

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Habr v. RXMAPPER, LLC

Habr · No. 4:23-cv-2061-YGR · Decided July 18, 2025

SUMMARY

This is Pretrial Order No. 3 issued by the United States District Court for the Northern District of California in Habr v. RXMAPPER, LLC. The order revises the trial schedule and addresses proposed jury instructions concerning fraud damages, mitigation, conversion of source code, and the defendants’ Lanham Act claim. The order is dated July 18, 2025.

CASE DETAILS

COURT	United States District Court for the Northern District of California
WRITING FOR THE COURT	Yvonne Gonzalez Rogers
DECIDED	July 18, 2025
DOCKET	4:23-cv-2061-YGR
DISPOSITION	other
PROCEDURAL POSTURE	Pretrial order addressing the revised trial schedule and disputed jury instructions in an action involving fraud, mitigation of damages, conversion of source code, and Lanham Act counterclaims.
PRECEDENTIAL VALUE	Unknown; district-court pretrial order
PARTIES	Edward Habr et al. v. RXMAPPER, LLC et al.

TOPICS

- jury instructions
- damages
- conversion
- trademark infringement
- civil procedure

PRACTICE AREAS

- civil procedure
- torts
- intellectual property
- commercial litigation

QUESTIONS PRESENTED

- Whether plaintiffs' fraud claim involving a promise of equity could support benefit-of-the-bargain or expectation damages.

2. Whether defendants could present mitigation of damages as an affirmative defense for the jury's consideration.
3. Whether source code could be the subject of a conversion claim and be submitted to the jury if the evidence satisfied the applicable test.
4. Whether the evidence would support a jury instruction on defendants' Lanham Act claim based on actual confusion.
5. Whether plaintiffs could file a summary-judgment motion after the expired deadline.

HOLDINGS

1. Plaintiffs' fraud claim concerning the promise of equity in RxMapper, LLC is governed by California Civil Code section 3343(a), and plaintiffs may not recover benefit-of-the-bargain or expectation damages absent a showing of both a fiduciary relationship and intentional misrepresentations. Because plaintiffs had not shown a fiduciary duty, the court denied their requested instruction on expectation damages and directed that proposed instruction 42.1-D be given.
2. Defendants may present mitigation of damages as an affirmative defense for the jury's consideration because the defense raises factual issues concerning application of the law. Proposed jury instruction 34 will be given.
3. At the pretrial stage, the court preliminarily determined that source code may be the subject of a conversion claim and that defendants may submit their conversion counterclaim to the jury if the trial evidence satisfies the applicable three-part test. Proposed jury instructions 62-64 were preliminarily allowed.
4. The court deferred until the charging conference whether the trial evidence would warrant a jury instruction on defendants' Lanham Act claim based on actual confusion; the relevant instructions would be included preliminarily if sufficient evidence were presented.
5. Plaintiffs were denied leave to file a summary-judgment motion because the deadline had expired on November 22, 2024.

KEY QUOTATIONS

“The Court finds that plaintiffs’ fraud claim, if successful, will be limited to recovery for out-of-pocket damages.” (at 2)

“Plaintiffs cannot recover “benefit of the bargain” damages unless they show (1) a fiduciary relationship, and (2) that defendant made intentional misrepresentations.” (at 3)

“Although not all intellectual property can be converted, the Court is satisfied at this juncture that sufficient evidence can be presented to a jury to support the claim.” (at 4)

FACTUAL BACKGROUND

Plaintiffs alleged fraud concerning a promise of equity in RxMapper, LLC and sought expectation or benefit-of-the-bargain damages. The case also involved a dispute over whether RxMapper source code could support a

conversion claim and defendants' Lanham Act counterclaim, including the need to prove actual confusion. The parties disputed whether mitigation of damages could be presented as an affirmative defense and which jury instructions should be given at trial.

PROCEDURAL HISTORY

The district court issued Pretrial Order No. 3 after requiring additional submissions concerning disputed trial issues. The court ruled on proposed instructions concerning fraud damages, mitigation, and conversion, deferred the Lanham Act instruction issue until the charging conference, and denied leave to file an untimely summary-judgment motion.

DISPOSITION

other

CASES CITED

- Hill v. Wrather, 158 Cal. App. 2d 818, 825 (1958)
- Fragale v. Faulkner, 110 Cal. App. 4th 229, 236 (2003)
- Stout v. Turney, 22 Cal. 3d 718, 725 (1978)
- Pepitone v. Russo, 64 Cal. App. 3d 685, 689, 134 Cal. Rptr. 709 (1976)
- Kelley v. Fundomate, Inc., 773 F. Supp. 3d 899, 925-926 (C.D. Cal. 2025)
- City Sols., Inc. v. Clear Channel Commc'ns, Inc., 242 F. Supp. 2d 720, 726-732 (N.D. Cal. 2003), aff'd in part, rev'd in part sub nom. City Sols., Inc. v. Clear Channel Commc'ns, 365 F.3d 835 (9th Cir. 2004)
- Cupps v. Mendelson, 2010 WL 1366996 (Cal. Ct. App. Apr. 7, 2010)
- Michelson v. Camp, 72 Cal. App. 4th 955, 973 (1999)
- Auble v. Pac. Gas & Elec. Co., 55 F. Supp. 2d 1019, 1022-1023 (N.D. Cal. 1999)
- All. Mortg. Co. v. Rothwell, 10 Cal. 4th 1226, 1240 (1995)
- Kremen v. Cohen, 337 F.3d 1024 (9th Cir. 2003)
- Eng. & Sons, Inc. v. Straw Hat Rests., Inc., 176 F. Supp. 3d 904, 921 (N.D. Cal. 2016)