

FILED

1 Chuck Foster
2 8941 Atlanta Avenue #512
3 Huntington Beach, CA/USA 92646
4 Telephone: (702) 449-8712
5 Email: chuckfoster@aol.com

2014 FEB -7 PM 4:05

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA

BY _____

6
7
8 Plaintiff in Pro Se

9 **UNITED STATES DISTRICT COURT FOR**
10 **THE CENTRAL DISTRICT OF CALIFORNIA**

11	CHUCK FOSTER,	}	CASE NO. SACV14-00004-AG-(DFMx)
12	Plaintiff.	}	JUDGE: Andrew J. Guilford
13	vs.	}	
14	THERESA KEEPING, and	}	FIRST AMENDED COMPLAINT FOR
15	DOES 1 thru 5, inclusive,	}	Breach of Contract; Breach of Implied
16	Defendant.	}	Covenant of Good Faith and Fair Dealing;
17		}	Negligence; and Damages.
18		}	JURY TRIAL DATE: August 18, 2016
19		}	DISCOVERY CUT-OFF: May 18, 2015
20		}	JUDGE: Hon. Andrew J. Guilford
21		}	MAGISTRATE: Hon. Douglas F. McCormick

22 As the result of a meet and confer conference between the parties on 1/31/14;
23 defendant's defective Notice of Errata and Correction; defendant's not having
24 yet filed an Answer to plaintiff's Complaint; to conform alleged facts with
25 supporting evidence and law; an unsuccessful in attempt to obtain written
26 consent from defense counsel;and as permitted by Fed. R. Civ. P. 15(a)(2);
27 plaintiff's First Amended Complaint is respectfully submitted as follow

28 **I. JURISDICTION**

1. Defendant is a Canadian citizen and resides in Alberta, Canada.
2. Plaintiff is a U.S. citizen and resident of Orange County, California.
3. The total sum of plaintiff's general and compensatory pled damages, including costs, is \$65,000.

1 Chuck Foster
2 8941 Atlanta Avenue #512
3 Huntington Beach, CA/USA 92646
4 Telephone: (702) 449-8712
5 Email: chuckfoster@aol.com

6
7
8 Plaintiff in Pro Se

9 **UNITED STATES DISTRICT COURT FOR**
10 **THE CENTRAL DISTRICT OF CALIFORNIA**

11 CHUCK FOSTER, } **CASE NO. SACV14-00004-AG-(DFMx)**
12 Plaintiff. } **JUDGE: Andrew J. Guilford**
13 vs. }
14 } **FIRST AMENDED COMPLAINT FOR**
15 THERESA KEEPING, and } Breach of Contract; Breach of Implied
16 DOES 1 thru 5, inclusive, } Covenant of Good Faith and Fair Dealing;
Defendant. } Negligence; and Damages.
} **Bench Trial Requested**

17
18 As the result of a meet and confer conference between the parties on 1/31/14;
19 defendant's defective Notice of Errata and Correction; defendant's not having
20 yet filed an Answer to plaintiff's Complaint; to conform alleged facts with
21 supporting evidence and law; an unsuccessful attempt to obtain written consent
22 from defense counsel; and as permitted by Fed. R. Civ. P. 15(a)(2); plaintiff's
23 First Amended Complaint is respectfully submitted as follows:

24 **I. JURISDICTION**

- 25 1. Defendant is a Canadian citizen and resides in Alberta, Canada.
26 2. Plaintiff is a U.S. citizen and resident of Orange County, California.
27 3. The total sum of plaintiff's general and compensatory pled damages,
28 including costs, is \$65,000.

1 **II. VENUE**

- 2 4. Causes of action stem from a breached oral contract entered into, and with
3 resulting damages occurring within Orange County, California.

4 **III. PARTIES**

- 5 5. Chuck Foster, as an individual, is the sole plaintiff.
6 6. Theresa Keeping, the sole named defendant to date.
7 7. Does 1 to 5, inclusive, are not currently known to plaintiff and sued as
8 fictitious Doe defendants. When a Doe identity becomes known, plaintiff
9 will seek leave of court to amend this complaint as needed.

