

**O'Connor v Society Pass Inc.**

2026 NY Slip Op 30437(U)

February 5, 2026

Supreme Court, New York County

Docket Number: Index No. 656938/2019

Judge: Joel M. Cohen

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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. JOEL M. COHEN** **PART 03M**

*Justice*

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THOMAS O'CONNOR, CVO ADVISORS PTE. LTD.

**INDEX NO. 656938/2019**

Plaintiffs,

- v -

**DECISION AFTER NON-JURY TRIAL**

SOCIETY PASS INCORPORATED,

Defendant.

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This commercial dispute arises from a series of agreements and business relationships between Plaintiffs Thomas O'Connor ("O'Connor") and CVO Advisors Pte. Ltd. ("CVO") (together, "Plaintiffs") and Defendant Society Pass Incorporated ("SPI"), a Nevada corporation engaged in the development of digital commerce platforms in Southeast Asia. Plaintiffs allege that SPI breached multiple agreements and wrongfully withheld salary and equity compensation. In response, SPI denies liability and asserts a faithless servant defense against O'Connor as well as counterclaims for breach of O'Connor's employment agreement, tortious interference with prospective business relations, breach of fiduciary duty, fraudulent inducement, and unjust enrichment.

On May 18, 2023, the Court granted in part O'Connor's motion for partial summary judgment on his claim for breach of a Common Stock Purchase Warrant (the "Warrant"), holding as a matter of law that O'Connor had validly exercised his right to purchase 1,148

**DECISION AFTER NON-JURY TRIAL**

shares<sup>1</sup> of SPI common stock under the terms of the Warrant (NYSCEF 198 at 1). In doing so, the Court rejected SPI's contention that O'Connor was not entitled to those shares because his Employment Agreement purportedly conditioned their vesting on his continued employment and meeting key performance indicators ("KPIs"). The Court directed the appointment of a Special Referee to determine the value of those shares (NYSCEF 241).

On October 17, 2024, the First Department affirmed the Court's summary judgment decision, holding that the Warrant constituted a "stand-alone agreement unmoored from plaintiff's employment covenants under the Employment Agreement ...." (*O'Connor v Society Pass Inc.*, 233 AD3d 139, 147-8 [1st Dept 2024]). The First Department further stated:

The Warrant is a writing signed by both parties that specifically changed the terms under which SPI granted equity to plaintiff. Nguyen signed the Warrant, and initialed each page, except the pages that he had signed. Plaintiff also initialed every page. Nguyen and plaintiff both signed the January 31, 2019 notice of exercise appended to the Warrant. Under the clear terms of the Employment Agreement, the Warrant cannot be deemed to have superseded that agreement. Instead, the Warrant can be viewed as a modification of the equity provision set forth in section 3(b) of the Employment Agreement, which notably eliminated the KPI requirement and provided a new equity vesting and distribution schedule

(*id.*). The appellate court concluded that although O'Connor was entitled to the 1,148 SPI shares, his entitlement to the remaining shares vesting from June 2019 forward "may be vulnerable to the independent faithless servant defense based on plaintiff's purported insubordination that occurred during that period" (*id.*)

On June 5, 2025, the Special Referee issued a Report and Recommendations finding that O'Connor's 1,148 shares were valued at \$5,763.00 per share, for a total valuation of \$6,615,934, plus interest. The Court confirmed those Recommendations on July 21, 2025 (NYSCEF 604).

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<sup>1</sup> Under the Warrant, half of the shares (861) vested upon signing, and the remainder vested in equal monthly installments over twelve months. The 1,148 shares therefore reflect the initial 861 shares plus the shares that vested over approximately four months.

The action proceeded to trial on the remaining issues, including whether O'Connor is entitled to additional Warrant shares that otherwise would have vested from June 2019 forward, and whether he is entitled to recover damages for unpaid wages and unreimbursed expenses.

Based on the evidence presented at trial (NYSCEF 607-8)—including testimony from O'Connor; former SPI CEO Dennis Nguyen; current SPI CEO Raynauld Liang; and Lester Chan, the former CEO of SPI investor Fund Singapore Pte. Ltd. ("Fund Singapore")—and a review of the documentary evidence and post-trial submissions, the Court finds that:

- (i) O'Connor's effective abandonment of his principal responsibilities as an SPI executive beginning in June 2019 breached the Employment Agreement (justifying withholding of salary and severance but not equity grants under the Warrant) and his conduct beginning in August 2019 gave rise to an "independent faithless servant defense" (233 AD3d at 148) that precludes O'Connor from recovering equity grants vesting under the Warrant from August 2019 forward;
- (ii) Although O'Connor's unauthorized and potentially disastrous meeting with SPI's prospective lead investor (Fund Singapore) in August 2019 breached his employment agreement and triggered a faithless servant defense, SPI did not prove that his conduct was the proximate cause of that investor's ultimate decision to reduce its investment in SPI. More broadly, SPI failed to prove monetary damage flowing from O'Connor's various breaches of contract or purported tortious interference.
- (iii) CVO failed to establish its claim for breach of the Subscription Agreement. The evidence showed that the SPI shares to which CVO was entitled under that agreement were tendered to CVO. Moreover, SPI proved at trial by clear and

convincing evidence that the Subscription Agreement and Software Development Agreement are subject to rescission (and the tendered shares being returned to SPI) because SPI was fraudulently induced to sign those agreements by O'Connor's misrepresentation that he owned CVO at the time of the agreement (which he did not). SPI failed to prove that this misrepresentation also fraudulently induced it to enter into the Employment Agreement and Warrant.

