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9 **UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
11 **(EASTERN DIVISION)**

12 Joseph Diaz, Jr.,

13 Plaintiff,

14 vs.

15 RALPH HEREDIA, true name RAFAEL
16 HEREDIA TARANGO, a/k/a RAFAEL
17 HEREDIA, a/k/a RAFAEL
18 BUSTAMANTE; JOHN DOE, ESQ.;
19 and JANE DOES 1 through 20,
20 inclusive,
21 Defendants.

Case No.: 5:20-cv-02332-JWH-KKx

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO DISMISS
COMPLAINT**

Date: February 12, 2021

Time: 9:00 a.m.

Judge: Hon. John W. Holcomb

CTRM: 2

22 **MEMORANDUM OF POINTS AND AUTHORITIES**
23 **IN SUPPORT OF DEFENDANT'S**
24 **MOTION TO DISMISS COMPLAINT**
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1 **STATEMENT OF THE MOTION**

2 Defendant Ralph Heredia, through undersigned counsel and pursuant to
3 Federal Rule of Civil Procedure (Fed. R. Civ. P.) 12(b)(6), respectfully submit this
4 Memorandum of Points and Authorities in support of his Motion to Dismiss all
5 claims brought against him in Counts I, II, III, IV, V, VI, VII, and VIII of
6 Plaintiff's Complaint (ECF 3). Mr. Heredia requests that all claims be dismissed.

7 **INTRODUCTION AND STATEMENT OF FACTS**

8 On February 23, 2017, Mr. Diaz and Moses Heredia signed a Boxer-
9 Manager Contract. Mr. Larry Ervin from the Commission oversaw the signing of
10 the new contract. *See* Complaint at ¶¶2, 44, & 45.

11 Through the keen management provided, Mr. Diaz flourished and on
12 January 30, 2020, Mr. Diaz became the International Boxing Federation super
13 featherweight world champion by defeating Tevin Farmer. Complaint at ¶1.

14 After Mr. Diaz became a world champion, MTK Global, another boxing
15 management company, reached out to Mr. Diaz and offered him, upon information
16 and belief, an advance of \$100,000 on his next purse. MTK Global provided this
17 advance in exchange for Mr. Diaz signing a "marketing advisory" agreement.
18 Upon information and belief, MTK Global hired VGC, LLP to file suit on behalf
19 of Mr. Diaz in an attempt to drive a wedge between Mr. Diaz and his current
20 boxing manager. This case is simply about a rival company inducing a boxer to
21 breach his contract based on promises of future success.

22 On December 9, 2020, Defendant filed a Notice of Motion and Motion to
23 Dismiss for failure to state a claim. Docket #9. Defendant failed to follow Local
24 Rule 7-3 and conduct a meet and confer prior to the filing of that motion. *See*
25 Docket #17. On January 5, 2021, the Honorable Judge John W. Holcomb denied
26 Defendants motion without prejudice citing the failure to follow the local rules.
27 Docket #22.

Pursuant to Local Rule 7-3, on January 5, 2021 (more than seven days prior to the last day for filing the motion) counsel for Defendant, Rajan Dhungana, called counsel for Plaintiff, Alexander Safyan, and conducted a meet and confer concerning the intent to re-file a motion to dismiss for failure to state a claim under Rule 12(b)(6). Counsel were unable to reach a resolution for the motion. On January 5, 2021, Defendant's counsel, Rajan Dhungana called Plaintiff's counsel, Alexander Safyan and conducted a meet and confer

ARGUMENT

This Court should grant Defendant Ralph Heredia's motion to dismiss for the following reasons:

I. Legal Standard

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). To be sure, the facts alleged need not be "detailed." *Twombly*, 550 U.S. at 555. But they must allow "the court to draw the reasonable inference that the defendant is liable for the misconduct alleged[.]" *Id.* Where a pleading offers only "labels and conclusions" or "a formulaic recitation of the elements of a cause of action," the pleading "will not do." *Id.* And while a court assumes the truth of the factual allegations, it does not assume the truth of legal conclusions or accept inferences that a plaintiff draws. *See Iqbal*, 556 U.S. at 678; *Kowal v. MCI Commc'ns Corp.*, 16 F.3d 1271, 1276 (D.C. Cir. 1994). Further, complaints involving fraud must be plead with particularity. Fed. R. Civ. P. 9(b).

