

1 Before the Court is Defendant and Counterclaimant Vickie Lynn Marshall's (Vickie)¹
2 motion to alter or amend the judgment in this matter by increasing the damages by a factor of 2.5
3 or in the alternative to award prejudgment interest. After reviewing all the moving, opposing,
4 and replying papers, and after oral argument on April 15, 2002, and for the reasons set forth
5 below, the Court DENIES the motion.

6 **I.**

7 **BACKGROUND**

8 On March 7, 2002, the Court issued a judgment in this matter. The procedural history and
9 facts of the case are fully set forth in the Court's Findings of Fact and Conclusions of Law,
10 reported at *Marshall v. Marshall (In re Marshall)*, 275 B.R. 5 (C.D. Cal. 2002). The Court
11 presumes familiarity with that order and uses the abbreviated terms found therein.

12 **II.**

13 **DISCUSSION**

14 **A. Increasing the Award by a Factor of 2.5**

15 In its Findings of Fact and Conclusions of Law (FFCL), the Court held that the proper
16 valuation of Koch stock was based on the "price that a seller is willing to accept and a buyer is
17 willing to pay on the open market in an arm's-length transaction." FFCL at 76 (quoting Black's
18 Law Dictionary 1549 (7th ed. 1999)). The Court established that the Book Value maintained by
19 MPI and recorded in their transactions with Texas Commerce Bank represent the best estimation
20 of that amount, and accordingly based the MPI value on that.

21 In arguing for the increase in damages, Vickie points to evidence that the sale of Koch
22 stock was based on a factor of Book Value times 2.5. She refers to the 1980 sale of stock
23 between J. Howard and J. Howard, III. In that sale, J. Howard paid J. Howard, III \$208 per
24 share for his 4% voting interest in Koch. That price was based on Book Value times 2.5.

25 Pierce argues that Vickie did not raise that argument during the litigation and cannot raise

26
27 ¹ As all the principals in the matter at hand share the same last name, the Court
28 will refer to the parties by their given names, as is customary in cases involving family
members

1 it after judgment has been issued. Vickie, however, did raise the factual issue and significant
2 testimony regarding the valuation of Koch was presented in the trial before the bankruptcy court
3 and in this Court’s de novo review.

4 The argument must ultimately be rejected because the Book Value multiplier used in
5 1980 is not probative of the current fair market value of the stock J. Howard owned at his death
6 (or rather the stock that he would have owned at his death absent Pierce’s tortious interference)
7 for several reasons. First, J. Howard owned non-voting stock, whereas the stock purchased from
8 J. Howard, III in 1980 was voting stock.² A discount should therefore reasonably be applied to
9 the fair market value of the non-voting stock relative to the voting stock purchased from J.
10 Howard, III. Additionally, the stock that J. Howard, III owned in 1980 was the swing vote in a
11 family battle for control of Koch Industries. Whether or not it was the “extortion” price that J.
12 Howard claimed at the time, J. Howard, III was clearly in an advantageous bargaining position
13 with his father, and likely obtained a premium. By 1992, when J. Howard began preparing a
14 “New Community” for Vickie, the battle for control of Koch was long since over with J.
15 Howard’s faction having won. Thus, the premium involved in the 1980 sale should not be
16 applied.

17 Accordingly, the Court’s original valuation will not be disturbed.

18 **B. Prejudgment Interest**

19 Vickie next argues that the Court should award prejudgment interest on the damages,
20 accruing from the date she filed the present counterclaim against Pierce. Vickie asserts that
21 prejudgment interest is mandatory.

22 Under Texas law, there are two bases for an award of prejudgment interest: “(1) general
23 principles of equity and (2) an enabling statute.” *Johnson & Higgins of Texas, Inc. v. Kenneco*
24 *Energy, Inc.*, 962 S.W.2d 507, 528 (Tex. 1998). In *Cavnar v. Quality Control Parking, Inc.*, 696
25 S.W.2d 549, 552-55 (Tex. 1985), the Texas Supreme Court held that prejudgment interest was

27 ² As detailed in the FFCL, J. Howard sold the stock back to Koch shortly after
28 buying it from J. Howard, III. FFCL at 12.

1 mandatory in cases involving wrongful death, personal injury, or property damage. *Id.* That rule
2 was subsequently codified and slightly altered by the Texas Legislature. Tex. Fin. Code §
3 304.102 (previously Tex. Rev. Civ. Stat. article 5069-1.05, section 6); *see also Johnson &*
4 *Higgins of Texas*, 962 S.W.2d at 528. Vickie’s claims, however, are for economic loss, and are
5 therefore governed by the permissive principles of equity. *Spangler v. Jones*, 861 S.W.2d 392
6 (Tex. App. 1993); *see also Johnson & Higgins of Texas*, 962 S.W.2d at 529 (“We hold that
7 section 6 means what it says: statutory prejudgment interest applies only to wrongful death,
8 personal injury, and property damage cases” and holding that economic loss is not property
9 damage.”). Thus, applying the principles of equity, Vickie is not entitled to prejudgment
10 interest. Although the Court has awarded damages based on the value of Koch Industries at J.
11 Howard’s death, the gift to Vickie would have gone to her only many years after his and
12 Eleanor’s death.³ While the nature of the case forces the Court to fix a date upon which
13 damages are found and order that amount to be paid, it recognizes that the value of Koch in the
14 future is speculative. Thus, balancing the interests between Pierce’s tortious action and the
15 appropriate value of Vickie’s intended gift leaves the Court in the position of fixing the amount
16 at the time of J. Howard’s death, but not awarding prejudgment interest because of the
17 speculative nature of the growth of Koch in the future.

18 **C. Multiplier or Interest as Additional Sanction**

19 Vickie finally contends that a multiplier to the damages, or an award of prejudgment
20 interest, should be given as a sanction for Pierce’s discovery abuses. Vickie argues that Pierce’s
21 abuse of the process goes on to this day. In support of this argument, Vickie has lodged with the
22 Court a press release issued by Pierce that apparently insinuates that this Court’s decision, and
23 the bankruptcy court’s decision, were based on “influence[s] other than the facts and the law.”
24 Vickie argues that this shows contempt of court and can be used to increase the amount of
25 damages.

26
27 ³ At the time the Court made its findings of fact, Eleanor was still alive, and the
28 Court assumes that she continues to be.

