No. 25-

IN THE

Supreme Court of the United States

BI-QEM SA DE CV AND BI-QEM INC.,

Petitioners,

v.

TRADE LINKS LLC,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

ROBERT W. CINQUE
Counsel of Record
CINQUE & CINQUE, P.C.
355 Lexington Avenue, 8th Floor
New York, NY 10017
(212) 759-5515
cinque845@aol.com

Counsel for Petitioners

384605

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

1. Whether an unsigned and uninitialed document entitled "Courtroom Minutes – Civil," hyperlinked to a "Minute Entry" in the docket constitutes an "Order" for purposes of Federal Rule of Appellate Procedure 4(a); and

2. Even if the "Courtroom Minutes – Civil" are deemed an Order, whether the docket entry of this document as a "Minute Entry" constitutes entry of an "Order" under Connecticut Court District Local Rule 77(a)(2), which provides that "the notation in the appropriate docket of an 'order'…shall constitute the entry of this order," and therefore triggers the time to appeal.

PARTIES TO THE PROCEEDING

Petitioners are Bi-Qem SA DE CV and Bi-Qem Inc. Petitioners were defendants-appellants in the proceedings below.

Respondent is Trade Links LLC. Respondent was plaintiff-appellee below.

CORPORATE DISCLOSURE STATEMENT

There is no parent or publicly held company owning 10% or more of Petitioners' stock.

LIST OF RELATED PROCEEDINGS

The following is a list of all proceedings in other courts that are directly related to the case in this Court:

- Trade Links, LLC v. Bi-Qem SA DE CV and Bi-Qem, Inc., No. 3:19-cv-00308 (KAD), United States District Court for the District of Connecticut. Judgment entered on January 18, 2024.

- Trade Links, LLC v. Bi-Qem SA DE CV and Bi-Qem, Inc., No. 24-418, U.S. Court of Appeals for the Second Circuit. Judgment entered on May 15, 2025.

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The following are the reported opinions and orders entered in the case:

Second Circuit summary order entered May 15, 2025 – 2025 WL 1416759

Connecticut District Court memorandum of decision on motion for attorneys' fees dated January 18, 2024 – 2024 WL 198024

Connecticut District Court memorandum of decision on motion for attorneys' fees dated March 30, 2023 – 2023 WL 2646832

Connecticut District Court order denying Petitioners' motion to amend/correct judgment dated March 7, 2023 – 2023 WL 2388703

Connecticut District Court memorandum of decision on Petitioners' motion for summary judgment dated September 28, 2021 – 2021 WL 4441935

Connecticut District Court order on motion to file amended complaint dated April 29, 2020 – 2020 WL 13828207

Connecticut District Court memorandum of decision on motions to dismiss and to strike dated March 23, 2020 – 2020 WL 1335688

JURISDICTION

The Second Circuit denied Petitioners' petition for rehearing/rehearing en banc by order entered July 1, 2025. This Court has jurisdiction under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

1. Federal Rule of Appellate Procedure 4(a)(4)(A)(i):

> (4) **Effect of a Motion on a Notice of Appeal**.
>
> (A) If a party files in the district court any of the following motions under the Federal Rules of Civil Procedure--and does so within the time allowed by those rules--the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

2. Federal Rule of Appellate Procedure 4(a)(7)(A)(i):

(7) Entry Defined.

(A) A judgment or order is entered for purposes of this Rule 4(a):

(i) if Federal Rule of Civil Procedure 58(a) does not require a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a);

3. Federal Rule of Civil Procedure 79(a)(2)(C):

(2) **Items to be Entered**. The following items must be marked with the file number and entered chronologically in the docket:

(C) appearances, orders, verdicts, and judgments.

4. Federal Rule of Civil Procedure 79(b):

(b) **Civil Judgments and Orders**. The clerk must keep a copy of every final judgment and appealable order; of every order affecting title to or a lien on real or personal property; and of any other order that the court directs to be kept. The clerk must keep these in the form and manner prescribed by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States.

5. Federal Rule of Civil Procedure 79(c)(1):

> (c) **Indexes; Calendars**. Under the court's direction, the Clerk must:
>
> (1) keep indexes of the docket and of the judgments and orders described in Rule 79(b); and

6. Connecticut District Court Local Rule 77(a)(2):

> **(a) Entry of Orders and Judgments by the Court**
>
> 2. The notation in the appropriate docket of an "order," as defined in the previous paragraph, shall constitute the entry of the order.

STATEMENT OF THE CASE

After judgment was entered pursuant to a jury verdict in favor of Respondent, Petitioners timely moved for judgment as matter of law pursuant to Federal Rule of Civil Procedure 50(b). On February 23, 2023 the district court heard oral argument on six post-trial motions, including Petitioners' Rule 50(b) motion. The court orally denied this motion but no order was ever entered reflecting this. Instead, an unsigned and uninitialed document entitled "Courtroom Minutes – Civil" was filed with boxes being checked as to whether the motions were denied or taken under advisement. When entered in the docket this document was labeled as a "Minute Entry" and not as an order. As six motions were argued that day it was expected

that orders would be entered on each of them and that the Minute Entry was simply a reference to what transpired that day and not an appealable order.

Additional proceedings were had before the district court which entered an order awarding Respondent attorneys' fees on January 18, 2024. Petitioners filed their notice of appeal to the Second Circuit on February 16, 2024.