II. First Cause of Action

A. Plaintiff Failed to Plead Sufficient Allegations Under Any Theory or Subset of Fraud to Establish a *Prima Facie* Case and Fails to Plead Damages.

Plaintiff's first cause of action must be dismissed because it fails to allege a *prima facie* case of fraud under California law. Further, fraud must be pleaded with particularity. Fed. R. Civ. P. 9(b); *see also Vess v. Ciba-Geigy Corp. USA*, 317 F.3d 1097, 1103 (9th Cir. 2003) ("It is established law, in this circuit and elsewhere, that Rule 9(b)'s particularity requirement applies to state-law causes of action."). The elements of fraud in California are: "(a) misrepresentation (false representation, concealment, or nondisclosure); (b) knowledge of falsity (or "scienter"); (c) intent to defraud, i.e., to induce reliance; (d) justifiable reliance; and (e) resulting damage." *See e.g., Lazar v. Superior Court*, 12 Cal.4th 631, 638 (1996). California law contains several varieties of fraud. Plaintiff failed to plead with particularity the type of fraud he is alleging. Regardless, Plaintiff failed to allege a *prima facie* case of any subset of fraud under California law.

B. Plaintiff Failed to Plead with Particularity a Fraudulent Inducement Theory of Fraud.

Plaintiff alleges in his Complaint at ¶63 that Defendant Heredia allegedly "induce[d]" Plaintiff into contract. "Fraud in the inducement is a subset of fraud." *Parino v. BidRack, Inc.*, 838 F.Supp.2d 900, 906 (N.D. Cal. 2011). "A promise to do something necessarily implies the intention to perform; hence, where a promise is made without such intention, there is an implied misrepresentation of fact that may be actionable fraud. An action for promissory fraud may lie where a defendant fraudulently induces the plaintiff to enter into a contract." *Lazar*, 12 Cal.4th at 638. (citations omitted). "Promissory fraud or fraud in the inducement, a subspecies of fraud and deceit, has the same elements [as fraud] but also requires that the 'defendant fraudulently induce[d] the plaintiff to enter into a contract.'" *Copart, Inc. v. Sparta Consulting, Inc.*, 277 F.Supp.3d 1127, 1148 (E.D. Cal. 2017) quoting *Engalla v. Permanente Med. Grp., Inc.*, 15 Cal.4th 951, 973-974 (1997), as modified (July 30, 1997).

1 “Fraud in the inducement ... occurs when the promisor knows what he is
 2 signing but his consent is *induced* by fraud.” *Rosenthal v. Great W. Fin. Sec.*
 3 *Corp.*, 14 Cal.4th 394, 415 (1996) (internal citations omitted) (emphasis in the
 4 original). “To establish a claim of fraudulent inducement, one must show that the
 5 defendant did not intend to honor its contractual promises when they were made.”
 6 *Food Safety Net Services v. Eco Safe Systems USA, Inc.*, 209 Cal.App.4th 1118,
 7 1131 (2012). “To plead a claim for fraud in the inducement, Plaintiffs' allegations
 8 must be sufficiently detailed to meet the heightened Rule 9(b) pleading standard
 9 for fraud.” *Parino*, 838 F.Supp.2d at 906.

10 Plaintiff failed to plead that Defendant Heredia did not intend to honor his
 11 contractual promises. Plaintiff stated in his complaint that the 2017 contract was
 12 between Plaintiff and Mr. Moses Heredia—who is not a defendant in this case. As
 13 such, there is no management contract between Plaintiff and Defendant Heredia.
 14 Therefore, Defendant Heredia did not induce Plaintiff nor could have Defendant
 15 Heredia induced Plaintiff. Assuming, *arguendo*, that Defendant Heredia set up
 16 some sort of scheme to “use” his half-brother, Mr. Moses Heredia, a duly-licensed
 17 boxing manager per the Complaint, there is still no fraud as the Plaintiff received
 18 everything he bargained for to include becoming a world champion boxer under
 19 the management of the Heredias. Clearly, helping a boxer achieve world-champion
 20 status does not show that at the time of contract formation Defendant Heredia did
 21 not intend to honor his promises, contractual or otherwise. Thus, Plaintiff failed to
 22 plead that Defendant Heredia or Mr. Moses Heredia did not intend to honor their
 23 contractual promises. As such, any cause of action for fraud in the inducement
 24 must be dismissed.