In the end, in connection with his relatively brief tenure at SPI O'Connor will receive, in addition to salary paid through May 2019, the substantial value of his equity grants under the Warrant (approximately \$6,615,934 from the Court's prior summary judgment decision plus an additional \$824,109.00 based on shares that vested through July 2019, plus prejudgment interest). Although given the factual findings set forth below that may seem a harsh result for SPI, as the First Department aptly noted in affirming SPI's independent contractual obligations under the Warrant, "a deal is a deal" (233 AD3d at 140).

All remaining claims and counterclaims are dismissed. The Court's findings of fact and conclusions of law are set forth below.

## FINDINGS OF FACT

### I. Employment Agreement and O'Connor's Performance

1. SPI and O'Connor executed an Employment Agreement dated November 21, 2018, pursuant to which O'Connor was to serve as SPI's Chief Marketing Officer (NYSCEF 623 [JX-5]). The Employment Agreement set O'Connor's initial salary at \$10,000 per month, which would increase to \$20,000 per month upon SPI's

- completion of a Series C financing (*id.*, §3[a]). The agreement further required SPI to provide a 30-day notice of termination with or without cause (*id.*, §2).
2. The Employment Agreement also contained a Non-Disparagement provision, which provided in relevant part that during O'Connor's employment and at any time thereafter, he would not, directly or indirectly, engage in conduct or make statements—whether in commercial or noncommercial speech—that disparaged or criticized SPI or any of its officers, directors, employees, customers, agents, or products or services (*id.*, §5[d]). The Employment Agreement also prohibited O'Connor from soliciting other SPI executives (*id.*, §5[c]).
  3. Under the Employment Agreement, O'Connor was entitled to severance compensation equal to 60 days of salary, bonus, benefits and perquisites, calculated from the date of termination of his employment (*id.* at §6).
  4. On January 31, 2019, O'Connor received a Common Stock Purchase Warrant as part of his compensation package, entitling him to purchase 1,721 shares of SPI stock subject to various terms and conditions (NYSCEF 625 [JX-7 (“Warrant”)] §1). Of those shares, 861 vested immediately, while the 860 shares vested monthly unless O'Connor “voluntarily resign[ed]” (*id.* §1[a] [“In case if Holder voluntarily resigns from his employment with the Company, any amount of unexercised Warrants during this twelve month period, shall become null and void and the Holder will not be allowed to exercise said remaining Warrants”]).
  5. Among O'Connor's primary responsibilities was securing additional investments and clients. Nguyen and Liang testified that O'Connor did not secure any new investors or clients during his employment at SPI (tr 206:33–208:20; 137:1–4).

6. Over time, O'Connor's relationship with Nguyen (with whom he had been a business school classmate years before, tr. 201) deteriorated. Starting in June 2019, O'Connor effectively abandoned his main obligations to SPI for approximately five weeks, during which he took an unauthorized vacation in Japan. The Court did not find O'Connor's testimony that he traveled to Japan principally to secure investments for SPI to be persuasive (tr 38:1–39:1). On June 25, 2019, Nguyen emphasized in a text message to O'Connor that O'Connor was “not focusing on what need[ed] to be done” (JX-15). The Court found credible Nguyen's testimony regarding O'Connor's failure from June 2019 forward to perform the functions set forth in the Employment Agreement.
7. As described in greater detail below, on August 14, 2019, O'Connor met with Lester Chan of Fund Singapore, an investment fund that was considering making a sizable investment in SPI. At that meeting, O'Connor disparaged Nguyen, expressed doubt about SPI's future, and — to Chan's bewilderment — pitched Chan on an investment unrelated to SPI (tr 140:17–141:13; 179:02–179:10; 214:9–24).
8. O'Connor testified that he sent emails to Chan, SPI's Vice Chairman Tan Bien Kiat, and SPI's Chief Financial Officer Ray Liang, promoting an investment opportunity in a separate project unrelated to SPI (tr 23:21-24:14, 26:2-27:8).
9. Based on dissatisfaction with O'Connor's performance, Nguyen withheld O'Connor's salary beginning in June 2019 (partial payment only) and ceased reimbursing his purported expenses (tr 52:4–53:5; 54:25–55:9).

