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15 ROBINSON, JR

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17 **UNITED STATES DISTRICT COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA**

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ERIC PODWALL, an individual,

Plaintiff,

v.

WILLIAM “SMOKEY” ROBINSON,  
JR., an individual,

Defendant.

**CASE NO. 2:16-cv-06088-ODW  
(AGR<sub>x</sub>)**

**JOINT MEMORANDUM OF  
CONTENTIONS OF FACT AND  
LAW**

The Hon. Otis D. Wright II

Case Removed: August 15, 2016  
Final PTC: January 14, 2022  
Trial Date: February 15, 2022

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1 Plaintiff Eric Podwall (“Plaintiff” or “Podwall”) and Defendant William  
2 “Smokey” Robinson, Jr. (“Defendant” or “Robinson”), by and through their  
3 undersigned attorneys, submit the foregoing Joint Memorandum of Contentions of  
4 Fact and Law pursuant to Local Rule 16-4.

5 **I. CLAIMS AND DEFENSES**

6 **A. Plaintiff’s Claims**

7 Pursuant to Local Rule 16-4.1(a), the following is a summary statement of the  
8 claims Plaintiff has pleaded and plans to pursue:

9 **Claim 1 in the FAC:** Breach of written contract by defendant Robinson.

10 **Claim 2 in the FAC:** Alternatively, quantum meruit against defendant  
11 Robinson.<sup>1</sup>

12 **B. The Elements of Plaintiff’s Claims**

13 Pursuant to Local Rule 16-4.1(b), the elements required to establish Plaintiff’s  
14 claims are as follows:

15 **Breach of written contract**

16 To recover damages from defendant Robinson for breach of contract,  
17 plaintiff Podwall must prove all of the following:

- 18 1. That plaintiff Podwall and defendant Robinson entered into a contract;
- 19 2. That plaintiff Podwall did all, or substantially all, of the significant
- 20 things that the contract required him to do;
- 21 3. That defendant Robinson failed to do something that the contract
- 22 required him to do;
- 23 5. That plaintiff Podwall was harmed; and

24 \_\_\_\_\_  
25 <sup>1</sup> Plaintiff Podwall intends to pursue this claim for Quantum Meruit in the alternative  
26 to his breach of written contract claim. Specifically, Podwall only intends to pursue  
27 the quantum meruit claim if the jury finds that there was no breach of written contract  
28 between Podwall and defendant Robinson.

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1 6. That defendant Robinson’s breach of contract was a substantial factor in  
2 causing Podwall’s harm.

3 See Judicial Council of California Civil Jury Instruction 303 (2019)

4 **Quantum meruit**

5 Plaintiff Podwall claims that defendant Robinson owes him money for  
6 services rendered. To establish this claim, plaintiff Podwall must prove all of the  
7 following:

- 8 1. That defendant Robinson requested, by words or conduct, that plaintiff
- 9 Podwall perform services for the benefit of defendant Robinson;
- 10 2. That plaintiff Podwall performed the services as requested;
- 11 3. That defendant Robinson has not fully paid plaintiff Podwall for the
- 12 services; and
- 13 4. The reasonable value of the services that were provided.

14 **C. The Evidence Supporting Plaintiff’s Claims**

15 Pursuant to Local Rule 16-4.1(c), Plaintiff provides a brief description of the  
16 key evidence in support of each of the claims, and Defendant provides a brief  
17 description of the key evidence in opposition to each of the claims.

18 **1. The Breach of Contract Claim**

19 **Plaintiff’s Evidence**

20 To recover damages from defendant Robinson for breach of contract,  
21 plaintiff Podwall must prove all of the following:

- 22 1. That plaintiff Podwall and defendant Robinson entered into a contract
- 23 • The timing and substance of the relevant pre-contract meeting and
- 24 contract negotiation will be evidenced by live testimony of Podwall, Robinson
- 25 and Brian French and by several e-mails.
- 26 • Contract formation will be evidenced by live testimony of Podwall,
- 27 Robinson and French and a copy of the Management Agreement signed by
- 28 Robinson and Podwall.

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1 2. That plaintiff Podwall did all, or substantially all, of the significant  
2 things that the contract required him to do

3 • Podwall’s performance under the Management Agreement will be  
4 evidenced primarily by live testimony by Podwall and Paul George. Performance  
5 will also be evidence by several e-mails.

6 3. That defendant Robinson failed to do something that the contract  
7 required him to do

8 • Robinson breached Section 2 of the Management Agreement by  
9 failing to pay Podwall ten (10) percent of Robinson’s gross earnings from various  
10 live performances that occurred between June 2013 and the end of February 2016.  
11 In particular, Robinson performed in at least 251 live performances that occurred  
12 during the June 2013 to the end of February 2016 timeframe. Robinson earned  
13 approximately \$10 million from those performances. Accordingly, Robinson  
14 owed Podwall approximately \$1 million in performance related commissions  
15 under Section 2 of the Management Agreement. To date, Defendant has paid  
16 Podwall less than \$25,000.00 of the \$1 million owed in performance related  
17 commissions under the Management Agreement.

18 • Defendant Robinson’s payment obligations will be evidenced by the  
19 Management Agreement itself and the live testimony of Podwall.

20 • Robinson’s breaches will be evidenced by the live testimony of  
21 Podwall, Robinson, George, Rob Heller, Heller’s former WME assistants, Earl  
22 Bryant, Tom Wolff and the deposition testimony of Robinson’s long time and  
23 former bookkeeper, Jan Stern.

24 • Robinson’s breaches will also be evidenced by Robinson’s financial  
25 ledgers which were prepared by Stern and business records prepared by William  
26 Morris Endeavor (“WME”), Robinson’s former talent agency that booked all of  
27 the performances at issue. These live performances and payments are further  
28 corroborated by business records prepared by Podwall’s office.

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1           •       That Robinson only paid around \$25,000.00 in commissions is  
2 evidenced by Podwall’s testimony and Podwall’s accounting records and  
3 Robinson’s checks.

4           •       Robinson also breached Section 2 of the Management Agreement by  
5 failing to pay Podwall a ten (10) percent commission on an advance payment  
6 Robinson received from Verve Records in September 2014 in connection with a  
7 recording agreement. If necessary, this breach is evidenced by the live testimony  
8 of Lex Conboy from the record company, the recording agreement at issue and  
9 the record company’s business records showing the payment of the advance.

10          •       That defendant Robinson did not pay Podwall a commission on the  
11 record company advance is evidenced by Podwall’s testimony and Podwall’s  
12 accounting records and Robinson’s checks.