25 **C. Plaintiff Failed to Plead with Particularity a Nondisclosure**
 26 **Theory of Fraud.**

1 Plaintiff alleges in his Complaint at ¶63-64 that Defendant Heredia
 2 “intentionally concealed and/or failed to disclose” facts to the Plaintiff.
 3 Nondisclosure is a claim for misrepresentation in a cause of action for fraud.
 4 *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1127 (9th Cir. 2009). “[A] cause of
 5 action for misrepresentation requires an affirmative statement, not an implied
 6 assertion.” *RSB Vineyards, LLC v. Orsi*, 15 Cal.App.5th 1089, 1102 (2017).
 7 “[T]here are two causation elements in a fraud cause of action. First, the plaintiff’s
 8 actual and justifiable reliance on the defendant’s misrepresentation must have
 9 caused him to take a detrimental course of action. Second, the detrimental action
 10 taken by the plaintiff must have caused his alleged damage. *Beckwith v. Dahl*, 205
 11 Cal.App.4th 1039, 1062 (2012). A nondisclosure must be pleaded with
 12 particularity under Rule 9(b). *Kearns*, 567 F.3d at 1127.

13 Plaintiff pleads that the nondisclosure in this case concerns various alleged
 14 concealments. Complaint ¶62. Plaintiff fails to allege when these alleged
 15 misrepresentations or nondisclosures occurred, where they occurred, and to whom
 16 they occurred. Plaintiff additionally fails to allege any justifiable reliance or that
 17 any said reliance caused Mr. Diaz to take a detrimental course of action. To the
 18 contrary, it was under the Heredias’ management that Mr. Diaz flourished and
 19 became a world champion. Further, Plaintiff contracted with Mr. Moses Heredia –
 20 not Defendant Heredia. As such, any cause of action for fraud based on
 21 nondisclosure or misrepresentation must be dismissed.

22 **D. Plaintiff Failed to Plead with Particularity a Concealment Theory**
 23 **of Fraud.**

24 Plaintiff also alleges that Defendant Heredia concealed certain facts from
 25 Plaintiff. “Concealment is a species of fraud or deceit.” *Blickman Turkus, LP v.*
 26 *MF Downtown Sunnyvale, LLC*, 162 Cal.App.4th 858, 868 (2008). “The following
 27 elements must be proven to establish a fraud by concealment claim: 1) the
 28

1 defendant concealed or suppressed a material fact, 2) the defendant was under a
 2 duty to disclose the fact to the plaintiff, 3) the defendant intentionally concealed or
 3 suppressed the fact with the intent to defraud the plaintiff, 4) the plaintiff was
 4 unaware of the fact and would not have acted as he did had he known of the
 5 concealed or suppressed fact, and 5) the plaintiff sustained damages as a result of
 6 the concealment or suppression of the fact.” *Brewer v. Indymac Bank*, 609
 7 F.Supp.2d 1104, 1120–21 (E.D. Cal. 2009) citing *Lovejoy v. AT & T Corp.*, 92
 8 Cal.App.4th 85, 96 (2001). Plaintiff fails to allege with particularity why the facts
 9 allegedly concealed are material. Complaint at ¶62. Plaintiff fails to allege that Mr.
 10 Heredia was under any duty to disclose the allegedly concealed facts to Plaintiff.
 11 Plaintiff fails to allege Mr. Heredia intentionally concealed any fact with the
 12 requisite intent to defraud. Plaintiff does not plead with particularity the harm
 13 caused by the alleged concealment. As such, any cause of action for fraud based on
 14 concealment must be dismissed.

15 **E. Plaintiff Failed to Adequately Plead Damages and Failed to Plead**
 16 **Damages Resulted from any type of Fraud.**

17 Plaintiff alleges in his Complaint at ¶67 that Plaintiff “has suffered damages
 18 in an amount to be proved at trial.” Plaintiff failed to allege and cannot allege any
 19 damages here. “It is the rule that fraud without damages is not actionable.” *Agnew*
 20 *v. Parks*, 172 Cal.App.2d 756, 768 (1959). The Heredias, through Heredia Boxing
 21 Management, managed the Plaintiff to become a world champion boxer. While
 22 damages are not required to be pled with particularity, they must in fact be pled.
 23 *Ward v. Nat'l Entm't Collectibles Ass'n, Inc.*, 2012 WL 12885073, at *6 (C.D. Cal.
 24 Oct. 29, 2012) (internal citations omitted). A bald assertion of harm is not enough
 25 to sustain a *prima facie* case. “Every element of the cause of action for fraud must
 26 be alleged in the proper manner (i.e., factually and specifically).” *Hall v. Dep't of*
 27 *Adoptions*, 47 Cal.App.3d 898, 904 (Ct. App. 1975). Further, California recognizes

1 two measurements of damages in fraud claims: “out-of-pocket” and “benefit-of-
2 the-bargain.” *All. Mortg. Co. v. Rothwell*, 10 Cal.4th 1226, 1240 (1995).

