiff has suffered as a result of selling shares in a corporation that were deceitfully undervalued. See *Poole v. N. V. Deli Maatschappij*, 224 A.2d 260 (1966), *endorsing Neuman v. Corn Exchange National Bank & Trust Company*, 51 A.2d 759 (1947).

It also is instructive to observe that Delaware chancery courts use the fair value of stock (not a value reduced by a DLOM) in cases where minority shareholders have been unfairly squeezed out of their ownership interests by people or institutions who control the corporations – usually majority shareholders.

Moreover, there is substantial reason to infer that Delaware Chancery courts would be sympathetic with the following pronouncement by a California court: "the rule justifying the devaluation of minority shares in closely held corporations for their lack of control has little validity when the shares are to be purchased by someone who is already in control of the corporation. In such a situation, it can hardly be said that the shares are worth less to the purchaser because they are noncontrolling." *Brown v. Allied Corrugated Box Company, Inc.*, 91 Cal.App.3d 477, 486 (1979).

The *Brown* court went on to point out that an unscrupulous controlling shareholder could be unfairly rewarded if he (or it) were enabled to avoid proportionate distribution simply by invoking a buyout provision. The court opined that when "misconduct and unfairness" have been involved in the process that has led up to the point where a purchase of minority shares by a majority shareholder is to occur, applying a DLOM would enable the misbehaving party or entity to take further advantage of the minority shareholders. *Id.*, at 487.

Stated differently, the Arbitrator concludes that Delaware Chancery courts are not likely to take well to a valuation method that would deliver a value-windfall to the Company if it were permitted to acquire Dr. Chen's shares at a discounted value instead of at their value in a going (and increasingly successful) concern.

Because it is not clear Delaware courts would limit the fair value method to classic appraisal situations, because fraudulent and bad faith conduct[17] played such a critical role in moving Dr. Chen into the vulnerable position he occupied when he was terminated, because Dr. Wu was effectively squeezing the largest minority shareholder out of the Company when he fired Dr. Chen, and because Dr. Chen's shares will be purchased by Innogrit itself (not some third party), the Arbitrator has concluded that a Chancery court in Delaware would decline to apply a DLOM when determining the value of the shares that Dr. Chen is in effect being forced to sell.

Based on the expert opinion evidence offered by Mr. Saba, which, for this purpose, the Arbitrator accepts, Dr. Chen has proven that, on September 15, 2020, the value of each of his shares in SPV I was .60 and the value of each of his shares in SPV II was .71. See Ex. 211, Saba Report of December 1, 2020, at Exhibit B.1.

If, for purposes of the damages on his contract cause of action, Dr. Chen elects to leave all of his four (4) million shares in SPV II, his contract-based damages are the product multiplying 4,000,000 times .71, which is $2,800,000.

If Dr. Chen elects to have his damages calculated on the premise that two (2) million shares are in SPV I and another two (2) million are in SPV II, his damages are two million times .60 [$1,200,000] plus two million times .71 [$1,420,000], for a total in contract damages of $2,620,000.

The Fraudulent Inducement and Tortious Interference Claims

As determined in preceding sections of this Award, Dr. Chen proved that Dr. Wu fraudulently induced him to join Innogrit and to sever his ties with Marvell. He also proved Dr. Chen tortiously interfered with the prospective economic advantage he would have enjoyed with Marvell but for Dr. Wu's tortious conduct. It follows that Dr. Chen is entitled to damages he has proved were proximately caused by these wrongs. The same categories

[17]Dr. Wu (1) fraudulently induced Dr. Chen to believe he would receive 20% of the employee equity pool, (2) cornered him into signing, under duress, the employment contract and the Founder's Restricted Share Purchase Agreement, (3) then, less than a year after Dr. Chen joined the Company, in bad faith and behind Dr. Chen's back, Dr. Wu hired Mr. Kitahama to replace Dr. Chen, in fact demoting him.

or kinds of damages are available under both of these tort theories: compensatory economic damages, emotional distress damages, and punitive damages.