10 **IV. STATEMENT OF FACTS**

- 11 8. Defendant Theresa Keeping (“Keeping”) solicited, negotiated and
12 communicated a contractual offer to plaintiff, Chuck Foster, (“Foster”)
13 which, if accepted and satisfactorily performed as agreed, would
14 foreseeably provide the mutually discussed and anticipated benefits.
15 9. On February 13, 2013, Keeping telephoned Foster, stated she was at the
16 Royal Bank of Canada (“RBC”) located in St. John’s, Newfoundland, and
17 requested Foster to speak with the present RBC employee to confirm the
18 existence of a bank account and the sum of money it contained.
19 10. Foster spoke with the RBC employee who confirmed the accounts
20 existence and the account balance as Keeping had alleged.
21 11. On or about March 21, 2013, multiple telephone conversations occurred
22 between Foster and Keeping. A witness to these phone conversations was
23 Dan Howard (“Howard”), a former business consultant of Keeping’s.
24 12. The focus of these phone conversations was to discuss construction details
25 of a boat-building (“boat”) agreement with Gambol Industries
26 (“Gambol”), including the required payment by March 25, 2013 in order
27 to begin construction in time for said boat to be completed and delivered
28 by November 3, 2013.

- 1 13. Defendant Keeping told Foster that the anticipated transfer of funds from
2 the RBC account required prior written approval by her attorney or
3 accountant, but “due to their Easter Holiday schedules, neither would be
4 available in time to sign-off on the wire transfer of funds needed to meet
5 Gambol's initial payment deadline.
- 6 14. Again witnessed by Howard, Defendant Keeping asked if Foster had or
7 could obtain the needed funds, and make the initial \$50,000 payment to
8 Gambol on her behalf? If “yes,” Keeping promised Foster prompt
9 reimbursement payment, plus interest, and any related costs.
- 10 15. Specifically, Keeping told Foster she could use her credit cards to obtain
11 cash for repayment, or payment would occur by wire transfer from the
12 RBC account on April 3, 2013.
- 13 16. Foster accepted Keeping’s offer and an oral contract resulted based upon:
14 a) Foster’s belief that Keeping’s offer and consideration was fair and
15 reasonable; b) mutually beneficial; c) funds in the RBC account had been
16 previously confirmed; and 4) that the promised reimbursement with
17 interest and related costs would occur on April 3, 2013.
- 18 17. Timely reimbursement and related facts as indicated above were also told
19 to witness Howard by Keeping’s business associate, Dale Merkel.
- 20 18. Foster subsequently contacted Gambol, requested and obtained a brief
21 payment extension predicated upon Foster’s personal guarantee of
22 Gambol’s requested payment on or before, March 28, 2013.
- 23 19. Pursuant to this oral agreement with defendant Keeping, Foster used his
24 personal disability and social security funds to make the Keeping-
25 requested \$50,000 payment to Gambol on March 28, 2013.
- 26 20. On April 3, 2013, Keeping breached said agreement by failing to make the
27 promised reimbursement plus interest and costs to Foster as contractually
28 agreed.

- 1 21. Dale Merkel told witness Howard that the unexpected payment delay
2 occurred because Keeping "... checked herself into the hospital" but
3 insisted that the promised payment "would definitely come by wire
4 transfer from the RBC account if not on Friday [4/5/2013], absolutely no
5 later than Monday [4/8/2013]."
- 6 22. When attempting to send flowers to the hospital Keeping had purportedly
7 checked into, Foster was told the hospital's computers were linked to
8 other Canadian hospitals as well, and that a computer search indicated
9 there was "no record of recent hospitalization or emergency room
10 treatment by anyone with the first or last name of Theresa or Keeping."
- 11 23. When Foster contacted the RBC on April 4, 2013 to inquire about the wire
12 transfer of his promised \$50,000 reimbursement, plus interest and related
13 costs, the bank official said all but \$11,507 of the \$1,467,169 prior
14 balance in the account on February 13, 2013, had been withdraw by
15 Keeping on February 25th [2013].
- 16 24. Foster subsequently discovered that the money previously on deposit had
17 been withdrawn by Keeping and used to make personal purchases,
18 property improvements and/or business/land investments.
- 19 25. When defendant Keeping learned that Foster had discovered the financial
20 anomalies indicated above, Keeping told witness Howard that she "had the
21 RBC employee fired" for disclosing the account information to Foster;
22 admitted to not having available funds to currently make the promised
23 reimbursement, and due to the perceived "tone" of Foster's emails and
24 phone messages, she was not going to reimburse Foster as promised.
- 25 26. When Keeping breached her contract with Foster, and refused to make the
26 promised reimbursement plus interest and cost payment, Foster made, but
27 Keeping ignored, Foster's repeated good faith requests for her assistance
28 to help prevent or mitigate existing and further anticipated damages,

1 including a request for Keeping to provide the name of her attorney, or
2 instruct her attorney to contact Foster.