3 The ‘out-of-pocket’ measure of damages ‘is directed to restoring the
4 plaintiff to the financial position enjoyed by him prior to the
5 fraudulent transaction, and thus awards the difference in actual value
6 at the time of the transaction between what the plaintiff gave and what
7 he received.’ The ‘benefit-of-the-bargain’ measure, on the other hand,
8 is concerned with satisfying the expectancy interest of the defrauded
9 plaintiff by putting him in the position he would have enjoyed if the
10 false representation relied upon had been true; it awards the difference
11 in value between what the plaintiff actually received and what he was
12 fraudulently led to believe he would receive.

13 *Id.* Neither of these measurements of damages is pleaded. The complaint does not
14 state what Plaintiff believed he was going to receive and did not in fact receive. “In
15 an action for common law fraud, damage is an essential element of the cause of
16 action. Misrepresentation, even maliciously committed, does not support a cause of
17 action unless the plaintiff suffered consequential damages.” *Patrick v. Alacer*
18 *Corp.*, 167 Cal.App.4th 995, 1016–1017 (2008) (internal citations and brackets
19 omitted). “If the existence—and not the amount—of damages alleged in a fraud
20 pleading is ‘too remote, speculative or uncertain,’ then the pleading cannot state a
21 claim for relief.” *Small v. Fritz Companies, Inc.*, 30 Cal.4th 167, 202 (2003). “At
22 the pleading stage, the complaint ‘must show a cause and effect relationship
23 between the fraud and damages sought; otherwise no cause of action is stated.” *Id.*
24 “It is not enough for the complaint to allege damage was suffered. The fraud
25 plaintiff must also allege his damages were caused by the actions he took in
26 reliance on the defendant's misrepresentations.” *Beckwith*, 205 Cal.App.4th at
27 1064, citing *Goehring v. Chapman University*, 121 Cal.App.4th 353, 364–365
28

(2004). There are no out of pocket damages as Plaintiff cannot point to any actual loss. Further, Plaintiff received everything he was supposed to get as part of the benefit of the bargain. As such, any cause of action for fraud or any subset of fraud must be dismissed.

III. Second Cause of Action

The elements of a cause of action for breach of fiduciary duty are the existence of a fiduciary duty, breach of that duty, and damage proximately caused by that breach. *Knox v. Dean*, 205 Cal.App.4th 417, 432-433 (2012); *see also Slaieh v. Simons*, 584 B.R. 28, 41 (C.D. Cal. 2018). Here, Plaintiff fails to plead anything beyond conclusory terms, fails to plead damages beyond stating they will be proved at trial, and fails to plead how any alleged damages were proximately caused by an alleged breach of fiduciary duty. To the extent that Plaintiff's allegations are based on claims of fraud, they have not been pled with sufficient particularity as required. *See Kearns*, 567 F.3d at 1126. Moreover, Plaintiff signed his contract with Mr. Moses Heredia as part of Heredia Boxing Management – not Defendant Heredia. As such, the allegations of a breach of a fiduciary duty are directed at the wrong entity and/or individual, and this cause of action must be dismissed.

IV. Third Cause of Action

A. Plaintiff Alleged an Implied-In-Fact Contract when the Contract was an Express Contract

A contract may be express or implied. Cal. Civil Code § 1619. “[A]n implied-in-fact contract entails an actual contract, but one manifested in conduct rather than expressed in words.” *Maglica v. Maglica*, 66 Cal.App.4th 442, 455 (1998). “The true implied contract, then, consists of obligations arising from a mutual agreement and intent to promise where the agreement and promise have not been expressed in words.” *McGough v. University of San Francisco*, 214

1 Cal.App.3d 1577, 1584 (1989). “An implied-in-fact contract is based on the
 2 conduct of the parties. Like an express contract, an implied-in-fact contract
 3 requires an ascertained agreement of the parties.” *Unilab Corp. v. Angeles-IPA*,
 4 244 Cal.App.4th 622, 636 (2016) (internal citation omitted). “If the agreement is
 5 shown by the direct words of the parties, spoken or written, the contract is said to
 6 be an express one. But if such agreement can only be shown by the acts and
 7 conduct of the parties, interpreted in the light of the subject matter and of the
 8 surrounding circumstances, then the contract is an implied one.” *Marvin v. Marvin*,
 9 18 Cal.3d 660, 678, fn. 16 (1976) (internal citation omitted).