Economic Damages Under the Fraud and the Tortious Interference Claims

To recover compensatory economic damages under his tort theories, Dr. Chen must prove he would have been in a net economically better situation if he had stayed at Marvell than he ended up being in after he was induced to accept employment at Innogrit.

Dr. Chen has proved that his salary would have been substantially higher at Marvell, but he has not proved that the net financial compensation he would have received at Marvell exceeds the net financial compensation he will receive as a result of joining Innogrit. If the Arbitrator assumes, as the evidence permits, that Dr. Chen would have continued to be employed at Marvell for three additional years, his total compensation would have been in the neighborhood of [redacted] over that period. See Ex. 211, Saba Report of December 1, 2020, Exhibit D.3.

Dr. Chen's total compensation at Innogrit for the 13 months or so he worked there consisted primarily of two components: salary (and signing bonus) and vested equity. His salary and signing bonus amounted to about [redacted]. But the value of his vested equity in Innogrit is between 2,620,000 and 2,800,000.

Moreover, after being terminated at Innogrit, Dr. Chen secured new and remunerative employment. By September 15, 2020, Dr. Chen had earned a total of [redacted] from these alternative sources. See Ex. 211, Expert Report of Carl S. Saba, October 2, 2020, Ex. D.1. By the end of the third hypothesized year, April 23, 2021, Dr. Chen likely would have earned an additional sum in the vicinity of [redacted]. The value of these post-Innogrit earnings must be subtracted from the amount he would have earned at Marvell to determine what his mitigated damages were.

Taking into account all these considerations, the Arbitrator concludes Dr. Chen has failed to prove that he has suffered net economic harm as a result of Dr. Wu's fraud or of his tortious interference with Dr. Chen's relationship with Marvell.

Emotional Distress Damages
Under the Fraudulent Inducement and Interference Claims

Dr. Chen has proved he suffered severe emotional distress as a result of Dr. Wu's tortious conduct. That tortious conduct included fraudulently inducing Dr. Chen to believe, reasonably, that he had been promised 20% of the employee equity pool – and, on that basis, inducing Dr. Chen to sever his advantageous ties with Marvell. Then, after standing passively by for three months, Dr. Wu wrongfully pretended that no agreement about equity had ever been reached – thus manipulating Dr. Chen into a corner in which he had virtually no bargaining power. So cornered, Dr. Chen felt compelled to accept an equity share that was only half the size of the share to which he was entitled.

By these tortious acts, Dr. Wu intentionally maneuvered Dr. Chen into a very vulnerable position, then took advantage of that maneuvering to pressure Dr. Chen to accept a much smaller percentage of the employee equity pool than Dr. Wu had in fact promised.

Through this course of conduct, Dr. Wu caused Dr Chen to suffer very considerable emotional distress. He was "devastated" when he learned Dr. Wu had no intention of keeping his 20% promise. He felt trapped. Dr. Wu had exploded the most fundamental premise on which he had decided to take a huge economic risk and to walk away from a very lucrative, secure position with Marvell, the industry leader. It took Dr. Chen several days to work through, with his wife's counsel and support, the emotional turmoil into which he had plunged as a direct consequence of Dr. Wu's wrongful conduct. Tr. 254, 258, 260, 264.

When he finally was able to pull himself to a point where he could think with a modicum of rationally about his alternatives, he faced a deeply disappointing reality. When he went back to Dr. Wu to try to salvage his situation, he played the only card left in his hand: he elected to give up his promised seat on the board of directors in return for a 2% increase in his equity. Tr. 260

In assessing the extent of a wronged person's emotional distress, the law requires us to accept the person as he is – not as something he is not. In the case at bar, the Claimant,

Dr. Chen, might be viewed as something of "an eggshell plaintiff" in that he was very sensitive, very proud, and deeply emotionally dependent on "face." Dr. Wu's conduct did severe damage to Dr. Chen's sense of "face." It is fair to infer that Dr. Chen suffered harm to his sense of "face" when he felt compelled to call Mr. Pan essentially to beg for help in his effort to secure the entitlement to equity he felt he had been promised and deserved.