By summary order dated May 15, 2025 the Second Circuit dismissed Petitioners' appeal, ruling that the "Minute Entry" constitutes entry of an "order" for purposes of Federal Rule of Appellate Procedure 4(a)(4)(A), even though the word "order" does not appear on the "Courtroom Minutes - Civil" which were hyperlinked in the docket.

The Second Circuit also ruled that the "Minute Entry" satisfied the requirement in Connecticut District Court Local Rule 77(a)(2) that "the notation in the appropriate docket of an 'order'…shall constitute entry of an order." The Second Circuit held that inclusion of the word 'order' in a docket entry is not required under the Local Rule.

On May 29, 2025 Petitioners moved for rehearing/rehearing en banc before the Second Circuit, which denied this motion on July 1, 2025.

The District Court had jurisdiction of this matter pursuant to 28 U.S.C. 1332(a) as the matter is controversy exceeds the sum or value of $75,000.00 and is between citizens of different states.

REASONS FOR GRANTING THE PETITION

The Second Circuit's decision held that unsigned and uninitialed "Courtroom Minutes – Civil," entered in the docket as a "Minute Entry," is an appealable order requiring Petitioners to file a notice of appeal within 30 days. As explained in Point I below, this ruling is in conflict with decisions from the Ninth Circuit. As this Court stated in Acosta v. Louisiana Department of Health and Housing Resources, 478 U.S. 251, 253, 106 S. Ct. 2876, 2877, 92 L.Ed.2d 192 (1986), a petition for a writ of certiorari should be granted where there is "a direct conflict over the interpretation of the Rules of Appellate Procedure." Litigants must be given clear guidance on the important issue of when the time to appeal begins to run, and the Federal Rules of Appellate Procedure require that an "order" be entered to meet this requirement. "Civil Minutes" and "Minute Entries" simply do not qualify as "Orders." This Court should exercise its power to require entries of "Orders" to commence the time to appeal and to establish a uniform rule applicable to all Circuits. As noted in Hanna v. Plumer, 380 U.S. 460, 472, 85 S. Ct. 1136, 1145, 14 L.Ed.2d 8 (1965), "'uniformity in the federal courts'" was Congress' central goal in enacting the Federal Rules.

In addition, the Second Circuit departed from accepted proceedings by failing to apply the Connecticut District Court Local Rule, providing that "the notation in the appropriate docket of an 'order'…shall constitute the entry of an order," when it held that entry of a document labeled as a "minute entry" constitutes entry of an "order."

I. Unsigned and Uninitialed "Courtroom Minutes – Civil" Do Not Constitute An Appealable "Order"

On February 27, 2023 an unsigned and uninitialed document entitled "Courtroom Minutes – Civil" was hyperlinked to a "Minute Entry" in docket number 305. The Minutes merely had boxes checked "denied" or "advisement" for six motions orally argued that day. Petitioners submit that the Civil Minutes do not constitute an order for appellate purposes.[1]

As Petitioners timely moved under FRCP 50(b), FRAP 4(a)(4)(A)(i) provides that their time for filing an appeal commences upon "the entry of the order disposing of" the motion. Entry of an order is defined in FRAP 4(a)(7)(A)(i) as "when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a)."

FRCP 79(a)(2)(c) requires the district court clerk to mark orders "with the file number and entered chronologically in the docket." The clerk is also required by FRCP 79(b) and (c)(1) to keep a copy of every "appealable order" and to "keep indexes of the docket and of the judgments and orders."

It is uncontroverted that no document labeled as an "order" was ever docketed in connection with Petitioners'

1. On page 4 of its decision the Second Circuit stated that "the parties agree that the district court's oral ruling denying the Rule 50(b) motion became final and appealable on February 27, 2023…." This is not true, as Petitioners argued in opposition to Respondent's dismissal motion that the oral ruling and subsequent civil minutes do not constitute an appealable order (see Second Circuit Docket No. 22.1).

Rule 50(b) motion. Indeed no "order" was ever entered by the court – only documents labeled as a "Minute Entry" and "Courtroom Minutes – Civil." Neither the clerk nor the district judge signed or initialed either of these documents.

In Carter v. Beverly Hills Sav. and Loan Ass'n, 884 F.2d 1186, 1190 (9th Cir. 1989), cert. denied, 497 U.S. 1024 (1990), the Ninth Circuit held that an initialed but unsigned document entitled "Civil Minutes – General," containing "a description of what transpired in the courtroom," was not an order:

> In this case, we have civil minutes which do not bear the imperative "IT IS ORDERED," and are not signed by the deputy clerk who prepared them. Although the civil minutes were entered in the civil docket book, they do not constitute a separate order nor were they entered as an order.

This holding was followed in Ingram v. AC and S, Inc., 977 F.2d 1332, 1339 (9th Cir. 1992), where the issue was whether minute orders disposing of post-trial motions with the language "Order DENYING; written opinion to follow" constituted entry of the order for appellate purposes:

> If an oral ruling, or a minute order that does not meet the requirements of *Carter* and *Beaudry* [*Motor Co. v. Abko Properties, Inc.*, 780 F.2d 751 (9th Cir.), *cert. denied*, 479 U.S. 825 (1986)] is *not* followed by a properly entered dispositive order, this court will have appellate jurisdiction when a notice of appeal is filed any time after the district court's ruling.