3 27. To date, Keeping has refused to make the promised repayment, nor answer
4 or return any of Foster's phone calls, voice or email messages,

5 28. Plaintiff is informed, believes, and therefore alleges that defendant
6 Keeping, and each DOE party, is contractually, tortuously or otherwise
7 responsible for the alleged events, happenings and cause of plaintiff's
8 claimed damages, and for reasons set forth herein, plaintiff's lawsuit seeks
9 damages according to proof as set forth herein.

10 **V. FIRST CAUSE OF ACTION**

11 **(Breach of Contract)**

12 29. Plaintiff incorporates herein by reference, all allegations set forth within
13 preceding paragraphs 1-28 and hereafter.

14 30. On or about March 21, 2013, and being the basis for a witnessed oral
15 agreement ("contract"), plaintiff communicated to defendant his
16 acceptance of her request for financial assistance and timely
17 reimbursement offer, i.e., using plaintiff's personal funds to make a
18 \$50,000 business payment on defendant's behalf. Essential terms and
19 conditions of this contract included as follows:

- 20 a. On or about March 25, 2013, plaintiff agreed to obtain and/or use his
21 personal funds to timely make an initial \$50,000 payment to Long
22 Beach, California boat-builder, Gambol Industries, as was necessary
23 for the Plaintiff-funded business transaction to timely proceed;
- 24 b. In consideration for plaintiff making said \$50,000 payment, defendant
25 promised and guaranteed repayment to plaintiff, with interest and any
26 related costs, on or before April 3, 2013.
- 27 c. Plaintiff's reimbursement with interest and costs notwithstanding, the
28 additional mutual consideration for both parties was the anticipated,

1 foreseeable business use and related benefits resulting from said boat's
2 timely construction and delivery on or before November 3, 2013 and
3 prior to Veteran's Day weekend festivities.

4 31. The consideration set forth and pertaining to this contract was fair and
5 reasonable, as were the discussed mutual benefits.

6 32. Reasonably believing and relying upon defendant's timely reimbursement
7 promise, plaintiff performed all conditions, covenants and promises
8 required on his part to be performed in accordance with the contract's
9 terms and conditions.

10 33. On April 3, 2013, defendant breached said agreement by failing to
11 reimburse plaintiff's \$50,000 plus pay for related interest and costs.

12 34. Defendant's business associate, Dale Merkel, told witness Howard that the
13 April 3, 2013 payment had not been made because "Theresa [defendant
14 Keeping]) checked herself into the hospital" but assured Howard that
15 payment to plaintiff would be forthcoming by wire transfer from the RBC
16 account "if not on Friday [April 5], absolutely no later than Monday [April
17 8, 2013]."

18 35. When plaintiff contacted the RBC on April 4, 2013 to inquire about the
19 wire transfer of his promised \$50,000 reimbursement, plus interest and
20 related costs, the bank official said "... all but \$11,507" of the \$1,467,169
21 prior balance in the account on February 13, 2013, "had been withdrawn
22 by Ms. Keeping on February 25th [2013]."

23 36. Plaintiff subsequently discovered that the money previously on deposit
24 had been withdrawn by defendant to make personal purchases, property
25 improvements and/or business/land investments.

26 37. When defendant learned that plaintiff was aware of the above stated
27 banking irregularities, she stopped responding to plaintiff's phone calls,
28 voice or email communication, and has ignored or disregarded plaintiff's

1 repeated plea for assistance, even to identify and allow plaintiff to speak
2 with defendant's attorney in his effort to prevent or mitigate existing and
3 further anticipated damages.

4 38. As a direct and proximate result of defendant's breach of contract,
5 plaintiff has been damaged in an amount of at least \$50,000 and, as such,
6 other damages estimated to be, but not to exceed \$15,000 according to
7 proof at time of trial.

8 VI. SECOND CAUSE OF ACTION

9 (Breach of Implied Covenant of Good Faith and Fair Dealing)

10 39. Plaintiff incorporates herein by reference, all allegations set forth within
11 preceding paragraphs 1-38 and hereafter.

12 40. California law implies a covenant of good faith and fair dealing in all
13 contracts between parties entered into in the State of California, and
14 requires the parties thereto not deliberately contravene the spirit and
15 intention of its terms.

16 41. As previously set forth within the above paragraphs, plaintiff reasonably
17 relied upon the representations of defendant and, in good faith, entered
18 into an oral agreement therewith.

19 42. Based upon plaintiff's reasonable reliance and belief that defendant would
20 honor and abide by her personal reimbursement assurances, obligations
21 and guarantees under terms and conditions of the stated contract, plaintiff
22 subsequently completed all conditions of his contractual obligation by
23 fully performing as agreed.

