

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

JOSEPH MALDONADO,

Plaintiff,

v.

Case No.: 3:22-cv-18229-TKW-ZCB

VINCE JOHNSON,

Defendant.

_____ /

MOTION FOR SUMMARY JUDGMENT

COMES NOW, Plaintiff, JOSEPH MALDONADO, pursuant to Rule 56, Fed. R. Civ. P., and Local Rule 7.01, files this Motion for Summary Judgment as to the following claims:

Count VIII Fraudulent Misrepresentation

Count XI Breach of Contract¹

For the reasons that follow, there is no genuine issue as to any

¹ Plaintiff is concurrently filing a Motion for Leave to Amend its claim to state a claim for Breach under Promissory Estoppel.

material fact and the Plaintiff is entitled to judgement as a matter of law on the claims listed above.

STATEMENT OF UNDISPUTED FACTS

1. On May 24, 2013, Plaintiff, JOSEPH MALDONADO (hereafter, "MALDONADO") and Defendant, VINCE JOHNSON (hereafter, "JOHNSON") entered into a work for hire relationship wherein MALDONADO commissioned JOHNSON to write songs for his personal use. (DE 101.1, P. 12-14; DE 101.2, 7:10-19; DE 101.2, 8:11-23; DE 101.2, 15:23-16:3; 101.13, 20:1-20; DE 101.13, 33:17-22; DE 101.13, 34:23-35:6).

2. Defendant JOHNSON communicated with MALDONADO primarily by email through vincejohnson@q.com, which is the same email that JOHNSON uses at present. (DE 101.2, 10:18-22; DE 101.2, 15:4-6; DE 101.13, 23:13-17; DE 101.13, 24:5-8; DE 101.13, 24:18-20). JOHNSON testified he exchanged approximately 300 emails with MALDONADO. (DE 101.2, 13:9-11).

3. The agreement was 1) MALDONADO paid JOHNSON to write the lyrics; 2) JOHNSON gave the lyrics to a singer, Danny Clinton, who

recorded the song in a studio; and 3) the finished product was then provided to MALDONADO. (DE 101.1, P. 31; DE 101.13, 34:5-9).

4. Danny Clinton was a former bandmate of JOHNSON and is now deceased. (DE 101.2, 18:13-14).

5. A dispute occurred over whether MALDONADO was buying the full rights to the lyrics and music to use as his own, re-record, publicize and otherwise omit credit to the songs.

6. On June 16, 2013, Defendant JOHNSON offered to sell MALDONADO the **“songs outright with no credit expected.”** (DE 101.1, P. 2-3). On June 17, 2013, JOHNSON presented MALDONADO with the following deal: **“\$2,000 a song to sell you (MALDONADO) all rights without credits meaning you can say you wrote the song sang it whatever.”** (DE 101.1, P. 1).

7. On June 17, 2013, **Defendant JOHNSON advised MALDONADO that they had a “DEAL,” and that MALDONADO could have “JT or whoever write up something saying whatever you like.”** (DE 101.1, P. 19).

8. This agreement has repeatedly been ratified and the email communications were verified as authentic by JOHNSON. (DE 101.2).

I Saw a Tiger

9. On June 17, 2013, Defendant JOHNSON sent MALDONADO the following email dictating the terms of the agreement and the consideration for entering into the agreement for the song, *I Saw a Tiger*,

“...[s]o this contract would deal with I Saw A Tiger you would need to include me as the writer danny as the vocalist stating we have sold all rights to the composition / song for \$1500 and have no claims what so ever to ownership and we can never use the song play the song etc etc in a nutshell its Joes song...”

(DE 101.1, P 18; DE 101.2, 48:5-13).

10. **On June 18, 2013, Defendant JOHNSON signed a Transfer of Music Rights Agreement for the song *I Saw a Tiger*.** (DE 101.3; DE 101.2, 18:7-19:15). In deposition, JOHNSON agreed the Transfer of Music Rights Agreement was a “contract” wherein, “Vince Johnson and the Clint Johnson Band, the producer, relinquishes all copyrights, publishing rights, and all other related rights” to MALDONADO and that JOHNSON received the consideration / payment from MALDONADO for the contract. (DE 101.2, 19:18-25; 101.2, 37:9-17).