13           5. That plaintiff Podwall was harmed

14          •       Here, Defendant Robinson’s breach was his failure to pay Podwall.  
15 Accordingly, defendant Robinson’s breach and Podwall’s damages are  
16 synonymous. The same evidence used to prove that defendant Robinson  
17 breached the contract will be used to prove damages. In particular, the amount of  
18 damages will be proved by the business records identified above.

19           6. That defendant Robinson’s breach of contract was a substantial factor in  
20 causing Podwall’s harm.

21          •       Here, Defendant Robinson’s breach was his failure to pay Podwall.  
22 Accordingly, defendant Robinson’s breach and Podwall’s damages are  
23 synonymous. The same evidence used to prove that defendant Robinson  
24 breached the contract will be used to prove damages. In particular, the amount of  
25 damages will be proved by the business records identified above.

26           Defendant’s Evidence

27           A brief description of the key evidence in opposition to this claim is as  
28 follows: Robinson, along with his production manager Brian French (“French”),

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1 will testify that the deal agreed to by Podwall and Robinson was that Podwall would  
 2 serve as Robinson’s manager to obtain television and film opportunities and that, if  
 3 Podwall was able to secure any such opportunities for Robinson, Podwall would be  
 4 entitled to a ten percent (10%) commission on those opportunities. Because  
 5 Robinson has been performing concerts and tours his entire career, such concerts  
 6 and performances would be excluded from Podwall’s commissions unless Podwall  
 7 brought such opportunities to Robinson—and in that case, Podwall would be  
 8 entitled to a commission on those concerts or performances only. Robinson and  
 9 French were directly involved in the discussions which led to the formation of this  
 10 contract. Robinson’s former agent, Rob Heller (“Heller”), and tour manager, Earl  
 11 Bryant (“Bryant”), will also testify that Podwall was Robinson’s television and film  
 12 manager from approximately September 2012 to December 2015, and that Podwall  
 13 generally had no role or responsibilities with respect to Robinson’s live performance  
 14 business. Podwall is seeking commissions on Robinson’s live performances, but he  
 15 did not bring those opportunities to Robinson and is not entitled to any commissions  
 16 on them. Podwall’s claim of breach is unfounded, as is his claim of any damages  
 17 flowing from any breach. Podwall was paid in full the commissions he was owed.  
 18 Further, because Podwall is seeking commissions for live performances that he did  
 19 not secure for Robinson, Podwall’s breach of contract claim fails for the additional  
 20 reason that Podwall did not perform his contractual obligations that would entitle  
 21 him to commissions. These facts will be established from the testimony of  
 22 Robinson, French, Heller and Bryant, and e-mails, invoices and other documents  
 23 showing that Podwall is not entitled to commissions of Robinson’s live  
 24 performances.

25 **2. The Quantum Meruit Claim**

26 **Plaintiff’s Evidence**

27 1. That defendant Robinson requested, by words or conduct, that plaintiff  
 28 Podwall perform services for the benefit of defendant Robinson.

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1           •       That defendant Robinson requested management services from  
2 Podwall will be evidenced by the by live testimony of Podwall, Robinson and  
3 Brian French and by several e-mails.

4           2. That plaintiff Podwall performed the services as requested.

5           •       Podwall’s performance under the Management Agreement will be  
6 evidenced primarily by live testimony by Podwall and Paul George. Performance  
7 will also be evidence by several e-mails.

8           3. That defendant Robinson has not fully paid plaintiff Podwall for the  
9 services.

10          •       That Robinson did not fully pay is evidenced by Podwall’s testimony  
11 and Podwall’s accounting records and Robinson’s checks.

12          4. The reasonable value of the services that were provided.

13          •       The reasonable value of Podwall’s management services will be  
14 evidenced by Podwall’s testimony.

15           Defendant’s Evidence

16           A brief description of the key evidence in opposition to this claim is as  
17 follows: Podwall did not perform any work for the live performances that he  
18 seeking commissions for. The value of his “services” is zero. This will be  
19 supported by the testimony of Robinson, French, Bryant and Heller, and e-mails,  
20 invoices and other documents showing that Podwall did not have any role with  
21 respect to these performances. He was not the talent agent, production manager,  
22 tour manager or publicist.

23           **D. Defendant’s Affirmative Defenses**

24           Pursuant to Local Rule 16-4.1(d), Defendant provides a summary statement  
25 of the affirmative defenses Defendant has pleaded and plans to pursue.

26           First Affirmative Defense: Plaintiff’s claims are barred under the doctrine of  
27 waiver.

28           Second Affirmative Defense: Plaintiff’s claims are barred under the doctrine

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1 of estoppel.

2 Third Affirmative Defense: Plaintiff’s claims are barred under the doctrine of  
3 unclean hands.

4 Fourth Affirmative Defense: Plaintiff’s claims are barred due to his  
5 fraudulent and deceitful conduct.

6 Fifth Affirmative Defense: Plaintiff’s claims are barred under the doctrine of  
7 mistake.

8 Sixth Affirmative Defense: Plaintiff’s claims are barred under the doctrine of  
9 accord and satisfaction.

10 Seventh Affirmative Defense: Plaintiff’s claims are barred by the affirmative  
11 defense of novation.

12 **E. Elements Required to Establish Defendant’s Affirmative Defenses**

13 Pursuant to Local Rule 16-4.1(e), these are the elements required for each  
14 affirmative defense:

15 Elements Required to Establish Defendant’s Affirmative Defense of Waiver

- 16 1. Plaintiff knew Defendant was required to pay commissions on live
- 17 performances;
- 18 2. Plaintiff freely and knowingly gave up his right to have Defendant
- 19 perform this obligation.

20 A waiver may be oral or written or may arise from conduct that shows that  
21 Plaintiff gave up that right. If Defendant proves that Plaintiff gave up his right to  
22 Defendant’s payment of commissions for live performances, then Defendant was  
23 not required to perform this obligation.

24  
25 Authority: Judicial Council of California Civil Jury Instructions (2020  
26 Edition) No. 336

27 Plaintiff’s Note on Waiver: Plaintiff does not dispute the elements identified  
28 above, except that Defendant has not adequately identified the standard of proof –

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1 clear and convincing evidence. Defendant must prove both of the elements  
2 identified above by clear and convincing evidence. See Judicial Council of  
3 California Civil Jury Instructions (2020 Edition) No. 336; *DRG/Beverly Hills, Ltd.*  
4 *v. Chopstix Dim Sum Cafe & Takeout III, Ltd.*, 30 Cal. App. 4th 54, 60–61 (1994).