24 43. Plaintiff's performance notwithstanding, defendant unfairly interfered
25 with plaintiff's right to receive the benefits of said contract.

26 44. Defendant knew, or should have known, that her failure to comply with
27 the terms of said agreement would foreseeably, if not predictably, cause
28 plaintiff to sustain financial, as well as other related damages.

1 45. As a result of the acts and omissions set forth above and herein, plaintiff
2 was harmed by defendant's Breach of Implied Covenant of Good Faith
3 and Fair Dealing.

4 46. Notwithstanding plaintiff's good faith performance, defendant unfairly
5 interfered with plaintiff's right to receive the benefits of said contract
6 when defendant refused and thereby failed to reimburse plaintiff for the
7 \$50,000 he was requested to spend, and did spend, at defendant's request.

8 47. Defendant also refused to assist or cooperative with plaintiff, or make any
9 independent effort to prevent or mitigate damages resulting from her
10 contractual breach.

11 48. As a direct and proximate result of defendant's Breach of Implied
12 Covenant of Good Faith and Fair Dealing, plaintiff has been damaged in
13 an amount of at least \$50,000, and such other related damages estimated to
14 be, but not to exceed \$15,000 according to proof at time of trial.

15 49. Plaintiff therefore prays for judgment and damages set forth below.

16 ~~—VII. THIRD CAUSE OF ACTION—~~

17 ~~—(Negligence)—~~

18 ~~50. Plaintiff incorporates herein by reference, all allegations set forth within~~
19 ~~preceding paragraphs 1-49 and hereafter.~~

20 ~~51. By virtue of the existing business and social relationship that existed~~
21 ~~between defendant and plaintiff as identified within above paragraphs,~~
22 ~~defendant undertook and owed plaintiff a duty of care.~~

23 ~~52. At all times prior, during, and after her request for plaintiff's financial~~
24 ~~assistance as previously described, defendant knew, or should have~~
25 ~~known, that plaintiff would foreseeably believe, reasonably rely and act~~
26 ~~upon her representations to his resulting detriment.~~

27 ~~53. Defendant also knew, or should have known at the time she entered into~~
28 ~~the contract with plaintiff, that the money purportedly held in the RBC~~

1 ~~account from which plaintiff was to be purportedly reimbursed, had~~
2 ~~already been depleted and lacked the sufficient funds necessary to timely~~
3 ~~reimburse plaintiff for the use of his \$50,000 as promised.~~

4 ~~54. Defendant breached her duty to exercise due care by carelessly making~~
5 ~~promises and assurances which she was uncertain or incapable of~~
6 ~~performing as represented. —~~

7 ~~55. Defendant's breach of duty continued when she failed to exercise due care~~
8 ~~by refusing to cooperate with, or assist plaintiff in his repeated efforts to~~
9 ~~prevent or mitigate the damages for which defendant was responsible; —~~
10 ~~also by not accepting or returning plaintiff's numerous phone calls or~~
11 ~~email messages.~~

12 ~~56. Defendant's failure to exercise due care continued by her refusal to —~~
13 ~~provide plaintiff with the name of her attorney and/or refusing to instruct~~
14 ~~her attorney to communicate with plaintiff on her behalf and, by so doing,~~
15 ~~defendant also caused plaintiff to unnecessarily incur even more damages.~~

16 ~~57. Defendant further breached the due care duty owed to plaintiff by~~
17 ~~misrepresenting, withholding and/or failing to timely and honestly~~
18 ~~communicate accurate financial matters, i.e. the near liquidation of all~~
19 ~~funds from the RBC account from which plaintiff was to receive the~~
20 ~~promised reimbursement, interest and related costs.~~

21 ~~58. Had defendant exercised the required degree of proper and due care, and~~
22 ~~not mislead plaintiff, including communicating false or misleading —~~
23 ~~representations, assurances and guarantees, plaintiff would not have acted~~
24 ~~as defendant had requested, and subsequently incur the resulting damages.~~

25 ~~59. As a direct and proximate result of defendant's negligence, plaintiff was~~
26 ~~damaged in an amount of at least \$50,000 and such other amounts —~~
27 ~~estimated, but not to exceed, \$15,000 according to proof at time of trial.~~

28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VIII. REQUEST FOR RELIEF

Plaintiff seeks judgment as follows:

1. General damages being the reimbursement of plaintiff's \$50,000;
2. Compensatory damages collectively including interest on \$50,000 from April 3, 2013 to date, plus collection and litigation expenses according to proof estimated to be, but not to exceed \$15,000.
3. Should the Court determine plaintiff's prior Superior Court complaint, or this amended complaint, not contain the pled amount in controversy required for U.S. District Court jurisdiction, plaintiff respectfully requests that this matter be remanded to Superior Court.
4. As evidenced within plaintiff's filed response to defendant's Notice of Removal filed on January 2, 2014, plaintiff respectfully asks the court to consider appropriate reprimand and/or disciplinary action against defense counsel, Keith Davidson for acts and omissions equating to attorney misconduct, i.e., wrongfully filing with the Superior and U.S. District Court, false, misleading, confusing and otherwise defective Notice of Removal documents, and having sought Court relief and assistance with unclean hands.
5. For such other declaratory relief that the Court may deem appropriate.

