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8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

9 **IN AND FOR THE COUNTY OF MARICOPA**

10 **LAURA OWENS,**

11 **Plaintiff,**

12 **v.**

13 **GREGORY GILLESPIE,**

14 **Defendant.**

Case No.: CV2021-052893

**RESPONSE TO MOTION FOR
SUMMARY JUDGMENT**

(Assigned to the Hon.
Michael Gordon)

15 Defendant/Counterclaimant Gregory Gillespie (“Gillespie”), by and through
16 undersigned counsel, hereby submits his Response to Plaintiff/Counterdefendant’s Laura
17 Owens’ (“Owens”) Motion for Summary Judgment. This Motion should be denied,
18 because Gillespie can make a showing of damages, which appears to be the only disputed
19 issue in the Motion. This Response is supported by the Gillespie’s Objections and
20 Controverting Statement of Facts (“CSOF”) and Separate Statement of Facts (“SSOF”),
21 the Declaration of Gregory Gillespie, and the following Memorandum of Points and
22 Authorities.

23 **MEMORANDUM OF POINTS AND AUTHORITIES**

24 **I. INTRODUCTION AND SUMMARY OF ARGUMENTS**

25 Owens argues that Gillespie cannot prove his claims for fraud and intentional
26 infliction of emotional distress. In particular, Owens argues that Gillespie cannot prove his
damages as to his fraud claim. Owens further argues that Gillespie cannot maintain an
intentional infliction of emotional distress claim, because he did not show that he suffered

LAW

ZAZUETA

1 severe emotional distress and did not compute his damages.

2 Owens’ arguments are without merit. Given Gillespie’s profession as a commission-
 3 based salesperson, Gillespie’s damages are not reasonably subject to calculation. [SSOF at
 4 ¶¶ 1–2]. For example, Gillespie cannot simply state that he missed work and missed out on
 5 an opportunity to work a set number of hours. [*Id.*]. Instead, Gillespie was denied an
 6 opportunity to engage in sales that would have earned him a commission. [SSOF at ¶¶ 3–
 7 5]. Since such figures are not subject to reasonable calculation, Gillespie can testify with
 8 reasonable certainty based on his experience as a salesperson. [SSOF at ¶ 6].

9 **II. LEGAL ARGUMENT**

10 **a. Standard of Review.**

11 In evaluating a motion for summary judgment, all inferences are to be drawn in
 12 favor of the non-moving party. *See Orme School v. Reeves*, 166 Ariz. 301, 309-10, 802
 13 P.2d 1000 (Ariz. 1990) (quoting *Anderson v. Liberty Lobby*, 477 U.S. 242, 255, 106 S.Ct.
 14 2505, 2513 (1986)). Additionally, summary judgment is only appropriate when the
 15 evidence presented by the nonmoving party is of so little probative value that a reasonable
 16 trier of fact could not find in favor of that party. *Lasley v. Helms*, 179 Ariz. 589, 591, 880
 17 P.2d 135 (App. 1994).

18 In other words, “assuming discovery is complete, the judge should grant summary
 19 judgment if, on the state of the record, he would have to grant a motion for directed verdict
 20 at the trial.” *Orme School*, 166 Ariz. at 309, 802 P.2d at 1008. The evidence is to be viewed
 21 in the light most favorable to the non-moving party. *See Unique Equip. Co., Inc. v. TRW*
 22 *Vehicle Safety Sys., Inc.*, 197 Ariz. 50, 52, 3 P.3d 970, 972 (App.1999). Even where the
 23 facts are undisputed, a genuine dispute as to conflicting inferences to be drawn from them
 24 precludes an award of summary judgment. *See Northern Contracting Co. v. Allis-Chalmers*
 25 *Corp.*, 117 Ariz. 374, 573 P.2d 65 (Ariz. 1977) (citing *Executive Towers v. Leonard*, 7
 26 Ariz. App. 331, 439 P.2d 303 (Ariz. 1968)).

1 **b. Gillespie Can Prove His Claim for Fraud.**

2 Owens is correct that a showing of an injury is required to establish a claim for
3 fraud. *See Fridenmaker v. Valley Nat. Bank of Arizona*, 23 Ariz. App. 565, 569, 534 P.2d
4 1064, 1068 (App. 1975). Notably, a victim of fraud is entitled to various damages,
5 including consequential damages. *Ulan v. Richtars*, 8 Ariz. App. 351, 359, 446 P.2d 255,
6 263 (App. 1968). As noted in Gillespie’s Second Supplemental Disclosure Statement,
7 Gillespie is expected to testify that he suffered from emotional distress as a result of
8 Owens’ fraudulent conduct. As a further result of Owens’ fraudulent conduct and
9 Gillespie’s subsequent severe emotional distress, Gillespie suffered injuries in the form of
10 decreased earning capacity. As a salesperson, Gillespie earns income via commissions;
11 therefore, Gillespie’s amount of damages are not necessarily subject to a computation that
12 can be provided through documentary evidence. As an experienced salesperson, Gillespie
13 can testify as to the difference between the monies he could have earned and the monies
14 he actually earned as a result of Owen’s conduct. Through Gillespie’s testimony, and other
15 evidence contained his Second Supplemental Disclosure Statement, Gillespie can establish
16 damages to support his fraud claim.

17 **c. Gillespie Can Prove His Claim for Intentional Infliction of Emotional**
18 **Distress.**

19 Owens is also correct that a claim for intentional infliction of emotional distress
20 requires a showing of severe emotional distress. *Ford v. Revlon, Inc.*, 153 Ariz. 38, 734
21 P.2d 580 (1987). However, as explained above, Gillespie is expected to testify as to his as
22 damages in the form of lost commission earnings. While Gillespie has not specifically
23 disclosed symptoms of his severe emotional distress, he can testify to his severe emotional
24 distress and how it impacted his career and his earnings. Accordingly, the Motion for
25 Summary Judgment is improper.