In Ingram, the Ninth Circuit held that the civil minutes were orders because they contained the word "order:"

> In both cases, the "Civil Minutes" documents state on their faces that they are indeed orders. The words "Order DENYING, written opinion to follow" is a statement that the minute orders are *orders*….

Here, the docket entry is labeled as a "Minute Entry" and not as an "Order."

II. The "Minute Entry" Docket Notation Does Not Constitute Entry of an "Order" Under the Connecticut District Court Local Rules

Even if the "Courtroom Minutes – Civil" are deemed an order they must be entered in the docket as an "order" for purposes of Federal Rule of Appellate Procedure 4(a)(7)(A)(i), which defines the date of entry of an order as "when the order is entered in the civil docket."

The Federal Rules of Civil Procedure do not specify what constitutes the entry of an order, so it is up to the individual District Courts to define when an order is entered for purposes of Federal Rule of Appellate Procedure 4(a). In order to constitute entry of an order a document must meet the requirements of District Court Local Rules, which have "the force of law." Weil v. Neary, 278 U.S. 160, 169, 49 S. Ct. 144 (1929).

Connecticut District Court Local Rule 77(a)(2) provides that an Order is deemed to have been entered only when a document denominated as an "Order" is entered in the docket:

> The notation in the appropriate docket of an "order," as defined in the previous paragraph, shall constitute the entry of an order.

The relevant Local Rule puts italics around the word "order" signifying that the docket entry must include this specific word.[2]

On page 5 of its Summary Order the Second Circuit concluded that the Local Rule's specific use of the italicized word "order" did not require that a document be entered in the docket as an "order" to be deemed an appealable order:

> Local Rule 77(a)(2) does indeed provide that inclusion of the work "order" in a docket entry is *sufficient* to signal that what is being entered is, indeed, an order. But it does not provide that inclusion of that word is the *only, or necessary,* way to reflect entry of an order.

With all due respect to the Second Circuit, its interpretation of the Local Rule states the obvious and there would be no

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2. Significantly, the Connecticut District Court does not have a local rule (such as Local Civil Rule 6.2 of the Southern and Eastern Districts of New York) providing that "the notation in the docket of a memorandum or of an oral decision…shall constitute the entry of the order." The fact that these district courts felt the need to specifically address the question of whether a docket entry of an oral decision (as happened here) constitutes entry of an order confirms that the docket entry of an oral decision does not constitute entry of an order absent such a Local Rule. This case was heavily litigated and Petitioners relied upon the clear language in Connecticut Local Rule 77(a)(2) (different from Local Rule 6.2 of the S.D.N.Y. and E.D.N.Y.) requiring entry of an "order" memorializing an oral decision.

need for such a Local Rule. Clearly, a document entered as an "order" constitutes entry of an order – no Local Rule is necessary to support this conclusion. In order to give any meaning to the Local Rule the only sensible interpretation is that the word "order" must appear in the docket to constitute entry of an order.[3] Furthermore, the use of the word "shall" in the phrase "shall constitute the entry of an order" indicates that the word "order" must appear in the docket entry. If the use of the word "order" were merely permissive and not mandatory, as stated in the Summary Order, the Local Rule would have used the phrase "may constitute entry of an order."

If this were not the case, why would the Southern and Eastern Districts of New York need to specifically provide that a docket entry of an oral decision constitutes entry of an order? Why would the Connecticut District Court put italics around the word "order" if the use of the word was optional and if it did not require a docket entry of a document labeled as an "order" to trigger the time to appeal?

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3. The Second Circuit's citation of Redhead v. Conf. of Seventh-Day Adventists, 360 Fed. Appx. 232, 234 (2d Cir. 2010) (summary order), for the proposition that use of a minute entry is "an acceptable form of entering a judgment disposing of a Rule 50(a) motion," ignores the fact that there were "two separate docket entries with respect to the judgment." In addition to the minute entry there was a "second entry labeled 'ENTRY OF JUDGMENT AS A MATTER OF LAW'…." This Court stated that this second entry (and not the minute entry) "constitutes a separate entry setting forth the disposition of the matter." Id. The Court dismissed the appeal because appellant did not take any timely action "after the entry of the final judgment" – referring to the second docket entry labeled "ENTRY OF JUDGMENT AS A MATTER OF LAW," and not the minute entry. In the case at bar no "order" or "judgment" was ever entered on the docket.

Despite the facts that: (1) there is no signed document denying Petitioners' post-trial motion; (2) no "order" denying the motion was ever entered in the docket; and (3) the Connecticut District Court Local Rule states that entry of an order is effected upon "the notation in the appropriate docket of an 'order'," the Second Circuit nevertheless ruled that the time to appeal commenced upon the entry of the unsigned "Minute Entry." This ruling ignores the provisions of the Federal Rules of Appellate Procedure, the Federal Rules of Civil Procedure, and the Connecticut District Court Local Rules and therefore should be reversed.

CONCLUSION

For the reasons specified above it is respectfully requested that Petitioners' petition for a writ of certiorari be granted.

Respectfully submitted,

ROBERT W. CINQUE
Counsel of Record
CINQUE & CINQUE, P.C.
355 Lexington Avenue, 8th Floor
New York, NY 10017
(212) 759-5515
cinque845@aol.com

Counsel for Petitioners

DATED: September 11, 2025

APPENDIX

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APPENDIX A — SUMMARY ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, FILED MAY 15, 2025

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

24-418-cv

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 15th day of May, two thousand twenty-five.

