

1 understood by counsel, prior to the filing of the action.

2 Complaints of this type are not required to be verified under Oath and, as such,
3 this Complaint is not verified under Oath.

4 In compliance with California law, reasonable efforts have been made by counsel
5 to understand the facts at this early stage of pleadings, so that a reasonable effort may be
6 made to apprise defendant(s) generally of counsel's understanding of the facts
7 constituting the elements of the claims made herein.

8 Nothing in this complaint should be construed as an admission on the part of, or
9 attributable to, the parties themselves.

10 **GENERAL ALLEGATIONS**

11 1. Plaintiff HARRY BERKOWITZ is an adult individual over 18 years of
12 age.

13 2. Defendant NICHOLAS "NICK" DELFRANCO is an adult individual
14 over 18 years of age, who resides in the County of Orange, State of California. NICK
15 DELFRANCO is a partner with defendant TOM DELFRANCO, in defendant
16 HYDROPONICS HOUSE, LLC.

17 3. Defendant TOM DELFRANCO is an adult individual over 18 years of
18 age. Plaintiff is informed and believes that TOM DELFRANCO resides in the County
19 of McComb, State of Michigan. TOM DELFRANCO is a partner with defendant NICK
20 DELFRANCO, in defendant HYDROPONICS HOUSE, LLC. Both NICK
21 DELFRANCO and TOM DELFRANCO were involved in the subject transaction, and
22 both of them made specific representations to plaintiff as to their ability to deliver the
23 products ordered in the subject transaction.

24 4. Defendant HYDROPONICS HOUSE, LLC is a Michigan limited liability
25 company, having its principal place of business within the County of McComb, State of
26 Michigan.

27 5. Defendant JP MORGAN CHASE BANK, N.A., a Delaware corporation,
28 is named not for liability purposes, but as an entity in possession, custody or control of

1 funds held in the name of HYDROPONICS HOUSE, LLC, which are rightfully owned
2 by Plaintiff. Plaintiff seeks to be declared rightful owner and beneficiary of a
3 constructive trust of those monies. Plaintiff will seek to enjoin and restrain Defendant
4 JP MORGAN CHASE BANK, N.A. from transferring those funds until such time as all
5 of the claims within this Complaint can be fully and completely adjudicated.

6 6. Plaintiff is informed and believes, and thereupon alleges, that DOES 1
7 through 10 are each responsible in some manner for the events herein alleged, and that
8 plaintiff's damages as herein alleged were proximately caused by their conduct.

9 7. Plaintiff is informed and believes, and thereupon alleges, that at all times
10 mentioned each of the Defendants, including DOES 1 through 10, inclusive, were the
11 agents and employees of each of the remaining Defendants except where specified
12 otherwise. In doing the things hereinafter alleged, Defendants acted within the scope
13 and course of such agency. Plaintiff is further informed and believes that at all times
14 relevant hereto, each of the defendants, including DOES 1 through 10, acted in concert
15 with one another and in furtherance of each other's interests.

16 8. In or about July 2015, plaintiff met with a group of businessmen at the
17 Island Hotel in Newport Beach to discuss a cannabis growing business. Approximately
18 twelve persons attended the meeting.

19 9. The focus of the meeting was a presentation by defendant Nick
20 DelFranco, who represented that he had relocated to Newport Beach from Michigan.
21 Mr. DelFranco further represented himself as having fifteen years of experience in the
22 cannabis growing business, with expertise in all aspects of the business, which included
23 growing, harvesting, and providing wholesale hydroponics equipment. Mr. Defranco
24 represented that he had a warehouse in Mt. Clemens, Michigan for fulfillment of orders
25 for hydroponics equipment. He represented that he and his father Tom DelFranco were
26 partners in the business known as Hydroponics House, LLC, which distributed and
27 supplied hydroponics equipment, and other equipment necessary for horticulture.

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1 10. Plaintiff was planning to build a licensed cannabis growing facility in
2 Denver, Colorado. After several meetings with Nick DelFranco, plaintiff informed Mr.
3 DelFranco that he was about to order horticulture equipment for the new facility, and
4 had a list of the specific hydroponics and other horticulture equipment that plaintiff
5 needed.