10. On September 12, 2019, SPI terminated O'Connor's employment and purported to cancel the Warrant (NYSCEF 638 [JX-24 (Termination of Employment Agreement)]; tr 30:7–19; 272:9–11).
11. SPI did not provide O'Connor with a 30-day pre-termination notice and did not pay him the contractual 60 days of severance (tr 56:12–24).
12. On September 17, 2019, following his termination, O'Connor sent an email to several SPI investors and members of the management team accusing Nguyen of wrongdoing, including illegal acts against SPI and its investors (NYSCEF 657 [JX-49 (September 2019 Email)]).
13. O'Connor also solicited two SPI employees to join O'Connor at a competing venture (tr 107:5–109:2; 230:21–231:02; 235:04–235:13).

## **II. Subscription Agreement, Software Development Agreement, and Call Agreement**

14. Separate from the Employment Agreement and Warrant, O'Connor signed three agreements (dated November 1, 2018) on behalf of Plaintiff CVO, an entity O'Connor purportedly owned at the time of signing: a Call Agreement with Nguyen, a Subscription Agreement with SPI, and a Software Development Agreement with SPI (NYSCEF 620 [JX-2 (Call Agreement)]; NYSCEF 621 [JX-3 (Software Development Agreement)]; NYSCEF 624 [JX-4 (Subscription Agreement)]; tr 238:2—239:2).
15. Under the Subscription Agreement, CVO was entitled to receive \$8,000,000 in SPI Series A Preferred Stock in exchange for software development services to be provided by CVO pursuant to the Software Development Agreement (JX-4; tr 102:16–103:05).

16. The Software Development Agreement provides, in relevant part: “Client [SPI] and Developer [CVO] have executed Series A Share Subscription Agreement (hereinafter referred to as the "Related Agreement") on the Effective Date simultaneously with the execution of this Agreement, and agree that execution of such Related Agreement are a condition precedent to execution of this Agreement” (JX-3 at 1).
17. In conjunction with the Subscription Agreement and Software Development Agreement, O’Connor and Nguyen entered into the Call Agreement. That agreement permitted Nguyen to purchase all of the shares O’Connor purportedly owned in CVO for \$10 per share (JX-2, §1[a]). At the time of signing, O’Connor represented to Nguyen that he was the sole owner of CVO (tr 246:08–247:13). In fact, O’Connor did not own *any* shares of CVO when he executed the three agreements on behalf of CVO (NYSCEF 656 [JX-48 (Affidavit Supporting Restoration Application)] at 2–3; tr 100:23-101:15). That was a material misrepresentation, given that Nguyen was relying on O’Connor’s ownership of the CVO shares to ensure satisfaction of the call option.
18. The issue of O’Connor’s ownership of CVO surfaced during trial when, on cross-examination, O’Connor was asked about the share transfer date listed in an affidavit he filed in connection with court proceedings in Singapore, where CVO was incorporated:

**Q:** Going to page 3, paragraph 7 of Joint Exhibit 48. It reads: "Sometime later on or around May 2019, I proceeded to purchase the entire shareholding of CVO from Tantarpal. Tantarpal proceeded to transfer his shareholding of 1,000

ordinary shares to me and resigned as the director with immediate effect." You see that; correct?

A: Yes.

Q: Is the May 2019, is that a typo?

A: No.

19. Consistent with that testimony, and as O'Connor had represented to the Singapore court, CVO's shares were at the relevant time owned by an individual named Tantarpal Singh (JX-48). O'Connor did not acquire any ownership interest in CVO until May 2019—approximately six months after the Call Agreement and related CVO agreements were executed (*id.* at 3; tr 99:09–103:08).
20. When asked on cross-examination about the percentage of his ownership interest in CVO in 2018, O'Connor stated: "[W]hatever the amount was that was existing in the arrangements with Tantarpal Singh. So, I believe he was the sole shareholder and director at the time, and so he would have been the 100 percent shareholder and then in May 2019 we effected the transfer to me" (tr 100:11-16). In response to a follow-up question that specifically asked about his ownership interest in CVO at the time he executed the Call Agreement, O'Connor said: "Zero" (tr 101:4-6).
21. Effectively, the Call Agreement permitted Nguyen to buy back the SPI stock that had been conveyed to CVO in the Subscription Agreement at a modest price. The Court finds that the Call Agreement, Subscription Agreement and Software Development Agreement were "connected and interlinked," as Nguyen testified at trial (tr 238:24–239:09). Nguyen also testified credibly that he would not have entered into any of the

- agreements—whether between Nguyen and O’Connor or between O’Connor and SPI—had he known that O’Connor did not own CVO.
22. On December 27, 2018, O’Connor and Nguyen executed a Certificate of Completion of Works, confirming that the software development contemplated by the Subscription Agreement was materially completed by December 23, 2018 and that the services provided by CVO fully complied with the terms of the Software Development Agreement (NYSCEF 624 [JX-6 (Certificate of Completion)]).
23. The record further reflects that CVO received the Preferred Stock, which was subsequently converted to common shares (tr 98:06–98:19; 239:10–11; NYSCEF 656 [JX-48 (General Division of the High Court of the Republic of Singapore, O’Connor’s June 2025 Affidavit)] ¶24; NYSCEF 655 [JX-45 (Certified Shareholder List)] at 72).

