

1 JOSEPH R. ASHBY (SBN 248579)
2 joseph@ashbylawfirm.com
3 ASHBY LAW FIRM P.C.
4 1055 West Seventh Street, 33rd Floor
5 Los Angeles, CA 90017
6 Telephone: (213) 232-3810
7 Facsimile: (213) 429-0976

8 WILLIAM T. O'BRIEN (*admitted pro hac vice*)
9 williamobrien@eversheds-sutherland.us

10 JOHN W. LOMAS, JR. (*admitted pro hac vice*)
11 johnlomas@eversheds-sutherland.us

12 EVERSHEDS SUTHERLAND (US) LLP
13 700 6th St NW
14 Washington, DC 20001
15 Telephone: (202) 220-8049
16 Facsimile: (202) 637-3593

17 Attorneys for Plaintiff

18 UNITED STATES DISTRICT COURT

19 CENTRAL DISTRICT OF CALIFORNIA

20 PAVEL FUKS, an individual,

21 Plaintiff,

22 vs.

23 YURI VANETIK, an individual,

24 Defendant.

) Case No.: 8:19-cv-1212- FLA (JDEx)

) **PLAINTIFFS' MEMORANDUM OF**
) **CONTENTIONS OF FACT AND**
) **LAW**

) Pre-trial Conference: May 28, 2021

) Time: 3:00 p.m.

) Courtroom: 6B

) Judge: Hon. Fernando L. Aenlle-Rocha

) Trial Date: June 8, 2021

) Action Filed: June 18, 2019

1 Pursuant to L.R. 16-4 and the Court’s Order of March 29, 2021 (Dkt. #49),
2 Plaintiff Pavel Fuks respectfully submits this Memorandum of Contentions of
3 Fact and Law.

4 **I. INTRODUCTION**

5 This is an action for fraud, intentional misrepresentation, breach of contract,
6 and unjust enrichment. Defendant Yuri Vanetik promised Plaintiff Pavel Fuks a
7 VIP package for the 2017 US presidential inauguration that included prime
8 seating, tickets to exclusive inaugural balls, and access to other special events at
9 a price of \$200,000. But when Fuks arrived in Washington DC from Europe,
10 there was no VIP package, no prime seating, no tickets to exclusive balls, and no
11 access to special events. It soon became clear that it was all a scam.

12 Fuks immediately sought a refund from Vanetik. Vanetik initially
13 expressed sympathy, shifted blame to a purported intermediary—“Meadowood
14 PR”—with whom Vanetik claimed he had contracted to provide the VIP
15 inauguration package, and even purported to be cooperating with Fuks in helping
16 to address the situation with Meadowood PR. But when pressed, Vanetik refused
17 to provide Fuks with a copy of the purported contract and refused even to
18 provide the contact information for Meadowood.

19 In this action, Vanetik no longer blames the fictitious “Meadowood PR”.
20 Instead, he now claims that he paid a significant amount of the money he
21 received from Fuks to a Washington D.C. area public relations firm—that
22 Vanetik identifies as The Keelen Group—to set up a program of events for Mr.
23 Fuks. But Matt Keelen, the Founder and President of The Keelen Group and a
24 widely known and highly regarded lobbyist & political strategist with over
25 twenty years’ experience, confirms that neither he nor The Keelen Group
26 prepared any program of events for Vaentik or Fuks, and that the only monies
27 The Keelen Group received from Vanetik was \$5,000 to reimburse the cost of
28

1 several tickets to one inauguration event that The Keelen Group had purchased
2 for Vanetik at his request.

3 Notably, this isn't the first time that Vanetik has engaged in fraud. A
4 California Court of Appeals recently found that "substantial evidence" supported
5 a jury's verdict that Vanetik had defrauded a friend out of \$750,000. In that case,
6 the trial judge described Vanetik and his father as "artful puppeteers who
7 masterminded the scam that relieved the plaintiff of \$750,000," and further found
8 that the "money was used to personally enrich [Vanetik and his father] and enable
9 them to travel the world trolling for more big fish." *Farmers & Merchants Trust*
10 *Co. v. Vanetik*, G053688 (consol. with G053689, G053978 & G054218) p. 18 (Ct.
11 App., 4th Dist. Feb. 27, 2019) (unpublished portion of opinion).