5 Elements Required to Establish Defendant’s Affirmative Defense of Estoppel

- 6 1. Plaintiff must know the facts;
- 7 2. Plaintiff must intend that his conduct shall be acted upon, or must so
- 8 act that the party asserting the estoppel had the right to believe that it was so
- 9 intended;
- 10 3. Defendant must be ignorant of the true state of facts; and
- 11 4. Defendant relies upon Plaintiff’s conduct to his injury.

12  
13 Authority: *DRG/Beverly Hills, Ltd. v. Chopstix Dim Sum Cafe & Takeout III,*  
14 *Ltd.*, 30 Cal. App. 4th 54, 59-60 (1994); Cal. Evid. Code § 623.

15  
16 Elements Required to Establish Defendant’s Affirmative Defense of Unclean Hands

- 17 1. Inequitable conduct by the Plaintiff;
- 18 2. The Plaintiff’s conduct directly relates to the claim which he has
- 19 asserted against the Defendant; and
- 20 3. Plaintiff’s conduct injured the Defendant.

21  
22 Authority: *Jade Fashion & Co., Inc. v. Harkham Industries, Inc.*, 229 Cal.  
23 App. 4th 635, 653-54 (2014); see *Camp v. Jeffer, Mangels, Butler & Marmaro*, 35  
24 Cal. App. 4th 620, 638 (1995) (“In California, the doctrine of unclean hands may  
25 apply to legal as well as equitable claims . . . and to both tort and contract  
26 remedies.”)

1 Elements Required to Establish Defendant’s Affirmative Defense of Fraud/Deceit

- 2 1. Plaintiff represented that the contract did not entitle him to  
3 commissions on live performances that he did not procure and that any language  
4 that said otherwise had been taken out;
- 5 2. Plaintiff knew those representations were not true;
- 6 3. Plaintiff made the representation to persuade Defendant to agree to the  
7 contract;
- 8 4. Defendant reasonably relied on these representations; and
- 9 5. Defendant would not have entered into the contract if he had known  
10 that the representations were not true.

11  
12 Authority: Judicial Council of California Civil Jury Instructions (2020  
13 Edition) No. 330

14  
15 Elements Required to Establish Defendant’s Affirmative Defense of Mistake

- 16 1. That Defendant was mistaken about language in the written agreement  
17 which would allow Podwall to collect commissions on Defendant’s live  
18 performances that Podwall had no role in procuring.
- 19 2. That Plaintiff knew Defendant was mistaken and used that mistake to  
20 take advantage of him;
- 21 3. That Defendant’s mistake was not caused by his excessive carelessness;  
22 and
- 23 4. That Defendant would not have agreed to enter into the contract if he  
24 had known about the mistake.

25 If you the jury decide that Defendant has proven all of the above, then no  
26 contract was created.

27  
28 Authority: Judicial Council of California Civil Jury Instructions (2020

1 Edition) No. 330

2

3 Elements Required to Establish Defendant’s Affirmative Defense of Accord and  
4 Satisfaction

- 5 1. There was a bona fide dispute between the parties;
- 6 2. Defendant made it clear that acceptance of what he tendered was  
7 subject to the condition that it was to be in full satisfaction of the Plaintiff’s  
8 unliquidated claim; and
- 9 3. Plaintiff clearly understood when accepting what was tendered that the  
10 debtor intended such remittance to constitute payment in full of the particular claim  
11 in issue.

12

13 Authority: *BII Finance Co. v. U-States Forwarding Services Corp.*, 95 Cal.  
14 App. 4th 111, 126 (2002); *Conderback, Inc., v. Standard Oil Co.*, 239 Cal. App. 2d  
15 664, 680 (1966) (“The question whether an agreement amounts to an accord and  
16 satisfaction is one of the intention of the parties and is therefore a question of fact.”)

17

18 Elements Required to Establish Defendant’s Affirmative Defense of Novation

- 19 1. All parties agreed, by words or contract, to cancel the original contract  
20 and to substitute a new contract in its place.

21

22 Authority: Judicial Council of California Civil Jury Instructions (2020  
23 Edition) No. 337

24

25 **F. Evidence Supporting Defendant’s Affirmative Defenses**

26 Pursuant to Local Rule 16-4.1(f), the parties provide a brief summary of the  
27 key evidence supporting and opposing Defendant’s affirmative defenses:

28

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1                                   **1.     Waiver**  
2                                   Defendant’s Evidence

3             The evidence supporting this affirmative defense is summarized as follows:  
4 In 2013, Paul George (“George”), who works for Plaintiff’s company Podwall  
5 Entertainment, sent an invoice on behalf of Plaintiff and/or his company to  
6 Defendant’s business manager seeking commissions for certain live performances.  
7 Defendant rejected this invoice as contrary to the parties’ agreement. Thereafter,  
8 Plaintiff did not file a lawsuit or otherwise pursue a claim for these commissions,  
9 and he never followed up in writing to seek these commissions. Further, as  
10 Defendant continued to conduct live performances and receive payments for those  
11 performances, Plaintiff did not send Defendant invoices or otherwise request  
12 payment in writing. Plaintiff did not present Defendant with any written claim for  
13 these commissions until years later in 2016 after he was terminated. Plaintiff  
14 knowingly and intentionally relinquished any right to collect these commissions by  
15 not seeking these commissions while continuing to serve as Defendant’s television  
16 and film manager from 2012 to 2015. Plaintiff claims that he spoke to Defendant  
17 over the phone and in person to request these commissions, but this testimony is  
18 contradicted by Defendant and is not credible. These facts will be established  
19 through the testimony of Robinson, Podwall, Heller, Bryant, French and George,  
20 and e-mails, invoices and other documents showing Plaintiff’s knowing and  
21 intentional relinquishment of his right to collect commissions on Defendant’s live  
22 performances.

23                                   Plaintiff’s Evidence

- 24             1.     Plaintiff does not dispute that he knew Defendant was required to pay  
25 commissions on live performances.
- 26             2.     Plaintiff disputes that he freely and knowingly gave up his right to have  
27 Defendant perform the obligation to pay commissions on live performances.  
28 Podwall will rely on evidence that after Robinson’s obligation to pay commissions

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1 on his touring/performance revenue began in June 2013, and Robinson failed to  
2 make commission payments to Podwall, Podwall had numerous conversations with  
3 Robinson about Robinson’s non-payment between 2013 and 2016. Podwall never  
4 told Robinson that he would not have to pay commissions. Rather, throughout these  
5 multiple conversations with Robinson, Podwall clearly and consistently notified  
6 Robinson that he owed commissions under the Management Agreement on  
7 touring/live performances, and that Robinson needed to pay Podwall those  
8 commissions. In sum and substance, Podwall continued to remind Robinson that he  
9 needed to pay Podwall commissions as required by the Management Agreement,  
10 that his non-payment needed to be fixed, and that he owed a commission on all of  
11 the live performances that took place since June 2013. In sum and substance,  
12 Robinson continued to make excuses and stated that he needed more time to pay  
13 Podwall what was owed, and that he intended to do so. These facts will be  
14 evidenced by Podwall’s testimony.