### III. Fund Singapore

24. In 2019, SPI pursued an investment from Fund Singapore, which operated as a crowdfunding brokerage platform that identified investment opportunities, solicited equity contributions from institutional and public investors, and invested those funds in selected projects (tr 172:15–173:15).
25. Lester Chan was, at the relevant time, Fund Singapore’s Chief Executive Officer (tr 173:16–18).
26. On May 9, 2019, SPI and Fund Singapore signed an Indicative Equity Term Sheet, which set forth the general contours of Fund Singapore’s proposed investment (NYSCEF 626 [JX-9 (Fund Singapore/SPI Indicative Equity Agreement, May 9, 2019)]). The Term Sheet contemplated an investment of \$10 million to \$15 million,

- contingent on SPI's satisfaction of certain conditions precedent, including obtaining a digital wallet license and securing a strategic partnership with a Tier 1 or Tier 2 merchant such as Mega Market, a major Vietnamese retailer (*id.* at 3).
27. On May 22, 2019, SPI signed a Memorandum of Understanding ("MOU") with Mega Market under which SPI would develop a consumer engagement platform that included, among other things, a digital wallet (NYSCEF 627 [JX-10 (Mega Market/SPI MOU)]). The MOU required SPI to obtain the necessary licenses from the Vietnamese government to operate a digital wallet within 60 days of the signing of the MOU (*id.* at 4). As noted below, SPI did not obtain those necessary licenses.
28. In August 2019, O'Connor traveled to Singapore without seeking authorization from Nguyen to do so (tr 211:24-212:6). O'Connor requested an impromptu meeting with Chan on August 14, 2019 (tr 140:1-13; 178:16-179:1). Upon receiving O'Connor's request, Chan asked SPI's Raynauld Liang whether he knew the purpose of the meeting (he did not) and requested that Liang attend the meeting (*id.*).
29. Based on the credible testimony of Chan and Liang, the Court finds that during this meeting O'Connor asserted that Nguyen was making personal use of company funds, questioned Nguyen's leadership and the qualifications of the rest of the SPI leadership team, and expressed doubts about SPI's viability as an investment (tr 140:17-141:13; 179:02-179:10; 214:9-24). O'Connor also pitched Chan on investment opportunities unrelated to SPI, which under the circumstances was adverse to SPI's commercial interests in maximizing Fund Singapore's investment in SPI (tr 140:17-141:13; 178:8-178:15).

30. Chan testified that O'Connor's statements during the meeting "cast doubts on the company ... in terms of professionalism. It is concerning for us ... when a company is going through a period of fundraising, we expect the C suite management to be collective as one. But when we see cracks in the system where C suite management is talking to us as the lead investor for such a project and having disputes with the CEO and talking negatively about the CEO, from an investment viewpoint, we do have grave concerns about the company['s] ability to steer forward" (tr. at 177–78).
31. Chan also expressed concern about O'Connor having pitched an alternative investment during the meeting: "[I]n the position of leading investment and senior management of the fundraising come to us, they should only be talking about their project. But when the CMO [O'Connor] start introducing other projects to us, then that set us thinking a lot about whether is the Society Pass really the best project or is really even a good project to invest in" (*id.* at 178).
32. Liang was alarmed by O'Connor's comments and called Nguyen after the meeting to inform him about them (*id.*). Nguyen confirmed at trial that he received this call from Liang (tr 214:9–25).
33. Although O'Connor's comments undermined Chan's confidence in SPI, in the end the evidence showed that those comments did not proximately cause Fund Singapore's decision to reduce its proposed investment in SPI to approximately \$1 million. Rather, that decision was driven by SPI's failure to satisfy the conditions precedent set forth in the Term Sheet (JX-9 at 3), including obtaining a digital wallet license and finalizing a strategic partnership with a retailer such as Mega Market.

34. The evidence showed that SPI failed to obtain the licenses required to operate a digital wallet in Vietnam, which in turn prevented SPI from finalizing a partnership agreement with Mega Market (JX-10 at 4; NYSCEF 644 [JX-30 (Board Meeting Minutes, January 23, 2020)] at 1; tr 33:20–35:3; 250:24–252:9). SPI’s failure to secure that partnership, and not O’Connor’s comments about Nguyen or SPI, materially affected Fund Singapore’s investment decision.
35. In the end, and notwithstanding O’Connor’s comments, Chan testified that Fund Singapore would have made a greater investment had SPI obtained the required license (tr 182:3–6 to 183:1–4; 185:7–15).
36. The Court further notes that SPI has taken inconsistent positions regarding the cause of Fund Singapore’s reduced investment, as it argued in separate litigation that the reduced investment was attributable to alleged misconduct by a different SPI executive, Rahul Narain (NYSCEF 647 [JX-34 (Economic Damage Report)]).
37. In sum, the Court finds based on the preponderance of the evidence that O’Connor’s meeting with Chan was not the reason Fund Singapore lowered its potential investment in SPI from \$10-15 million to approximately \$1 million. (As discussed below in the Conclusions of Law, however, O’Connor’s conduct nevertheless breached the Employment Agreement and supports a faithless servant defense to compensation otherwise due in connection with the employment relationship.)

