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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

15 ORACLE CORPORATION, a Delaware
16 Corporation,

17 Plaintiff,

18 v.

19 WARRANTY CORPORATION OF AMERICA, a
20 Georgia Corporation,

21 Defendant.

Case No.: C 03-3146 PJH

22 **PLAINTIFF ORACLE CORPORATION'S REPLY MEMORANDUM OF POINTS AND**
23 **AUTHORITIES IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

24 DATE: January 26, 2005
25 TIME: 9:00 a.m.
26 COURTROOM 3

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1 **I. INTRODUCTION**

2 Defendant Warranty Corporation of America argues that Plaintiff Oracle Corporation is
3 not entitled to summary judgment because an Oracle salesman supposedly promised before execution
4 that the parties’ integrated written contract contained a financing contingency. As Oracle demonstrated
5 in its opening brief, this litigation-inspired story is belied by what WaCA did, said, and didn’t say before
6 it had a motive to fabricate. Seventy years ago the California Supreme Court, faced with similar tactics
7 and suspicious circumstances, held that “[f]or reasons founded in wisdom and to prevent frauds and
8 perjuries, the rules of the common law exclude such oral testimony of the alleged agreement; and as it
9 cannot be proved by legal evidence, the agreement itself in legal contemplation cannot be regarded as
10 existing in fact.” Bank of America v. Pendergrass, 4 Cal.2d 258, 263-64 (1935). Pendergrass, and the
11 policy choice it reflects, govern this case.

12 WaCA attempts to justify a different result by characterizing the Oracle salesman’s
13 alleged statement as a false representation of “fact” rather than a “false promise.” According to WaCA,
14 the parol evidence rule applies only to *false promises* that contradict the language of the parties’
15 agreement, not to representations of fact that do the same. But Pendergrass and later cases that have
16 applied its holding turn on legal analysis, not labels. Under California law, an integrated contract cannot
17 be avoided based on claims of pre-execution fraud consisting of nothing more than alleged statements
18 contradicting the contract’s unambiguous written terms. It makes no difference whether those alleged
19 statements are called false promises or representations of fact concerning the content of the contract.

20 Oracle’s motion for summary judgment should be granted because the parol evidence
21 rule requires exclusion of the “evidence” on which WaCA relies. The remaining, legally admissible
22 evidence presents no genuine issue of material fact.

23 **II. REPLY FACTUAL STATEMENT**

24 WaCA’s opposition concedes, either expressly or impliedly, all but one of the bases for
25 Oracle’s motion:

26 1. The Licensing Agreement is integrated: Although WaCA criticizes Oracle for
27 supposedly overemphasizing the significance of the integration clause as grounds to find that the
28 Licensing Agreement is integrated, it offers neither evidence nor legal authority that could support a

1 contrary conclusion.

2 2. The Licensing Agreement is not ambiguous: WaCA does not claim that the
3 Licensing Agreement’s payment terms are ambiguous. Nor does it dispute that those terms are
4 unconditional, noncancellable, and require payment 30 days after invoice date.

5 3. WaCA did not request a financing condition: WaCA cannot dispute that, despite
6 having had weeks to comment on the Licensing Agreement, it never asked that the contract be revised to
7 include a financing contingency.

8 4. Oracle is entitled to recover under the Licensing Agreement: WaCA does not
9 challenge Oracle’s right to recover based on the terms of the Licensing Agreement as written.

10 5. The parol evidence contradicts the Licensing Agreement: WaCA does not dispute
11 that its parol evidence directly contradicts the terms of the written integration.

12 6. Oracle’s damage calculation is correct: WaCA raises no objection to the measure of
13 damages Oracle set forth in its opening memorandum and supporting evidence.

14 7. WaCA waited 18 months to claim that Oracle orally promised a financing
15 contingency : WaCA makes no effort to refute Oracle’s evidence that WaCA said nothing about any
16 oral promise of a financing condition until more than 18 months after it signed the Licensing Agreement
17 and almost a full year after this litigation commenced, nor does it provide any reasonable explanation for
18 its failure to raise that claim on any of the numerous occasions when it had opportunities to provide a
19 reason for its nonpayment.

20 Given these undisputed facts, Oracle’s motion for summary judgment presents one
21 narrow issue: whether Glen Hammer’s story about a last-second promise of a financing contingency is
22 admissible, and whether, even if admitted, it would supply grounds to defeat Oracle’s motion. The
23 answer to both questions is “no.”

