

OCT 13 2020

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FRANCISCO MANZO

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9 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

10 **COUNTY OF VENTURA**

11
12 FRANCISCO MANZO,

13 Plaintiff,

14 vs.

15
16 ARTURO HERNANDEZ; an individual;
DOES 1 through 100, inclusive

17 Defendants

) CASE NO.:

)
) COMPLAINT FOR DAMAGES AND
) DEMAND FOR JURY TRIAL BASED
) UPON:

-) 1. COMMON LAW AND STATUTORY
) FRAUD AND DECEIT
) 2. BREACH OF A WRITTEN
) CONTRACT
) 3. CONVERSION
) 4. VIOLATION OF BUSINESS AND
) PROFESSIONS CODE SECTION
) 17200 ET SEQ
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Plaintiff FRANCISCO MANZO complains and alleges as follows:

GENERAL ALLEGATIONS
(AGAINST ALL NAMED DEFENDANTS)

1. Plaintiff FRANCISCO MANZO (hereinafter "Plaintiff" or "MANZO") is a resident of the City of Port Hueneme, County of Ventura, State of California.

2. Plaintiff is informed and believes that Defendant ARTURO HERNANDEZ, (hereinafter "Defendant" or "HERNANDEZ), an individual is and was a resident of the County of Ventura, State of California.

4. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or associate, of those defendants fictitiously sued as DOES 1 through 100 inclusive and so Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the DOE defendants reside in the State of California and are in some manner responsible for the conduct alleged herein. Upon discovering the true names and capacities of these fictitiously named Defendants, Plaintiff will amend this complaint to show the true names and capacities of these fictitiously named defendants.

5. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of that information and belief, alleges that at all times herein mentioned, each of the remaining codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and under the authority of their agency, employment, or representative capacity, with the consent of her/his codefendants.

6. On or about February 2018, Plaintiff met Defendant while performing construction work at Defendant's home. One day after work, Plaintiff and Defendant started talking and Defendant informed Plaintiff that he imports avocados from Mexico and sells them to markets and distributors in Los Angeles and Ventura County.

1 Defendant told Plaintiff if he is ever interested in investing to let him know. Defendant
2 further advised Plaintiff that he makes between \$5,000-\$8,000 in profit from a load of
3 avocados and told Plaintiff if he invests \$15,000 he will agree to pay Plaintiff 30% of the
4 profits on the load.

5
6 7. On or about July 5, 2018, Plaintiff gave Defendant \$15,000 towards
7 purchasing a load of avocados from Mexico and Defendant told him that the money will
8 go in next month and that Plaintiff will receive 30% of the profits from the upcoming
9 loads in August. Defendant further told Plaintiff that he is importing multiple loads of
10 avocados in August and if Plaintiff is willing to invest an additional \$10,000 then he will
11 pay Plaintiff 50% of the profit on the loads. Plaintiff then agreed and gave Defendant
12 an additional \$10,000 on or about August 2018.

13
14 8. On or about September 2018, Plaintiff called Defendant to get an update
15 on his investment, and Defendant informed Plaintiff that the deal didn't go through.
16 Plaintiff then asked for his money back and Defendant told Plaintiff that he will return
17 his money.

18
19 9. After not hearing from Defendant for a few weeks, Plaintiff contacted
20 Defendant on or about the end of September/beginning of October 2018. In this
21 conversation, Defendant told Plaintiff that he used some of Plaintiff's money for the
22 mortgage on his house, but that he is expecting payment from some customers soon.
23 Defendant told Plaintiff not to worry, that he will get him his money.

24
25 10. Over the next few months, Plaintiff continued to contact Defendant to try
26 to get his money back. However, Defendant ignored his calls.