11. JOHNSON testified that he signed the agreement and that he signed it because MALDONADO was, “paying me, obviously.” (DE 101.2, 20:20; DE 101.2, 22:12-19).

12. The Agreement mirrored the terms **offered by JOHNSON** in the June 17, 2013 email as it provided that JOHNSON relinquish all copyright, publishing rights and all other related rights of the music and/or songs. **All rights of the song would rest with MALDONADO “in perpetuity in all jurisdictions and through all process.”** (DE 101.3).

13. On February 18, 2014, Defendant JOHNSON confirmed MALDONADO paid JOHNSON for *I Saw a Tiger* and that JOHNSON split the fee with Danny Clinton. (DE 101.1, P. 71).

14. On June 15, 2014, Defendant JOHNSON confirmed he had been paid for *I Saw a Tiger* in an email stating he was “**paid up now on all songs...**” except for the songs that were in the works in 2014 which included “small town song the happy fun song and killer carole.” (DE 101.1, P. 50-51).

15. In a Second email on June 15, 2014, Defendant JOHNSON stated,

“...[a]nd for the 10th time you bought the songs I

wrote I Saw A Tiger-GW And Me- You Cant Believe The Sun Says-You Got A Guardian - Harry Reid sight unseen I already write and recorded My First Love and Pretty Woman Lover which I sent you and you bought them..."

(DE 101.1, P. 31-32).

GW and Me

16. On May 31, 2013, MALDONADO commissioned JOHNSON to write a song about his brother, GW. (DE 101.1, P. 13; DE 101, 17:19-24). On June 12, 2013, Defendant JOHNSON sent MALDONADO the song *GW and Me*. (DE 101.1, P. 12).

17. On July 26, 2013, MALDONADO and JOHNSON and Danny Clinton entered into a Transfer of Music Rights Agreement specifically associated with the music compilation *GW and Me*. (DE 101.4).

18. On February 18, 2014, Defendant JOHNSON confirmed MALDONADO paid JOHNSON for *GW and ME* and that JOHNSON split the fee with Danny Clinton. (DE 101.1, P. 71).

19. On June 15, 2014, Defendant JOHNSON confirmed he had been paid for *GW and Me* in an email stating he was "paid up now on all songs..." except for the songs that were in the works in 2014 which included "small town song the happy fun song and killer carole." (DE 101.1,

P. 50-51).

20. In a Second email on June 15, 2014, Defendant JOHNSON stated,

“...[a]nd for the 10th time you bought the songs I wrote I Saw A Tiger-GW And Me- You Cant Believe The Sun Says-You Got A Guardian - Harry Reid
sight unseen I already write and recorded My First Love and Pretty Woman Lover which I sent you and you bought them...”

(DE 101.1, P. 31-32).

My First Love

21. In November of 2013, MALDONADO and JOHNSON began working on *My First Love*. MALDONADO paid JOHNSON \$500.00 towards the balance for the song *My First Love*. (DE 101.1, P. 53).

22. In December of 2013, **MALDONADO and JOHNSON and Danny Clinton entered into a Transfer of Music Rights Agreement specifically associated with the music compilation *My First Love***. (DE 101.5) JOHNSON testified that he signed the *My First Love* Agreement. (DE 101.2, 50:3-9).

23. On February 17, 2014, JOHNSON confirmed MALDONADO had fully paid for the song *My First Love* in an email stating, **“Your and my**

agreement is \$1500 and \$1000 to danny for My First Love which you've paid in full." (DE 101, P. 76).

24. On June 15, 2014, Defendant JOHNSON confirmed he had been paid for *My First Love* in an email stating he was "paid up now on all songs..." except for the songs that were in the works in 2014 which included "small town song the happy fun song and killer carole." (DE 101.1, P. 50-51).

25. In a Second email on June 15, 2014, Defendant JOHNSON stated,

"...[a]nd for the 10th time you bought the songs I wrote I Saw A Tiger-GW And Me- You Cant Believe The Sun Says-You Got A Guardian - Harry Reid sight unseen I already write and recorded My First Love and Pretty Woman Lover which I sent you and you bought them..."

(DE 101.1, P. 31-32).

Pretty Woman Lover

26. In February of 2014, MALDONADO and JOHNSON began working on the song *Pretty Woman Lover*. In a February 17, 2014 email MALDONADO confirms he paid \$1,250.00 to Danny Clinton for his work on the song. He told JOHNSON he would pay the balance that Friday.