Present: GUIDO CALABRESI,
BARRINGTON D. PARKER, JR.,
WILLIAM J. NARDINI,
Circuit Judges.

TRADE LINKS, LLC,

Plaintiff-Appellee,

v.

BI-QEM SA DE CV, BI-QEM, INC.,

Defendants-Appellants.

Appeal from a judgment of the United States District Court for the District of Connecticut. (Kari A. Dooley, *District Judge*).

Appendix A

SUMMARY ORDER

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the appeals of the district court judgment entered on June 13, 2022, and the order entered on February 27, 2023, are **DISMISSED**, and that the March 27, 2023, order of the district court is **AFFIRMED**.

Defendants-Appellants BI-QEM SA de CV and BI-QEM, Inc. (collectively, "BI-QEM") appeal from a series of decisions entered by the United States District Court for the District of Connecticut (Kari A. Dooley, *District Judge*) resolving the underlying breach-of-contract dispute and awarding attorneys' fees and costs to Plaintiff-Appellee Trade Links, LLC ("Trade Links"). The district court decisions contested on appeal include: (1) a judgment on the merits, following a jury trial, entered on June 13, 2022, awarding $965,000 in damages to Trade Links for lost profits; (2) the denial of BI-QEM's motion for judgment as a matter of law pursuant to Federal Rule of Civil Procedure ("Rule") 50(b), on February 27, 2023; and (3) the granting of Trade Links's Rule 54 motion for attorneys' fees and costs, based on the parties' Sales Representative Agreement ("SRA"), in an order entered on March 27, 2023, which was finalized when the district court awarded Trade Links $775,844.29 in attorneys' fees and costs on January 18, 2024.[1] Trade Links moved to

1. Although BI-QEM's notice of appeal lists, among the orders being appealed, the award of $775,844.29 in attorneys' fees and costs, its appellate brief makes no argument about the quantum of the award. Accordingly, we deem any such challenge abandoned. *See, e.g., Norton v. Sam's Club*, 145 F.3d 114, 117 (2d Cir. 1998) ("Issues not

dismiss as untimely those portions of BI-QEM's appeal that concern the judgment on the merits and the denial of the Rule 50(b) motion, and it argues that the district court correctly awarded attorneys' fees and costs.[2] We agree with Trade Links and therefore dismiss part of the appeal on jurisdictional grounds and affirm as to the award of attorneys' fees and costs. We assume the parties' familiarity with the case.

I. Motion to Dismiss

In its motion to dismiss, Trade Links contends that BI-QEM's notice of appeal, filed on February 16, 2024, was untimely with respect to the district court's judgment on the merits (which was entered on the docket on June 13, 2022) and the denial of BI-QEM's post-trial motion under Rule 50(b) for judgment as a matter of law (which was orally pronounced at a hearing on February 27, 2023, and memorialized in a minute entry entered on the docket that same day).

Under 28 U.S.C. § 2107(a) and Federal Rule of Appellate Procedure ("FRAP") 4(a)(1)(A), civil litigants generally must file a notice of appeal within 30 days after

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sufficiently argued in the briefs are considered waived and normally will not be addressed on appeal.").

2. Trade Links originally moved to dismiss as untimely BI-QEM's appeal of the district court's order granting Trade Links's motion for attorneys' fees. However, in its subsequent reply to the motion, Trade Links concedes that the district court's order was not sufficiently final for purposes of appeal until the court entered its follow-on order on January 18, 2024, quantifying the amount of fees and costs owed to Trade Links.

the "entry" of the judgment or order being appealed. 28 U.S.C. § 2107(a) (generally requiring notice of appeal in civil case to be filed "within thirty days after the entry of such judgment, order or decree"); Fed. R. App. P. 4(a)(1)(A) (requiring notice of appeal in civil case to be filed "within 30 days after entry of the judgment or order appealed from"). The failure to do so prevents us from acquiring appellate jurisdiction, and there is no equitable exception to this 30-day rule. *See Amara v. Cigna Corp.*, 53 F.4th 241, 247 n.3 (2d Cir. 2022). That said, when a litigant files a timely, qualifying post-trial motion, including a Rule 50(b) motion, "the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion." FRAP 4(a)(4)(A).

The parties agree about what happened in the district court. A quick review of the docket is therefore warranted. The district court entered a written judgment on the underlying merits dispute, after the jury trial, on June 13, 2022. The parties agree that the time to file a notice of appeal from that judgment did not begin to run immediately because BI-QEM filed a timely Rule 50(b) motion on July 11, 2022. At a hearing on February 27, 2023, the district court heard argument and orally denied that motion. On that same day—February 27, 2023—there is a docket entry that reads "Minute Entry," the text of which memorializes a number of the district court's oral rulings during the hearing. That docket text includes the language: "Proceedings held before Judge Kari A. Dooley: . . . denying for the reasons stated on the record [BI-QEM's] Motion for Judgment as a Matter of Law . . . ." App'x at 7. The docket entry contains a hyperlink to a

document entitled "COURTROOM MINUTES-CIVIL," which lists several motions that were considered by the district court during the hearing on February 27, 2023. *Id.* at 196. One of the listed motions is "#274 Motion for Judgment as a Matter of Law," next to which the box "denied" has been checked. *Id.*