24 **III. ARGUMENT**

25 **A. Hammer’s Story Falls Under Pendergrass**

26 WaCA does not cite, much less discuss, a key California Supreme Court case that
27 supports Oracle’s motion. In Bank of America v. Pendergrass, 4 Cal.2d 258 (1935), the plaintiff sued to
28 collect on a promissory note. The defendant asserted a defense of fraudulent inducement, based on an

1 alleged representation by the bank that it would not foreclose on the note until for a period of one year,
2 which alleged promise was in direct contravention of the written note’s unconditional promise to pay on
3 demand. The Supreme Court held that defendant could not introduce evidence concerning the alleged
4 representation:

5 Our conception of the rule which permits parol evidence of fraud to
6 establish the invalidity of the instrument is that it must tend to establish
7 some independent fact or representation, some fraud in the procurement of
the instrument, or some breach of confidence concerning its use, and not a
promise directly at variance with the promise of the writing.

8 4 Cal.2d at 263. As noted in this brief’s Introduction, the Supreme Court based its Pendergrass holding
9 on a policy judgment favoring the enforcement of written agreements over potentially perjurious
10 testimony of contradictory pre-execution representations. Further, the Supreme Court noted that its rule
11 made practical sense because the party seeking to contradict the contract easily could have prevented
12 any dispute simply by demanding that the contract set forth any such representation:

13 [F]raud may not be established by parol evidence to contradict the terms
14 of the writing ‘when the statements relate to rights depending upon
15 contracts yet to be made, to which the person complaining is a party, *as*
16 *under such circumstances he has it in his power to guard in advance*
17 *against any and all consequences of a subsequent change of conduct by*
the person with whom he is dealing, and to admit evidence of extrinsic
agreements would be to open the door to all evils that the parol evidence
rule was designed to prevent.’

18 Id. at 264 (emphasis added) (quoting Lindemann v. Goryell, 59 Cal. App. 788, 212 P. 47, 48 (1922)).

19 Although Pendergrass referred to the bank’s representation as a “promise,” nothing in the
20 opinion limits its application depending on whether the representation is labeled as a false promise, or a
21 false statement about the agreement’s content. Nor can a valid distinction be made on that basis, since a
22 “false promise” always includes a false statement of fact—i.e., that the person making the promise
23 intends to keep it. Conversely, any representation about the terms of a contract is at the same time a
24 promise by the speaker that he will act in accordance with such representation. Accordingly, both
25 California and Federal courts have applied the Pendergrass rule in circumstances indistinguishable from
26 those presented here.

27 For example, in Bank of America v. Lamb Finance Co., 179 Cal.App.2d 498 (1960), the
28 defendant made precisely the argument WaCA advances: she contended that the bank misrepresented

1 the terms of the document that she signed, telling her that it was only a corporate note when, in fact, it
2 also unambiguously provided that she was personally guaranteeing the corporate obligation. The Court
3 of Appeal held that such evidence was properly stricken as incompetent because “far from constituting
4 some additional act not covered by the terms of the guarantee, [it] covers the very matter of the main
5 agreement.” Id. at 503.

6 In its effort to avoid the holding in Lamb Finance, WaCA advances conflicting
7 arguments. On one hand, WaCA argues that Lamb Finance involved a “false promise” and therefore
8 does not apply to WaCA’s claim that an Oracle salesman misrepresented the contract terms. On the
9 other hand, WaCA concedes that the defendant in Lamb Finance, like WaCA, alleged an “actual
10 mischaracterization of the terms of the subject written guaranty,” but urges that the case was wrongly
11 decided. Opposition Brief at 13. WaCA’s confusion betrays its inability to distinguish Lamb Finance
12 from this case: in both, the defendant was attempting to supersede unambiguous written contract terms
13 by alleging that the plaintiff had misrepresented those terms. Lamb Finance properly applied the
14 Pendergrass rule that a fraudulent inducement claim cannot be based on a representation that varies or
15 contradicts unambiguous contract terms. Its holding is dispositive here as well.

16 WaCA again substitutes labels for analysis when it describes Brinderson-Newberg Joint
17 Venture v. Pacific Erectors, Inc., 971 F.2d 272 (9th Cir. 1992), cert. denied, 507 U.S. 914 (1993) as a
18 “false promise” case and asserts that, as such, it has no application to WaCA’s claims. WaCA ignores
19 the Ninth Circuit’s description of the parol evidence the defendant offered in that case:

20 Brinderson assured Pacific that the language only required picks and sets
21 for the FGS components and that article 1(a) limited the scope of work to
jobs that Pacific customarily performed.