(DE 101.1, P. 77).

27. Later, on February 17, 2014, **JOHNSON confirmed MALDONADO paid him \$1,000 for *Pretty Woman Lover***. (DE 101.1, P. 76).

28. February 22, 2014, **MALDONADO and JOHNSON entered into a Transfer of Music Rights Agreement specifically associated with the song *Pretty Women Lover***. (DE 101.6; DE 101.2, 50:16-18). JOHNSON testified that he signed the *Pretty Woman Lover* Agreement. (DE 101.2, 50:16-18).

29. On June 15, 2014, **Defendant JOHNSON confirmed he had been paid for *Pretty Woman Lover* in an email stating he was “paid up now on all songs...”** except for the songs that were in the works in 2014 which included “small town song the happy fun song and killer carole.” (DE 101.1, P. 50-51).

30. In a Second email on June 15, 2014, Defendant JOHNSON stated,

“...[a]nd for the 10th time you bought the songs I wrote I Saw A Tiger-GW And Me- You Cant Believe The Sun Says-You Got A Guardian - Harry Reid sight unseen I **already write and recorded My First Love and *Pretty Woman Lover*** which I sent you and you bought them...”

(DE 101.1, P. 31-32).

The Sun Says

31. On August 8, 2013, MALDONADO commissioned JOHNSON to write a song about a man with Alzheimer's. (DE 101.1, P. 60).

32. In October of 2013, MALDONADO and JOHNSON and Danny Clinton entered into a Transfer of Music Rights Agreement specifically associated with the song *The Sun Says*. (DE 101.7; DE 101.2, 49:16-21).

33. On February 18, 2014, Defendant JOHNSON confirmed MALDONADO paid JOHNSON for *The Sun Says* and that JOHNSON split the fee with Danny Clinton. (DE 101.1, P. 71).

34. On June 15, 2014, Defendant JOHNSON confirmed he had been paid for *the Sun Says* in an email stating he was "paid up now on all songs..." except for the songs that were in the works in 2014 which included "small town song the happy fun song and killer carole." (DE 101.1, P. 50-51).

35. In a Second email on June 15, 2014, Defendant JOHNSON stated,

"...[a]nd for the 10th time you bought the songs I wrote I Saw A Tiger-GW And Me- You Cant Believe The Sun Says-You Got A Guardian - Harry Reid sight unseen I already write and recorded My First Love and Pretty Woman Lover which I sent you and you bought them..."

(DE 101.1, P. 31-32).

Confidentiality Agreement

36. On February 6, 2014, MALDONADO AND JOHNSON entered into a Compensated Employee Confidentiality Agreement. **The Confidentiality Agreement prohibited JOHNSON from disclosing or divulging any trade secrets, confidential information or any other proprietary data and included compositions, music and songs.** (DE 101.8; DE 101.2, 50:23-51:10; 101.2, 50:23-51:3; DE 101.13, 32:1-9; DE 101.13, 35:7-37:1).

37. The basis of this bargain was known to the parties at all time – JOHNSON and CLINTON's roles were to be kept confidential.

38. This agreement was repeatedly discussed in JOHNSON's deposition (DE 101.2) and in the email communications between he and MALDONADO. (DE 101.1).

39. Defendant JOHNSON first violated the terms of the music rights agreements when he sold licensing rights to MALDONADO's songs to the producers at Netflix for the series, *Tiger King*. In or around 2018, a producer contacted him and asked if he wanted to license songs. (DE 101.2, P 12:9-18).

JOHNSON was compensated for licensing MALDONADO'S music to Netflix for the series *Tiger King*. (DE 101.2, P 12:19).

BMG

40. On April 1, 2020, JOHNSON entered into a licensing agreement with BMG Music Rights. (DE 101.9)

41. On June 7, 2020, BMG announced via BMG.com that "Netflix's 'Tiger King' songwriter Vince JOHNSON signed a global publishing agreement with BMG.² (DE 101.10). The agreement concerned BMG's "exclusive rights to administer" music compilations that included *I Saw a Tiger, GW and ME, My First Love, Pretty Woman Lover and The Sun Says*. (DE 101.10).

42. JOHNSON did not inform BMG about the agreements with Maldonado (DE 101.2, 69:23-25).

43. JOHNSON has breached and continues to breach the bargain; has taken property and rights of MALDONADO's as his own; and, likewise, has breached the Confidentiality Agreement.