12 Unfortunately for Fuks, he got caught on Vanetik's line. Fuks gave Vanetik
13 every opportunity to return the money, but Vanetik refused. In this action, Fuks
14 seeks a full refund of his \$200,000, the costs of his travel to the United States for
15 the inauguration, and his attorney's fees and expenses for having to bring this
16 action.

17 18 **II. PLAINTIFF'S CLAIMS**

19 **A. Summary of the Claims Plaintiff has Pleaded and Plans to Pursue**

20 Plaintiff Fuks asserted the following claims in his Complaint that he plans to
21 pursue:

22 Claim 1: Defendant Vanetik committed promissory fraud against Plaintiff
23 Fuks when he promised Fuks a VIP inauguration package in exchange for
24 \$200,000.

25 Claim 2: Defendant Vanetik is liable to Plaintiff Fuks for Vanetik's
26 intentional misrepresentation that he could obtain a VIP inauguration package for
27 Fuks in exchange for \$200,000.

1 Claim 3: Defendant Vanetik breached his contractual obligation to provide a
2 VIP inauguration package to Plaintiff Fuks.

3 Claim 4: Defendant Vanetik converted the specific sum of \$200,000 from
4 Plaintiff Fuks.

5 Claim 5: Defendant Vanetik has been unjustly enriched at Plaintiff Fuks's
6 expense.

7 Claim 6: Defendant Vanetik has violated Cal. Business & Professions Code
8 Section 17200 et seq., by misrepresenting the character and nature of his business.

9
10 **B. Elements of Plaintiffs' Claims**

11 Claim 1: Promissory Fraud.

- 12 1. Defendant Vanetik promised Plaintiff Fuks he would perform a future
13 action;
- 14 2. Defendant did not really have that intent at the time that he made his
15 promise (i.e., the promise was false);
- 16 3. Plaintiff Fuks justifiably relied on Defendant's false promise;
- 17 4. Defendant's false promise caused Plaintiff Fuks to take a detrimental
18 course of action;
- 19 5. Plaintiff's detrimental action taken by the plaintiff caused his asserted
20 damages.

21 *See Beckwith v. Dahl*, 205 Cal.App.4th 1039, 1060-62 (2012); *Engalla v.*
22 *Permanente Medical Group, Inc.*, 15 Cal.4th 951, 973-974 (1997); *Tenzer v.*
23 *Superscope, Inc.* 39 Cal.3d 18, 30 (1985).

24
25 Claim 2: Intentional Misrepresentation.

- 26 1. Defendant Vanetik represented to Plaintiff Fuks that a fact was true;
- 27 2. Defendant Vanetik's representation was false;

- 1 3. Defendant Vanetik knew that the representation was false when he
- 2 made it, or that he made the representation recklessly and without
- 3 regard for its truth;
- 4 4. Defendant Vanetik intended that Plaintiff Fuks rely on the
- 5 representation;
- 6 5. Plaintiff Fuks reasonably relied on Defendant Vanetik's
- 7 representation;
- 8 6. Plaintiff Fuks was harmed; and
- 9 7. Plaintiff Fuks's reliance on Defendant Vanetik's representation was a
- 10 substantial factor in causing him harm.

11 *See Beckwith v. Dahl*, 205 Cal.App.4th 1039, 1060-62 (2012).

12

13 Claim 3: Breach of Contract

- 14 1. A contract existed between Plaintiff Fuks and Defendant Vanetik;
- 15 2. Plaintiff Fuks performed his obligations under the contract;
- 16 3. Defendant Vanetik breached his obligations under the contract; and
- 17 4. Defendant Vanetik's breach harmed Plaintiff Fuks.

18 *See Richman v. Hartley*, 224 Cal.App.4th 1182, 1186 (2014).

19

20 Claim 4: Conversion

- 21 1. Plaintiff Fuks has a right to a specified sum of money;
- 22 2. Defendant Vanetik has unlawfully interfered with Plaintiff Fuks's
- 23 right to the sum of money by refusing to return it after Plaintiff
- 24 demanded its return;
- 25 3. Plaintiff Fuks has not consented to Defendant Vanetik retaining the
- 26 money; and

1 4. Plaintiff Fuks was harmed by Defendant Vanetik’s refusal to return
2 the money.