15 Podwall will also rely on evidence that Podwall and George continued  
16 performing management services under the Management Agreement, and that  
17 Robinson was aware of such continued performance. It was clear that Podwall (and  
18 George) were not working for free, and that Podwall expected to be compensated as  
19 required by the Management Agreement. Such continued performance under the  
20 Management Agreement will be evidenced primarily by testimony by Podwall,  
21 George and Robinson. Performance will also be evidence by several e-mails.  
22 Podwall will also rely on the language of the Management Agreement itself.

## 23 2. Estoppel

### 24 Defendant’s Evidence

25 The evidence supporting this affirmative defense is summarized as follows:  
26 In 2013, Paul George (“George”), who works for Plaintiff’s company Podwall  
27 Entertainment, sent an invoice on behalf of Plaintiff and/or his company to  
28 Defendant’s business manager seeking commissions for certain live performances.

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1 Defendant rejected this invoice as contrary to the parties' agreement. Thereafter,  
2 Plaintiff did not file a lawsuit or otherwise pursue a claim for these commissions,  
3 and he never followed up in writing to seek these commissions. Further, as  
4 Defendant continued to conduct live performances and receive payments for those  
5 performances, Plaintiff did not send Defendant invoices or otherwise request  
6 payment in writing. Plaintiff did not present Defendant with any written claim for  
7 these commissions until years later in 2016 when he filed the Complaint in this  
8 matter. Plaintiff did not seek these commissions while continuing to serve as  
9 Defendant's television and film manager from 2012 to 2015. Plaintiff claims that he  
10 spoke to Defendant over the phone and in person to request these commissions, but  
11 this testimony is contradicted by Defendant and is not credible. Plaintiff, through  
12 his conduct and statements, led Defendant to believe that Plaintiff had dropped his  
13 request for these commissions. Defendant would have exercised his right to  
14 terminate the written agreement in 2014 if Defendant knew that Plaintiff still  
15 claimed that he is owed these commissions. These facts will be established through  
16 the testimony of Robinson, Podwall, Heller, Bryant, French and George, and e-  
17 mails, invoices and other documents showing Plaintiff is estopped from collecting  
18 commissions on Defendant's live performances.

19 Plaintiff's Evidence

- 20 1. Plaintiff does not dispute that he knew Defendant was required to pay  
21 commissions on live performances.
- 22 2. Plaintiff disputes that he intended that his conduct would be acted upon  
23 by Robinson, or that Podwall acted so that Robinson had the right to believe that it  
24 was so intended. In particular, Podwall did not engage in any conduct to cause  
25 Robinson to believe that Robinson would not be required to pay commissions on live  
26 performances. Podwall will rely on evidence that after Robinson's obligation to pay  
27 commissions on his touring/performance revenue began in June 2013, and Robinson  
28 failed to make commission payments to Podwall, Podwall had numerous

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1 conversations with Robinson about Robinson’s non-payment between 2013 and  
2 2016. Podwall never told Robinson that he would not have to pay commissions.  
3 Rather, throughout these multiple conversations with Robinson, Podwall clearly and  
4 consistently notified Robinson that he owed commissions under the Management  
5 Agreement on touring/live performances, and that Robinson needed to pay Podwall  
6 those commissions. In sum and substance, Podwall continued to remind Robinson  
7 that he needed to pay Podwall commissions as required by the Management  
8 Agreement, that his non-payment needed to be fixed, and that he owed a  
9 commission on all of the live performances that took place since June 2013. In sum  
10 and substance, Robinson continued to make excuses and stated that he needed more  
11 time to pay Podwall what was owed, and that he intended to do so. These facts will  
12 be evidenced by Podwall’s testimony.

13 Podwall will also rely on evidence that Podwall and George continued  
14 performing management services under the Management Agreement, and that  
15 Robinson was aware of such continued performance. It was clear that Podwall (and  
16 George) were not working for free, and that Podwall expected to be compensated as  
17 required by the Management Agreement. Such continued performance under the  
18 Management Agreement will be evidenced primarily by testimony by Podwall,  
19 George and Robinson. Performance will also be evidence by several e-mails.  
20 Podwall will also rely on the language of the Management Agreement itself.

21 3. Podwall disputes that Robinson was ignorant of Podwall’s intention to  
22 enforce the Management Agreement, in particular Robinson’s obligations to pay  
23 commissions. Podwall will rely on the same evidence identified in opposition to  
24 element 2.

25 4. Podwall disputes that Robinson relied upon Podwall’s conduct to his  
26 injury. Podwall will rely on the same evidence identified in opposition to element 2.

27 **3. Unclean Hands**

28 **Defendant’s Evidence**

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1 The evidence supporting this affirmative defense is summarized as follows:  
2 In 2012, Robinson, Podwall and French discussed the terms under which Podwall  
3 would serve as Robinson’s television and film manager. Those terms were that  
4 Podwall would help secure television and film appearances for Robinson and that  
5 Podwall would be entitled to a commission of ten percent (10%) of Robinson’s  
6 revenue earned as a result of those appearances. If Robinson was able to secure a  
7 television or film role without the assistance of Podwall or if the opportunity was  
8 generated by someone else, Podwall would not be entitled to any commission. With  
9 further discussions, Robinson told Podwall that he could collect commissions for  
10 live performances or other opportunities at the same percentage but only if Podwall  
11 created those opportunities for Robinson. Robinson told Podwall directly that  
12 Podwall was not entitled to collect commissions on any of Robinson’s live  
13 performance business that Robinson had already established long before Podwall  
14 became involved with Robinson. Podwall indicated to Robinson and French that he  
15 understood and agreed to these terms. Podwall, through French, provided Robinson  
16 with a draft written agreement, but this agreement was contrary to these terms and  
17 would allow Podwall to collect commissions on Robinson’s live performance  
18 business. Robinson told Podwall that this written agreement was contrary to their  
19 discussions and was not acceptable. Robinson directed Podwall to amend the  
20 agreement accordingly. Podwall told Robinson, in sum and substance, that he made  
21 the requested changes and that the written agreement conformed to the parties’  
22 discussions which was that Podwall was only entitled to collect a commission on  
23 opportunities that Podwall brought to Robinson that Robinson agreed to do.  
24 Contrary to his representations, Podwall did not make the requested changes and  
25 lied to Robinson to induce him to sign the written agreement. Robinson relied on  
26 Podwall’s representations and signed the agreement. Podwall’s fraud and deceit  
27 constitutes inequitable conduct that supports the unclean hands defense. In addition,  
28 Robinson was over the age of 70 when he signed the agreement. Podwall’s

1 fraudulent and deceitful conduct also constitutes elder abuse under California law,  
2 which further supports Robinson’s unclean hands defense. These facts will be  
3 established through the testimony of Robinson, Podwall, French, Heller and Bryant,  
4 and e-mails, invoices and other such documents.