CHUCK FOSTER



Dated this 7th day of February, 2014

Plaintiff in Pro Se

1 Chuck Foster
2 8941 Atlanta Avenue #512
3 Huntington Beach, CA/USA 92646
4 Telephone: (702) 449-8712
5 Email: chuckfoster@aol.com

6
7
8 Plaintiff in Pro Se

9 **UNITED STATES DISTRICT COURT FOR**
10 **THE CENTRAL DISTRICT OF CALIFORNIA**

11 CHUCK FOSTER, } **CASE NO. SACV14-00004-AG-(DFMx)**
12 Plaintiff. } **JUDGE: Andrew J. Guilford**
13 vs. }
14 } **FIRST AMENDED COMPLAINT FOR**
15 THERESA KEEPING, and } Breach of Contract; Breach of Implied
16 DOES 1 thru 5, inclusive, } Covenant of Good Faith and Fair Dealing;
Defendant. } Negligence; and Damages.
} **Bench Trial Requested**

17
18 As the result of a meet and confer conference between the parties on 1/31/14;
19 defendant's defective Notice of Errata and Correction; defendant's not having
20 yet filed an Answer to plaintiff's Complaint; to conform alleged facts with
21 supporting evidence and law; an unsuccessful attempt to obtain written consent
22 from defense counsel; and as permitted by Fed. R. Civ. P. 15(a)(2); plaintiff's
23 First Amended Complaint is respectfully submitted as follows:

24 **I. JURISDICTION**

- 25 1. Defendant is a Canadian citizen and resides in Alberta, Canada.
26 2. Plaintiff is a U.S. citizen and resident of Orange County, California.
27 3. The total sum of plaintiff's general and compensatory pled damages,
28 including costs, is \$65,000.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

II. VENUE

4. Causes of action stem from a breached oral contract entered into, and with resulting damages occurring within Orange County, California.

III. PARTIES

- 5. Chuck Foster, as an individual, is the sole plaintiff.
- 6. Theresa Keeping, the sole named defendant to date.
- 7. Does 1 to 5, inclusive, are not currently known to plaintiff and sued as fictitious Doe defendants. When a Doe identity becomes known, plaintiff will seek leave of court to amend this complaint as needed.

IV. STATEMENT OF FACTS

- 8. Defendant Theresa Keeping (“Keeping”) solicited, negotiated and communicated a contractual offer to plaintiff, Chuck Foster, (“Foster”) which, if accepted and satisfactorily performed as agreed, would foreseeably provide the mutually discussed and anticipated benefits.
- 9. On February 13, 2013, Keeping telephoned Foster, stated she was at the Royal Bank of Canada (“RBC”) located in St. John's, Newfoundland, and requested Foster to speak with the present RBC employee to confirm the existence of a bank account and the sum of money it contained.
- 10. Foster spoke with the RBC employee who confirmed the accounts existence and the account balance as Keeping had alleged.
- 11. On or about March 21, 2013, multiple telephone conversations occurred between Foster and Keeping. A witness to these phone conversations was Dan Howard (“Howard”), a former business consultant of Keeping’s.
- 12. The focus of these phone conversations was to discuss construction details of a boat-building (“boat”) agreement with Gambol Industries (“Gambol”), including the required payment by March 25, 2013 in order to begin construction in time for said boat to be completed and delivered by November 3, 2013.