22 971 F.2d at 275. Thus, the defendant in Brinderson-Newberg charged that plaintiff misrepresented the
23 contract terms—the same claim now made by WaCA. The Ninth Circuit held that such evidence was
24 incompetent under Pendergrass:

25 [T]he purposes of the rule will be undermined unless there is some limit to
26 the fraud/misrepresentation exception. Thus, California holds parties
responsible for signing integrated contracts and will allow parol evidence
27 of fraud only to the extent it does not contradict the integrated contract.

28 * * * *

1 Pacific should have insisted that Brinderson's promises and
2 representations were put into the contract before it was signed. An
3 integrated contract is given legal significance under California law, and
4 Pacific cannot introduce parol evidence of fraud if the evidence
5 contradicts the integrated contract. Pendergrass, 48 P.2d at 661.

6 Id. at 281.

7 The same policy concerns underlie Pendergrass and the cases applying its holding. As
8 the Court of Appeals pointedly observed in Banco Do Brasil, S. A. v. Latian, Inc., 234 Cal. App. 3d 973,
9 1011 (1991), cert. denied, 504 U.S. 986 (1992):

10 We do not share the concern expressed in some circles that parties to a
11 contract in California are not capable of drafting a written instrument
12 which will fully and completely define a particular legal relationship. As
13 we view it, it is the essence of the judicial function to contribute to legal
14 certainty and reasonable predictability in the affairs of our citizens rather
15 than to suggest that such goals are not attainable. Parties to a business or
16 commercial transaction, such as those in this case, should be able to
17 clearly express their intent as to the nature and scope of their legal
18 relationship and then be able to rely on that expression. If, as in this case,
19 they agree that their entire understanding is completely set forth in a
20 particular writing then they are both entitled and required to live with the
21 agreed terms. The courts simply cannot permit clear and unambiguous
22 integrated agreements, such as the one before us, to be rendered
23 meaningless by the oral revisionist claims of a party who, at the end of the
24 game, does not care for the result.

25 The California Supreme Court recently confirmed that the policy judgment made in Pendergrass remains
26 valid today. Casa Herrera, Inc. v. Beydoun, 32 Cal.4th 336, 346-47 (2004) (“the parol evidence rule
27 effectively immunizes appellant from liability for prior or contemporaneous statements at variance with
28 the written sales contract.”) (holding that termination of an action based on the parol evidence rule
constitutes a favorable termination for malicious prosecution purposes).

WaCA obviously does not like the end result of the agreement it negotiated and executed.
But the record is compelling that WaCA’s arguments are nothing more than “oral revisionist claims”
barred by the parol evidence rule (as construed in Pendergrass). Glen Hammer reviewed and
commented on the contract himself. Deposition of Glen Hammer (“Hammer Depo.”) 153-54 (Exhibit
12); see also Exhibit 13 (e-mail from Glen Hammer dated November 27, 2002).¹ WaCA had its lawyer

¹ Unless otherwise indicated, all evidentiary citations in this reply brief refer to the evidence that Oracle submitted with its moving papers.

1 review the contract terms and negotiate revisions. O’Dowd Decl. ¶¶6, 7; Deposition of Todd Campbell
2 (“Campbell Depo.”) 25:4 to 26:10 (Exhibit 18). None of the revisions requested by WaCA involved a
3 financing contingency. O’Dowd Decl. ¶7. The notion that Hammer—a sophisticated, experienced
4 businessman—would, without reading the contract, rely upon a salesman’s off-hand comment that the
5 contract included a financing contingency is sheer nonsense, *especially when nobody from WaCA had*
6 *ever requested such a provision and the parties had never discussed it.*² To permit WaCA to evade the
7 clear and unambiguous terms of its bargain on this record would eviscerate the parol evidence rule. The
8 law is not so foolish: properly applied, the parol evidence rule bars WaCA’s attempt to contradict the
9 terms of the integrated contract.