6 11. Mr. DelFranco asked if he could bid the against the price that plaintiff had
7 received. Plaintiff provided the material list, without prices, so that defendant could bid.

8 12. Mr. DelFranco's bid did in fact come in lower than the price quoted from
9 the other equipment supplier. The bid was approximately \$122,250.

10 13. Mr. DelFranco asked for a \$63,250 deposit (roughly half of the bid).

11 14. On or about January 7, 2016, plaintiff handed Mr. DelFranco a cashier's
12 check drawn from a Wells Fargo account in the amount of \$63,250. At Mr. DelFranco's
13 request, plaintiff drove Mr. DelFranco to Chase Bank in Newport Beach, where Mr.
14 DelFranco deposited the check into the Hydroponics House, LLC bank account. A true
15 and correct copy of the cashiers check is attached hereto as Exhibit "1," and
16 incorporated herein by reference.

17 15. The balance due was \$59,000.00, to be paid upon final shipment of the
18 entire order.

19 16. On January 20, 2016, plaintiff received an invoice from Hydroponics
20 House, LLC, reflecting the payment of the \$63,250 deposit. A true and correct copy of
21 the invoice reflecting receipt of the deposit is attached hereto as Exhibit "2," and
22 incorporated herein by reference.

23 17. Defendant shipped four (4) pumps (which were quoted as costing between
24 \$122 and \$240 in the bid), and nothing else. Plaintiff could not do anything with four
25 pumps, and no other equipment. As an aside, the quantity of pumps that were supposed
26 to be shipped was twenty (20).

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1 18. As weeks and months passed, plaintiff repeatedly requested delivery
2 dates, and defendants repeatedly failed to provide equipment or shipment dates, as they
3 had promised they would do.

4 19. Plaintiff realized that he had been scammed, that defendant had no
5 intention of providing the equipment, and that defendant had absconded with the
6 money.

7 20. In late February 2016, plaintiff canceled the order in writing and after
8 only receiving the four pumps of the total order. Plaintiff requested a return of the full
9 deposit and offered to ship the four pumps back to Michigan.

10 21. However, Mr. DelFranco did not accept return of the four pumps and did
11 not refund the money.

12 **FIRST CAUSE OF ACTION**

13 **(BREACH OF WRITTEN CONTRACT)**

14 **(AGAINST HYDROPONICS HOUSE, LLC, AND DOE DEFENDANTS)**

15 22. Plaintiff realleges and incorporates herein by reference paragraphs 1
16 through 21, inclusive, as though fully set forth herein.

17 23. Pursuant to contract evidenced by a writing (written bid, cashier's check
18 based upon bid, and invoice), Plaintiff was to turn over to Defendant a \$63,250 deposit,
19 which plaintiff did. Defendant promised and represented that he would use the money to
20 purchase equipment, which would be shipped to plaintiff, the vast majority
21 immediately, one product within 3-5 days, two products within one week, and three
22 products within 4-5 weeks.

23 24. By not performing as set forth above, Defendant breached the contract.

24 25. Plaintiff performed all conditions, covenants and promises required on his
25 part to be performed under the contract.

26 26. As a direct and proximate result of Defendant's actions against Plaintiff,
27 as alleged above, Plaintiff has suffered special damages of \$63,250.

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1 27. Plaintiff is further entitled to incidental and consequential damages, in an
2 amount to be proven at time of trial.

3 28. Plaintiff is further entitled to prejudgment interest in an amount to be
4 proven at time of trial.

5 **SECOND CAUSE OF ACTION**

6 **(BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR**
7 **DEALING)**

8 **(AGAINST HYDROPONICS HOUSE, LLC, AND DOE DEFENDANTS)**

9 29. Plaintiff realleges and incorporates herein by reference paragraphs 1
10 through 21, inclusive, as though fully set forth herein.

11 30. At all times herein mentioned, there existed an implied covenant of good
12 faith and fair dealing incident to the express contract by and between Plaintiff and
13 Defendant such that:

14 (a) Each party would act in good faith and deal fairly toward the other
15 concerning all matters relating to the contract; and

16 (b) Neither party would do anything to deprive the other party of the benefits
17 of the agreement.