- 1 13. Defendant Keeping told Foster that the anticipated transfer of funds from
2 the RBC account required prior written approval by her attorney or
3 accountant, but “due to their Easter Holiday schedules, neither would be
4 available in time to sign-off on the wire transfer of funds needed to meet
5 Gambol's initial payment deadline.
- 6 14. Again witnessed by Howard, Defendant Keeping asked if Foster had or
7 could obtain the needed funds, and make the initial \$50,000 payment to
8 Gambol on her behalf? If “yes,” Keeping promised Foster prompt
9 reimbursement payment, plus interest, and any related costs.
- 10 15. Specifically, Keeping told Foster she could use her credit cards to obtain
11 cash for repayment, or payment would occur by wire transfer from the
12 RBC account on April 3, 2013.
- 13 16. Foster accepted Keeping’s offer and an oral contract resulted based upon:
14 a) Foster’s belief that Keeping’s offer and consideration was fair and
15 reasonable; b) mutually beneficial; c) funds in the RBC account had been
16 previously confirmed; and 4) that the promised reimbursement with
17 interest and related costs would occur on April 3, 2013.
- 18 17. Timely reimbursement and related facts as indicated above were also told
19 to witness Howard by Keeping’s business associate, Dale Merkel.
- 20 18. Foster subsequently contacted Gambol, requested and obtained a brief
21 payment extension predicated upon Foster’s personal guarantee of
22 Gambol’s requested payment on or before, March 28, 2013.
- 23 19. Pursuant to this oral agreement with defendant Keeping, Foster used his
24 personal disability and social security funds to make the Keeping-
25 requested \$50,000 payment to Gambol on March 28, 2013.
- 26 20. On April 3, 2013, Keeping breached said agreement by failing to make the
27 promised reimbursement plus interest and costs to Foster as contractually
28 agreed.

- 1 21. Dale Merkel told witness Howard that the unexpected payment delay
2 occurred because Keeping "... checked herself into the hospital" but
3 insisted that the promised payment "would definitely come by wire
4 transfer from the RBC account if not on Friday [4/5/2013], absolutely no
5 later than Monday [4/8/2013]."
- 6 22. When attempting to send flowers to the hospital Keeping had purportedly
7 checked into, Foster was told the hospital's computers were linked to
8 other Canadian hospitals as well, and that a computer search indicated
9 there was "no record of recent hospitalization or emergency room
10 treatment by anyone with the first or last name of Theresa or Keeping."
- 11 23. When Foster contacted the RBC on April 4, 2013 to inquire about the wire
12 transfer of his promised \$50,000 reimbursement, plus interest and related
13 costs, the bank official said all but \$11,507 of the \$1,467,169 prior
14 balance in the account on February 13, 2013, had been withdraw by
15 Keeping on February 25th [2013].
- 16 24. Foster subsequently discovered that the money previously on deposit had
17 been withdrawn by Keeping and used to make personal purchases,
18 property improvements and/or business/land investments.
- 19 25. When defendant Keeping learned that Foster had discovered the financial
20 anomalies indicated above, Keeping told witness Howard that she "had the
21 RBC employee fired" for disclosing the account information to Foster;
22 admitted to not having available funds to currently make the promised
23 reimbursement, and due to the perceived "tone" of Foster's emails and
24 phone messages, she was not going to reimburse Foster as promised.
- 25 26. When Keeping breached her contract with Foster, and refused to make the
26 promised reimbursement plus interest and cost payment, Foster made, but
27 Keeping ignored, Foster's repeated good faith requests for her assistance
28 to help prevent or mitigate existing and further anticipated damages,

1 including a request for Keeping to provide the name of her attorney, or
2 instruct her attorney to contact Foster.
3 27. To date, Keeping has refused to make the promised repayment, nor answer
4 or return any of Foster's phone calls, voice or email messages,
5 28. Plaintiff is informed, believes, and therefore alleges that defendant
6 Keeping, and each DOE party, is contractually, tortuously or otherwise
7 responsible for the alleged events, happenings and cause of plaintiff's
8 claimed damages, and for reasons set forth herein, plaintiff's lawsuit seeks
9 damages according to proof as set forth herein.

10 **V. FIRST CAUSE OF ACTION**

11 **(Breach of Contract)**

- 12 29. Plaintiff incorporates herein by reference, all allegations set forth within
13 preceding paragraphs 1-28 and hereafter.
- 14 30. On or about March 21, 2013, and being the basis for a witnessed oral
15 agreement ("contract"), plaintiff communicated to defendant his
16 acceptance of her request for financial assistance and timely
17 reimbursement offer, i.e., using plaintiff's personal funds to make a
18 \$50,000 business payment on defendant's behalf. Essential terms and
19 conditions of this contract included as follows:
- 20 a. On or about March 25, 2013, plaintiff agreed to obtain and/or use his
21 personal funds to timely make an initial \$50,000 payment to Long
22 Beach, California boat-builder, Gambol Industries, as was necessary
23 for the Plaintiff-funded business transaction to timely proceed;
 - 24 b. In consideration for plaintiff making said \$50,000 payment, defendant
25 promised and guaranteed repayment to plaintiff, with interest and any
26 related costs, on or before April 3, 2013.
 - 27 c. Plaintiff's reimbursement with interest and costs notwithstanding, the
28 additional mutual consideration for both parties was the anticipated,

1 foreseeable business use and related benefits resulting from said boat's
2 timely construction and delivery on or before November 3, 2013 and
3 prior to Veteran's Day weekend festivities.