## CONCLUSIONS OF LAW

### I. O'Connor's Claim for Breach of the Employment Agreement

"The elements of a cause of action for breach of contract are the existence of a contract, the plaintiff's performance thereunder, the defendant's breach thereof, and resulting damages" (*Lebedev v Blavatnik*, 193 AD3d 175, 182 [1st Dept 2021] [internal quotation marks omitted]).

Here, the existence and enforceability of the Employment Agreement are undisputed. Under the Employment Agreement O'Connor was required to "devote substantially all of [his] time, attention and energies to the business of [SPI]..." (JX-5 § 4). He also agreed that, during and after his employment with SPI, he "shall not, directly or indirectly, engage in any conduct or make any statement, whether in commercial or noncommercial speech, disparaging or criticizing in any way the Company, or any of their respective officers, directors ... nor shall Executive engage in any other conduct or make any other statement that could be reasonably expected to impair the goodwill of any of them." (*Id.*, §5 [d]).

O'Connor's breach of contract claim for compensation from June 2019 forward fails because during that time he breached the Employment Agreement by failing to devote substantially all of his time, attention, and energies to the business and because he breached the non-disparagement and non-solicitation provisions as well. The trial record establishes that beginning in June 2019, O'Connor effectively abandoned his core responsibilities, took a lengthy unauthorized personal trip to Japan, and then sought and attended an ill-advised and potentially disastrous meeting with the company's lead investor without obtaining authorization from the CEO or informing him about it, and devoted time and attention to other endeavors unrelated to SPI.

In addition, and independently, O'Connor's breach of contract claim is precluded by SPI's faithless servant defense. Fundamental to the employer-employee relationship is the proposition that an employee is to be loyal to his employer (*W. Elec. Co. v Brenner*, 41 NY2d 291, 295 [1977]). As SPI's Chief Marketing Officer, O'Connor was "prohibited from acting in any manner inconsistent with his agency or trust and is at all times bound to exercise the utmost good faith and loyalty in the performance of his duties" (*id.*). The faithless servant doctrine provides that "[o]ne who owes a duty of fidelity to a principal and who is faithless in the performance of his services is generally disentitled to recover his compensation, whether commissions or salary" (*Feiger v Iral Jewelry, Ltd.*, 41 NY2d 928 [1977]).

Here, SPI established its faithless servant defense by demonstrating that O'Connor engaged in disloyal conduct, which reached its peak on August 14, 2019. O'Connor made disparaging remarks about the company and its CEO in an unauthorized meeting with SPI's lead prospective investor. Beyond that, he pitched an investment opportunity unrelated to SPI. Both of those were fundamentally inconsistent with his principal role of encouraging investment in SPI.

O'Connor's suggestion that his conduct should not limit his recovery because Fund Singapore ultimately decided to invest in SPI is unavailing. Under New York law, it does not "make any difference that ... the principal suffered no provable damage as a result of the breach of fidelity by the agent" (*id.* at 928-29). In addition to his meeting with Chan, O'Connor testified that during the course of his employment he sent several emails soliciting investments in a separate, non-SPI venture (tr 23:21-24:14, 26:2-27:8). O'Connor's promotion of non-SPI investments—particularly to SPI's proposed lead investor—breached his duty of loyalty as a senior SPI employee.

Accordingly, O'Connor's breach of contract claim seeking damages for unpaid salary, notice pay, or severance is dismissed. O'Connor is also not entitled to damages for purportedly unreimbursed expenses, as he offered no evidence to support that claim.

## **II. O'Connor's New York Labor Law Claim**

O'Connor's Labor Law claim is dismissed for the same reason his breach of contract claim fails: he did not perform under the Employment Agreement and therefore is not entitled to recover wages for the period after he ceased devoting his full time, attention, and energies to SPI's business beginning in June 2019. Accordingly, O'Connor may not recover unpaid wages or other compensation accruing after that point.

## **III. O'Connor's Claim for Breach of the Warrant**

As the First Department held, the Warrant is a stand-alone, enforceable agreement distinct from the Employment Agreement (*O'Connor v Society Pass Inc.*, 233 AD3d 139 [1st Dept 2024]), and it provides for monthly vesting of shares unless O'Connor "voluntarily resign[ed]." The record shows that O'Connor did not voluntarily resign; rather, SPI terminated him on September 12, 2019. SPI's unilateral cancellation of the Warrant upon termination therefore constituted a material breach.

