

SUPERIOR COURT OF CALIFORNIA  
SANTA CLARA COUNTY

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County of Santa Clara,  
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Case #18CV333075  
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CHRISTOPHER D. ALAFI, ALAFI CAPITAL  
COMPANY, LLC, and THE CHRISTOPHER  
D. ALAFI FAMILY TRUST,

Plaintiffs,

Case No.: 18CV333075

ORDER AFTER TRIAL ON SUBMITTED  
MATTER

v.

STANLEY N. COHEN AND

TZU-HAO CHENG,

Defendants

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Trial came on regularly for hearing January, 19, 2022, in Department 22, the Honorable Beth McGowen presiding. Mintz Levin Cohn Ferris Glovsky and Popeo P.C., by Michael Grandener, Esq., appeared for Plaintiffs. Quinn Emanuel Urquhart & Sullivan LLP, by Robert P. Feldman, Esq., appeared for Defendants. After several weeks of trial, the parties made closing arguments on March 28, 2022, and the matter was deemed submitted by the court. Having weighed the credibility of the witnesses and considered the evidence presented and the arguments of counsel, the court finds as follows:

1. Plaintiffs shall recover against Defendant Cohen the sum of twenty million dollars as a return on Plaintiffs' investment in the company founded by Dr. Cohen, known as Nuredis, Inc., and referred to herein as "Nuredis." The court finds that Dr. Cohen's testimony was not credible regarding his conversations with Plaintiffs prior to the initial investment made on July 26, 2016. Specifically, the court finds that Dr. Cohen was

negligent in his representations to Plaintiffs and that he made material omissions to Plaintiffs in the solicitation of investment capital for Nuredis. At the time of investment, Defendants owned and controlled Nuredis.

2. Plaintiff Chris Alafi was not a passive investor but an active participant in Nuredis. He became President of Nuredis in 2016, in anticipation of Plaintiffs' stock purchase. He held a Board of Directors position through 2018.
3. Dr. Cohen, an academic, lacked experience with the business of drug development in the private sector. All parties sought to achieve a rapid return on investment by developing a treatment for Huntington's disease. Plaintiffs knew that the lead compound identified by Defendants had previously been approved by the FDA for the treatment of skin ailments. Plaintiffs knew the compound had some level of toxicity to patients and that FDA approval for Nuredis was not guaranteed. At trial, Plaintiffs claimed they did not know that this lead compound had been withdrawn from the market by the FDA in 1976, due to potentially deadly side effects, and placed on the FDA's "DO NOT COMPOUND" list, where it remains. It is undisputed that Defendants did know about the history of the compound and shared that information specifically and in written form with others prior to Plaintiffs' investment.
4. Plaintiffs engaged several experts in a due diligence review of the Nuredis opportunity. Some of these experts testified during trial and none had knowledge of the Nuredis compound's prior FDA history. A long-standing friendship between Dr. Cohen and Moshe Alafi may have resulted in Plaintiffs ignoring the advice of certain advisors and moving forward with the investment. At trial, expert testimony supports Plaintiffs' position that had the compound's history been known at the time of Plaintiffs' due diligence, the risk of investment would have been intolerably high and Plaintiffs would not have invested twenty million dollars.

5. Though Dr. Cohen may have shared material facts with Moshe Alafi, Dr. Cohen did not credibly testify that material facts had been shared with Moshe's son, Chris Alafi, prior to investment. Dr. Cohen's testimony at times was inconsistent, confusing, and unreliable. Other former employees of Nuredis testified regarding conflicting opinions between the parties and the qualifications of certain staff members hired by Defendants.
6. In early 2018, Nuredis discontinued efforts to develop its lead compound and by year's end, the company had closed. In April of 2018, Nuredis still retained over thirteen million dollars from the original investment by Plaintiffs. In August of 2018, Plaintiffs filed this lawsuit. At present, no funds remain from Plaintiffs' investment. Nuredis tried unsuccessfully to sell its intellectual property, but it was given, without compensation, to Dr. Cohen's employer, Stanford University.
7. Both parties spent considerable time presenting evidence regarding the relationships between the parties, the scientific background of the research, and the communications prior to the investment in Nuredis by the Plaintiffs. The court is persuaded that Dr. Cohen and Dr. Cheng started Nuredis with good intentions and with viable, peer reviewed research. After the parties lost trust in each other and became disappointed in the growth and development of the company, tempers flared and litigation followed. The court does not find intentional misrepresentation or intent to defraud by Defendants. At least initially, all parties wanted the Nuredis venture to succeed.
8. When Nuredis closed, Dr. Cohen refused to return the remaining investment funds to Plaintiffs. Funds remaining at Nuredis were instead spent on legal fees for other litigation related to these parties.
9. "Under California law, negligent misrepresentation is a species of actual fraud and a form of deceit." (Wong v. Stoler (2015) 237 Cal.App4th 1375, 1388.) "In fraud cases involving the 'purchase, sale or exchange of property,' the Legislature has expressly provided that the 'out-of-pocket'...measure of damages should apply." (Alliance

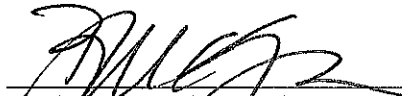
Mortgage Co. v. Rothwell (1995) 10 Cal.4<sup>th</sup> 1226, 1240.) “The ‘out-of-pocket’ measure of damages is directed to restoring the plaintiff to the financial position enjoyed by him prior to the fraudulent transaction, and thus awards the difference in actual value at the time of the transaction between what the plaintiff gave and what he received.” (Ibid.)

10. Plaintiffs shall recover nothing against Defendant Cheng because the court finds Plaintiffs have failed to meet the burden of proof as to this Defendant.
11. Because Plaintiffs have recovered the entirety of their claim under the negligent misrepresentation cause of action, the court declines to comment on the remaining causes of action.

Plaintiffs are ordered to prepare Judgment in accordance with this order.

IT IS SO ORDERED.

Date: June 25, 2022

  
The Honorable Beth McGowen  
Judge of the Superior Court  
State of California  
County of Santa Clara