3 *See Fearon v. Department of Corrections*, 162Cal.App.3d 1254, 1257 (1984);
4 *PCO, Inc. v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro, LLP*, 150
5 Cal.App.4th 384, 395 (2007).

6
7 Claim 5: Unjust Enrichment

- 8 1. Defendant Vanetik received a benefit from Plaintiff Fuks; and
9 2. Defendant Vanetik’s retention of the benefit is an unjust and at
10 Plaintiff Fuks’s expense.

11 *See Unilogic, Inc. v. Burroughs Corp.*, 10 Cal.App.4th 612, 627–628 (1992); Rest.,
12 Restitution, § 1.

13
14 Claim 6: Violation of Cal. Business & Professions Code Section 17200 et
15 seq.

- 16 1. Defendant Vanetik misrepresented the character and nature of his
17 business; and that
18 2. Plaintiff Fuks reasonably relied on Defendant Vanetik’s
19 misrepresentation about the character and nature of his business; and
20 3. Plaintiff Fuks was harmed by his reliance on Defendant Vanetik’s
21 misrepresentation about the character and nature of his business.

22 *See Cal. Bus. & Prof. Code § 17200; Cal. Bus. & Prof. Code § 17505.*

23
24 **C. Description of the Key Evidence Underlying Plaintiffs’ Claims**

25 Claim 1: Promissory Fraud

26 The key evidence for Plaintiff’s Promissory Fraud claim includes:
27
28

1 (1) Plaintiff Fuks's testimony concerning Defendant Vanetik's promises and
2 misrepresentations, his payment of \$200,000 to Defendant Vanetik for the
3 promised VIP inaugural package, what Fuks experienced when he arrived in
4 Washington D.C., his request to have his money refunded, and Vanetik's attempts
5 to avoid responsibility;

6 (2) the text messages exchanged between Plaintiff Fuks and Defendant
7 Vanetik;

8 (3) the invoice for the \$200,000 and related correspondence;

9 (4) a receipt for the receipt for payment of funds; and

10 (5) Defendant Vanetik's interrogatory responses.

11
12 Claim 2: Intentional Misrepresentation.

13 The key evidence for Plaintiff's Intentional Misrepresentation claim
14 includes:

15 (1) Plaintiff Fuks's testimony concerning Defendant Vanetik's promises and
16 misrepresentations, his payment of \$200,000 to Defendant Vanetik for the
17 promised VIP inaugural package, what Fuks experienced when he arrived in
18 Washington D.C., his request to have his money refunded, and Vanetik's attempts
19 to avoid responsibility;

20 (2) the text messages exchanged between Plaintiff Fuks and Defendant
21 Vanetik;

22 (3) the invoice for the \$200,000 and related correspondence;

23 (4) a receipt for the receipt for payment of funds; and

24 (5) Defendant Vanetik's interrogatory responses.

25
26 Claim 3: Breach of Contract

27 The key evidence for Plaintiff's Breach of Contract claim includes:
28

1 (1) Plaintiff Fuks's testimony concerning Defendant Vanetik's promises and
2 misrepresentations, his payment of \$200,000 to Defendant Vanetik for the
3 promised VIP inaugural package, what Fuks experienced when he arrived in
4 Washington D.C., his request to have his money refunded, and Vanetik's attempts
5 to avoid responsibility;

6 (2) the text messages exchanged between Plaintiff Fuks and Defendant
7 Vanetik;

8 (3) the invoice for the \$200,000 and related correspondence;

9 (4) a receipt for the receipt for payment of funds; and

10 (5) Defendant Vanetik's interrogatory responses.
11

12 Claim 4: Conversion

13 The key evidence for Plaintiff's Conversion claim includes:

14 (1) Plaintiff Fuks's testimony concerning Defendant Vanetik's promises and
15 misrepresentations, his payment of \$200,000 to Defendant Vanetik for the
16 promised VIP inaugural package, what Fuks experienced when he arrived in
17 Washington D.C., his request to have his money refunded, and Vanetik's attempts
18 to avoid responsibility;

