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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF LOS ANGELES

12 [REDACTED]

13 Plaintiff,

14 vs.

15 [REDACTED]

16 DOES 1 to 50, inclusive,

17 Defendants.

Case No. [REDACTED]
Judge: [REDACTED]

**DEFENDANT [REDACTED]
NOTICE OF MOTION AND MOTION FOR
SANCTIONS AGAINST [REDACTED]
AND [REDACTED]
PURSUANT TO CODE OF CIVIL
PROCEDURE SECTION 128.7**

[Filed Concurrently with Declaration of Jerry R. Dagrella.]

Hearing:
Date: [REDACTED]
Time: 8:30 a.m.
Dept.: [REDACTED]

Action Filed: [REDACTED]
Trial Date: None set

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:


PLEASE TAKE NOTICE that on [REDACTED], or as soon as thereafter as the matter may be heard in Department [REDACTED] of the above-entitled Court, located at [REDACTED] [REDACTED] will and hereby does move this Court to impose monetary and non-monetary sanctions, including striking the complaint and dismissing the action and assessing reasonable attorneys' fees and costs, jointly and severally, against [REDACTED] in the amount of \$19,745.00 as well as such other sum and/or sanction as the court may find just and reasonable.

This Motion is made pursuant to *Code of Civil Procedure* section 128.7 on the ground that the Complaint is without factual or legal merit and was filed primarily for an improper purpose to harass Defendant.

This Motion will be based upon this Notice, Memorandum of Points and Authorities, the declaration of Jerry R. Dagrella, and the pleadings and records on file in this action, and upon such further documents and evidence as may be presented at the hearing of this motion.

Dated: [REDACTED]

DAGRELLA LAW FIRM, PLC

By: 
JERRY R. DAGRELLA
Attorney for [REDACTED]

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff [REDACTED] is using this Court as a forum to freely defame, harass and extort her ex-boyfriend, Defendant [REDACTED]. She shamelessly portrays herself as the hopeful financier of a large scale narcotics business allegedly operated by Defendant. She claims she gave \$150,000 in cold hard cash to Defendant on November 6, 2015 for purposes of investing in new routes of narcotics distribution in Orange County. (Complaint ¶¶ 10-12; Dagrella Decl., ¶ 2 [Plaintiff's Response to Special Interrogatory No. 1 & 9].) She continues this remarkable fairy tale by describing how a drug deal went south, she lost her investment and is now doing society a favor by hauling Defendant into court for retribution. (Dagrella Decl., ¶ 2 [Plaintiff's Response to Special Interrogatory No. 4].)

By way of her complaint, Plaintiff asks this court step knee deep into her criminal enterprise and be her enforcer, so to speak: she wants a judgment ordering Defendant—the alleged drug dealer—to repay her lost investment. (Complaint, ¶ 35.) But that is not all. She expected a \$15,000 profit on her investment within 72 hours, a return of more than 1,000 percent per annum. (Dagrella Decl., ¶ 2 [Plaintiff's Response to Special Interrogatory No. 4].) The narcotics distribution business is very profitable apparently, and Plaintiff wants to make sure the court keeps it that way, by hauling the drug dealers into court to pay the financiers whenever a deal goes astray.

Plaintiff's Complaint is so unbelievable and palpably frivolous that it warrants immediate dismissal and sanctions. Unsurprisingly, Plaintiff produced no documents and identified no witnesses in discovery to corroborate her mystifying fairy tale. (Dagrella Decl., ¶ 2.) This case presents the perfect example of the type of abuse of the judicial system that *Code of Civil Procedure* section 128.7 was designed to prevent. The judicial system should never be used as a forum by disgruntled partners to freely defame their exes. And, even if Plaintiff's fairy tale were taken at face value, Courts are not in the business of lending aid to persons involved in illegal drug trafficking. It is really that simple. Plaintiff got her laugh. Now she must face the consequences of making a mockery of the judicial system.

1 **III. LEGAL ANALYSIS**

2 When an attorney prosecutes a complaint with the court, he or she is certifying that the
3 claims therein “are warranted by existing law.” (C.C.P. §128.7(b)(2).) The attorney also certifies
4 that the complaint is not being presented “for an improper purpose, such as to harass or to cause
5 unnecessary delay or needless increase in the cost of litigation.” (*Id.* §128.7(b)(1).)