Mind Guerrilla

² <https://www.bmg.com/de/news/Vince-Johnson-Tiger-King-signs-with-BMG.html>

44. On August 7, 2020, The Vince Johnson Band released an album called *Mind Guerrilla*. (DE 101.2 75:6-17; DE 101.2, 81:13-21; DE 101.11).

45. *I Saw a Tiger, Killer Carole, The Sun Says, GW and Me, Pretty Woman Lover, My First Love* are all featured songs on the album. (DE 101.11).

46. As of the writing of the Motion, *Mind Guerrilla* and the individual songs subject to this Motion are available for purchase on streaming platforms including Apple Music, Spotify, Amazon, Tidal, Deezer, Shazam, YouTube and Napster. (DE 101.11).

Media Campaign

47. Following the release of *Tiger King*, Defendant JOHNSON engaged in a media campaign. (DE 101.12)

48. On March 23, 2020, Vanity Fair published an article titled *Tiger King: Inside Joe Exotic's wild homemade music videos*.³ (DE 101.12, P. 1-4). In this article, the writer boasts to finding “the men who really sang songs like *I Saw a Tiger* and *Here Kitty Kitty*. In the article, JOHNSON is quoted as he fraudulently claimed credit for *I Saw a Tiger*:

“I had no idea he was going to Milli Vanilli the songs,” Johnson wrote Vanity Fair in an email. “It was a couple of months and two or three songs [into the collaboration]

³ <https://www.vanityfair.com/hollywood/2020/03/netflix-tiger-king-joe-exotic>

when I was on YouTube one night and just happened to look up Joe Exotic. And there he was, lip-syncing and acting like the ghost of Elvis [in these music videos]. I called him up, I was hot...And he bamboozled me about his reality show – that it was coming soon and he would make everything right as rain. I just wanted the proper credit.”

49. On March 27, 2020, Slate published an article called *Behind the music of the Tiger King*.⁴ (DE 101.12, P. 5-8). In this article JOHNSON responded to questions via email. When referring to *Pretty Women Lover* and *My Frist Love*, JOHNSON was quoted as saying:

“He seemed like a dandy,” Johnson wrote. It wasn’t until months later, watching Joe’s videos on YouTube, that Johnson realized Joe was going to “Milli Vanilli” the songs and take full credit for them.

50. JOHNSON was later quoted explaining that, “Joe would set the subjects for the songs and then leave JOHNSON to “do my research.”

51. On March 29, 2020, TMZ published an interview with JOHNSON titled ‘*Tiger King’ Band behind Joe Exotic’s songs...Hopes to strike gold*.⁵ (DE 101.12, P. 9- 12). In the interview JOHNSON was credited with providing the following information:

⁴ <https://slate.com/culture/2020/03/netflixs-tiger-king-joe-exotics-music-isnt-even-by-joe-exotic.html>

⁵ <https://www.tMZ.com/2020/03/29/joe-exotic-band-tiger-king-song-clinton-johnson-record-deal/>

As for how The CB Band -- from Vancouver, Washington -- got linked up with the Oklahoma zoo extraordinaire ... Vince tells us they simply responded to one of Joe's ads to make a theme song for Joe's TV show and park, and it evolved from there.

He says how it worked was Exotic would give Vince a theme and some details, he'd write a tune and Danny would sing it. Then they'd email it to Joe.

52. On June 5, 2020, the Chicago Tribune published an article titled *Band behind 'Tiger King' music lands publishing deal, releases new Carole Baskin song*.⁶ (DE 101.12, P. 13-14). The article announced:

Vince Johnson, one half of The Clinton-Johnson Band who wrote and performed the songs Joe Exotic tried to pass off as his own, has officially signed an exclusive worldwide licensing and distribution deal with BMG Rights Management and Create Music Group. The agreement covers such classics as "I Saw a Tiger" and "My First Love."

The deal was signed with entity the Vince Johnson Band, not the Clinton-Johnson Band, as Daniel Clinton, Johnson's musical partner, died last year of a heart attack. Under that name, Johnson is set to release a compilation album containing all of the songs he and Clinton wrote that were featured in "Tiger King."