19 (2) the text messages exchanged between Plaintiff Fuks and Defendant
20 Vanetik;

21 (3) the invoice for the \$200,000 and related correspondence;

22 (4) a receipt for the receipt for payment of funds; and

23 (5) Defendant Vanetik's interrogatory responses.
24

25 Claim 5: Unjust Enrichment

26 The key evidence for Plaintiff's Unjust Enrichment claim includes:
27
28

1 (1) Plaintiff Fuks’s testimony concerning Defendant Vanetik’s promises and
2 misrepresentations, his payment of \$200,000 to Defendant Vanetik for the
3 promised VIP inaugural package, what Fuks experienced when he arrived in
4 Washington D.C., his request to have his money refunded, and Vanetik’s attempts
5 to avoid responsibility;

6 (2) the text messages exchanged between Plaintiff Fuks and Defendant
7 Vanetik;

8 (3) the invoice for the \$200,000 and related correspondence;

9 (4) a receipt for the receipt for payment of funds; and

10 (5) Defendant Vanetik’s interrogatory responses.
11

12 Claim 6: Violation of Cal. Business & Professions Code Section 17200 et
13 seq.,

14 The key evidence for Plaintiff’s claim for Violation of Cal. Business &
15 Professions Code Section 17200 et seq. includes:

16 (1) Plaintiff Fuks’s testimony concerning Defendant Vanetik’s promises and
17 misrepresentations, his payment of \$200,000 to Defendant Vanetik for the
18 promised VIP inaugural package, what Fuks experienced when he arrived in
19 Washington D.C., his request to have his money refunded, and Vanetik’s attempts
20 to avoid responsibility;

21 (2) the text messages exchanged between Plaintiff Fuks and Defendant
22 Vanetik;

23 (3) the invoice for the \$200,000 and related correspondence;

24 (4) a receipt for the receipt for payment of funds; and

25 (5) Defendant Vanetik’s interrogatory responses.
26
27
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1 **III. DEFENDANT’S AFFIRMATIVE DEFENSES¹**

2 **A. Summary of Defendant’s Affirmative Defenses**

3 In his Answer, Defendant Vanetik asserted eighteen affirmative defenses.
4 Dkt. #23 at 4-7. On March 22, 2021, Defendant represented that he planned to
5 pursue just his First, Second, Fifth, Eighth, Twelfth, Fourteenth, Sixteenth, and
6 Seventeenth Affirmative Defenses. Dkt. #46 at 7-8. Defendant subsequently
7 expressly abandoned his First Affirmative Defense. Dkt. #54 at 12. That leaves
8 the following seven Affirmative Defenses asserted by Defendant:

9 Affirmative Defense 1: Defendant’s “Second Affirmative Defense of
10 Unclean Hands”

11 Affirmative Defense 2: Defendant’s “Fifth Affirmative Defense of
12 Estoppel”

13 Affirmative Defense 3: Defendant’s “Eighth Affirmative Defense of
14 Consent”

15 Affirmative Defense 4: Defendant’s “Twelfth Affirmative Defense of
16 Release”

17 Affirmative Defense 5: Defendant’s “Fourteenth Affirmative Defense
18 of Failure to Mitigate”

19 Affirmative Defense 6: Defendant’s “Sixteenth Affirmative Defense
20 of No Reasonable Reliance”

21 Affirmative Defense 7: Defendant’s “Seventeenth Affirmative
22 Defense of Standing”

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¹ Defendant has not asserted any counterclaims in this action.
28

1 **B. Elements of Defendant’s Affirmative Defenses**

2 Affirmative Defense 1: Unclean Hands

3 To establish the Affirmative Defense of Unclean Hands, Defendant must
4 prove that:

- 5 1. Plaintiff engaged in misconduct;
- 6 2. The misconduct occurred in a transaction directly related to the matter
7 before the courts; and
- 8 3. The misconduct infects the cause of action before the court.

9 *See California Satellite Systems, Inc. v. Nichols* (1985) 170 Cal. App. 3d 56, 70
10 [216 Cal. Rptr. 180]; *Carman v. Athearn* (1947) 77 Cal. App.2d 585, 598 [175
11 P.2d 926].