10 Here, Plaintiff states that there was an agreement to loan the vehicle.
 11 Complaint at ¶76. This verbal agreement is not conduct based and hence the
 12 contract is an express contract. As this is an express contract, this cause of action
 13 must be dismissed.

14 **B. Plaintiff Failed to Specify the Dates Payments Needed to be Made**
 15 **to avoid the Lienholder from Repossessing the Vehicle.**

16 Assuming, *arguendo*, that this is an implied contract, the cause of action still
 17 fails. Breach of contract, express or implied, requires the same elements to be
 18 pleaded. *See Division of Labor Law Enforcement v. Transpacific Transportation*
 19 *Co.*, 69 Cal.App.3d 268, 275 (1977) (“As to the basic elements, there is no
 20 difference between an express and implied contract.”). “To prevail on a cause of
 21 action for breach of contract, the plaintiff must prove (1) the contract, (2) the
 22 plaintiff’s performance of the contract or excuse for nonperformance, (3) the
 23 defendant’s breach, and (4) the resulting damage to the plaintiff.” *Richman v.*
 24 *Hartley*, 224 Cal.App.4th 1182, 1186 (2014). “To claim a breach of contract in
 25 federal court the complaint must identify the specific provision of the contract
 26 allegedly breached by the defendant.” *Kaar v. Wells Fargo Bank, N.A.*, 2016 WL
 27 3068396, at *1 (N.D. Cal. Jun. 1, 2016). This requires the plaintiff to “identify with
 28

1 specificity the contractual obligations allegedly breached by the defendant.” *Misha*
 2 *Consulting Grp., Inc. v. Core Educ. and Consulting Solutions, Inc.*, 2013 WL
 3 6073362, at *1 (N.D. Cal. Nov. 15, 2013). Under California law no notice of
 4 default is required to repossess a vehicle. Cal. Com. Code § 9609.

5 Plaintiff alleges that the contract was a loan contract, wherein Mr. Heredia
 6 would purchase the car and presumably hold title and then provide the car to
 7 Plaintiff while Plaintiff paid Mr. Heredia for the car in agreed upon increments.
 8 Plaintiff then alleges that Mr. Heredia breached the implied-in-fact contract by
 9 taking possession of the car, by not returning Plaintiff’s payment of \$25,000.00
 10 and by not compensating Plaintiff for the \$4000.00 in modifications to the car and
 11 the alleged \$300.00 left in the car. Complaint at ¶¶76-79. Plaintiff, however, does
 12 not provide any fact revealing the content of the terms of the alleged contract. In
 13 other words, Plaintiff has identified acts which the Plaintiff believes to constitute
 14 breach without identifying: (1) what Plaintiff’s own duties under the contract were
 15 [such as terms of the repayment obligation] and what requirements had been
 16 placed on Plaintiff and (2) what obligations were placed on Mr. Heredia.
 17 Moreover, it is unclear on what grounds Mr. Heredia’s action in repossessing his
 18 own car constitutes breach, especially in light of the fact that repossession for
 19 failure to pay is permitted under California law. Nor does Plaintiff state that Mr.
 20 Heredia was prohibited from repossessing the vehicle when Plaintiff defaulted on
 21 the loan agreement.

22 Plaintiff has not demonstrated that an implied-in-fact contract plausibly
 23 existed. Plaintiff alleges that Mr. Heredia breached the contract, without
 24 identifying what terms Mr. Heredia is alleged to have breached and without
 25 identifying what obligations Plaintiff had under the alleged contract. As such, this
 26 court should dismiss Plaintiff’s cause of action predicated on breach of an implied-

1 in-fact contract, because Plaintiff has not provided sufficient fact to support the
2 plausible existence or breach of an implied-in-fact contract.