10 **B. Greene Does Not Justify a Different Result**

11 WaCA relies heavily on Pacific State Bank v. Greene, 110 Cal.App.4th 375 (3rd Dist.
12 2003). Indeed, WaCA’s story about the Hammer-O’Dowd pre-signing conversation, which first arose
13 well after Greene was decided, appears crafted to fit within the parameters of that opinion. But Greene
14 stands alone and apart from the mainstream in its application of the parol evidence rule, is flawed
15 analytically, and in any event, does not constitute precedent on which this Court may rely.³

16 Oracle has been unable to find any other case that would permit a party to escape liability
17 under an integrated, unambiguous contract by using alleged pre-execution representations to contradict
18 the contract’s terms. As Greene itself acknowledges, its result is inconsistent with Lamb Finance. Nor
19 can Greene be reconciled with the Ninth Circuit’s analysis in Brinderson-Newberg. In fact, Greene
20 cannot be squared with any case applying California’s parol evidence rule, because it relies on an
21 illogical and illusory distinction between “false promises” about contract terms and “representations of
22
23

24 ² Although WaCA claims in its opposition brief that Hammer asked for a financing contingency, that
25 claim is not supported by the cited evidence. Hammer was extraordinarily evasive when Oracle
26 examined him on this point, and a fair reading of the testimony is that Hammer ultimately conceded that
27 he could not remember requesting a financing contingency. See WaCA Exhibit A, Hammer Depo. at
28 155-57.

³ The California Supreme Court has noted, but not endorsed, the Greene holding. Casa Herrera, 32
Cal.4th at 346 n. 6.

1 fact” concerning the content of a contract.⁴

2 As noted earlier, every “false promise” includes a representation of fact: i.e., the
3 promisor represents that it intends to perform the promise. Similarly, any representation concerning the
4 contract’s contents could equally be characterized as a false promise that the party making the
5 representation will apply the contract in a manner consistent with the representation. No valid
6 distinction can be drawn based on how the pre-execution statements are characterized.⁵ Whatever label
7 is applied, the policy implications cited by Pendergrass and subsequent cases are the same: to permit
8 such evidence to undermine negotiated, integrated, unambiguous contract terms would create
9 uncertainty, invite perjury, and swallow up the parol evidence rule.

10 The Greene court’s assertion that alleged representations concerning contract terms do
11 not present the same policy issues as do “false promises” cannot withstand scrutiny. It is just as easy to
12 base a fraudulent inducement claim on alleged representations about key contract terms as on alleged
13 false promises. Moreover, the same issues are presented in each case. Such evidence—even if wholly
14 inconsistent with every document, statement, and action before and after contract execution—would
15 then be used to create a factual dispute, precluding summary judgment and requiring a jury
16 determination. The ease with which such claims can be made would leave little, if any, place for
17 application of the parol evidence rule. In addition, the risk of misleading the trier of fact—a core
18 concern of the parol evidence rule—would soar.

19 The inability to square Greene with Pendergrass and the body of parol evidence case law
20

21 ⁴ Indeed, Greene’s use of this distinction conflicts with West v. Henderson, 227 Cal.App.3d 1578
22 (1991), a ruling from the same district of the Court of Appeal decided just twelve years earlier. West
23 held that the parol evidence rule barred a fraudulent inducement claim based upon alleged
24 misrepresentations “of fact” as to the length of a lease term, and as to defendant’s status under the lease
as guarantor rather than principal. In Greene, three judges who were not on the West panel
recharacterized its holding as involving only false promises. That the same appellate court cannot agree
on the proper label demonstrates that the distinction lacks any legitimate basis.

25 ⁵ This case presents a perfect example of the absurdity of any such distinction. Hammer’s story would
26 be construed as involving both a “false promise” (i.e., “we’ll rip it up”) and a false representation as to
27 the content of the contract (i.e., “Does it say it in the contract? Absolutely.”). Under WaCA’s
28 argument, the first statement would be excluded but the second would be admitted. A far more
reasonable interpretation would treat the second statement as simply confirming the first. As a result,
both statements are part of the same false promise, and WaCA would then have to concede that the parol
evidence rule applies and requires the exclusion of both.

1 is decisive. Federal courts "are bound by the pronouncements of the state's highest court on applicable
2 state law." Ticknor v. Choice Hotels Int'l, Inc., 265 F.3d 931, 939 (9th Cir.2001). In this case,
3 Pendergrass, a decision of the California Supreme Court, provides "the necessary guidance to resolve
4 this issue." Appling v. State Farm Insurance, 340 F.3d 769, 778 (2003), cert. denied, 125 S.Ct. 90
5 (2004). Under Pendergrass, WaCA's parol evidence must be excluded, and on the evidence properly in
6 the record, Oracle is entitled to judgment.