18 31. Defendant breached and continues to breach the implied covenant of good
19 faith and fair dealing by acting as alleged herein. The conduct of Defendant was
20 designed to prevent and in fact prevented Plaintiff from receiving benefits to which he
21 was entitled pursuant to contract.

22 32. As a direct and proximate result of Defendant's actions against Plaintiff,
23 as alleged above, Plaintiff has suffered special damages of \$63,250.

24 33. Plaintiff is further entitled to incidental and consequential damages, in an
25 amount to be proven at time of trial.

26 34. Plaintiff is further entitled to prejudgment interest in an amount to be
27 proven at time of trial.

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1 **THIRD CAUSE OF ACTION**

2 **(INTENTIONAL FRAUD)**

3 (AGAINST NICK DELFRANCO, HYDROPONICS HOUSE, LLC, AND DOE
4 DEFENDANTS)

5 35. Plaintiff realleges and incorporate herein by reference paragraphs 1
6 through 21, inclusive, as though fully set forth herein.

7 36. Lazar/ Starkey factors:

8 WHO: Nick DelFranco, on behalf of himself personally, and on behalf of
9 Hydroponics House, LLC;

10 REPRESENTATION: that Nick DelFranco and Hydroponics House, LLC would
11 deliver the specified goods, the vast majority immediately, one product within 3-5 days,
12 two products within one week, and three products within 4-5 weeks;

13 HOW: in a face-to-face conversation;

14 WHEN: on multiple dates including but not limited to January 7, 2016.

15 WHERE: as to the January 7, 2016 instance - at Chase Bank in Newport Beach,
16 California;

17 TO WHOM: to plaintiff Harry Berkowitz;

18 BY WHAT MEANS: speaking directly face-to-face.

19 37. When Defendant Delfranco made misrepresentations, as set forth above,
20 he knew the statements to be false when he made them. In this way, Defendant
21 DelFranco made affirmative, material misrepresentations to Plaintiff.

22 38. Defendants intended to induce Plaintiff to rely on their
23 misrepresentations. Plaintiff did rely on their misrepresentations, by depositing the
24 \$63,250 in Defendants' bank account.

25 39. Plaintiff had no reason to believe Defendant's statements were false and
26 therefore acted in reasonable reliance upon Defendant's statements. Specifically, based
27 upon Defendant's reassurances, Plaintiff provided Defendants with money that was
28 supposedly going to be used for the purchase of equipment that was to be turned over to

1 plaintiff. Instead, Defendants kept the money, and did not perform any of the actions
2 that were supposed to be taken with the money. Despite this fact, and as further
3 evidence of fraud, Defendants have failed and refused to return the money when
4 requested. Said actions on the part of Defendants have caused tremendous financial
5 detriment to Plaintiff.

6 40. As a direct and proximate result of Defendants' actions against Plaintiff,
7 as alleged above, Plaintiff has suffered special damages in excess of \$63,250.

8 41. As a further direct and proximate result of the Defendants' actions against
9 Plaintiff, as alleged above, Plaintiff has suffered and continues to suffer general
10 damages including but not limited to substantial and enduring emotional distress
11 including humiliation, mental anguish and physical distress, in an amount to be proven
12 at time of trial, in excess of the minimum jurisdictional requirements of this Court.

13 42. Plaintiff is further entitled to incidental and consequential damages, in an
14 amount to be proven at time of trial.

15 43. Plaintiff is further entitled to prejudgment interest in an amount to be
16 proven at time of trial.

17 44. The aforementioned acts of Defendants were fraudulent, malicious and
18 oppressive. Particularly fraudulent, malicious and oppressive was Defendants' predatory
19 behavior in taking advantage of Plaintiff's trust, and making bald-faced lies about
20 Defendant's ability to deliver equipment. Plaintiff is thus entitled to and herein seeks
21 punitive and exemplary damages from Defendants, in an amount according to proof at
22 trial, to punish Defendants and deter Defendants and others from engaging in similar
23 future conduct.