3 **V. Fourth Cause of Action**

4 To sustain a conversion cause of action under California law, a plaintiff must
5 demonstrate that (1) plaintiff had a right to possess an item of personal property;
6 (2) that defendant substantially interfered with plaintiff's property right; (3) that
7 plaintiff did not consent; (4) that plaintiff suffered harm; and (5) that defendant's
8 conduct was a substantial factor in causing plaintiff's harm. *See Duke v. Superior*
9 *Court*, 18 Cal.App.5th 490, 508 (2017); *Lee v. Hanley*, 61 Cal.4th 1225, 1240
10 (2015); *Cerra v. Blackstone*, 172 Cal.App.3d 604, 609 (1985) ("The first element
11 of that cause of action is his ownership or right to possession of the property at the
12 time of the conversion.").

13 Plaintiff offers a formulaic restatement of the elements underlying a
14 conversion cause of action and concludes that Mr. Heredia acted in violation of
15 each element. Plaintiff, however, fails to present a factual basis in support of the
16 fundamental element of ownership. *See Cerra*, 172 Cal.App.3d at 609.

17 Plaintiff asserts that he owned or was entitled to possess the tickets for other
18 matches, the 18% manager's fee and the \$29,300.00 in connection to the vehicle.
19 Plaintiff, however, does not allude to any factual basis in support of his alleged
20 right to possess or own the aforementioned items.

21 Plaintiff's contractual agreement with Mr. Moses Heredia explicitly reserves
22 an 18% fee to the manager as payment, meaning that Plaintiff has no entitlement,
23 contractual or otherwise, to the amount contained in the 18% fee. Moreover,
24 contrary to the position stated above, Plaintiff's complaint recognizes that the
25 tickets were at the discretion of the promoter to distribute. Plaintiff does not
26 provide any evidence of a right to tickets and as such his claim of legal entitlement
27 to certain types of tickets or seat access. In addition, Plaintiff states that he has a
28

1 contractual right to the \$29,300.00 in connection to the alleged repossession of the
2 vehicle. Plaintiff fails to demonstrate that such a contract existed, and similarly
3 fails to provide what general terms of the alleged contract may be. As such,
4 Plaintiff cannot indicate which general terms of the alleged implied-in-fact loan
5 contract compelled such a contractual right to the return of the \$25,000.00 in
6 payments, the \$4,000.00 that Plaintiff put into in modifying the car, or ownership
7 of the car. Merely claiming the existence of a contract without providing an
8 indication of the contract's contents is simply a naked conclusion without any
9 factual support. This is exactly the sort of naked conclusion that is well suited for
10 dismissal. *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). Nor does
11 plaintiff provide any factual support to buttress his claim for the \$300.00 which
12 Plaintiff claims he left in the car. In summation, Plaintiff fails to demonstrate that
13 he owns the items on which he bases his conversion claim.

14 Plaintiff also alleges that 2% of his earnings were converted because Mr.
15 Heredia used the 2% to pay for legal services. Plaintiff's allegation is that Mr.
16 Heredia paid for legal services for the benefit of Mr. Heredia using Plaintiff's
17 money without the consent of Plaintiff. Plaintiff does not identify any such
18 occasion or occurrence where legal services were used for the benefit of Mr.
19 Heredia; as such, Plaintiff's allegation is completely unsupported by fact. Plaintiff
20 therefore fails to put forward a plausible argument that is more than just labels and
21 conclusions with respect to his allegations concerning the legal fees. Thus, Plaintiff
22 fails to put forward any facts in support of his conversion pleading in regards to the
23 2% of his earnings, and fails to establish any factual basis for his claims of
24 ownership over the 18% fee, the tickets to matches, and the vehicle related sum of
25 approximately \$29,300.00 in total. Plaintiff therefore fails to satisfy pleading
26 standards and as such, plaintiff's cause of action concerning conversion should be
27 dismissed.

1 **VI. Fifth Cause of Action**

2 Plaintiff's complaint must be dismissed because it fails to allege a *prima*
 3 *facie* case of tortious interference with prospective economic advantage under
 4 California law. To establish this claim, a plaintiff must show that: (1) an economic
 5 relationship between the plaintiff and some third party, with the probability of
 6 future economic benefit to the plaintiff, (2) the defendant's knowledge of the
 7 relationship, (3) intentional acts on the part of the defendant designed to disrupt the
 8 relationship, (4) actual disruption of the relationship, and (5) economic harm to the
 9 plaintiff proximately caused by the acts of the defendant. *Korea Supply Co. v.*
 10 *Lockheed Martin Corp.*, 29 Cal.4th 1134, 1153 (2003). Because Plaintiff fails to
 11 state adequate facts satisfying the first and third elements, the complaint must be
 12 dismissed.