The parties agree that the district court's oral ruling denying the Rule 50(b) motion became final and appealable on February 27, 2023, such that the 30-day window for filing an appeal started to run, only if the district court's minute entry on that date constitutes "entry" of an order denying that motion for purposes of FRAP 4(a)(4)(A). Trade Links argues that the Minute Entry is precisely such an "entry," because it appears on the docket and expressly states that the district court denied the Rule 50(b) motion. We agree. Pursuant to Federal Rule of Civil Procedure 58(a)(1), "a separate document is not required for an order disposing of a motion . . . for judgment under Rule 50(b)," and under Rule 58(c), "if a separate document is not required," then judgment is entered "when the judgment is entered in the civil docket under Rule 79(a)," which requires the Clerk of Court to note on the docket "the substance and date of entry of each order and judgment," Fed. R. Civ. P. 79(a)(3). The Minute Entry satisfies both criteria of Rule 79: It reflects the substance of the order being appealed (that the district court denied the Rule 50(b) motion) and the date on which it was entered (February 27, 2023). No more was needed.

BI-QEM nevertheless argues that the Minute Entry did not constitute a final, appealable order because it

failed to satisfy Local Rule 77(a)(2) of the United States District Court for the District of Connecticut, which provides that "[t]he notation in the appropriate docket of an 'order' . . . shall constitute the entry of an order." BI-QEM contends that under Local Rule 77(a)(2) the word "order" must appear in a minute entry if it is to constitute an order that triggers the time to appeal. This misreads the Local Rules. Local Rule 77(a)(2) does indeed provide that inclusion of the word "order" in a docket entry is *sufficient* to signal that what is being entered is, indeed, an order. But it does not provide that inclusion of that word is the *only*, or *necessary*, way to reflect entry of an order. Such an interpretation of Local Rule 77(a)(2) rings of empty formalism. In this case, the docketed Minute Entry unmistakably reflected the district court's conclusive adjudication of BI-QEM's Rule 50(b) motion by stating that it had been "den[ied] for the reasons stated on the record." App'x at 7. This was enough to convey the "substance and date of entry" of the court's order for purposes of Rule 79(a)(3). *See also Redhead v. Conf. of Seventh-Day Adventists*, 360 F. App'x 232, 234 (2d Cir. 2010) (summary order) (recognizing that a district court's use of a minute entry "explicitly stat[ing] that the reasoning of the district court and its order are contained in the court transcript" is an acceptable form of entering a judgment disposing of a Rule 50(a) motion).

Because BI-QEM filed its notice of appeal more than 30 days after entry of the district court's denial of its Rule 50(b) motion, this Court lacks jurisdiction to consider BI-QEM's appeal of that motion or the underlying judgment on the merits. Its appeal is therefore dismissed with respect to those issues.

II. Attorneys' Fees and Costs

The sole surviving issue on appeal is BI-QEM's contention that the district court erred in holding that Trade Links was entitled to an award of attorneys' fees and costs under Section 7(b) of the SRA, which reads as follows:

> *Indemnification Against Breach of Agreement.* Any party breaching its obligations under this Agreement (a "Defaulting Party") shall indemnify and hold the other party harmless against all claims, losses, damages, costs, and expenses (including reasonable attorneys' fees) of any nature or kind arising directly or indirectly from such breach.

App'x at 372-73. We review this question of contract interpretation *de novo*. *See Colon de Mejias v. Lamont*, 963 F.3d 196, 202 (2d Cir. 2020).

"The awarding of attorneys' fees in diversity cases such as this is governed by state law . . . ." *Grand Union Co. v. Cord Meyer Dev. Co.*, 761 F.2d 141, 147 (2d Cir. 1985).[3] The parties' briefs assume that Connecticut law applies here, and we proceed on the same basis. Under the American rule, adhered to in Connecticut, "attorney's fees and ordinary expenses and burdens of litigation are not allowed to the successful party absent a contractual or

3. Unless otherwise indicated, when quoting cases, all internal quotation marks, alteration marks, emphases, footnotes, and citations are omitted.

statutory exception." *24 Leggett St. Ltd. P'ship v. Beacon Indus., Inc.*, 239 Conn. 284, 311, 685 A.2d 305 (1996). Trade Links argues that Section 7(b) of the SRA provides an express contractual authorization for its award of attorneys' fees and costs arising from the failure of a contractual party to meet its obligations, while BI-QEM contends that this provision applies only to third-party disputes as opposed to this first-party action.

We conclude that the SRA's text and Connecticut's case law support the conclusion that the expansive language of Section 7(b) incorporates indemnity for first-party actions. Section 7(b) is worded broadly, both in terms of the covered parties and the covered claims. With respect to parties, the provision requires indemnification to be paid by "[a]ny party breaching its obligations under this agreement" (which clearly applies to one of the parties to the contract itself) and to be paid to "the other party" (that is, the party to the contract which has not defaulted). With respect to claims, Section 7(b) is similarly broad, covering "all claims . . . of any nature or kind arising directly or indirectly from such breach," with no other limitation (say, to third-party claims). As the district court acknowledged, Connecticut courts have read such broad indemnification provisions for "all claims" as not limited to third-party actions. App. Doc. No. 3 at 14; *see also Heyman Assocs. No. 5, L.P. v. FelCor TRS Guar., L.P.*, 153 Conn. App. 387, 417, 102 A.3d 87 (2014) ("Given the broad language of the indemnification provision and the absence of any indication that it was limited to third party claims, we conclude that the provision is not limited to third party claims, and that it provides for an award of

attorney's fees between the plaintiffs and the defendant for a breach of the restrictive covenant.").