6 If an attorney refuses to file a dismissal within 21 days of receiving a §128.7 motion that
7 proves the complaint is manifestly without legal merit, the Court may then strike the complaint
8 and award fees and costs to the defendant. (*Id.* §128.7(c)(1).) Continuing to advocate claims that
9 are legally baseless is abusive, grossly wasteful (to defendant, and the Court), and in direct
10 violation of C.C.P. §128.7(b), which requires an ongoing reasonable inquiry that the claims are
11 warranted by existing law. (*Id.* § 128.7(b)(3) see also *Peake v. Underwood* (2014) 227
12 Cal.App.4th 428, 440.) Such is the case before this Court. Plaintiff and her attorney have filed a
13 complaint containing legally meritless and fabricated causes of action, and are pursuing same for
14 the primary purpose of harassing an ex-boyfriend.

15 **A. The Entire Complaint Must Be Dismissed Because The Courts Do Not Aid in**
16 **Enforcement of Illegal Contracts**

17 It is well known that distribution of narcotics is illegal in any and all circumstances under
18 the federal Controlled Substances Act. (21 U.S.C.S. §§ 812, 841, 844 [designating marijuana as a
19 Schedule 1 controlled substance and making possession and distribution a federal crime.]) The
20 same was true under state law on November 6, 2015, the date of the alleged transaction.¹ (*Health*
21 *& Saf. Code* §§ 11362.765(a), 11359-11360.)

22 It is also well settled that a court will not assist either party to an illegal contract. (*See,*
23 *e.g., Bovard v. American Horse Enterprises, Inc.* (1988) 201 Cal.App.3d 832, 837, 839–841 [247
24 Cal. Rptr. 340] [corporation predominantly produced paraphernalia used to smoke marijuana,
25 making contract for sale of the corporation illegal and void].) “No principle of law is better
26

27 ¹ A year later, on November 8, 2016, Proposition 64 was passed, which immunizes persons from state prosecution for
28 cultivation of medicinal marijuana. However, this law is not retroactive, does not preempt federal law and did not in
any event legalize unlicensed distribution.

1 settled than that a party to an illegal contract cannot come into a court of law and ask to have his
2 illegal objects carried out.” (*Yoo v. Jho* (2007) 147 Cal.App.4th 1249, 1251.) The California
3 Supreme Court summed up the rationale behind this rule when it stated:

4 “The reason for this refusal is not that the courts are unaware of
5 possible injustice between the parties, and that the defendant may
6 be left in possession of some benefit he should in good conscience
7 turn over to the plaintiff, but that this consideration is outweighed
8 by the importance of deterring illegal conduct. Knowing that they
9 will receive no help from the courts and must trust completely to
10 each other’s good faith, the parties are less likely to enter an illegal
11 arrangement in the first place.” (*Lewis & Queen v. N. M. Ball Sons*
12 (1957) 48 Cal.2d 141, 150-51.)

13 The rule against enforcing illegal contracts precludes any claim for restitution of money
14 regardless of the cause of action pled:

15 “[N]either can plaintiff recover the monies paid pursuant to the
16 terms of the contract. It is a well settled general rule that a party to
17 an illegal contract may not obtain the aid of the courts to recover
18 any consideration parted with pursuant thereto; the law leaves the
19 parties where it finds them.” (*Richardson v. Roberts* (1962) 210
20 Cal.App.2d 603, 606-07.)

21 If Plaintiff’s fairy tale is true, then she is, for lack of a better term, nothing more than a
22 financier of large scale drug dealers, who sought to profit off the illegal sale and distribution of a
23 Schedule 1 controlled substance. “Whenever the evidence discloses the relations of the parties to
24 the transaction to be illegal and against public policy, it becomes the duty of the court to refuse to
25 entertain the action.” (*Russell v. Soldinger* (1976) 59 Cal.App.3d 633, 642.) “Whether the
26 evidence comes from one side or the other... the disclosure is fatal to the case, and the court is
27 justified in rendering judgment that neither party take anything from the other.” (*Ibid.*)

28 Unbelievably, Plaintiff alleges in her discovery responses that she thought drug trafficking
was legal. Of course, this is of no consequence since ignorance of the law is no excuse. (*Diaz v.*
Grill Concepts Services, Inc., 23 Cal. App. 5th 859, 869 [“Ignorance of the law is no excuse. This
maxim is so long standing and so well established that it is part of the very fabric of our legal
system.”].) Even so, what is most remarkable about Plaintiff’s claim is that she professes to have
financed the alleged drug deal with \$150,000 cash. (Dagrella Decl., ¶ 2 [Plaintiff’s Response to
Special Interrogatory No. 9].) No rational person would think a legit business deal is being

1 conducted with such large sums of cash. Indeed, courts have frequently remarked on the fact the
2 large sums of cash and illegal narcotics frequently go together. (*United States v. \$95,945.18*
3 *in U.S. Currency* (4th Cir. 1990) 913 F.2d 1106, 1111 ["[C]arrying a large sum of cash is strong
4 evidence that the property was exchanged for or intended to be exchanged for drugs."]; *United*
5 *States v. Thomas*, 913 F.2d 1111, 1115 (4th Cir. 1990) ["The possession of unusually large
6 amounts of cash... or the making of uncommonly large cash purchases... may be circumstantial
7 evidence of drug trafficking."]; *United States v. \$25,055.00*, 728 F.Supp. 1406, 1408-09. (E.D.
8 Mo. 1990) ["The large quantity of money involved infers a linkage to drug trafficking."].)