5 Plaintiff’s Evidence

6 1. Podwall disputes that he engaged in any inequitable conduct. This  
7 defense mirrors Robinson’s fraud defense. Podwall disputes that he represented that  
8 the contract did not entitle Podwall to commissions on live performances that he did  
9 not procure and that any language that said otherwise had been taken out. Podwall  
10 will rely on evidence that in approximately late August 2012, Podwall met with  
11 Robinson about becoming Robinson’s personal manager (the “August 2012  
12 Meeting”). That meeting was brokered by Brian French, one of Robinson’s  
13 associates. French also attended that meeting. At the August 2012 Meeting, the  
14 parties discussed the contemplated management services/relationship. Podwall  
15 never represented that he would not commission all of Robinson’s live  
16 performances or live performances that he did not procure. Podwall never  
17 represented that he was going to procure employment or engagements for Robinson.

18 In the weeks that followed the August 2012 Meeting, the parties negotiated  
19 the Management Agreement. Robinson’s associate, French, negotiated the  
20 agreement on Robinson’s behalf and spoke directly to Robinson about the  
21 agreement and its proposed terms. Podwall did not negotiate directly with Robinson  
22 about the contemplated agreement. Again, during those negotiations, Podwall  
23 provided deal terms/drafts of the Management Agreement to both French and  
24 Robinson. Those draft deal terms clearly indicated that Podwall would commission  
25 Robinson’s gross touring revenues. During Podwall’s negotiations with French,  
26 Podwall clearly indicated that he intended to commission Robinson’s gross touring  
27 revenues, and never said that he was going to remove such language from the  
28 agreement. Neither Robinson nor French objected to the proposed commissions on

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1 Robinson’s touring revenue. Neither French nor Robinson ever requested that  
2 Podwall remove such language. French, who was negotiating on Robinson’s behalf,  
3 requested that Podwall make other modifications to the draft deal terms. Podwall  
4 promptly made every change proposed by French/Robinson.

5 On or about September 10, 2012, Podwall, Robinson and French met at  
6 Robinson’s home about the Management Agreement (the “September 2012  
7 Meeting”). At the September 2012 Meeting, Podwall, Robinson and French  
8 reviewed the one-page Management Agreement. Following their review of the  
9 Management Agreement, neither Robinson nor French expressed any objection to  
10 the Management Agreement. At the September 2012 Meeting, Podwall and  
11 Robinson signed the Management Agreement.

12 These facts will be evidenced by testimony by Podwall, French and Robinson.  
13 They will also be evidence by the e-mails between French, Podwall and/or  
14 Robinson.

15 2. As Podwall disputes that he made the representations at issue, there is  
16 nothing to address in connection with the second element of the unclean hands  
17 defense.

18 3. Podwall disputes that he made the representations at issue. Assuming  
19 that Podwall made any representation, which he did not, Podwall disputes that the  
20 alleged representations at issue caused Robinson to enter into the Management  
21 Agreement. In particular, Robinson saw the substance of the final draft and signed  
22 it knowing that it obligated him to pay Podwall commissions on Robinson’s gross  
23 touring revenue. Podwall intends to rely on the same evidence identified in  
24 opposition to element 1.

25 **4. Fraud/Deceit**

26 **Defendant’s Evidence**

27 The evidence supporting this affirmative defense is summarized as follows:  
28 In 2012, Robinson, Podwall and French discussed the terms under which Podwall

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1 would serve as Robinson’s television and film manager. Those terms were that  
2 Podwall would help secure television and film appearances for Robinson and that  
3 Podwall would be entitled to a commission of ten percent (10%) of Robinson’s  
4 revenue earned as a result of those appearances. If Robinson was able to secure a  
5 television or film role without the assistance of Podwall or if the opportunity was  
6 generated by someone else, Podwall would not be entitled to any commission. With  
7 further discussions, Robinson told Podwall that he could collect commissions for  
8 live performances or other opportunities at the same percentage but only if Podwall  
9 created those opportunities for Robinson. Robinson told Podwall directly that  
10 Podwall was not entitled to collect commissions on any of Robinson’s live  
11 performance business that Robinson had already established long before Podwall  
12 became involved with Robinson. Podwall indicated to Robinson and French that he  
13 understood and agreed to these terms. Podwall, through French, provided Robinson  
14 with a draft written agreement, but this agreement was contrary to these terms and  
15 would allow Podwall to collect commissions on Robinson’s live performance  
16 business. Robinson told Podwall, in sum and substance, that this written agreement  
17 was contrary to their discussions and was not acceptable. Robinson directed  
18 Podwall to amend the agreement accordingly. Podwall told Robinson, in sum and  
19 substance, that he made the requested changes and that the written agreement  
20 conformed to the parties’ discussions which was that Podwall was only entitled to  
21 collect a commission on opportunities that Podwall brought to Robinson that  
22 Robinson agreed to do. Contrary to his representations, Podwall did not make the  
23 requested changes and lied to Robinson to induce him to sign the written agreement.  
24 Robinson relied on Podwall’s representations and signed the agreement. These facts  
25 will be established through the testimony of Robinson, Podwall, French, Heller and  
26 Bryant, and e-mails, invoices and other such documents.

27 Plaintiff’s Evidence

28 1. Podwall disputes that he represented that the contract did not entitle

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1 Podwall to commissions on live performances that he did not procure and that any  
2 language that said otherwise had been taken out. Podwall will rely on evidence that  
3 in approximately late August 2012, Podwall met with Robinson about becoming  
4 Robinson’s personal manager (the “August 2012 Meeting”). That meeting was  
5 brokered by Brian French, one of Robinson’s associates. French also attended that  
6 meeting. At the August 2012 Meeting, the parties discussed the contemplated  
7 management services/relationship. Podwall never represented that he would not  
8 commission all of Robinson’s live performances or live performances that he did not  
9 procure. Podwall never represented that he was going to procure employment or  
10 engagements for Robinson.