27
28 11. Finally, on or about February 13, 2019, Defendant responded to Plaintiff's
call and told him to come to his house to discuss the matter. Plaintiff thereafter went

1 to Defendant's house and Defendant prepared and signed a document in which he
2 acknowledged that he owed Plaintiff \$32,000, (\$25,000 for his initial investment,
3 \$6,000 for his return on his investment, plus \$1,000 for Plaintiff's labor). Attached
4 hereto as Exhibit "1" is a true and correct copy of the signed agreement.
5

6 12. On or about March 11, 2019, Plaintiff called Defendant to make
7 arrangements to receive the first installment payment of \$7,000. However, Defendant
8 did not answer his call. On or about March 13, 2019, Plaintiff spoke to Defendant and
9 Defendant told Plaintiff that he didn't have the money yet and told Plaintiff that he will
10 be getting payment from a merchant the following month and he will be able to pay
11 Plaintiff after that. However, Plaintiff did not receive any money from Defendant in
12 April 2019.
13

14 13. After not receiving payment as promised in April 2019, Plaintiff contacted
15 Defendant again and Defendant told Plaintiff that he will pay him \$12,000 in cash later
16 that month. Plaintiff told Defendant that he can't take his word for it and that he needs
17 something to guarantee payment. Defendant then agreed to give Plaintiff checks.
18

19 14. On or about May 2019, Defendant gave Plaintiff 6 checks totaling
20 \$36,000, (\$6,000 each), and told Plaintiff that he could deposit the first check by the
21 end of the month.
22

23 15. On or about May 31, 2019, Plaintiff deposited one of the \$6,000 checks
24 from Defendant, and on or about June 5, 2019 Plaintiff received notice from the bank
25 that the check was returned because of "Not Sufficient Funds" and that Plaintiff was
26 assessed a \$15 returned check fee.
27

28 16. Between June 2019 and October 2019, Plaintiff called Defendant at least
once a week regarding getting his money back, but Defendant was not responsive.

1 22. Defendant knew at the time he made the representation to Plaintiff, that
2 the representations were untrue and as things turned out, the representations turned
3 out to be untrue, and the following occurred with respect to Plaintiff:
4

- 5
- 6 a. Defendant did not use Plaintiff's money to purchase loads of
 avocados from Mexico;
- 7 b. Defendant used Plaintiff's money to pay for personal expenses,
 including the mortgage on his house; and
- 8 c. Defendant refused to return Plaintiff's money to him

9 23. Plaintiff's reliance on Defendant's representations was justifiable as
10 Defendant represented himself as a reputable business man with an established and
11 profitable business importing avocados from Mexico.
12

13 24. As a result of Defendant's intentional and fraudulent misrepresentations,
14 Plaintiff has suffered, and continues to suffer, severe emotional distress, as well as
15 financial losses, all to the Plaintiff's damage, in a sum within the jurisdiction of this
16 court, to be ascertained according to proof.
17

18 25. Plaintiff alleges that Defendant acted with malice, oppression and/or
19 fraud. By reason thereof, Plaintiff prays for punitive damages against said Defendant in
20 an amount within the jurisdiction of this court, to be ascertained by the fact finder, that
21 is sufficiently high to punish said Defendant, deter them from engaging in such conduct
22 again, and to make an example of them to others.
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SECOND CAUSE OF ACTION

BREACH OF A WRITTEN CONTRACT

(AGAINST DEFENDANT ARTURO HERNANDEZ AND DOES 1-100)

26. Plaintiff realleges the information set forth in paragraph 1-25 and incorporates these paragraphs into this cause of action as if they were fully alleged herein.

27. Plaintiff hereby brings this cause of action against Defendant HERNANDEZ for breach of a written contract based on the written agreement Defendant signed on February 13, 2019 in which Defendant acknowledged that he owed Plaintiff money based on Plaintiff's \$25,000 investment and their prior agreement, and agreed to pay Plaintiff \$32,000.

28. The express terms of the written contract include the following:

a. That Defendant owes Plaintiff \$32,000 to be paid as follows: \$7,000 on March 11, 2019, \$5,000 on April 11, 2019, \$10,000 on May 11, 2019, and \$10,000 on June 11, 2019. Attached hereto as Exhibit "1" is a true and correct copy of the agreement Defendant signed on February 13, 2019.

29. Despite the representations made to the Plaintiff and the reliance he placed upon them, Defendant breached the written contract he entered into with Plaintiff by providing Plaintiff checks that would bounce and refusing to pay Plaintiff the \$32,000 due to him.