4 31. The consideration set forth and pertaining to this contract was fair and
5 reasonable, as were the discussed mutual benefits.

6 32. Reasonably believing and relying upon defendant's timely reimbursement
7 promise, plaintiff performed all conditions, covenants and promises
8 required on his part to be performed in accordance with the contract's
9 terms and conditions.

10 33. On April 3, 2013, defendant breached said agreement by failing to
11 reimburse plaintiff's \$50,000 plus pay for related interest and costs.

12 34. Defendant's business associate, Dale Merkel, told witness Howard that the
13 April 3, 2013 payment had not been made because "Theresa [defendant
14 Keeping]) checked herself into the hospital" but assured Howard that
15 payment to plaintiff would be forthcoming by wire transfer from the RBC
16 account "if not on Friday [April 5], absolutely no later than Monday [April
17 8, 2013]."

18 35. When plaintiff contacted the RBC on April 4, 2013 to inquire about the
19 wire transfer of his promised \$50,000 reimbursement, plus interest and
20 related costs, the bank official said "... all but \$11,507" of the \$1,467,169
21 prior balance in the account on February 13, 2013, "had been withdrawn
22 by Ms. Keeping on February 25th [2013]."

23 36. Plaintiff subsequently discovered that the money previously on deposit
24 had been withdrawn by defendant to make personal purchases, property
25 improvements and/or business/land investments.

26 37. When defendant learned that plaintiff was aware of the above stated
27 banking irregularities, she stopped responding to plaintiff's phone calls,
28 voice or email communication, and has ignored or disregarded plaintiff's

1 repeated plea for assistance, even to identify and allow plaintiff to speak
2 with defendant's attorney in his effort to prevent or mitigate existing and
3 further anticipated damages.

4 38. As a direct and proximate result of defendant's breach of contract,
5 plaintiff has been damaged in an amount of at least \$50,000 and, as such,
6 other damages estimated to be, but not to exceed \$15,000 according to
7 proof at time of trial.

8 VI. SECOND CAUSE OF ACTION

9 (Breach of Implied Covenant of Good Faith and Fair Dealing)

10 39. Plaintiff incorporates herein by reference, all allegations set forth within
11 preceding paragraphs 1- 38 and hereafter.

12 40. California law implies a covenant of good faith and fair dealing in all
13 contracts between parties entered into in the State of California, and
14 requires the parties thereto not deliberately contravene the spirit and
15 intention of its terms.

16 41. As previously set forth within the above paragraphs, plaintiff reasonably
17 relied upon the representations of defendant and, in good faith, entered
18 into an oral agreement therewith.

19 42. Based upon plaintiff's reasonable reliance and belief that defendant would
20 honor and abide by her personal reimbursement assurances, obligations
21 and guarantees under terms and conditions of the stated contract, plaintiff
22 subsequently completed all conditions of his contractual obligation by
23 fully performing as agreed.

24 43. Plaintiff's performance notwithstanding, defendant unfairly interfered
25 with plaintiff's right to receive the benefits of said contract.

26 44. Defendant knew, or should have known, that her failure to comply with
27 the terms of said agreement would foreseeably, if not predictably, cause
28 plaintiff to sustain financial, as well as other related damages.

- 1 45. As a result of the acts and omissions set forth above and herein, plaintiff
2 was harmed by defendant's Breach of Implied Covenant of Good Faith
3 and Fair Dealing.
- 4 46. Notwithstanding plaintiff's good faith performance, defendant unfairly
5 interfered with plaintiff's right to receive the benefits of said contract
6 when defendant refused and thereby failed to reimburse plaintiff for the
7 \$50,000 he was requested to spend, and did spend, at defendant's request.
- 8 47. Defendant also refused to assist or cooperative with plaintiff, or make any
9 independent effort to prevent or mitigate damages resulting from her
10 contractual breach.
- 11 48. As a direct and proximate result of defendant's Breach of Implied
12 Covenant of Good Faith and Fair Dealing, plaintiff has been damaged in
13 an amount of at least \$50,000, and such other related damages estimated to
14 be, but not to exceed \$15,000 according to proof at time of trial.
- 15 49. Plaintiff therefore prays for judgment and damages set forth below.