BI-QEM counters by relying on our Court's non-precedential decision in *Rand-Whitney Containerboard Ltd. Partnership v. Town of Montville*, 290 F. App'x 430 (2d Cir. 2008) (summary order), for the proposition that Section 7(b) is an indemnification provision that applies only to third-party claims. In *Rand-Whitney*, we held that the contractual indemnification provision at issue there unambiguously did not apply to first-party actions. *Id.* at 433 ("Reading the contract as a whole, we find that the indemnification provision was not meant to apply to intra-party suits. Furthermore, under Connecticut law, the words 'indemnification' and 'hold . . . harmless'—which are used in this contract—are typically interpreted to apply to third-party claims." (citing *Amoco Oil Co. v. Liberty Auto and Elec. Co.*, 262 Conn. 142, 144, 810 A.2d 259 (2002)). BI-QEM's comparison is inapt. Even though indemnification provisions "typically" apply to third-party actions, that does not prevent parties from drafting a contract in such a way as to use the term "indemnification" to create rights held by either party against intra-party breach of the agreement. *See Heyman*, 153 Conn. App. at 411-17. That circumstance is presented here. As noted above, the indemnification provision expressly applies to "[a]ny party . . . under this Agreement," meaning the contractual parties. App'x at 372-73. Moreover, the parties used the language "indemnify" and "hold the other party harmless" to describe a contractual party's right to be held harmless against a broadly defined category of claims—namely, "against all claims, losses, damages,

costs, and expenses (including reasonable attorneys' fees) of any nature or kind arising directly or indirectly from [the contractual party's] breach." *Id.* When "reviewing a claim that attorney's fees are authorized by contract, [the Court must] apply the well established principle that a contract must be construed to effectuate the intent of the parties, which is determined from its language . . . interpreted in the light of the situation of the parties and the circumstances connected with the transaction." *Total Recycling Servs. of Conn., Inc. v. Conn. Oil Recycling Servs., LLC*, 308 Conn. 312, 327, 63 A.3d 896 (2013). In our view, the language of SRA Section 7(b) reflects the will of the contracting parties to ensure mutual coverage for attorneys' fees and costs (among others) following any breach of SRA obligations by a contractual party.

* * *

We have considered the Appellants' remaining arguments and find them to be unpersuasive. Accordingly, we **DISMISS** BI-QEM's appeal of the district court's judgment on the merits and subsequent denial of BI-QEM's motion for judgment as a matter of law. We **AFFIRM** the judgment of the district court as to Trade Links's entitlement to an award of attorneys' fees and costs.

FOR THE COURT:
Catherine O'Hagan Wolfe,
Clerk of Court

/s/ Catherine O'Hagan Wolfe

APPENDIX B — COURTROOM MINUTES-CIVIL OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT, FILED FEBRUARY 27, 2023

HONORABLE: Kari A. Dooley
DEPUTY CLERK Kristen Gould
RPTR/ECRO/TAPE Tracy Gow
TOTAL TIME 3 hours 36 minutes
DATE: 2/27/2023
START TIME: 10:01am
END TIME: 1:37pm
LUNCH RECESS FROM: _____ TO _____
RECESS (if more than ½ hr) FROM: _____ TO _____

CIVIL NO. 3:19-cv-00308-KAD

Trade Links, LLC

vs

BI-QEM SA de CV et al

COURTROOM MINUTES-CIVIL

☒ Motion hearing
☐ Evidentiary hearing
☐ Miscellaneous hearing
☐ Show Cause Hearing
☐ Judgment Debtor Exam

Appendix B

☒ #263 Motion for Attorney Fees
☐ granted ☐ denied ☒ advisement

☒ #265 Motion Motion to Amend/Correct Judgment
☐ granted ☐ denied ☒ advisement

☒ #266 Motion for Cost and Fees
☐ granted ☐ denied ☒ advisement

☒ #274 Motion for Judgment as a Matter of Law
☐ granted ☒ denied ☐ advisement

☒ #275 Motion for Order under Federal Rule 59(e)
☐ granted ☒ denied ☐ advisement

☒ #299 Motion for Leave to File
☐ granted ☐ denied ☒ advisement

☐ #___ Motion _____
☐ granted ☐ denied ☐ advisement

☐ Oral Motion _____
☐ granted ☐ denied ☐ advisement

☐ Oral Motion _____
☐ granted ☐ denied ☐ advisement

☐ Oral Motion _____
☐ granted ☐ denied ☐ advisement

☐ Oral Motion _____
☐ granted ☐ denied ☐ advisement

Appendix B

☐ ☐ Briefs(s) due _____
☐ Proposed Findings due ___ Response due ___

☐ ☐ filed ☐ docketed

☐ ☐ filed ☐ docketed

☐ ☐ filed ☐ docketed

☐ ☐ filed ☐ docketed

☐ ☐ filed ☐ docketed

☐ ☐ filed ☐ docketed

☐ Hearing continued until ___ at___

APPENDIX C — MINUTE ENTRY OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT, FILED FEBRUARY 27, 2023

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

No: 3:19-cv-00308-KAD

TRADE LINKS, LLC,

Plaintiff,

v.