In addition, it is not unreasonable to infer that Dr. Chen felt a loss of face within his own family when he was forced to tell his wife he had been cornered into accepting such a smaller percentage of the employee equity pool. Moreover, it is substantially more probable than not that feeling compelled to give up his seat on the board of directors, being relegated to the *powerless status* of an "observer,' in return for a modest increase in equity, further damaged Dr. Chen's sense of "face." He could not, as he had expected, present himself to customers, partners, the world, as a person with the prestige and power that would accompany full voting membership on the small board of directors that would be seen as controlling the fate of the Company. This is an additional component of the emotional distress damages attributable to Dr. Wu's actionable misconduct.

The law provides no formula for calculating these kinds of damages – leaving this determination to the reasoned discretion of the trier of fact. Taking into account all the pertinent evidence and circumstances, the Arbitrator has determined it is appropriate to award Dr. Chen as emotional distress damages an amount that approximates what his total remuneration would have been had he remained at Marvell for an additional year: $500,000. This figure will be added in the award to Dr. Chen's total damages.

Punitive Damages

An entitlement to punitive damages must be proved by clear and convincing evidence. To meet this standard, a party must show it is highly probable that the challenged conduct occurred and that it was infected by oppression, fraud, or malice. Cal. Civil Code section 3294; CACI 201.

The Arbitrator concludes Dr. Chen has not proven by clear and convincing evidence that Dr. Wu was guilty of "oppression" as that word is defined in the applicable law. It is

not clear Dr. Wu's conduct, while certainly indefensible, warrants the label "despicable."

On the other hand, Dr. Chen has proven, by clear and convincing evidence, that Dr. Wu intended to cause Dr. Wu injury (economic) and intended to defraud Dr. Chen. For purposes of establishing access to a punitive damages award, the law requires Dr. Chen to prove fraudulent conduct that consists of "intentional . . . deceit . . . with the intention . . . [to deprive Dr. Chen] of property or legal rights or otherwise [cause] injury." *Id.* Dr. Chen's evidence satisfies this standard. He proved, by clear and convincing evidence, that Dr. Chen intended to deprive him of his contractually rooted legal right to 20% of the employee equity pool.

Because Dr. Chen satisfied this statutory requirement, the Arbitrator must decide, exercising his discretion, whether an award of punitive damages is appropriate in this case – and, if so, what the size of the award should be.

In determining how to exercise his discretion, the Arbitrator has attended carefully to the purposes punitive damage awards are to serve. Those purposes include punishing an individual wrongdoer and/or deterring future wrongdoing by the defendant or by others similarly situated. See *Bardis v. Oates*, 119 Cal.App.4th 1 (2004).

With respect to the punishment purpose, the law instructs us to focus principally on the "degree of reprehensibility" of the subject conduct. In assessing reprehensibility, we are to take into account the kind of interest the conduct threatened (physical harm and public safety being appreciably more important to protect than economic interests), the vulnerability of the victim, whether the conduct "involved repeated actions or was an isolated incident, and whether the harm was the result of 'intentional malice, trickery, or deceit, or mere accident.'" *Id.*, quoting from *State Farm Mutual Insurance v. Campbell*, 538 U.S. 408 (2003).

In the case at bar, Dr. Wu's conduct certainly did not threaten to result in physical harm to anyone or pose a threat of any kind to public safety. It was intended, however, to create vulnerability in its target (Dr. Chen), and it did involve actions repeated over time and intentional deceit. It certainly was not the product of mere accident.

