

1 DAVID WISE
2 8545 W WARM SPRINGS RD
3 SUITE A4-381
4 LAS VEGAS, NV 89113
5 *In Pro Per*

6
7 **SUPERIOR COURT OF ORANGE COUNTY**

8 **CENTRAL JUSTICE CENTER**

Assigned for all purposes:
Judge David A. Hoffer

9 DAVID WISE,
10
11 Plaintiff,
12
13 vs.
14 NICHOLAS DELFRANCO,
15 THOMAS DELFRANCO
16 Defendants

Case No.: 30-2020-01140030-CU-FR-CJC

COMPLAINT FOR:

1) FRAUD

2) CONVERSION

16
17 Plaintiff complains and for causes of action alleges as follows:

18 **I. INTRODUCTION**

19 1. Wise brings this action as a result of Nicholas and Thomas Delfrancos' ("Delfranco")
20 fraudulent and unfair business practices. Delfranco has engaged in a pattern and practice of
21 purchasing products from Wise upon misrepresentations about when payment would be
22 made and profit sharing in future production.

23
24 2. In addition, Delfranco has made numerous false promises to pay and then presented
25 a worthless check by knowingly writing a check upon an account without sufficient funds
26 to pay.
27

1 3. On November 24, 2019, Wise visited the farms only to find dead brush that was
2 never harvested. In addition, hardly any plants were in existence when compared to the total
3 number of seeds provided.

4 4. Delfranco makes only excuses that don't add up to facts.

5 5. Because there is no explanation as to how over \$6,000,000 in inventory has
6 disappeared, Wise has filed this complaint.
7

8 **II. PARTIES**

9
10 A) Defendants Delfranco ("Delfranco"), are, and at all times herein mentioned were, a
11 resident in of the City of Laguna Beach, County of Orange, State of California.

12 B) Plaintiff, David Wise, is, and at all time herein mentioned is a resident of the City of Las
13 Vegas, County of Clark, State of Nevada.
14

15 **III. JURISDICTION**

16 6. Jurisdiction over Delfranco is proper under California Code of Civil Procedure §410.10.

17 7. This Court has general personal jurisdiction over Delfranco because he has had
18 substantial and continuous contacts with California, living in a residence located in Laguna
19 Beach, CA.
20

21 **IV. FACTUAL ALLEGATIONS**

22 8. On or about August of 2019, Plaintiff had merchandise (farm supplies) delivered
23 to Defendant with a promise by Defendant to pay for the merchandise in 10 days.
24

25 9. Defendants, despite several demands, failed to make any payments whatsoever.
26 In fact, Defendants have had Plaintiff show up on numerous occasions, driving hundreds of
27 miles each time, to various places with a promise to pay all or part of the debt owed.
28

1 10. On or about September 18, 2019, Defendants told Plaintiff to come to his home
2 address in Laguna Beach, CA to pick up a check as partial payment.

3 11. Defendants falsely and fraudulently gave a check and represented to Plaintiff that
4 his check, #2003, was valid with funds available to pay for his debt owed to Plaintiff.
5

6 12. The representations made by Defendants were in fact false. The true facts were
7 that Defendant has a habit of passing bad checks as represented by his bank, Bank of America.

8 13. Plaintiff's bank, Wells Fargo, placed a hold on the entire amount due to the prior
9 history of Defendant Nicholas passing bad checks (Exhibit 1).
10

11 14. Plaintiff contacted Defendants addressing this concern, to which, Defendants
12 reassured, promised, and represented that there would be no problem with the check clearing.

13 15. Defendant's check was returned for Non-Sufficient Funds ("NSF") (Exhibit 2).

14 16. Plaintiff then drove to one of the farms over 1000 miles away on November 23rd
15 through the 25th because Defendants said harvest was happening soon.
16

17 17. Upon arrival, he found that only 70 acres had been planted for 1000 acres worth
18 of product.

19 18. When inquired about what happened to the rest of the product, there was no real
20 answer other than some of the product was available to be returned.

21 19. Plaintiff contacted the person, Chuck Parker, who was responsible for harvesting
22 to find out why it hasn't happened. The response was that Defendants hadn't paid him either.
23

24 20. To date, a very small portion of the product has been returned. This Complaint
25 addresses what was received and presumably used by Defendants for their own purposes other
26 than what was promised.
27

V. FIRST CAUSE OF ACTION
(For Fraud)

21. Plaintiff incorporates and re-alleges every allegation set forth in the prior paragraphs.

22. Defendants misrepresented his intent to pay for the merchandise received from Plaintiff.

23. Defendants misrepresented the availability of funds to cover the check, #2003, written to Plaintiff on September 18, 2019.

24. Plaintiff relied upon the misrepresentation to his detriment and the detriment of his vendors.

25. When the defendant made these representations, he knew them to be false, and these representations were made by Defendants with the intent to defraud and deceive plaintiff and with the intent to induce Plaintiff to further delay any collections.

26. Defendants knew the failure to pay Plaintiff was harming Plaintiff's relationship with his own vendors.

27. Defendant Nicholas attempted to 'cover his tracks' by claiming a fraud alert had been placed upon his account and kept the funds from clearing. This is false. Had a fraud alert been placed, a different rejection notice would have been made other than NSF.