13 **A. Plaintiff Failed to Allege Wrongful Conduct by Mr. Heredia in**
 14 **Sufficient Detail to Support His Claim.**

15 A claim for tortious interference of prospective economic advantage requires
 16 showing of intentional acts on the part of the defendant designed to disrupt the
 17 relationship. *Id.* Plaintiff alleges that Mr. Heredia has engaged in intentional and
 18 wrongful conduct designed to interfere with the relationship between Plaintiff and
 19 the promotor. Complaint, ¶ 92. However, there are not sufficient facts in the
 20 Complaint to support such allegations. Instead, the Complaint consists merely of
 21 repetitive statements that defendant "did not vigorously negotiate with Golden
 22 Boy" so that he "can squeeze more out of Golden Boy for himself and his other
 23 clients" and Mr. Heredia failed to "adequately protect or advance" Plaintiff's
 24 interests. Complaint, ¶¶ 41, 42, 92. These conclusory allegations, without any
 25 factual support, should not be accepted by this Court. *See Iqbal*, 556 U.S. at 678
 26 (noting that while a court assumes the truth of the factual allegations, it does not
 27 assume the truth of legal conclusions or accept inferences that a plaintiff draws.)
 28

1 Because Plaintiff fails to point to specific wrongful conduct by defendant, the
 2 claim does not rise “above the speculative level” and should be dismissed.

3 **B. Plaintiff Failed to Allege Interference With Probable**
 4 **Expectancies.**

5 Additionally, to prove the tort of intentional interference with prospective
 6 economic advantage, a plaintiff must establish the probability of future economic
 7 benefits. *See Roy Allan Slurry Seal, Inc., v. American Asphalt South*, 2 Cal.5th
 8 505, 509 (2017). In other words, a plaintiff must prove that “it is reasonably
 9 probable the plaintiff would have received the expected benefit had it not been for
 10 the defendant’s interference.” *See Westside Center Associates v. Safeway Stores*
 11 *23, Inc.*, 42 Cal.App.4th 507, 523 (1996). If, however, the probability of economic
 12 benefit is too speculative, a court will found the claim insufficient. *See Youst v.*
 13 *Longo*, 43 Cal.3d 64, 77 (1987) (holding that the loss of chance to win a sporting
 14 contest is too speculative to support a tortious interference claim.) Notably, the
 15 *Youst* court ruled that the plaintiff failed to properly state a claim because “the
 16 complaint only alleged in conclusory terms that defendant’s wrongful interference
 17 resulted in a lost opportunity to finish higher in the money.” *Id.*

18 Here, like in *Youst*, Plaintiff’s expectancy of prospective economic
 19 advantage is speculative in nature. Plaintiff alleges that Mr. Heredia wrongfully
 20 disrupted his economic relationship with the promotor because, but for defendant’s
 21 interference, he would have fought better matches, and the more challenging and
 22 high profile the bouts he fought, the faster he would build on his pedigree and
 23 further advance his career, and ultimately obtain greater purses. (Complaint at
 24 ¶¶91, 93.) This causal sequence is unduly attenuated and speculative as Plaintiff
 25 did failed to specify any particular bout he would have, or even reasonably could
 26 have, fought in, but for the alleged misdeeds of Plaintiff. Because Plaintiff fails to
 27
 28

1 meet the requirement of showing reasonable expectancy of future benefits, the
2 claim must be dismissed.

3 In conclusion, because Plaintiff fails to state adequate facts satisfying the
4 first element and the third element, the claim of tortious interference with
5 prospective economic advantage must be dismissed.

6 **VII. Sixth Cause of Action**

7 15 U.S.C § 6308 makes it unlawful for “a manager—(i) to have a direct or
8 indirect financial interest in the promotion of a boxer;” or “(ii) to be employed by
9 or receive compensation or other benefits from a promoter, except for amounts
10 received as consideration under the manager's contract with the boxer.” If such
11 actions were to occur, then federal law provides a private right of action to the
12 individual boxer so long as the individual “suffers economic injury.” 15 U.S.C. §
13 6309(d). Plaintiff’s cause of action fails on both points.

14 First, Plaintiff failed to allege that Defendant Heredia is employed by
15 Golden Boy Promotions. Plaintiff failed to allege beyond conclusory statements
16 that Defendant Heredia received “benefits” from Golden Boy Promotions.
17 Complaint at ¶99. Plaintiff mentions only one alleged benefit—tickets to a fight—
18 yet fails to allege that these tickets were specifically received in connection with
19 any management of Mr. Diaz performed by the Heredias.