In considering the deterrence purpose of punitive damages, it also is appropriate to

take into account whether misconduct occurred only once or was repeated. Here, Dr. Wu intentionally deceived Dr. Chen over a period of months[18] – then wrongly capitalized on that intentional deception when he maneuvered Dr. Chen into a position of vulnerability when the time came to 'renegotiate' the percentage share of equity Dr. Chen would receive when he joined Innogrit. Thus, Dr. Wu's knowing misconduct extended over a period of three months and was repeated on multiple occasions, the last several of which occurred during the period between February 21, 2017, and March 10, 2017.

Dr. Wu's apparent motives also are relevant here. He was not driven by a good faith belief in what was fair – but by his desire to preserve as much of the equity pool as possible for himself and to advance the interests of the Company in the future. While preserving equity to attract new employees or to reward existing employees was appropriate, reducing Dr. Chen's fair share of the equity pool so that Dr. Wu would have access to more of it was not.[19]

Another factor to take into account when resolving disputes about punitive damages is the wealth or resources of the person or entity against whom the award would be entered.

The Arbitrator has determined that a punitive damages award should run only against Dr. Wu, not against Shanghai Innogrit as an entity. It was Dr. Wu, acting largely on his own, who engaged in the wrongful conduct on which the award for punitive damages is based. SummitView appears to have known little or nothing about the communications between Dr. Chen and Dr. Wu in late November of 2016. There is no evidence to support a finding, for example, that anyone at SummitView, or anyone who later became a member of the Innogrit board of directors, knew Dr. Wu had, in legal effect, entered a contract with Dr. Chen on November 27, 2016. And SummitView left to Dr. Wu the decision about how

[18]As found in an earlier section of this opinion and Interim Award, between November 27, 2016, and at least February 21, 2017, Dr. Wu permitted Dr. Chen to believe he would be awarded 20% of the employee equity pool. Dr. Wu knew or surely should have known that Dr. Chen was proceeding on this fundamentally misplaced belief. A forthright person in Dr. Wu's position never would have permitted Dr. Chen to abandon Marvell and do nothing to try to cement his entitlements for three critical months.

[19]It is noteworthy that, a few months after Dr. Chen had involuntarily left the Company, Dr. Wu was granted [redacted]. Exs. 98 and 99. It also is noteworthy that sometime later the Board became concerned that [redacted].

much equity to offer Dr. Chen in late February and early March 2017. So even if the Board tacitly ratified the decision to award Dr. Chen only 10% of the employee equity pool, it did so without knowing the backstory – and it was in the backstory that the wrongful conduct occurred.

It follows from these findings that the value of Innogrit as an entity is not relevant to determining whether, or in what amount, punitive damages should be awarded.

It is only against Dr. Wu that punitive damages are justified – and called for.

The extent of Dr. Wu's wealth, and the nature of his resources, have not been made clear in this proceeding. There is, however, evidence that sheds instructive light on these questions. Dr. Wu owns many millions of shares of Shanghai Innogrit stock – apparently in excess of [redacted] of the employee equity pool. And the Company may well be worth more than $300 million.

Moreover, when he left Marvell, Dr. Wu "was making $2.8 million per year." Tr. 1333. So, he is far from being a pauper.

In determining the size of the punitive damages award, the Arbitrator also takes into account his finding that, during the Arbitration Hearing, Dr. Wu did not testify truthfully about some important matters, most notably about whether he and Dr. Chen kept negotiating, during December 2016 and January and February 2017, about the percentage of the employee equity pool Dr. Chen would be granted. The need to punish in order to deter increases when a party testifies untruthfully about obviously important matters.

Taking into account all the evidence, all the established facts, and all the circumstances that bear on this question, the Arbitrator exercises his discretion to award punitive damages against Dr. Wu, personally, in the sum of $650,000. This amount sufficiently punishes Dr. Wu for his dishonorable conduct and for the pain he caused Dr. Chen – and this is a level of punishment that will actively discourage him from trying to deceive and manipulate others (including other employees of Innogrit) in the future.