30. As a direct and proximate result of Defendant's breach of the contract plead in this cause of action, Plaintiff has suffered and continues to suffer substantial damages and economic losses, including the \$32,000 that Defendant agreed to pay him.

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THIRD CAUSE OF ACTION

CONVERSION

(AGAINST DEFENDANT ARTURO HERNANDEZ; AND DOES 1-100)

31. Plaintiff realleges and incorporate Paragraphs 1-30 above as though fully set forth herein.

32. By taking Plaintiff's \$25,000 investment and using it for his personal expenses and not the intended purpose of purchasing avocados, Defendant committed conversion of the property and moneys that belonged to Plaintiff in violation of the California law. Therefore, Defendant is liable for damages to Plaintiff in the amount of \$25,000.

33. The conversion has been carried out by Defendant with complete disregard of the law and the rights of Plaintiff.

34. In converting Plaintiff's money, Defendant is guilty of "oppression, fraud or malice" within the meaning of California Civil Code § 3294, and should be liable for punitive damages in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

VIOLATION OF CALIFORNIA UNFAIR COMPETITION STATUTE

(Bus. & Prof. Code § 17200, et seq.)

(AGAINST DEFENDANT ARTURO HERNANDEZ AND DOES 1-100)

35. Plaintiff realleges and incorporates Paragraphs 1-34 above as though fully set forth herein.

36. Defendant's actions and practices of fraudulently inducing Plaintiff to invest \$25,000 in Defendant's business, failing to use Plaintiff's money for its intended purpose, agreeing to pay Plaintiff \$32,000, then refusing to return Plaintiff's initial

1 investment and return on investment constitutes unfair competition in violation of
2 Business and Professions Code Section 17200, et. seq.

3 37. Plaintiff brings this cause of action against Defendant VXI pursuant to
4 Business and Professions Code Section 17200 et. seq., including section 17203.

5 38. Plaintiff seeks restitution of his initial investment, return on investment,
6 and wages that should have been paid.
7

8 WHEREFORE, the Plaintiff prays for the following relief, to be determined by a
9 jury, as follows:

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11 As to the First and Third Causes of Action

- 12 1. For general damages in an amount according to proof, but in
13 excess of the minimum jurisdiction of this court;
- 14 2. For special damages in an amount according to proof,
- 15 3. For all costs and disbursements incurred in this suit;
- 16 4. For such other and further relief as the Court deems just and
17 proper;
- 18 5. For all interest as allowed by law;
- 19 6. For punitive damages, as allowed by law, in an amount to be
20 ascertained, according to proof, that will sufficiently punish the
21 Defendant, make an example of them, and deter future conduct.

22
23 As to the Second Causes of Action

- 24 7. For \$32,000 due to Plaintiff pursuant to his agreement with
25 Defendant;
- 26 8. For all costs and disbursements incurred in this suit;
- 27 9. For all interest as allowed by law
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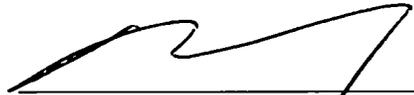
10. For such other and further relief as the Court deems just and proper.

As to the Fourth Cause of Action

11. For all remedies available under Business & Professions Code § 17200 *et. seq.*

Dated: October 9, 2020

LEE & ROSENZWEIG



BRENT ROSENZWEIG,
ATTORNEYS FOR PLAINTIFF,
FRANCISCO MANZO

MONEY OWED TO:

Francisco Manzo

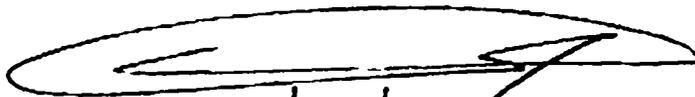
First Investment 7/05/2018 \$ 25,000.00

ROI \$ 6,000.00

total: \$ 31,000.00

Work Owed \$ 1,000.00

GRAN TOTAL \$ 32,000.00



2/13/2019

Arturo Hernandez

3/11/2019 - \$7,000.00

4/11/2019 - \$5,000.00

5/11/2019 - \$10,000.00

6/11/2019 - \$10,000.00