12
13 Affirmative Defense 2: Estoppel

14 To establish the Affirmative Defense of Estoppel, Defendant must prove
15 that:

- 16 1. Plaintiff made a representation as to a material fact that is contrary to
17 a later-asserted position;
- 18 2. Defendant relied on that representation; and
- 19 3. Defendant changed his position to his detriment because of that
20 representation and his reliance thereon.

21
22 Affirmative Defense 3: Consent

23 To establish the Affirmative Defense of Consent, Defendant must prove that
24 Plaintiff consented by words or conduct to the conduct by Defendant that caused
25 Plaintiff harm.

1 Affirmative Defense 4: Release

2 To establish the Affirmative Defense of Release, Defendant must prove that
3 Plaintiff agreed that Defendant would not be held responsible for a negative
4 outcome.

5
6 Affirmative Defense 5: Failure to Mitigate

7 To establish the Affirmative Defense of Failure to Mitigate, Defendant must
8 prove that:

- 9 1. Plaintiff's damages could have been avoided with reasonable efforts
10 or expenditures; and
11 2. Plaintiff did not take reasonable steps to avoid harm.

12 *See* Judicial Council of California, Civil Jury Instructions 358. Mitigation of
13 Damages, pg. 176

14
15 Affirmative Defense 6: No Reasonable Reliance

16 Reasonable reliance is an element of Plaintiff's Promissory Fraud and
17 Intentional Misrepresentation claims. An assertion that an element of a claim is
18 not met is not an affirmative defense.

19
20 Affirmative Defense 7: Standing.

21 For his Affirmative Defense of "Standing", Defendant asserts that there is no
22 contract between Plaintiff and Defendant. The existence of a contract is an
23 element of Plaintiff's breach of contract claim. An assertion that an element of a
24 claim is not met is not an affirmative defense.

1 **4. Evidence in Opposition to Defendant’s Affirmative Defenses**

2 Affirmative Defense 1: Unclean Hands

3 As an initial matter, Defendant has not identified any misconduct that
4 supports the assertion of the affirmative defense of unclean hands to Plaintiff’s
5 claims in this action.

6 Evidence in opposition to Defendant’s Affirmative Defense of Unclean
7 Hands includes (1) Plaintiff Fuks’s testimony concerning Defendant Vanetik’s
8 promises and misrepresentations, what Fuks experienced when he arrived in
9 Washington D.C., his request to have his money refunded, and Vanetik’s attempts
10 to avoid responsibility; and (2) the text messages exchanged between Plaintiff Fuks
11 and Defendant Vanetik.

12
13 Affirmative Defense 2: Estoppel

14 As an initial matter, Defendant has not identified any representation by
15 Plaintiff of a material fact that is contrary to Plaintiff’s asserted positions in this
16 case, nor any reliance or detrimental change in position.

17 Evidence in opposition to Defendant’s Affirmative Defense of Estoppel
18 includes (1) Plaintiff Fuks’s testimony concerning Defendant Vanetik’s promises
19 and misrepresentations, what Fuks experienced when he arrived in Washington
20 D.C., his request to have his money refunded, and Vanetik’s attempts to avoid
21 responsibility; and (2) the text messages exchanged between Plaintiff Fuks and
22 Defendant Vanetik.

1 Affirmative Defense 3: Consent

2 As an initial matter, Defendant has not identified any words or conduct by
3 Plaintiff that demonstrates consent to Defendant’s failure to provide the promised
4 VIP inauguration package.

5 Evidence in opposition to Defendant’s Affirmative Defense of Consent
6 includes (1) Plaintiff Fuks’s testimony concerning Defendant Vanetik’s promises
7 and misrepresentations, what Fuks experienced when he arrived in Washington
8 D.C., his request to have his money refunded, and Vanetik’s attempts to avoid
9 responsibility; and (2) the text messages exchanged between Plaintiff Fuks and
10 Defendant Vanetik.

11
12 Affirmative Defense 4: Release

13 As an initial matter, Defendant has not identified any agreement by Plaintiff
14 to not hold Defendant liable for Defendant’s failure to provide the promised VIP
15 inauguration package.