BI-QEM SA DE CV AND BI-QEM, INC.,

Defendants.

February 27, 2023

MINUTE ENTRY

#	Docket Text
305	Minute Entry. Proceedings held before Judge Kari A. Dooley: taking under advisement 263 Motion for Attorney Fees; taking under advisement 265 Motion to Amend/Correct;taking under advisement 266 Motion for Cost and Fees; denying for the reasons stated onthe record 274 Motion for Judgment as a Matter of Law; denying for the reasons stated onthe record 275 Motion for Order under Federal Rule 59(e); taking under advisement 299 Motion for

Appendix C

Leave to File; Motion Hearing held on 2/27/2023 re 263 MOTION forAttorney Fees and Court Costs and Expenses filed by BI-QEM, Inc., BI-QEM SA de CV, 265 MOTION to Amend/Correct 261 Judgment, filed by BI-QEM, Inc., BI-QEM SA deCV, 266 MOTION for Cost and Fees filed by Trade Links, LLC, 274 MOTION forJudgment as a Matter of Law (Renewed) filed by BI-QEM, Inc., BI-QEM SA de CV, 275 MOTION for Order under Federal Rule 59(e) re 262 Order, filed by Trade Links, LLC, 299 MOTION for Leave to File to file further support of Plaintiff's Rule 54 Motion forAttorneys' Fees and Costs filed by Trade Links, LLC. Total Time: 3 hours and 36 minutes(Court Reporter Tracy Gow.) (Gould, K.) Modified on 4/17/2023 (Gould, K.).(Entered: 02/27/2023)

APPENDIX D — EXCERPT OF TRANSCRIPT OF MOTION HEARING, UNITED STATES DISTRICT COURT, DISTRICT OF CONNECTICUT, FILED APRIL 16, 2023

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

No: 3:19-cv-00308-KAD
February 27, 2023
10:01 a.m.

TRADE LINKS, LLC,

Plaintiff,

v.

BI-QEM SA DE CV, *et al.*,

Defendants.

Brien McMahon Federal Building
915 Lafayette Boulevard
Bridgeport, CT 06604

MOTION HEARING

BEFORE:
THE HONORABLE KARI A. DOOLEY, U.S.D.J.

Appendix D

* * *

[91]And, in any event, the evidence does not dictate a determination the conduct at issue occurred primarily in Massachusetts. Whoever's burden it was, the evidence establishes that the Plaintiff worked out of Connecticut; communicated with Defendants in Mexico, Massachusetts and Europe.

Much of the evidence relied upon involved a multi-day meeting in Switzerland in January of 2019. The jury heard evidence regarding conduct at various meetings at various places throughout the United States, to include New York, Texas, Pennsylvania and Connecticut.

The evidence also involved the conduct of Defendants' personnel in Switzerland and, I believe to a certain extent, Italy. While there was evidence of events occurring in Massachusetts, as well, Plaintiff's conclusory assertion that this issue must be resolved in Plaintiff's favor is, frankly, belied by the record evidence.

So, even accepting the jury's verdict as advisory, I would not enter judgment in favor of the Plaintiff on the Chapter 93A claim on the body of evidence presently before the Court.

As to motion 274, the Defendants' Renewed Motion for Judgment as a Matter of Law, those standards were set forth articulately in *Munn v. Hotchkiss School*, 224 F.Supp.3d, 155. Again, without internal quotations or citations, the *Munn* [92]case instructs as follows:

Appendix D

Rule 50(b) of the Federal Rules of Civil Procedure allows for the entry of judgment as a matter of law if a jury returns a verdict for which there is no legally sufficient evidentiary basis. The standard under Rule 50 is the same as that for summary judgment. A Court may not grant a Rule 50 motion unless the evidence is such that without weighing the credibility of the witnesses or otherwise considering the weight of the evidence there can be but one conclusion as to the verdict that reasonable persons could have reached.

Thus, in deciding such a motion, the Court must give deference to all credibility determinations and reasonable inferences of the jury, and it may not itself weigh the credibility of the witnesses or consider the weight of the evidence.

In short, the Court cannot substitute its judgment for that of the jury; rather, judgment as a matter of law may only be granted if, one, there is such a complete absence of evidence supporting the verdict that the jury's findings could only have been the result of sheer surmise and conjecture; or, two, there is such an overwhelming amount of evidence in favor of the Movant that reasonable and fair-minded persons could not arrive at a verdict against it.

Defendants seek judgment as a matter of law on three grounds: The Court erroneously admitted, and should have [93]stricken, the testimony of Mr. Marcus; claims against BI-QEM, Inc. are barred by the statute of frauds; and Plaintiff materially breached the SRA by failing to give notice and the opportunity to cure.

As to these latter two arguments, they were presented to the jury and rejected. Regarding the claim that the Plaintiff failed to give notice and an opportunity to cure, the parties presented conflicting arguments to the jury as to the provision under which the Plaintiff terminated the SRA.

Defendant argued that the termination was pursuant to Section 11(b)(iv) of the SRA, which they argued required notice and an opportunity to cure, while the Plaintiff argued that the termination was pursuant to Section 11(b)(i) of the SRA, which allowed termination if the defaulting party acted in bad faith. These arguments presented a factual dispute as to the provisions of the SRA that the Plaintiff invoked in terminating the agreement.