7 **C. WaCA's Claimed Reliance Would Be Unreasonable as a Matter of Law**

8 Even if Greene were accepted as a correct statement of the parol evidence rule, WaCA
9 could not satisfy its requirements. Greene emphasized that a party would have considerable difficulty
10 defending a contract claim based on an allegation that the contract's terms were misrepresented. The
11 party relying on the fraud exception to the parol evidence rule has the burden of proving the
12 reasonableness of its reliance on an alleged fraudulent statement. 110 Cal.App.4th at 393. Noting the
13 general rule that a party is expected to read a contract before signing, Greene observed that "a 'party's
14 *unreasonable* reliance on the other's misrepresentations, resulting in a failure to read a written
15 agreement before signing it, is an insufficient basis, under the doctrine of fraud in the execution' . . . for
16 permitting that party to void the agreement." 110 Cal.App.4th at 393 (quoting Rosenthal v. Great
17 Western Fin. Securities Corp., 14 Cal.4th 394, 423 (1996) (emphasis in original).

18 A party's obligation to familiarize himself with the content of a contract is well-
19 established under California law. For example, in Rowland v. PaineWebber Incorporated, 4 Cal.App.4th
20 279, 286 (1992), the court held that

21 Reliance on an alleged misrepresentation is not reasonable when plaintiff
22 could have ascertained the truth through the exercise of reasonable
23 diligence. Reasonable diligence requires the reading of a contract before
24 signing it.

24 Where, as here, the parties intended the written contract to be the final and complete record of their
25 agreement, their obligation to read it is even stronger. Indeed, the Supreme Court's decision in
26 Pendergrass gave significant weight to the common sense consideration that the defendant could have
27 avoided any dispute simply by making sure the alleged representations contradicting the contract terms
28 were in the contract when he signed. Pendergrass, 4 Cal.2d at 264 (" 'when the statements relate to

1 rights depending upon contracts yet to be made, to which the person complaining is a party . . . he has it
2 in his power to guard in advance against any and all consequences of a subsequent change of conduct by
3 the person with whom he is dealing”).

4 WaCA’s story, even if accepted at face value, constitutes unreasonable reliance as a
5 matter of law. This case is nothing like Greene, where the contract was internally inconsistent, the
6 defendant was relatively unsophisticated, the broad scope of the guaranty was located in fine print
7 definitions, and the bank’s representation that the guaranty was limited to the purchase loan for
8 defendant’s trailer was consistent with ordinary business expectations. Rather, the Licensing Agreement
9 was negotiated between experienced businesses, and it was reviewed by both WaCA’s executives and its
10 attorneys. It is undisputed that WaCA never asked that a financing contingency be written into the
11 contract. In addition, WaCA knew that Frank O’Dowd did not have authority to agree to any change in
12 the standard contract language, which would require approval from his superiors as well as the Oracle
13 lawyer working on the deal. The License Agreement also plainly stated the “Payment Terms” as “net 30
14 days” and that the purchase was noncancellable and nonrefundable. In sum, even if Frank O’Dowd had
15 made the statements alleged—which he denies and which statements are inconsistent with the remainder
16 of the record—any claim that Hammer relied on that statement is unreasonable on its face.⁶

17 WaCA has offered no evidence to show that Hammer acted reasonably in relying on
18 O’Dowd’s alleged statement about the contents of the License Agreement and therefore has not met its
19 burden, even if this Court were to apply Greene’s holding.

20 **D. WaCA’s Rescission Claim Fails as a Matter of Law**

21 WaCA argues that a triable fact exists as to its rescission claim because parol evidence is
22 always admissible when offered to prove fraud in the inducement of a contract. WaCA is wrong.

23 Continental Airlines, Inc. v. McDonnell Douglas Corporation, 216 Cal.App.3d 388, 420 (1989)

24
25 ⁶ WaCA argues disingenuously—and inaccurately—that “not a single shred of evidence” contradicts
26 Hammer’s story. To the contrary. As Oracle has pointed out, if Hammer were telling the truth, WaCA
27 would have informed Oracle of the promise to “rip up the contract” as soon as Oracle began demanding
28 payment, and certainly no later than when Jim Vienneau of Oracle met with Doug Merriman of WaCA
and told him that WaCA’s payment obligation could not be cancelled. The very absence of any
corroborating documents or other evidence is itself a contradiction of Hammer’s claims.

1 (rejecting “incorrect pronouncement that ‘parol evidence is always admissible to prove fraud’”).
2 Specifically, when the alleged fraudulent representations contradict the unambiguous contract terms, the
3 parol evidence rule precludes rescission. West v. Henderson, 227 Cal.App.3d 1578, 1581 (1991) (“The
4 parol evidence rule prevents her rescission of the lease because Henderson's alleged fraudulent
5 misrepresentations are contradicted in the subsequent written lease.”).