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1 **FOURTH CAUSE OF ACTION**

2 **(NEGLIGENT MISREPRESENTATION)**

3 (AGAINST NICK DELFRANCO, HYDROPONICS HOUSE, LLC, AND DOE
4 DEFENDANTS)

5 45. Plaintiff realleges and incorporate herein by reference paragraphs 1
6 through 21, and 36, inclusive, as though fully set forth herein.

7 46. When Defendant Nick DelFranco made misrepresentations, as set forth
8 above, he should have known that the statements were false when he made them and/or
9 had no reasonable basis for believing the misrepresentations to be true. In this way,
10 Defendant Nick DelFranco made affirmative, material misrepresentations to Plaintiff.

11 47. Defendants intended to induce Plaintiff to rely on their
12 misrepresentations. Plaintiff did rely on their misrepresentations, by depositing the
13 \$63,250 in Defendants' bank account.

14 48. Plaintiff had no reason to believe Defendant's statements were false and
15 therefore acted in reasonable reliance upon Defendant's statements. Specifically, based
16 upon Defendant's reassurances, Plaintiff provided Defendants with money that was
17 supposedly going to be used for the purchase of equipment that was to be turned over to
18 plaintiff. Instead, Defendants kept the money, and did not perform any of the actions
19 that were supposed to be taken with the money. Despite this fact, and as further
20 evidence of fraud, Defendants have failed and refused to return the money when
21 requested. Said actions on the part of Defendants have caused tremendous financial
22 detriment to Plaintiff.

23 49. As a direct and proximate result of Defendants' actions against Plaintiff,
24 as alleged above, Plaintiff has suffered special damages in excess of \$63,250.

25 50. As a further direct and proximate result of the Defendants' actions against
26 Plaintiff, as alleged above, Plaintiff has suffered and continues to suffer general
27 damages including but not limited to substantial and enduring emotional distress

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1 including humiliation, mental anguish and physical distress, in an amount to be proven
2 at time of trial, in excess of the minimum jurisdictional requirements of this Court.

3 51. Plaintiff is further entitled to incidental and consequential damages, in an
4 amount to be proven at time of trial.

5 52. Plaintiff is further entitled to prejudgment interest in an amount to be
6 proven at time of trial.

7 **FIFTH CAUSE OF ACTION**

8 **(UNJUST ENRICHMENT/MONEY HAD AND RECEIVED)**

9 **(AGAINST ALL DEFENDANTS)**

10 53. Plaintiff realleges and incorporates herein by reference paragraphs 1
11 through 21, inclusive, as though fully set forth herein.

12 54. As set forth above, Plaintiff provided money to Defendants for the
13 purpose of purchasing specific hydroponics and related equipment. Defendants agreed
14 to do so. The transaction was a business transaction, from a business supplier, for
15 business hydroponics and related equipment, to be used at Plaintiff's business.

16 55. Defendants did not use the money for the intended purpose, and instead
17 took the money for their own use and benefit, which did not include any use or benefit
18 to Plaintiff.

19 56. Plaintiff demanded return of the money, but Defendants failed and refused
20 to return the money.

21 57. As a direct and proximate result of Defendants' actions against Plaintiff,
22 as alleged above, Plaintiff has suffered special damages in the amount of \$63,250.

23 58. As a further direct and proximate result of the Defendants' actions against
24 Plaintiff, as alleged above, Plaintiff has suffered and continues to suffer consequential
25 and incidental damages. Plaintiff is further entitled to prejudgment interest in an amount
26 to be proven at time of trial.

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1 **SIXTH CAUSE OF ACTION**

2 **(UNFAIR BUSINESS PRACTICES - B & P CODE, SECTION 17200)**

3 **(AGAINST ALL DEFENDANTS)**

4 59. Plaintiff realleges and incorporates herein by reference paragraphs 1
5 through 21, inclusive, as though fully set forth herein.