SPI's suggestion that the Warrant was not enforceable because "Mr. O'Connor was a beneficiary of some pretty sloppily drafted agreements" (NYSCEF 672, tr 18:23-24) is unavailing. To be sure, the Warrant *could* have been written to permit cancellation upon termination of employment for cause, but it was not.

However, as the First Department held, O'Connor's recovery for breach of the Warrant from August 2019 forward nevertheless is subject to forfeiture pursuant to a successful faithless servant defense. Because SPI established that defense based on O'Connor's conduct beginning

in August 2019, O'Connor is not entitled to recover any shares that would have vested in or after August 2019 (*Murray v Beard*, 102 NY 505, 508-09 [1886] ["An agent is held to *uberrima fides* in his dealings with his principal; and if he acts adversely to his employer in any part of the transaction, or omits to disclose any interest which would naturally influence his conduct in dealing with the subject of the employment, it amounts to such a fraud upon the principal as to forfeit any right to compensation for services."] [internal citations omitted]); *Soam Corp. v Trane Co.*, 202 AD2d 162, 163 [1st Dept 1994] [affirming lower court's finding of faithlessness where employee promoted employer's competitor's equipment for use in a project]).]

Accordingly, O'Connor's recovery on his Warrant claim is limited to 143 shares that vested in June and July 2019.

#### **IV. CVO's Claim for Breach of the Subscription Agreement**

CVO's claim for breach of the Subscription Agreement is dismissed. The evidence established that CVO received the preferred stock issued under the Subscription Agreement, that the preferred stock was converted into common shares, and that CVO remains the owner of those shares (NYSCEF 655 [JX-45 (Certified Shareholder List)] at 72). As described in greater detail below, however, the claim also fails for the independent reason that SPI established by clear and convincing evidence that O'Connor fraudulently induced SPI to enter into Subscription Agreement (and the Software Development Agreement). Therefore, SPI is entitled to rescind the agreement and recover the shares from CVO.

#### **V. SPI's Fraudulent Inducement Counterclaim**

To establish fraudulent inducement, a party must show "a material representation, known to be false, made with the intention of inducing reliance, upon which it actually relied,

consequentially sustaining a detriment” (*Frank Crystal & Co., Inc. v Dillmann*, 84 AD3d 704, 704 [1st Dept 2011] [cleaned up]).

SPI established each of these elements by clear and convincing evidence.<sup>2</sup> O’Connor executed the Subscription Agreement on behalf of CVO as part of a package that included the Software Development Agreement and the Call Agreement. Consistent with the terms of the Subscription Agreement, CVO received \$8,000,000 in SPI’s preferred stock as a payment for software development services that CVO provided pursuant to the Software Development Agreement. The Call Agreement would, however, permit Nguyen effectively to buy back the SPI stock, which seems to have been part of the overall bargain.

The documentary evidence and credible trial testimony show that O’Connor knowingly misrepresented to SPI and its CEO Nguyen that he was the sole owner of CVO at the time those three agreements were executed. This misrepresentation was material: O’Connor’s ownership of CVO shares—and in turn his ability to comply with the Call Agreement with Nguyen—was central to SPI’s decision to contract with CVO.

The record further demonstrates that O’Connor knew his claim of ownership was false when he made it. At trial, he admitted that he held no ownership interest in CVO at the time he

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<sup>2</sup> SPI’s fraud counterclaim initially was based on allegations that O’Connor made material misrepresentations and omissions regarding his intention to perform under the Employment Agreement, his ability to bring in certain clients in Vietnam, and expense submissions in connection with work travel and vacation (NYSCEF 558, Answer to First Amended Complaint ¶¶ 91-98). Under the circumstances, including that the question of O’Connor’s ownership came to light at trial, SPI is permitted to amend the pleadings to conform to the evidence adduced at trial. Under CPLR 3025(c), leave to amend may be granted even after trial and should be freely given absent prejudice, which requires a showing that the opposing party was hindered in preparing its case or prevented from advancing its position (*Kimso Apartments, LLC v Gandhi*, 24 NY3d 403, 411 [2014]). No such prejudice has been shown here. Indeed, Plaintiffs’ post-trial brief addressed this fraudulent inducement counterclaim as SPI’s Sixth Cause of Action (NYSCEF 664 ¶¶ 107–112) and Plaintiffs raised no objection at closing argument to the Court consideration this counterclaim.

signed those agreements, contrary to what he represented to Nguyen. O'Connor's testimony that he believed at that time that he controlled CVO through informal arrangements was not persuasive.

O'Connor's argument that SPI was obligated to independently verify O'Connor's ownership interest in CVO is unavailing. The record contains no evidence of any hints at the time the agreements were signed that would have put SPI on notice that O'Connor was misrepresenting his ownership interest in CVO. Because the misrepresentation concerned O'Connor's ownership of CVO—a fact peculiarly within his knowledge—SPI was entitled to rely on his affirmative representations (*Basis Yield Alpha Fund (Master) v Goldman Sachs Group, Inc.*, 115 AD3d 128, 139 [1st Dept 2014] [“a purchaser may not be precluded from claiming reliance on misrepresentations of facts peculiarly within the seller's knowledge”]).