Advanced in the motions are competing, to a certain extent, interpretations of the SRA. It is not for me in post-trial motions to interpret a contract when neither party has requested that the contract be interpreted by the jury in the first instance.

The jury could have found, as argued by the Plaintiff, that the Defendants' failure to pay commissions in [94]a timely fashion, a fact admitted by the Defendants, was not, as Defendants' posited, a matter of cash flow problems; but rather, a bad faith effort to force Plaintiff to terminate the SRA.

Again, Mr. Essagof testified that he felt he had no choice but to send the March 14th, 2019 termination letter due to the Defendants' failure to pay commissions. Again,

as he testified, his bank account was empty. However dubious the Defendants might find this testimony, the jury was entitled to accept and credit the testimony. Further, Plaintiff offered additional circumstantial evidence from which the Defendants' ill motive or bad faith in failing to pay commissions could be, and apparently was, inferred.

There is, therefore, a clear evidentiary basis for the jury to conclude as it did, rejecting the Defendants' arguments renewed here and accepting the Plaintiff's arguments at trial.

Likewise, the Defendants argued to the jury that the statute of frauds barred the claims against BI-QEM, Inc. In light of those arguments and that special defense, the jury was instructed on the statute of frauds accordingly, and there is no claim that the instruction was incorrect. Defendants' arguments regarding the statute of frauds in the instant motion merely rehashed the arguments that the jury has already heard and rejected.

[95]Under the standards articulated above, I do not disturb the jury's determination here.

As to the argument that the Court failed to strike Mr. Marcus's testimony, this argument is a much closer call, but ultimately, I determine, is unavailing. I remain of the view that the testimony was properly admitted, subject to the strongly-worded jury instruction regarding the jury's consideration of the testimony.

Mr. Marcus was also the subject of extensive and unlimited cross-examination, and in my view, the issues

raised by the Defendants bear on the weight to be afforded the testimony, not the admissibility of the testimony. The Defendants' conflate reliability under Daubert with credibility to a certain extent.

Mr. Marcus was untruthful, but the fact that Mr. Marcus may have been found by the jury to be untruthful in some matters does not necessarily implicate the reliability of his methodology or his opinions.

I will say it is a much closer call as to whether his involvement in the creation of the data on which he relied does implicate the reliability of his opinions under *Daubert*. But on the entirety of the trial record, I'm not going to revisit the admissibility of his testimony on this motion.

The jury's determination to substantially limit the [96] Plaintiff's claim to damages supports the conclusion that the jury instruction was followed and that the jury found the Defendants' arguments persuasive in many respects. That the jury did not reject Mr. Marcus's testimony in its entirety is not a basis upon which I would upset the jury's verdict at this juncture.

As I indicated, I will reserve on the other three motions. I hope to have something out in the near term.

Is there anything else we can do this afternoon, from the Plaintiff's perspective?

MR. McHUGH: No, Your Honor. Thank you.

Appendix D

THE COURT: All right. From the Defense?

MR. CINQUE: No, Your Honor. Thanks.

THE COURT: All right. We're in recess.

(Proceedings conclude, 1:37 p.m.)

APPENDIX E — DENIAL OF REHEARING OF THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT, FILED JULY 1, 2025

UNITED STATE COURT OF APPEALS
FOR THE
SECOND CIRCUIT

Docket No: 24-418

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 1st day of July, two thousand twenty-five.

TRADE LINKS, LLC,

Plaintiff-Appellee,

v.

BI-QEM SA DE CV, BI-QEM, INC.,

Defendants-Appellants.

ORDER

Appellants, BI-QEM SA de CV, BI-QE, Inc., filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

Appendix E

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

/s/ Catherine O'Hagan Wolfe

APPENDIX F — RELEVANT STATUTORY PROVISIONS

Rule 4. Appeal as of Right-When Taken, FRAP Rule 4

* * *

(4) Effect of **a Motion on a Notice of Appeal.**

(A) If a party files in the district court any of the following motions under the Federal Rules of Civil Procedure-and does so within the time allowed by those rules-the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

* * *

(7) Entry Defined.

(A) A judgment or order is entered for purposes of this Rule 4(a):

(i) if Federal Rule of Civil Procedure 58(a) does not require a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a); or

* * * *

Appendix F

Federal Rules of Civil Procedure Rule 79
Rule 79. Records Kept by the Clerk

* * *

(2) ***Items to be Entered.*** The following items must be marked with the file number and entered chronologically in the docket:

* * *

(C) appearances, orders, verdicts, and judgments.

* * *

(b) Civil Judgments and Orders. The clerk must keep a copy of every final judgment and appealable order; of every order affecting title to or a lien on real or personal property; and of any other order that the court directs to be kept. The clerk must keep these in the form and manner prescribed by the Director of the Administrative Office of the United States Courts with the approval of the Judicial Conference of the United States.

(c) Indexes; Calendars. Under the court's direction, the clerk must:

(1) keep indexes of the docket and of the judgments and orders described in Rule 79(b); and

* * * *

Appendix F

RULE 77

ENTRY OF ORDERS AND JUDGMENTS; MISCELLANEOUS

(a) Entry of Orders and Judgments by the Court

* * *

2. The notation in the appropriate docket of an "order," as defined in the previous paragraph, shall constitute the entry of the order.

* * * *