28. Plaintiff, at the time this promise was made and at the time Plaintiff took the actions herein alleged, was ignorant of defendant's secret intention not to perform and Plaintiff could not, in the exercise of reasonable diligence, have discovered Defendant's secret intention. In reliance on these representations, Plaintiff was induced to and did accept a worthless form of payment.

29. As a proximate result of Defendant's fraud and deceit and the facts herein alleged, Plaintiff was harmed by reason of which Plaintiff has been damaged in the sum of \$42,035.00.

30. In doing the acts herein alleged, Defendant acted with oppression, fraud, and malice, and Plaintiff is entitled to punitive damages in the sum of \$120,000.

SECOND CAUSE OF ACTION

(Conversion)

31. Plaintiff incorporates and re-alleges every allegation set forth in the prior Paragraphs.

32. Defendants willfully interfered with Plaintiff's rights to his personal property. Defendant has willfully interfered through a fraudulent scheme involving the purchase of farm supplies with full knowledge that he wouldn't pay for, use for the joint purpose agreed to between the parties, and thereby stealing not just the supplies but the profits as well.

33. Defendants diverted all product not used for a joint venture to his own personal use and gain.

34. There were enough supplies to harvest 1000 acres of product. Only 70 acres were planted in one field and 100 acres in another, and returned maybe 10% of the original supplies.

35. Defendant's intentional and deceitful acts enabled him to dispose of the property in a manner inconsistent with Plaintiff's property rights. These property rights include the sharing of profits from the use of the farm supplies.

36. Defendant's unauthorized sale and transfer of Plaintiff's property caused substantial damages to Plaintiff.

37. WHEREFORE, Plaintiff prays for relief as set forth below.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff pray judgment against Defendant, as follows:

- 3
- 4 1. For actual damages as to the bounced check, statutory damages, in the sum of
\$42,035.00;
 - 5 2. For actual damages as to the product delivered to Defendants and not returned in the
6 sum of \$3,800,000.
 - 7 3. For punitive or treble damages in the sum of \$120,000 for the NSF check and
additional punitive damages for the delivered product of \$3,600,000;
 - 8 4. For costs of suit incurred herein; and,
 - 9 5. For such other and further relief as the court may deem proper.

10
11
12 Dated: March 17, 2020



13 _____
David Wise, Plaintiff

14
15 **VERIFICATION**

16 I, David Wise, am the Plaintiff in the above-entitled action. I have read the foregoing and know
17 the contents thereof. The same is true of my own knowledge, except as to those matters which
18 are therein alleged on information and belief, and as to those matters, I believe it to be true.

19 I declare under penalty of perjury that the foregoing is true and correct and that this declaration
20 was executed at Las Vegas, Nevada.

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22 DATED: March 17, 2020



23 _____
David Wise, Plaintiff


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EXHIBIT 1

Wells Fargo Bank
N9777-112-FLM
P.O. Box 5106
Sioux Falls, SD 57117-5106

WELLS
FARGO

09/19/19

000264 XNTHAP62
 DAVID T WISE
6032 FLY FISHER ST
LAS VEGAS NV 89113-1728

Re: Account Number: XXXXXXXXXXXXXXX6989

Dear Customer:

We are delaying the availability of the funds from the check(s) described below because we believe the check(s) may not be paid. The reason for the hold and the date on which the funds will be available for withdrawal are also described below:

Deposit Date/ Total Deposit Amount	Amount Delayed	Hold Reason/ Date Funds Will Be Available
09/18/19 \$42,000.00	\$42,000.00	You need to refer to maker of check 09/27/19

We will be holding these funds until the date(s) indicated above. A hold means that although the check amount is credited to your account, the funds are not available for your use (please refer to the last page of this letter for more information about a hold on your account). To help avoid overdrawing your account and incurring overdrafts and/or returned item (non-sufficient funds/NSF) fees, during this time please do not make withdrawals or write checks against these funds (if your account allows check writing). Overdraft fees do not apply to prepaid cards.

If the check(s) listed above is returned, we will mail a notice to you the same day and deduct the amount of the check(s) from your account. A deposit item return fee will also be deducted from your account for each check returned (unless your account does not assess a fee for returned checks). Please refer to your account Fee and Information Schedule for the amount of the fee.

We understand the inconvenience that can occur when a check is returned. If you have questions regarding the availability of funds, please refer to the information on the last page of this letter or contact one of our representatives at the telephone number printed on your monthly account statement.

We appreciate your business and thank you for banking with Wells Fargo.

Sincerely,

Prevention Contact Center

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EXHIBIT 2

122105278
09/20/2019
3332805519

This is a LEGAL COPY
of your check. You can
use it the same way
you would use the
original check.

RETURN REASON - A
NOT SUFFICIENT
FUNDS

000001185533335
[091000019] 09/18/2019

NSE

NICHOLAS T DELFRANCO 2820 BERNARD CT LAGUNA BEACH CA 92651-2078		2003 11-35/1210 CA 70097
Date <u>9/18/19</u>		
Pay to the order of <u>David Wise</u>		\$ <u>42,000.00</u>
<u>forty two thousand Dollars zero cents</u>		Dollars
Bank of America		
ACH R/T 121000358		
For <u>Repayment</u>		
⑆ 121000358 ⑆		2003

⑆ 121000351

35 2003

⑆0004200000⑆