In light of O'Connor's trial testimony, and crediting Nguyen's testimony that the CVO-related agreements were interlinked, the Court finds that SPI established its entitlement to rescind the Subscription Agreement and the Software Development Agreement (SPI was not a party to the Call Agreement). A “defrauded party to a contract may elect to either disaffirm the contract by a prompt rescission or stand on the contract and thereafter maintain an action at law for damages attributable to the fraud” (*Sabby Healthcare Master Fund Ltd. v Microbot Med. Inc.*, 180 AD3d 529, 530 [1st Dept 2020]). Accordingly, SPI has established its entitlement to rescission, and therefore CVO's claim for breach of the now-rescinded Subscription Agreement is dismissed. In addition, the shares previously issued to CVO pursuant to the Subscription Agreement must now be restored to SPI.

SPI's remaining fraudulent inducement claims fail. Specifically, SPI seeks to rescind the Warrant and Employment Agreement, arguing that its CEO would not have signed those

agreements for the same reason he would not have signed the CVO-related agreements. While the Court credits Nguyen's testimony that he would not have entered into any of the CVO-related agreements had he known that O'Connor did not own CVO, it is not persuaded that the same was true of the Warrant and Employment Agreement. Unlike the CVO-related agreements, neither the Warrant nor the Employment Agreement include any provisions predicated on O'Connor's CVO ownership or make any reference to the CVO-related agreements.

Moreover, although the execution dates of the various agreements are not entirely clear, the documentary evidence indicates that the Employment Agreement and the Warrant were signed after the CVO-related agreements. The parties could have added provisions to the Warrant and Employment Agreement making O'Connor's CVO ownership a prerequisite, but they did not. Accordingly, SPI's fraudulent inducement assertions fail with respect to the Warrant and Employment Agreement, and those agreements are not subject to rescission.

#### **VI. SPI's Counterclaim for Breach of Employment Agreement**

As noted earlier, the existence and enforceability of the Employment Agreement are not in dispute. SPI established that O'Connor violated the Employment Agreement by abandoning his job responsibilities starting in June 2019. As a result, SPI suffered damages because it was deprived of the services for which it bargained under the agreement. Its relief for that claim is the dismissal of O'Connor's claim seeking to recover the salary and other Employment Agreement-related benefits that SPI withheld from him. As to SPI's other claims for breach of the Employment Agreement (based on disparagement and solicitation), SPI failed to establish

damages arising from that conduct (*Milan Music, Inc. v Emmel Communications Booking, Inc.*, 37 AD3d 206 [1st Dept 2007]).

#### **VII. SPI's Counterclaim for Tortious Interference with Prospective Business Relations**

SPI failed to meet its burden of proof on its claim for tortious interference with prospective business relations. To prevail on a claim for tortious interference with prospective business relations, a claimant must establish: “(1) the defendant’s knowledge of a business relationship between the plaintiff and a third party; (2) the defendant’s intentional interference with the relationship; (3) that the defendant acted by the use of wrongful means or with the sole purpose of malice; and (4) resulting injury to the business relationship” (*534 E. 11th St. Hous. Dev. Fund Corp. v Hendrick*, 90 A.D.3d 541, 542 [1st Dept 2011]).

The first element is satisfied, as the record establishes that O’Connor was aware of SPI’s ongoing discussions with Fund Singapore concerning a potential equity investment. SPI failed, however, to establish the remaining elements. With respect to intent, although O’Connor’s comments to Fund Singapore were critical of SPI’s leadership, the evidence did not establish that those remarks were made with the intent to disrupt or terminate SPI’s prospective business relationship with Fund Singapore. The record does not show that O’Connor urged Fund Singapore to abandon the transaction, or advised it not to invest in SPI, or otherwise took affirmative steps designed to sever the relationship.

SPI also failed to demonstrate wrongful means. Under New York law, wrongful means are defined as “physical violence, fraud or misrepresentation, civil suits and criminal prosecutions, and some degrees of economic pressure” (*NBT Bancorp Inc. v Fleet/Norstar Fin. Group, Inc.*, 87 NY2d 614, 624 [1996]). “[T]hey do not, however, include persuasion alone although it is knowingly directed at interference with the contract” (*id.*). Here, SPI presented no

evidence demonstrating that O'Connor engaged in fraud, misrepresentation, coercion, or any other form of tortious conduct in connection with his meeting with Fund Singapore's principal. Statements critical of management or expressions of skepticism regarding a company's prospects, without more, do not constitute wrongful means (*Advanced Global Tech., LLC v Sirius Satellite Radio, Inc.*, 44 AD3d 317 [1st Dept 2007]; *see also Vitro S.A.B. de C.V. v Aurelius Capital Mgt., L.P.*, 99 AD3d 564, 565 [1st Dept 2012] ["In the absence of any tortious conduct, the element of 'wrongful means,' necessary to support a claim for tortious interference with prospective economic advantage, is lacking"]).