11 In the weeks that followed the August 2012 Meeting, the parties negotiated  
12 the Management Agreement. Robinson’s associate, French, negotiated the  
13 agreement on Robinson’s behalf and spoke directly to Robinson about the  
14 agreement and its proposed terms. Podwall did not negotiate directly with Robinson  
15 about the contemplated agreement. Again, during those negotiations, Podwall  
16 provided deal terms/drafts of the Management Agreement to both French and  
17 Robinson. Those draft deal terms clearly indicated that Podwall would commission  
18 Robinson’s gross touring revenues. During Podwall’s negotiations with French,  
19 Podwall clearly indicated that he intended to commission Robinson’s gross touring  
20 revenues, and never said that he was going to remove such language from the  
21 agreement. Neither Robinson nor French objected to the proposed commissions on  
22 Robinson’s touring revenue. Neither French nor Robinson ever requested that  
23 Podwall remove such language. French, who was negotiating on Robinson’s behalf,  
24 requested that Podwall make other modifications to the draft deal terms. Podwall  
25 promptly made every change proposed by French/Robinson.

26 On or about September 10, 2012, Podwall, Robinson and French met at  
27 Robinson’s home about the Management Agreement (the “September 2012  
28 Meeting”). At the September 2012 Meeting, Podwall, Robinson and French

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1 reviewed the one-page Management Agreement. Following their review of the  
2 Management Agreement, neither Robinson nor French expressed any objection to  
3 the Management Agreement. At the September 2012 Meeting, Podwall and  
4 Robinson signed the Management Agreement.

5 These facts will be evidenced by testimony by Podwall, French and Robinson.  
6 They will also be evidence by the e-mails between French, Podwall and/or  
7 Robinson.

8 2. As Podwall disputes that he made the representations at issue, there is  
9 nothing to address in connection with the second element of the fraud defense.

10 3. As Podwall disputes that he made the representations at issue, there is  
11 nothing to address in connection with the third element of the fraud defense.

12 4. As Podwall disputes that he made the representations at issue.  
13 Assuming that Podwall made any misrepresentation, which he did not, Robinson's  
14 purported reliance was not reasonable. Robinson was provided with multiple drafts,  
15 including the final version that he signed at the September 12 Meeting. The one-  
16 page document, which Robinson reviewed, clearly stated that Podwall would  
17 commission all of Robinson's gross touring revenues. Podwall intends to rely on  
18 the same evidence identified in opposition to element 1.

19 5. Podwall disputes that he made the representations at issue. Assuming  
20 that Podwall made any representation, which he did not, Podwall disputes that the  
21 alleged representation(s) at issue caused Robinson to enter into the Management  
22 Agreement. In particular, Robinson saw the substance of the final draft and signed  
23 it knowing that it obligated him to pay Podwall commissions on Robinson's gross  
24 touring revenue. Podwall intends to rely on the same evidence identified in  
25 opposition to element 1.

26 **5. Mistake**

27 **Defendant's Evidence**

28 The evidence supporting this affirmative defense is summarized as follows:

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1 In 2012, Robinson, Podwall and French discussed the terms under which Podwall  
2 would serve as Robinson’s television and film manager. Those terms were that  
3 Podwall would help secure television and film appearances for Robinson and that  
4 Podwall would be entitled to a commission of ten percent (10%) of Robinson’s  
5 revenue earned as a result of those appearances. If Robinson was able to secure a  
6 television or film role without the assistance of Podwall or if the opportunity was  
7 generated by someone else, Podwall would not be entitled to any commission. With  
8 further discussions, Robinson told Podwall, in sum and substance, that he could  
9 collect commissions for live performances or other opportunities at the same  
10 percentage but only if Podwall created those opportunities for Robinson. Robinson  
11 told Podwall directly that Podwall was not entitled to collect commissions on any of  
12 Robinson’s live performance business that Robinson had already established long  
13 before Podwall became involved with Robinson. Podwall indicated to Robinson  
14 and French that he understood and agreed to these terms. Podwall, through French,  
15 provided Robinson with a draft written agreement, but this agreement was contrary  
16 to these terms and would allow Podwall to collect commissions on Robinson’s live  
17 performance business. Robinson told Podwall, in sum and substance, that this  
18 written agreement was contrary to their discussions and was not acceptable.  
19 Robinson directed Podwall to amend the agreement accordingly. Podwall told  
20 Robinson, in sum and substance, that he made the requested changes and that the  
21 written agreement conformed to the parties’ discussions which was that Podwall  
22 was only entitled to collect a commission on opportunities that Podwall brought to  
23 Robinson that Robinson agreed to do. Contrary to his representations, Podwall did  
24 not make the requested changes and lied to Robinson to induce him to sign the  
25 written agreement. Robinson relied on Podwall’s representations and signed the  
26 agreement. These facts will be established through the testimony of Robinson,  
27 Podwall, French, Heller and Bryant, and e-mails, invoices and other such  
28 documents.

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1           Plaintiff’s Evidence

2           1.       Podwall disputes that Robinson was mistaken about language in the  
3 written agreement which would allow Podwall to collect commissions on  
4 Defendant’s live performances that Podwall had no role in procuring. That  
5 language was clearly articulated to Robinson and French. Podwall will rely on  
6 evidence that in approximately late August 2012, Podwall met with Robinson about  
7 becoming Robinson’s personal manager (the “August 2012 Meeting”). That  
8 meeting was brokered by Brian French, one of Robinson’s associates. French also  
9 attended that meeting. At the August 2012 Meeting, the parties discussed the  
10 contemplated management services/relationship. Podwall never represented that he  
11 would not commission all of Robinson’s live performances or live performances  
12 that he did not procure. Podwall never represented that he was going to procure  
13 employment or engagements for Robinson.

14           In the weeks that followed the August 2012 Meeting, the parties negotiated  
15 the Management Agreement. Robinson’s associate, French, negotiated the  
16 agreement on Robinson’s behalf and spoke directly to Robinson about the  
17 agreement and its proposed terms. Podwall did not negotiate directly with Robinson  
18 about the contemplated agreement. Again, during those negotiations, Podwall  
19 provided deal terms/drafts of the Management Agreement to both French and  
20 Robinson. Those draft deal terms clearly indicated that Podwall would commission  
21 Robinson’s gross touring revenues. During Podwall’s negotiations with French,  
22 Podwall clearly indicated that he intended to commission Robinson’s gross touring  
23 revenues, and never said that he was going to remove such language from the  
24 agreement. Neither Robinson nor French objected to the proposed commissions on  
25 Robinson’s touring revenue. Neither French nor Robinson ever requested that  
26 Podwall remove such language. French, who was negotiating on Robinson’s behalf,  
27 requested that Podwall make other modifications to the draft deal terms. Podwall  
28 promptly made every change proposed by French/Robinson.