16 **VII. THIRD CAUSE OF ACTION**

17 **(Negligence)**

- 18 50. Plaintiff incorporates herein by reference, all allegations set forth within
19 preceding paragraphs 1-49 and hereafter.
- 20 51. By virtue of the existing business and social relationship that existed
21 between defendant and plaintiff as identified within above paragraphs,
22 defendant undertook and owed plaintiff a duty of care.
- 23 52. At all times prior, during, and after her request for plaintiff's financial
24 assistance as previously described, defendant knew, or should have
25 known, that plaintiff would foreseeably believe, reasonably rely and act
26 upon her representations to his resulting detriment.
- 27 53. Defendant also knew, or should have known at the time she entered into
28 the contract with plaintiff, that the money purportedly held in the RBC

1 account from which plaintiff was to be purportedly reimbursed, had
2 already been depleted and lacked the sufficient funds necessary to timely
3 reimburse plaintiff for the use of his \$50,000 as promised.

4 54. Defendant breached her duty to exercise due care by carelessly making
5 promises and assurances which she was uncertain or incapable of
6 performing as represented.

7 55. Defendant's breach of duty continued when she failed to exercise due care
8 by refusing to cooperate with, or assist plaintiff in his repeated efforts to
9 prevent or mitigate the damages for which defendant was responsible;
10 also by not accepting or returning plaintiff's numerous phone calls or
11 email messages.

12 56. Defendant's failure to exercise due care continued by her refusal to
13 provide plaintiff with the name of her attorney and/or refusing to instruct
14 her attorney to communicate with plaintiff on her behalf and, by so doing,
15 defendant also caused plaintiff to unnecessarily incur even more damages.

16 57. Defendant further breached the due care duty owed to plaintiff by
17 misrepresenting, withholding and/or failing to timely and honestly
18 communicate accurate financial matters, i.e. the near liquidation of all
19 funds from the RBC account from which plaintiff was to receive the
20 promised reimbursement, interest and related costs.

21 58. Had defendant exercised the required degree of proper and due care, and
22 not mislead plaintiff, including communicating false or misleading
23 representations, assurances and guarantees, plaintiff would not have acted
24 as defendant had requested, and subsequently incur the resulting damages.

25 59. As a direct and proximate result of defendant's negligence, plaintiff was
26 damaged in an amount of at least \$50,000 and such other amounts
27 estimated, but not to exceed, \$15,000 according to proof at time of trial.

28 //


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VIII. REQUEST FOR RELIEF

Plaintiff seeks judgment as follows:

1. General damages being the reimbursement of plaintiff's \$50,000;
2. Compensatory damages collectively including interest on \$50,000 from April 3, 2013 to date, plus collection and litigation expenses according to proof estimated to be, but not to exceed \$15,000.
3. Should the Court determine plaintiff's prior Superior Court complaint, or this amended complaint, not contain the pled amount in controversy required for U.S. District Court jurisdiction, plaintiff respectfully requests that this matter be remanded to Superior Court.
4. As evidenced within plaintiff's filed response to defendant's Notice of Removal filed on January 2, 2014, plaintiff respectfully asks the court to consider appropriate reprimand and/or disciplinary action against defense counsel, Keith Davidson for acts and omissions equating to attorney misconduct, i.e., wrongfully filing with the Superior and U.S. District Court, false, misleading, confusing and otherwise defective Notice of Removal documents, and having sought Court relief and assistance with unclean hands.
5. For such other declaratory relief that the Court may deem appropriate.

CHUCK FOSTER



Dated this 7th day of February, 2014

Plaintiff in Pro Se

PROOF OF SERVICE BY MAIL

1
2 On January 27, 2014, in the matter of Chuck Foster vs. Theresa Keeping, case
3 number SACV14-00004-AG-DFMx, I served the documents described as:
4

5 1. PLAINTIFF'S FIRST AMENDED COMPLAINT
6
7
8
9

10 on all interested parties in this action by placing a true and correct copy thereof
11 in a sealed envelope, with first-class postage prepaid thereon, and deposited
12 said envelope in the United States mail in Huntington Beach, CA 92646,
13 addressed to:
14

15 Keith M. Davidson, Esq. 8383 Wilshire Blvd, Suite 510 Beverly Hills, CA 90211

16 Amy Barry, Esq. 950 N. Blebe Road, Ste. 530, Arlington VA 22203

17 Mike Sullivan, Esq. 950 N. Blebe road, Ste. 530, Arlington VA 22203
18

19
20 (*) Attorneys for Theresa Keeping and Dale Merkel
21

22 I declare under penalty of perjury that the foregoing is true and correct.
23

24 Executed on February 7, 2014 at Huntington Beach, California.
25

26
27 By: 
28 Mary Ann Mercer