6 The cases on which WaCA relies are wholly inapposite. For example, California Trust
7 Company v. Cohn, 214 Cal. 619 (1932) predates Pendergrass by three years. Moreover, Cohn did not
8 involve an integration, nor did the alleged fraudulent statements contradict or vary the terms of the
9 parties’ contract. Accordingly, the parties did not even raise the parol evidence rule as an issue in the
10 case. In Fleury v. Ramacciotti, 8 Cal.2d 660 (1937), the contract was not integrated, and the extrinsic
11 evidence of fraud did not contradict any contractual term. In those circumstances, the parol evidence
12 rule has no applicability, as Fleury correctly held. But Fleury provides no guidance where, as here,
13 defendant is alleging a fraud that is contrary to the terms of an integrated, unambiguous contract.
14 Plaintiff’s other cases regarding rescission all involve circumstances that render them inapplicable. Kent
15 v. Clark, 20 Cal.2d 779 (1942) (issue limited to defenses available in ejectment action; parol evidence
16 rule not discussed and the alleged fraud did not vary the terms of the written contract); Shearer v.
17 Cooper, 21 Cal.2d 695 (1943) (parol evidence rule not at issue; alleged fraud was not related to terms of
18 contract); Van Meter v. Bent Construction Company, 46 Cal.2d 588 (1956) (no parol evidence issue);
19 French v. Construction Laborers Pension Trust For Southern California, 44 Cal.App.3d 479 (1975) (case
20 did not involve the parol evidence rule or any representation contradicting terms of integrated contract);
21 Styne v. Stevens, 26 Cal.4th 42 (2001) (parties allegedly entered into oral contract, not an integrated
22 written contract, and the issue presented was whether plaintiff was a properly licensed talent agent).

23 Whether based on fraud or mistake, WaCA’s rescission claim is barred by the parol
24 evidence rule.

25 **E. WaCA Cannot Assert Estoppel or Waiver as a Defense**

26 WaCA’s opposition clarifies that its estoppel and waiver defenses are based solely on its
27 “rip up the contract” story. But the parol evidence rule also precludes these defenses where, as here,
28 they are based entirely on evidence that contradicts unambiguous contract terms. Casa Herrera, Inc. v.

1 Beydoun, 32 Cal.4th 336, 346 (2004) (substantive nature of parol evidence rule means that courts cannot
2 “subjugate [the] rule to the principles of objection and waiver’ . . . Likewise, the doctrine of estoppel
3 . . . has no force against the parol evidence rule.”).⁷

4 **F. WaCA’s Mistake Defense Does Not Raise a Triable Issue**

5 WaCA’s mistake defense suffers from several flaws, none of which were cured by the
6 material it submitted in opposition to Oracle’s motion.

7 First, the evidence on which it relies to prove mistake is incompetent because it violates
8 the parol evidence rule.

9 Second, even if the parol evidence were admissible, it would not satisfy the elements
10 necessary to establish mistake. Thus, as Oracle noted in its opening brief, the supposed mistake does not
11 relate to the parties’ bargained-for exchange, and a mistake as to WaCA’s ability to pay is not sufficient
12 to support a defense. Restatement (Second) of Contracts §152, comment b (“mistakes as to . . . financial
13 ability do not justify avoidance.”). Moreover, WaCA has not provided any evidence that a mistake
14 caused a severe imbalance in the value of the performances to be exchanged under the contract. Id.,
15 comment c (“It is not enough for [a party] to prove that he would not have made the contract had it not
16 been for the mistake. He must show that the resulting imbalance in the agreed exchange is so severe that
17 he can not fairly be required to carry it out.”).

18 Third, the claim of mistake is preposterous: *WaCA got exactly the contract terms that its*
19 *lawyer and its management negotiated with Oracle.* WaCA’s opposition nowhere challenges this fact,
20 which exposes WaCA’s defense for what it is—an attempt to obtain the benefit of contract terms that it
21 never requested and to which Oracle never agreed.

22 **IV. CONCLUSION**

23 WaCA’s long-winded recitation of two competing versions of the meeting between
24 Hammer and Oracle’s Frank O’Dowd is a misguided attempt to manufacture the appearance of a
25 conflict that would justify denying Oracle’s motion. But that effort is wasted.

26
27 ⁷ WaCA’s estoppel defense, like its rescission counterclaim, also fails because WaCA cannot establish
28 reasonable reliance.