⁶ <https://www.chicagotribune.com/entertainment/tv/ct-ent-tiger-king-clinton-johnson-band-carole-baskin-song-20200605-4xye32xewvbdnpa3ia7qkizby-story.html>

53. On June 5, 2020, Rolling Stone published an article titled "*Tiger King*" *Songwriter Scores Publishing Deal, Shares New Song Killer Carole.*⁷ The article features a photograph of JOHNSON and notes he is, "one of the writers behind the viral hit '*I Saw a Tiger.*'" (DE 101.12 P. 15-16).

54. On March 24, 2020, the Los Angeles Times published an article titled, "*Did 'Tiger King' star Joe Exotic really sing those jaw-dropping country songs.*"⁸ (DE 101.12, P. 17-19). The article quotes JOHNSON and also credits JOHNSON and Clinton for writing and performing *My First Love*.

55. On June 4, 2020, TMZ published an article about JOHNSON called *Band behind the tunes new deal and song, 'Killer Carole.'*⁹ (DE 101.12 P. 20-21). The purpose was to announce the Vince Johnson Band had "just inked an exclusive licensing and distribution deal with BMG Rights Management and CREATE Music Group." The article further perpetuated JOHNSON's admission that "Vince Johnson of The Vince Johnson Band -- who made up one half of the music duo - wrote and performed Joe's tracks

⁷ <https://www.rollingstone.com/music/music-country/tiger-king-killer-carole-vince-johnson-1010387/>

⁸ <https://www.latimes.com/entertainment-arts/music/story/2020-03-24/tiger-king-joe-exotic-netflix-country-songs-here-kitty-kitty>

⁹ <https://www.tmz.com/2020/06/04/vince-johnson-band-joe-exotic-music-tiger-king-killer-carole-song/>

featured on the Netflix series.” JOHNSON’S hopes of fraudulently capitalizing on MALDONADO’S fame were realized.

56. On June 5, 2020, Variety published a similar story.¹⁰ (DE 101.12 P. 22-23). Both articles referred to JOHNSON’S statements published in the TMZ interview and credited JOHNSON with music compilations subject to the five (5) Agreements regarding the transfer of music rights.

57. On September 11, 2020, JOHNSON participated in a video recorded podcast with Dr. Brady Smith. The episode was called *Vince Johson: The man behind ‘I Saw a Tiger.’*¹¹ During the interview, JOHNSON was introduced as the genius behind the “Joe’s music” and the song *I Saw a Tiger*. JOHNSON was compensated with free dental work for doing the interview. (DE 101.2, 72:1-7).

58. As such, JOHNSON intentionally divulged and disclosed trade secrets associated with music and songs, all in clear breach of the Confidentiality Agreement and the Transfer of Music Rights Agreements.

59. Therefore, summary judgment is appropriate.

¹⁰ <https://variety.com/2020/music/news/tiger-king-music-band-publishing-carole-baskin-song-1234626348/>

¹¹ <https://www.youtube.com/watch?v=kYCXeOi1PYI&t=1429s>

MEMORANDUM OF LAW

Summary judgment must be granted “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” *Benoit v. City of Lake City, Florida*, 343 F. Supp. 3d 1219, 1229 (M.D. Fla. 2018). “Substantive law determines the materiality of facts, and “[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment.” *Gill v. Inch*, No. 3:20-cv-535, 2023 WL 2432323, *2 (M.D. Fla. March 9, 2023) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986)).

ARGUMENT

Breach of Contract - Transfer of Music Rights Agreement

A claim for breach of contract requires “(1) a valid contract; (2) a material breach; and (3) damages.” *Abbott Labs, Inc. v. Gen. Elec. Cap.*, 765 So. 2d 737, 740 (Fla. 5th DCA 2000). *AECOM Tech. Servs. v. Prof'l Servs. Indus.*, 580 F. Supp. 3d 1176, 1193 (M.D. Fla. 2021).

Plaintiff MALDONADO and Defendant JOHNSON entered into five contracts called Transfer of Music Rights Agreements. Each of the Transfer of Music Rights Agreements provided that JOHNSON relinquish all

copyright, publishing rights and all other related rights of the music and/or songs MALDONADO commissioned from him. All rights of the songs would rest with MALDONADO “in perpetuity in all jurisdictions and through all process.”