1 On or about September 10, 2012, Podwall, Robinson and French met at  
2 Robinson’s home about the Management Agreement (the “September 2012  
3 Meeting”). At the September 2012 Meeting, Podwall, Robinson and French  
4 reviewed the one-page Management Agreement. Following their review of the  
5 Management Agreement, neither Robinson nor French expressed any objection to  
6 the Management Agreement. At the September 2012 Meeting, Podwall and  
7 Robinson signed the Management Agreement.

8 These facts will be evidenced by testimony by Podwall, French and Robinson.  
9 They will also be evidence by the e-mails between French, Podwall and/or  
10 Robinson.

11 2. Podwall disputes that knew Robinson was allegedly mistaken and that  
12 Podwall used that alleged mistake to take advantage of him. Podwall will rely on  
13 the same evidence identified in opposition to element 1.

14 3. Podwall disputes that any alleged mistake was not caused by  
15 Robinson’s excessive carelessness. Robinson was given the one-page Management  
16 Agreement to read, including immediately prior to his signature. Podwall will rely  
17 on the same evidence identified in opposition to element 1.

18 4. Plaintiff disputes that Robinson would not have agreed to enter into the  
19 contract if he had known about the alleged mistake. In particular, Robinson saw the  
20 substance of the final draft and signed it knowing that it obligated him to pay  
21 Podwall commissions on Robinson’s gross touring revenue. Podwall intends to rely  
22 on the same evidence identified in opposition to element 1.

## 23 **6. Accord and Satisfaction**

### 24 **Defendant’s Evidence**

25 The evidence supporting this affirmative defense is summarized as follows:  
26 In 2013, Paul George (“George”), who works for Plaintiff’s company Podwall  
27 Entertainment, sent an invoice on behalf of Plaintiff and/or his company to  
28 Defendant’s business manager seeking commissions for certain live performances.

1 Defendant rejected this invoice as contrary to the parties' agreement. Podwall did  
2 not object and otherwise, through his statements and conduct, made it clear to  
3 Robinson that Podwall agreed that he would only be entitled to commissions on  
4 projects that Podwall generated and not live performances that he had nothing to do  
5 with. These facts will be established through the testimony of Robinson, Podwall,  
6 Heller, Bryant, French and George, and e-mails, invoices and other documents  
7 support this defense.

8 Plaintiff's Evidence

9 1. Plaintiff disputes that there was a bona fide dispute between the parties  
10 at the time in 2013. Podwall will rely on evidence that after Robinson's obligation  
11 to pay commissions on his touring/performance revenue began in June 2013, and  
12 Robinson failed to make commission payments to Podwall, Podwall had numerous  
13 conversations with Robinson about Robinson's non-payment between 2013 and  
14 2016. Podwall never told Robinson that he would not have to pay commissions.  
15 Rather, throughout these multiple conversations with Robinson, Podwall clearly and  
16 consistently notified Robinson that he owed commissions under the Management  
17 Agreement on touring/live performances, and that Robinson needed to pay Podwall  
18 those commissions. In sum and substance, Podwall continued to remind Robinson  
19 that he needed to pay Podwall commissions as required by the Management  
20 Agreement, that his non-payment needed to be fixed, and that he owed a  
21 commission on all of the live performances that took place since June 2013. In sum  
22 and substance, Robinson continued to make excuses and stated that he needed more  
23 time to pay Podwall what was owed, and that he intended to do so. These facts will  
24 be evidenced by Podwall's testimony.

25 2. Podwall disputes that Robinson tendered anything or made it clear that  
26 acceptance of anything that was allegedly tendered was subject to the condition that  
27 it was to be in full satisfaction of the Plaintiff's unliquidated claim. First, Robinson  
28 did not tender anything. Moreover, Robinson never said that anything that was

1 tendered (whatever that might be) would satisfy any claim. Podwall will rely on the  
2 same evidence identified in opposition to element 1.

3 Podwall will also rely on evidence that Podwall and George continued  
4 performing management services under the Management Agreement, and that  
5 Robinson was aware of such continued performance. It was clear that Podwall (and  
6 George) were not working for free, and that Podwall expected to be compensated as  
7 required by the Management Agreement. Such continued performance under the  
8 Management Agreement will be evidenced primarily by testimony by Podwall,  
9 George and Robinson. Performance will also be evidence by several e-mails.  
10 Podwall will also rely on the language of the Management Agreement itself.

11 Plaintiff will also rely on Robinson’s written termination notice of the  
12 Management Agreement.

13 3. Podwall disputes that he clearly understood when accepting what was  
14 allegedly tendered (whatever that might be) that Robinson intended such remittance  
15 to constitute payment in full of the particular claim in issue. Podwall will rely on  
16 the same evidence identified in opposition to elements 1 and 2.

17 7. **Novation**

18 **Defendant’s Evidence**

19 The evidence supporting this affirmative defense is summarized as follows:  
20 In 2013, Paul George (“George”), who works for Plaintiff’s company Podwall  
21 Entertainment, sent an invoice on behalf of Plaintiff and/or his company to  
22 Defendant’s business manager seeking commissions for certain live performances.  
23 Defendant rejected this invoice as contrary to the parties’ agreement. Podwall did  
24 not object and otherwise, through his statements and conduct, made it clear to  
25 Robinson that Podwall agreed that he would only be entitled to commissions on  
26 projects that Podwall generated and not live performances that he had nothing to do  
27 with. These facts will be established through the testimony of Robinson, Podwall,  
28 Heller, Bryant, French and George, and e-mails, invoices and other documents

1 support this defense.

2 Plaintiff's Evidence

3 2. Podwall disputes that all parties agreed, by words or contract, to cancel  
4 the original contract and to substitute a new contract in its place. Rather, the  
5 Management Agreement remained in place through approximately March 2016.  
6 Podwall will rely on evidence that after Robinson's obligation to pay commissions  
7 on his touring/performance revenue began in June 2013, and Robinson failed to  
8 make commission payments to Podwall, Podwall had numerous conversations with  
9 Robinson about Robinson's non-payment between 2013 and 2016. Podwall never  
10 told Robinson that he would not have to pay commissions. Rather, throughout these  
11 multiple conversations with Robinson, Podwall clearly and consistently notified  
12 Robinson that he owed commissions under the Management Agreement on  
13 touring/live performances, and that Robinson needed to pay Podwall those  
14 commissions. In sum and substance, Podwall continued to remind Robinson that he  
15 needed to pay Podwall commissions as required by the Management Agreement,  
16 that his non-payment needed to be fixed, and that he owed a commission on all of  
17 the live performances that took place since June 2013. In sum and substance,  
18 Robinson continued to make excuses and stated that he needed more time to pay  
19 Podwall what was owed, which, and that he intended to do so. These facts will be  
20 evidenced by Podwall's testimony.