9 Since the distribution of narcotics clearly violates federal law, both its illegality and the
10 doctrine of unclean hands absolutely bar any relief on the complaint. (*Klean W. Hollywood, LLC*
11 *v. Superior Court* (2018) 21 Cal.App.5th 70 [doctrine of unclean hands bars anyone who engages
12 in illegal act of buying or selling illicit drugs from pursuing a lawsuit to recover investment]; *see*
13 *also Whittemore v. Owens Healthcare-Retail Pharmacy, Inc.* (2010) 185 Cal.App.4th 1194.)

14 **B. Each Cause of Action is Objectively Baseless For Reasons Independent of the**
15 **Illegality of the Transaction**

16 "Sanctions should also be imposable for filing and serving or otherwise prosecuting a
17 partially frivolous complaint." (*Bach v. McNelis* (1989) 207 Cal.App.3d 852,876.) Each cause of
18 action is demonstrably meritless on its own, thereby providing additional and independent
19 grounds for granting this motion.

20 **(1) The 1st Cause of Action for Common Count**

21 The statute of limitations for a common count of money had and received is two years.
22 (*Franck v. J.J. Sugarman-Rudolph Co.* (1952) 40 Cal.2d 81, 90 ["two- year period applies, as for
23 money had and received (*Code Civ. Proc.*, § 339[1])."]; *Warren v. Lawler* (9th Cir. 1965) 343
24 F.2d 351, 360 ["An action for money had and received is barred, under section 339(1), if not filed
25 within two years after such money was assertedly received by the Appellants."].) The same is
26 true for breach of oral contract. (*Code Civ. Proc.*, § 339[1].)

27 Plaintiff concedes the two-year statute in her complaint wherein she sets up the cause of
28 action for common count with the following conclusory allegation: "[w]ithin the last two years

1 Plaintiff advanced to Defendants \$150,000.” (Complaint, ¶ 18; emphasis added.) However, this
2 attempt to plead within the statute of limitations is inconsistent with facts pled elsewhere in the
3 complaint. In paragraph 12 of the Complaint, Plaintiff states she “provided \$150,000 to [REDACTED] in
4 November 2015”. She repeats this in sworn discovery responses:

5 Special Interrogatory No. 9:

6 “State the date that you gave \$150,000 to Defendant, and if it was
7 given in multiple increments, state the amount provided on each
8 date.”

8 Response to Special Interrogatory No. 9

9 “The \$150,000 was given in one lump sum, in cash per [REDACTED]
10 insistence, on November 6, 2015.”

11 (Dagrella Decl., ¶ 2.) The complaint was filed on March 23, 2018, more than two years from
12 November 6, 2015—the date the money allegedly exchanged hands. Moreover, the date Plaintiff
13 expected to receive her money back—i.e., the date she alleges Defendant breached the
14 agreement—is November 9, 2015, also more than two years from the date the complaint was
15 filed. (Dagrella Decl., ¶ 2 [Plaintiff’s Responses to Special Interrogatories Nos. 4 & 5.].) Thus,
16 under any scenario, the cause of action for common count is clearly time-barred.

17 **(2) The 2nd Cause of Action for Fraud**

18 Plaintiff’s second cause of action is based on Defendant’s alleged misrepresentation that
19 he would invest her money in a narcotics distribution business and repay her a “substantial
20 return”. (Complaint, ¶ 10.) The “fraud” claim is barred by the economic loss rule because it
21 seeks purely economic losses—i.e., repayment of the invested funds—and is simply an oral
22 contract claim recast as a tort claim as a means to get around the two-year statute.

23 The economic loss rule bars the fraud claim because it seeks recovery of purely economic
24 losses. Under California law, the economic loss rule requires a plaintiff “to recover in contract
25 for purely economic loss due to disappointed expectations, unless he can demonstrate harm above
26 and beyond a broken contractual promise.” (*Foster Poultry Farms v. Alkar-Rapidpak-MP Equip.,*
27 *Inc.* (E.D. Cal. 2012) 868 F.Supp.2d 983, 991, quoting *Robinson Helicopter Co., Inc. v. Dana*
28 *Corp.* (2004) 34 Cal. 4th 979, 988.) Under the economic loss rule, purely economic losses are not

1 recoverable in tort. (*Robinson*, 34 Cal.4th at 988.) Courts apply the economic loss rule to bar
2 fraud claims where “the damages plaintiffs seek are the same economic losses arising from the
3 alleged breach of contract.” (*Foster*, 868 F.Supp.2d at 991.) Thus, as a practical matter, fraud
4 claims are barred by the economic loss rule when the representations at issue correspond with
5 contractual obligations. (*Foster*, 868 F.Supp.2d at 993 [fraud claims barred where “the
6 misrepresentation that forms the basis of the fraud claim is the contract itself”].)