In the June 18, 2013 email, JOHNSON dictated the terms of the first agreement transferring music rights to MALDONADO. JOHNSON also negotiated with MALDONADO the amount of consideration to be paid in exchange for the transfer of rights. In deposition, JOHNSON testified that he understood that in signing the agreement, he was “relinquishing all copyrights, publishing rights and related rights” to MALDONADO. (DE 101.2, 22:1-7).

The contract between the parties was voluntary, clear and unambiguous. According to JOHNSON, in his own words, the agreement meant MALDONADO could say he “wrote the song sang it whatever.” He acknowledged the exchange included “all rights without credit.” (DE 101.1, P. 1). Since each agreement contains the same language, there is no doubt JOHNSON fully understood the terms of each of the Transfer of Music Rights agreements.

Defendant JOHNSON has also acknowledged on numerous occasions that MALDONADO satisfied the terms of his part of the contracts when he confirmed in emails that MALDONADO made payment in full for each of the subject songs. (DE 101.1, P. 71; DE 101.1, P. 31-32). JOHNSON also stated in deposition that he signed the agreements because MALDONADO was paying him. (DE 101.2, 20:20; DE 101.2, 22:12-19). According to Defendant JOHNSON, the contracts were valid.

Therefore, Defendant JOHNSON breached the terms of the Transfer of Music Rights Agreements when he licensed the songs to the producers for Netflix's *Tiger King* series.

JOHNSON materially breached the terms of the Transfer of Music Rights Agreements when he purposefully entered into the licensing contract with BMG.

JOHNSON materially breached the terms of the Transfer of Music Rights Agreements when he created, promoted and sold music from the album, *Mind Guerilla*.

Breach of Contract - Confidentiality Agreement

JOHNSON understood the terms of the confidentiality agreement as well. In deposition, JOHNSON testified that he knew MALDONADO

wanted him to keep quiet. (DE 101.8; DE 101.2, 50:23-51:10; 101.2, 50:23-51:3; DE 101.13, 32:1-9; DE 101.13, 35:7-37:1).

JOHNSON materially breached the Confidentially Agreement in each interview he gave where he took credit for the songs that he contractually relinquished the rights to MALDONADO. The breaches continued when information JOHNSON provided one media outlet was used in the writing of articles for other news outlets. Instead of correcting the misinformation, JOHNSON perpetuated the assertion that he created and owned the rights to the music compilations at issue herein. His disclosures have resulted in multiple individual material breaches to the Confidentiality Agreement.

Therefore, Plaintiff is entitled to summary judgment on Count IX Breach of Contract for all six (6) of the agreements outlined herein. There is no material fact in dispute that 1) MALDONADO and JOHNSON entered into a contract wherein JOHNSON would sell MALDONADO songs written for MALDONADO's personal use in exchange for the relinquishment of all associated rights to the music; 2) MALDONADO and JOHNSON entered into a confidentiality agreement that prohibited JOHNSON from disclosing trade secrets that included music and songs; and 3) JOHNSON breached the agreements during the post *Tiger King*

media campaign and when he sold licenses to the music to Netflix and BMG Music Rights.

Fraudulent Misrepresentation - BMG

To state a claim for fraudulent misrepresentation, a plaintiff must show: "(1) a false statement concerning a material fact; (2) the representor's knowledge that the representation is false; (3) an intention that the representation induce another to act on it; and (4) consequent injury by the party acting in reliance on the representation." *Butler*, 44 So. 3d at 105; *Johnson v. Davis*, 480 So. 2d 625, 627 (Fla. 1985). *Specialty Marine & Indus. Supplies v. Venus*, 66 So. 3d 306, 310 (Fla. Dist. Ct. App. 2011)

Additionally, a fraudulent misrepresentation claim must satisfy the heightened Rule 9(b) standard and plead fraud with particularity, because "general allegations are not sufficient to satisfy Rule 9(b)." *Hesterly v. Royal Caribbean Cruises, Ltd.*, 515 F. Supp. 2d 1278, 2008 WL 11406184, at *8 (S.D. Fla. 2007).

Furthermore, Rule 9(b) envisions that claims alleging fraud must state the "who, what, where, when, and how" of the alleged fraud." *Begualg Inv. Mgmt. Inc. v. Four Seasons Hotel Ltd.*, No. 10-22153-CIV, 2011 U.S. Dist. LEXIS 108720, 2011 WL 4434891, *3 (S.D. Fla. September 23, 2011); see *Brooks v. Blue*

Cross & Blue Shield of Fla., Inc., 116 F.3d 1364, 1371 (11th Cir. 1997).