20 Second, Plaintiff failed to allege beyond any conclusory terms that the
21 alleged tickets received caused harm to Plaintiff. Specifically, that Plaintiff failed
22 to receive any monies owed him or that he was unable to secure a particular bout.
23 Plaintiff summarily states that “Diaz *would* have earned more money and/or
24 benefits,” Complaint at ¶ 101 (emphasis added), yet fails to specify the amount of
25 money, what specific benefits he would have received, or that he would have been
26 entitled to, or eligible to receive, such money or benefits. Indeed, Plaintiff had a
27 detailed promotion agreement between him and Golden Boy that was entire
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1 separate from any dealings with Plaintiff and Heredia Boxing. This contract
 2 controlled any additional money or benefits. This contract was not and could not
 3 be altered by Defendant Heredia. As such, this cause of action must be dismissed.

4 **VIII. Seventh Cause of Action**

5 Quantum meruit is a Latin phrase that means “as much as deserved.” It is
 6 used when there is no contract or agreement in place. *See E. J. Franks*
 7 *Construction, Inc. v. Sahota*, 226 Cal.App.4th 1123, 1127–1128 (2014). “To
 8 recover on a claim for the reasonable value of services under a quantum meruit
 9 theory, a plaintiff must establish both that he or she was acting pursuant to either
 10 an express or implied request for services from the defendant and that the services
 11 rendered were intended to and did benefit the defendant.” *Ochs v. PacifiCare of*
 12 *California*, 115 Cal.App.4th 782, 794 (2004). It is an “equitable remedy implied by
 13 the law under which a plaintiff who has rendered services benefitting the defendant
 14 may recover the *reasonable value* of those services when necessary to prevent
 15 unjust enrichment of the defendant.” *In re De Laurentiis Entertainment Group,*
 16 *Inc.*, 963 F.2d 1269, 1272 (9th Cir. 1992) (emphasis added) (citing B. Witkin,
 17 *Summary of California Law: Contracts* § 91 (1987); 55 Cal. Jur.3d Restitution
 18 360-61 (1980)). “The whole point of quantum meruit recovery is compensate
 19 plaintiffs who have provided a benefit to defendants but who do *not* have a
 20 contract—expressed or implied—with those defendants.” *Id.* at 1272 (emphasis in
 21 original).

22 This cause of action fails on two points. First, there was a contract for the
 23 boxing management and allegedly for the car. Second, Plaintiff has not alleged that
 24 he has not been compensated a “reasonable value” for his “services rendered,” or
 25 that the alleged tickets received by Defendant Heredia were intended as a particular
 26 benefit for said services. As such, this cause of action should be dismissed.

27 **IV. Eighth Cause of Action**

1 An action for an accounting is equitable in nature. It may be brought to
 2 compel the defendant to account to the plaintiff for money or property, (1) where a
 3 fiduciary relationship exists between the parties, or (2) where, even though no
 4 fiduciary relationship exists, the accounts are so complicated that an ordinary legal
 5 action demanding a fixed sum is impracticable. *See Los Defensores, Inc. v. Gomez*,
 6 223 Cal.App.4th 377, 401 (2014); *see also Civic Western Corp. v. Zila Industries,*
 7 *Inc.*, 66 Cal.App.3d 1, 14 (1977).

8 To plead a request for an accounting, a complaint “need only state facts
 9 showing the existence of the relationship which requires an accounting and the
 10 statement that some balance is due the plaintiff.” *Brea v. McGlashan*, 3 Cal.App.2d
 11 454, 460 (1934).

12 Plaintiff asks for an accounting however he asks for an accounting from
 13 Defendant Heredia, not Mr. Moses Heredia, the boxing manager he has contracted
 14 with, or from Heredia Boxing Management, the boxing management company ran
 15 by Mr. Moses Heredia. As the Plaintiff failed to state facts showing the proper
 16 relationship that requires an accounting, this cause of action should be dismissed.

17 CONCLUSION

18 For the foregoing reasons, Mr. Ralph Heredia respectfully requests that this
 19 Court dismiss Plaintiff’s complaint in its entirety.

20
 21 Dated: January 19, 2021

Respectfully submitted,

22
 23 /s/ Rajan O. Dhungana

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