7 A fraud claim may arise only where the plaintiff suffers “personal damages independent
8 of the plaintiff’s economic loss.” (*Robinson*, 34 Cal.4th at 993.) Without the economic loss rule,
9 every breach of contract claim could be asserted, in the alternative, as a tort claim, simply by
10 recasting alleged contractual obligations as promises that the defendant made without any intent
11 of performance. Where plaintiffs seek, as damages for a fraud claim, “the same economic losses
12 arising from the alleged breach of contract... [t]o allow a fraud claim under these facts would
13 ‘open the door to tort claims in virtually every case in which a party promised to make payments
14 under a contract but failed to do so.’” (*Multifamily Captive Group, LLC v. Assurance Risk
15 Managers, Inc.* (E.D. Cal. 2009) 629 F.Supp.2d 1135, 1146.) Virtually any time a contract has
16 been breached, the party bringing suit can allege that the breaching party never intended to meet
17 its obligations. To allow fraud claims in actions such as this one would collapse the carefully-
18 guarded distinction between contract and tort law. “Quite simply, the economic loss rule
19 ‘prevents the law of contract and the law of tort from dissolving one into the other.’” (*Robinson*,
20 34 Cal.4th at 988; *Aas v. Superior Court* (2000) 24 Cal.4th 627, 643 [“A person may not
21 ordinarily recover in tort for the breach of duties that merely restate contractual obligations”].)

22 The economic loss rule bars Plaintiff’s fraud claims because she seeks to recover the same
23 economic loss that is the subject of a contract claim. The alleged misrepresentations are nothing
24 other than Defendant’s “agreement” to invest her funds in a narcotics business and repay her a
25 substantial return. (Complaint, ¶ 22.) The alleged “fraud” is Defendant’s lack of intent to repay
26 her investment. (*Ibid.*) For both a contract and fraud claim, the alleged damages are the same
27 \$150,000, i.e., the amount of the invested funds. Thus, Plaintiff’s fraud claim falls squarely
28 within the economic loss rule, which is an additional and independent ground for dismissal.

1 (3) The 3rd, 4th and 5th Causes of Action for Conspiracy, Unjust
2 Enrichment and Constructive Trust

3 Not only has Plaintiff concocted a mystifying fairy tale of a purported drug dealer and his
4 financier, but she has also sought to fabricate causes of action. The 3rd, 4th and 5th causes of
5 action for conspiracy, unjust enrichment and constructive trust are not legally recognized claims.
6 (*Applied Equipment Corp. v. Litton Saudi Arabia Ltd.* (1994) 7 Cal.4th 503, 510-511
7 ["Conspiracy is not a cause of action..."]; *Melchior v. New Line Productions, Inc.* (2003) 106
8 Cal.App.4th 779, 793 ["there is no cause of action in California for unjust enrichment"]; *Jogani v.*
9 *Superior Court* (2008) 165 Cal. App. 4th 901, 911 ["[u]njust enrichment is not a cause of
10 action."]; *Glue-Fold, Inc. v. Slautterback Corp.* (2000) 82 Cal.App.4th 1018, 1023 n.3
11 ["Constructive trust is not an independent cause of action but merely a type of remedy for some
12 categories of underlying wrong."].) There was never any probable cause for these causes of
13 action because California does not recognize causes of action for conspiracy, unjust enrichment
14 and constructive trust. No objective lawyer could have thought that he had probable cause to
15 assert, and to continue to prosecute, causes of action that do not exist as a matter of law. (*Soukup*
16 *v. Law Office of Herbert Hafif* (2006) 39 Cal.4th 260, 292 ["A litigant will lack probable cause...
17 if he seeks recovery upon a legal theory which is untenable."].)

18 **IV. CONCLUSION**

19 As set forth above, Plaintiff and her attorney have pursued a frivolous lawsuit against
20 Defendant which has caused him to incur unnecessary fees and costs. Defendant requests
21 monetary sanctions in the amount of \$19,745.00 and nonmonetary sanctions in the form of
22 striking the complaint and dismissing this unmeritorious action. (*See* Dagrella Decl, ¶ 3.)

23 Dated: [REDACTED]

DAGRELLA LAW FIRM, PLC

24
25 By: 
26 JERRY B. DAGRELLA
27 Attorney for [REDACTED]
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