Finally, SPI failed to prove causation and damage. "Tortious interference with prospective economic relations requires an allegation that plaintiff would have entered into an economic relationship but for the defendant's wrongful conduct" (*Vigoda v DCA Prods. Plus*, 293 AD2d 265, 266 [1st Dept 2002]). The evidence established that Fund Singapore's decision to limit its investment was driven by SPI's failure to obtain a digital wallet license and secure a partnership with a major retailer, not by O'Connor's comments about SPI and Nguyen. Chan testified that these regulatory and operational deficiencies were determinative, consistent with the conditions set forth in the May 9, 2019 Term Sheet (tr 182:21–183:2; 184:23–185:15). Moreover, SPI's own economic analysis in separate litigation attributed the limited investment to the conduct of another SPI executive, further undermining any claim of causation attributable to O'Connor.

Accordingly, the claim is dismissed.

#### **VIII. SPI's Counterclaim for Breach of Fiduciary Duty**

Under New York law, a claim for breach of fiduciary duty requires proof of: "(1) the existence of a fiduciary relationship, (2) misconduct by the defendant, and (3) damages directly

caused by the defendant's misconduct" (*Qureshi v. Vital Transp., Inc.*, 173 AD3d 1076, 1078 [2d Dept 2019] citing *Rut v. Young Adult Inst., Inc.*, 74 AD3d 776, 777 [2010]).

SPI contends that O'Connor breached his fiduciary duty by pitching non-SPI investments to a prospective SPI investor, seeking reimbursement for unauthorized expenses, and taking unauthorized vacations. As already established, O'Connor's conduct at the meeting with Chan was disloyal. As described above, however, SPI did not provide credible evidence of damage proximately caused by any such conduct. Absent proof of causation and damages, SPI's fiduciary duty counterclaim cannot be sustained.

#### **IX. SPI's Counterclaim for Unjust Enrichment**

Finally, SPI failed to establish its claim for unjust enrichment. To establish unjust enrichment, a claimant must show: "(1) the other party was enriched, (2) at that party's expense, and (3) that it is against equity and good conscience to permit [the other party] to retain what is sought to be recovered" (*Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 182 [2011] [internal quotations omitted]).

While SPI claims that O'Connor was enriched because he paid himself tens of thousands of dollars in expense reimbursements that were for his personal benefit, SPI failed to offer contemporaneous financial records, bank statements, or electronic communications to support that claim. In the absence of any expense-reimbursement policy or proof that O'Connor caused SPI to reimburse him for unauthorized personal expenses, SPI's assertions that he submitted misleading expenses in connection with a trip to Chicago (tr 39:14-16), or received a personal benefit from legal fees incurred through counsel retained on SPI's behalf for SPI's business interests, are insufficient to establish a viable claim unjust enrichment. Therefore, this claim is dismissed as unproven.

The Court has considered the parties' remaining arguments and finds them unavailing.

Accordingly, it is

**ORDERED** that judgment will be **GRANTED** in favor of O'Connor against SPI for breach of the Common Stock Purchase Warrant in the amount of \$824,109.00<sup>3</sup> plus prejudgment interest running from July 31, 2019; it is further

**ORDERED** that judgment will be **GRANTED** in favor of SPI on its counterclaim for breach of the Employment Agreement and thus SPI is not required to provide any compensation otherwise due to O'Connor under the Employment Agreement for June 2019 through and after his termination; it is further

**ORDERED** that O'Connor's claims for breach of the Employment Agreement and violation of the New York Labor Law are dismissed; it is further

**ORDERED** that judgment will be **GRANTED** in favor of SPI against CVO with respect to SPI's counterclaim for fraudulent inducement solely to the extent of rescission of the Subscription Agreement and the Software Development Agreement. The shares previously tendered to CVO pursuant to the Subscription Agreement are to be returned to SPI; it is further

**ORDERED** that SPI's counterclaims for tortious interference with prospective business relations, breach of fiduciary duty, and unjust enrichment are dismissed; it is further

**ORDERED** that Plaintiff CVO Advisors Pte. Ltd.'s claim for breach of the Subscription Agreement is dismissed; and it is further

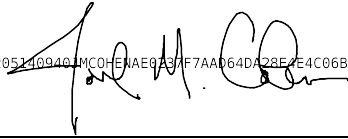
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<sup>3</sup> This amount is based on the Special Referee's determination that SPI's common stock was valued at \$5,763.00 per share. Accordingly, \$824,109.00 is the total value of O'Connor's 143 shares that vested before August 14, 2019. This is in addition to the Warrant shares awarded to O'Connor on summary judgment.

**ORDERED** that the parties are directed to settlement a judgment within two (2) weeks of the date of this Decision and Order.

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, JSC

DATE: 2/5/2026

Check One:

Case Disposed

Non-Final Disposition

Check if Appropriate:

Other (Specify

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