Porter v. Mainlands Sections 1 &2 Civic Ass'n, No. 14-62817-CIV, 2014 U.S.

Dist. LEXIS 190555, at *3 (S.D. Fla. Sep. 28, 2014)

Here, Defendant JOHNSON is the who. The what and when is that Defendant JOHNSON willfully misrepresented that he owned the exclusive rights to the songs *I Saw A Tiger, My First Love, GW and Me, Pretty Women Lover, and The Sun Says* when he entered into the licensing agreements with Netflix and BMG Music Rights between 2018 and 2020. Lastly, JOHNSON profited from the misrepresentation when he received approximately \$55,000.00 from BMG. The amount he received from Netflix is unknown because JOHNSON refused to disclose this information in deposition. (DE 101.2, P 12:9-21)

JOHNSON knew his representations were false. JOHNSON has acknowledged the agreements were valid, the terms of the agreements were satisfied, and that he fully understood the terms of the agreements. Therefore, JOHNSON knew when he represented to Netflix and BMG that he owned the rights to the subject music that his representations were false. Netflix and BMG acted on the false information by entering in to licensing contracts with JOHNSON.

Fraudulent Misrepresentation - Mind Guerilla

In this instance, Defendant JOHNSON willfully misrepresented that he possessed the exclusive rights to the songs *I Saw A Tiger*, *My First Love*, *GW and Me*, *Pretty Women Lover*, and *The Sun Says* when he produced, promoted and marketed the album *Mind Guerilla* on all streaming platforms in 2020 following the release of *Tiger King*. JOHNSON's fraudulent misrepresentation continues at present as the album and the individual songs remain available for streaming and for purchase on all major platforms under his name and The Vince Johnson Band.

Therefore, Plaintiff is entitled to summary judgment on Count VIII Fraudulent Misrepresentation. There is no material fact in dispute that 1) JOHNSON licensed MALDONADO's music to Netflix for the series *Tiger King*; 2) JOHNSON licensed MALDONADO's music to BMG Music Rights; 3) JOHNSON produced and marketed the album *Mind Guerilla* that included MALDONADO's music; and 4) that he did so by fraudulently misrepresenting to Netflix, BMG, and various music streaming platforms that he owned the music rights to MALDONADO's music.

Harm

JOHNSON has profited from and continues to profit from the

marketing and sale of MALDONADO's music. JOHNSON's unauthorized use of the subject music and the intentional misrepresentation that he owned the rights to the music was carefully orchestrated during the limited and not repeatable height of Tiger King's popularity.

Defendant JOHNSON sold the music rights to the subject music to Netflix and BMG Music Rights; and he recorded, produced and promoted an album containing the subject songs during the height of *Tiger King's* popularity; when the songs were at the height of marketability and profitability.

In order to market / promote the subject music, JOHNSON engaged in a media campaign where he disparaged Mr. MALDONADO's reputation, forever damaging Mr. Maldonado's brand and ruining any prospect of MALDONADO marketing the music for himself.

The harm to MALDONADO financially and reputationally is severe and includes missed contract deals, missed license deals, missed consumer endorsement deals, etc. The breaches and fraudulent misrepresentations resulted in damage to his professional personas, Joe Exotic and Tiger King as well.

CONCLUSION

For the foregoing reasons, the Plaintiff, JOSEPH MALDONADO, respectfully requests this Court grant the instant motion and enter a final summary judgment in favor of Plaintiff as to Counts VIII and IX of the First Amended Complaint.

LOCAL RULE 7.1(F) CERTIFICATION

I HEREBY CERTIFY that this Motion complies with the applicable word count requirements of Local Rule 7.1(f). I certify that this Motion is proportionally spaced and contains 4,670 words, excluding the parts exempted by Rule 7.1(f). I relied on my word processor to obtain the count and it is Microsoft Word.

The Motion complies with the typeface requirements of Rule 5.1(C) and is prepared in a proportionally spaced typeface using Microsoft Word 14-point font.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of November, 2023, a true and correct copy of the foregoing was electronically filed in the U.S. District Court, Northern District of Florida, Pensacola Division.

Respectfully submitted,

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