16 Evidence in opposition to Defendant’s Affirmative Defense of Release
17 includes (1) Plaintiff Fuks’s testimony concerning Defendant Vanetik’s promises
18 and misrepresentations, what Fuks experienced when he arrived in Washington
19 D.C., his request to have his money refunded, and Vanetik’s attempts to avoid
20 responsibility; and (2) the text messages exchanged between Plaintiff Fuks and
21 Defendant Vanetik.

22
23 Affirmative Defense 5: Failure to Mitigate

24 As an initial matter, Defendant has not identified any reasonable actions
25 Plaintiff could have taken to prevent the harm caused by Defendant’s failure to
26 provide the promised VIP inauguration package.

1 Evidence in opposition to Defendant’s Affirmative Defense of Failure to
2 Mitigate includes (1) Plaintiff Fuks’s testimony concerning Defendant Vanetik’s
3 promises and misrepresentations, what Fuks experienced when he arrived in
4 Washington D.C., his request to have his money refunded, and Vanetik’s attempts
5 to avoid responsibility; and (2) the text messages exchanged between Plaintiff Fuks
6 and Defendant Vanetik.

7
8 Affirmative Defense 6: No Reasonable Reliance

9 As noted above, reasonable reliance is an element of Plaintiff’s Promissory
10 Fraud and Intentional Misrepresentation claims. An assertion that an element of a
11 claim is not met is not an affirmative defense.

12 Evidence in opposition to Defendant’s assertion that there is no reasonable
13 reliance includes (1) Plaintiff Fuks’s testimony concerning Defendant Vanetik’s
14 promises and misrepresentations, what Fuks experienced when he arrived in
15 Washington D.C., his request to have his money refunded, and Vanetik’s attempts
16 to avoid responsibility; and (2) the text messages exchanged between Plaintiff Fuks
17 and Defendant Vanetik.

18
19 Affirmative Defense 7: Standing

20 As noted above, for his Affirmative Defense of “Standing”, Defendant
21 asserts that there is no contract between Plaintiff and Defendant. The existence of
22 a contract is an element of Plaintiff’s breach of contract claim. An assertion that
23 an element of a claim is not met is not an affirmative defense.

24 Evidence in opposition to Defendant’s assertion that there was no contract
25 between the parties includes (1) Plaintiff Fuks’s testimony concerning Defendant
26 Vanetik’s promises and misrepresentations, what Fuks experienced when he
27 arrived in Washington D.C., his request to have his money refunded, and Vanetik’s
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1 attempts to avoid responsibility; and (2) the text messages exchanged between
2 Plaintiff Fuks and Defendant Vanetik.

3
4 **IV. BIFURCATION OF ISSUES**

5 Plaintiff Fuks does not request a bifurcation of issues.

6
7 **V. JURY TRIAL**

8 Plaintiff Fuks requested a jury trial, but is amenable to a bench trial for
9 efficiency purposes and given the COVID pandemic.

10
11 **VI. ATTORNEYS' FEES**

12 Plaintiff Fuks seeks attorneys' fees as part of his request for punitive
13 damages under California Civil Code §3294, which provides that "where is it
14 proven by clear and convincing evidence that the defendant has been guilty of
15 oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may
16 recover damages for the sake of example and by way of punishing the defendant."

17
18 **VII. ABANDONMENT**

19 Defendant has expressly abandoned what he had identified in his Answer as
20 his first, seventh, eleventh, and eighteenth affirmative defenses. Dkt. #54 at 12.
21 Defendant had already previously indicated on that he no longer planned to pursue
22 his third, fourth, sixth, seventh, ninth, tenth, eleventh, thirteenth, fifteenth, and
23 eighteenth affirmative defenses. *See* Dkt. #46 at 7-8.

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DATED: April 30, 2021

ASHBY LAW FIRM P.C.
Joseph R. Ashby

EVERSHEDS SUTHERLAND LLP
William T. O'Brien
John W. Lomas, Jr.

By: /s/ Joseph R. Ashby
Joseph R. Ashby
Attorneys for Plaintiff Pavel Fuks