Summary of Determinations and Damages Awarded

1. Dr. Wu breached the contract with Dr. Chen that was entered on November 27,

2016. Thus, Dr. Chen proved he was entitled to 20% of the employee equity pool – but only as it vested on the universally applied schedule over a four-year period. Because only 20% of his shares vested, Dr. Chen is entitled to damages only for the value of 4,000,000 shares.

The damages to which Dr. Chen is entitled as a result of this breach are either $2,800,000, if he elects to leave all of his shares in SPV II, or $2,620,000 if he elects to move half of his shares to SPV I, leaving the other half in SPV II.

Assuming Dr. Chen chooses the higher of these two figures, the Arbitrator hereby awards $2,800,000 in damages against Respondents and in favor of Dr. Chen.

2. To be clear: Dr. Chen failed to prove that he ever acquired an entitlement to accelerate the vesting of his unvested shares – and he is not entitled to damages attributable to the value of any unvested shares.

3. Dr. Chen proved that his signatures on his employment contract and on the Founder's Restricted Share Purchase Agreement were procured by economic duress that was created and imposed by Dr. Wu.

Dr. Chen is entitled to rescission of both of these agreements.

4. Dr. Chen proved Dr. Wu fraudulently induced him to join Innogrit and to sever his ties with Marvell.

Dr. Chen also proved Dr. Wu tortiously interfered with Dr. Chen's prospective economic advantage with Marvell.

Dr. Chen failed to prove he suffered any net economic harm as a result of either (or both) of these two instances of tortious conduct.

Dr. Chen did prove, however, that this tortious conduct by Dr. Wu caused Dr. Chen to suffer emotional distress damages.

The Arbitrator hereby awards Dr. Chen $500,000 in emotional distress damages under these tort claims.

5. Dr. Chen proved Dr. Wu's wrongful tortious conduct warrants imposition of punitive damages.

Exercising his equitable discretion, the Arbitrator hereby awards punitive damages

against Dr. Wu and in favor of Dr. Chen in the amount of $650,000.

6. Dr. Chen proved Dr. Wu owed him a fiduciary duty as a minority shareholder in Innogrit, but Dr. Chen failed to prove that Dr. Wu breached that duty. Dr. Chen is entitled to no damages under this claim.

7. Dr. Chen proved he was fired, but failed to prove that retaliatory animus was a substantial factor in causing this adverse employment action. Dr. Chen is entitled to no damages under this claim.

8. Dr. Chen failed to establish that he is entitled to any damages or equitable relief under an unjust enrichment claim.

Order Re Additional Proceedings

If Dr. Chen believes he is entitled to any additional relief, e.g., in the form of interest, attorneys fees, or arbitration costs, he must file a petition praying for (and justifying) any such additional relief by no later than April 7, 2021.

If Dr. Chen files a petition for additional relief, Respondents must file their Opposition by April 21, 2021.

Dr. Chen must file the Reply in support of his petition by no later than April 28, 2021.

The Arbitrator will deem issues raised in any such post-Award proceedings submitted on the papers unless either Claimant or Respondents request oral argument, or the Arbitrator concludes that oral argument would be helpful.

IT IS SO ADJUDGED, AWARDED and ORDERED.

Date: March 18, 2021

Wayne D. Brazil

Hon. Wayne D. Brazil (Ret.)
Arbitrator

PROOF OF SERVICE BY EMAIL & U.S. MAIL

Re: Chen, Yuhui vs. Innogrit Corporation, et al.
Reference No. 1110024169

I, Aimee Hwang, not a party to the within action, hereby declare that on March 18, 2021, I served the attached FINDINGS OF FACT, CONCLUSIONS OF LAW, AND INTERIM AWARD on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at San Francisco, CALIFORNIA, addressed as follows:

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I declare under penalty of perjury the foregoing to be true and correct. Executed at San Francisco, CALIFORNIA on March 18, 2021.

Aimee Hwang

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