6 60. The aforementioned acts and omissions of the Defendants constitute
7 fraudulent, unlawful and unfair business practices within the meaning of Business &
8 Professions Code §17200, and Defendants are therefore liable to Plaintiff under this
9 statute. Pursuant to Business & Professions Code §17205, any recovery for violation of
10 this statute is cumulative and is thus in addition to any other damages recoverable in this
11 complaint. Fraudulent, unlawful and unfair business practices give rise to, among other
12 remedies, restitution and injunctive relief.

13 **SEVENTH CAUSE OF ACTION**

14 **(CONSTRUCTIVE TRUST)**

15 **(AGAINST HYDROPONICS HOUSE, LLC, and JP MORGAN CHASE BANK, N.A.)**

16 61. Plaintiff realleges and incorporates herein by reference paragraphs 1
17 through 21, inclusive, as though fully set forth herein.

18 62. Plaintiff seeks a constructive trust preventing dissipation of the funds that
19 were deposited into the account of HYDROPONICS HOUSE, LLC, at JP MORGAN
20 CHASE BANK, N.A., for the specific purpose of purchasing hydroponics and related
21 equipment for plaintiff. Imposing the constructive trust will preserve the status quo and
22 allow for a means of the return of Plaintiff's money. Through separate application or
23 motion, Plaintiff shall apply for a temporary restraining order, preliminary injunction
24 and writ of attachment to preserve the funds.

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1 **EIGHTH CAUSE OF ACTION**

2 **(PRELIMINARY INJUNCTION)**

3 (AGAINST HYDROPONICS HOUSE, LLC, and JP MORGAN CHASE BANK, N.A.)

4 63. Plaintiff realleges and incorporates herein by reference paragraphs 1
5 through 21, inclusive, as though fully set forth herein.

6 64. Plaintiff seeks a preliminary injunction to prevent the dissipation of the
7 funds that were deposited into the account of HYDROPONICS HOUSE, LLC, at JP
8 MORGAN CHASE BANK, N.A., for the specific purpose of purchasing hydroponics
9 and related equipment for plaintiff. Imposing the preliminary injunction will preserve
10 the status quo and allow for a means of the return of Plaintiff's money. Through
11 separate application or motion, Plaintiff shall apply for a temporary restraining order,
12 preliminary injunction and writ of attachment to preserve the funds.

13 **NINTH CAUSE OF ACTION**

14 **(WRIT OF ATTACHMENT)**

15 (AGAINST HYDROPONICS HOUSE, LLC)

16 65. Plaintiff realleges and incorporates herein by reference paragraphs 1
17 through 21, inclusive, as though fully set forth herein.

18 66. Plaintiff seeks a writ of attachment to prevent dissipation of the funds that
19 were deposited into the account of HYDROPONICS HOUSE, LLC, at JP MORGAN
20 CHASE BANK, N.A., for the specific purpose of purchasing hydroponics and related
21 equipment for plaintiff. Issuance of the writ of attachment will preserve the status quo
22 and allow for a means of the return of Plaintiff's money. Through separate application
23 or motion, Plaintiff shall apply for a temporary restraining order, preliminary injunction
24 and writ of attachment to preserve the funds.

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1 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of
2 them, as follows:

3 1. Special damages in a sum according to proof at time of trial, but in excess
4 of \$63,250;

5 2. General damages for emotional distress;

6 3. Restitution;

7 4. Injunctive relief;

8 5. Constructive trust, preliminary injunction, and writ of attachment;

9 6. Consequential and incidental damages in a sum according to proof at time
10 of trial;

11 7. Pre-judgment interest at the legal prevailing rate;

12 8. Payment of Plaintiff's costs and reasonable attorneys, if authorized by
13 statute, contract or law.

14 9. Punitive and exemplary damages in a sum according to proof at trial;

15 10. Costs of suit and recoverable disbursements herein incurred; and

16 11. Such other and further relief as the court deems proper.

17 **DEMAND FOR JURY**

18 Plaintiff hereby demands trial by jury in this action.

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20 DATED: July 27, 2016

LAW OFFICES OF JOHN Y. IGARASHI,
A PROFESSIONAL CORPORATION

21
22 By: 

John Y. Igarashi
Attorneys for Plaintiff HARRY
BERKOWITZ