21 Podwall will also rely on evidence that Podwall and George continued  
22 performing management services under the Management Agreement, and that  
23 Robinson was aware of such continued performance. It was clear that Podwall (and  
24 George) were not working for free, and that Podwall expected to be compensated as  
25 required by the Management Agreement. Moreover, there was no material change  
26 in the management services that Podwall and George provided to Robinson. Such  
27 continued performance under the Management Agreement will be evidenced  
28 primarily by testimony by Podwall, George and Robinson. Performance will also be

1 evidence by several e-mails. Podwall will also rely on the language of the  
2 Management Agreement itself.

3 Plaintiff will also rely on Robinson's written termination notice of the  
4 Management Agreement.

5 Third Parties

6 Pursuant to Local Rule 16-4.1(g), there are no statements to be made with  
7 respect to third parties.

8 **G. Evidentiary Issues**

9 Pursuant to Local Rule 16-4.1(h), the parties identify the following  
10 anticipated evidentiary issues:

11 Plaintiff intends to rely on certain business records, in particular financial  
12 ledgers and other financial documents, prepared by Defendant's accountant/book  
13 keeper and his talent agency that both identify all of Defendant's live performances  
14 during the relevant timeframe and Defendant's revenues from each of those  
15 performances. Plaintiff also intends to rely on Verve Records/UMG's business  
16 records that reflect the amount of a certain advance that was paid to Defendant  
17 during the relevant timeframe. The parties are discussing a stipulation as to  
18 admissibility and/or to certain facts reflected in those documents.

19 If the parties cannot reach such a stipulation, Plaintiff intends to file a motion  
20 *in limine* to have those documents admitted into evidence as business records.

21 Defendant does not, at this time, envision evidentiary issues with the  
22 presentation of its case in chief.

23 **H. Issues of Law**

24 Pursuant to Local Rule 16-4.1(i), the parties identify the following anticipated  
25 legal issue:

26 Legal Issues Raised by Plaintiff

27 ///

28 ///

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1           1.       Unclean Hands Defense

2           Plaintiff is concerned that this defense is duplicative of Defendant’s fraud  
3 defense. Accordingly, the unclean hands defense seems redundant. Notably,  
4 Defendant must identify “analogous case law” suggesting that the affirmative  
5 defense of unclean hands should be applied. *Kendall-Jackson Winery, Ltd. v.*  
6 *Superior Court*, 76 Cal.App.4th 970, 979 (1999). Again, it appears that Defendant  
7 is relying on common law fraud law to support this defense.

8           To the extent that Defendant is permitted to assert this equitable defense,  
9 Plaintiff contends that it should be decided by the Court, not the jury. In particular,  
10 Plaintiff is concerned that there is likely to be jury confusion as to how to decide this  
11 issue, especially if the jury determines that Defendant’s fraud defense is not  
12 meritorious.

13           2.       Contract Ambiguity.

14           Defendant apparently contends that a portion of Section 2 of the Management  
15 Agreement is susceptible to a different interpretation, and is ambiguous. Under  
16 California law, the determination of whether a written contract is ambiguous is a  
17 question of law that must be decided by the court. *Airborne Freight Corp. v.*  
18 *McPherson*, 427 F.2d 1283, 1285 (9th Cir. 1970) (interpreting California law);  
19 *Parsons v. Bristol Development Co.*, 62 Cal.2d 861, 865 (1965); *WYDA Associates*  
20 *v. Merner*, 42 Cal.App.4th 1702,1710 (1996). ““When there is no material conflict  
21 in the extrinsic evidence, the trial court interprets the contract as a matter of law.  
22 [Citation.] This is true even when conflicting inferences may be drawn from the  
23 undisputed extrinsic evidence[citations] or that extrinsic evidence renders the  
24 contract terms susceptible to more than one reasonable interpretation. [Citations.]  
25 *Brown v. Goldstein*, 34 Cal.App.5th 418, 433 (2019).

26           Legal Issues Raised by Defendant

27           Defendant identifies the following issues of law:

28           ///

1 1. Whether to present the equitable affirmative defenses of estoppel,  
2 laches, unclean hands and unjust enrichment to the jury. Under California law, the  
3 trial judge has discretion to do so. *Unilogic, Inc. v. Burroughs Corp.*, 10 Cal. App.  
4 4th 612, 622 (1992) (“the trial court has discretion whether to submit an equitable  
5 defense to the jury”). Defendant’s position is that the Court should present these  
6 equitable defenses to the jury as they involve fact questions that are suitable for  
7 resolution by lay jurors and overlap with fact questions that must be presented to the  
8 jury.

9 **II. BIFURCATION**

10 Neither party requests bifurcation.

11 **III. JURY TRIAL**

12 The parties have requested a jury trial on Plaintiff’s claims for breach of  
13 contract and quantum meruit, and both of those claims are actions at law that give  
14 rise to a right to a jury. Defendant asserts legal and equitable affirmative defenses,  
15 which should be submitted to the jury.

16 **IV. ATTORNEYS’ FEES**

17 Neither party is entitled to attorneys’ fees.

18 **V. ABANDONMENT OF ISSUES**

19 Plaintiff has abandoned his claims for declaratory relief and accounting.  
20 Defendant has abandoned his affirmative defenses that are not set forth in this  
21 document or in the Final Pretrial Conference Order, except Defendant pled several  
22 affirmative defenses that are fact defenses on which Plaintiff has the burden of  
23 proof. Defendant is not abandoning these fact defenses, which include Plaintiff’s  
24 failure to perform, no damages, no meeting of the minds, no service to defendant,  
25 lack of acceptance, breach of contract by Plaintiff and Defendant did receive or  
26 accept services from Plaintiff.

27  
28

1 DATED: January 14, 2022

FREEDMAN + TAITELMAN, LLP

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By:           /s/ Jesse A. Kaplan            
JESSE A. KAPLAN  
Attorneys for ERIC PODWALL

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7 DATED: January 14, 2022

MILLER BARONDESS, LLP

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By:           /s/ A. Sasha Frid            
A. SASHA FRID  
Attorneys for WILLIAM “SMOKEY”  
ROBINSON, JR

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**SIGNATURE ATTESTATION**

Pursuant to Local Civil Rule 5-4.3.4(a)(2)(i), I hereby attest that all other signatories listed, and on whose behalf this filing is jointly submitted, concur in this filing’s content and have authorized me to file this document.

/s/ Jesse A. Kaplan  
Jesse A. Kaplan

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