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6 UNITED STATES DISTRICT COURT  
7 EASTERN DISTRICT OF WASHINGTON  
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9 CODY ALLEN EASTERDAY,  
10 Plaintiff,  
11 v.  
12 TYSON FREE MEATS, INC.,  
13 Defendant.  
14  
15  
16

No. 4:22-CV-05155-SAB

**ORDER GRANTING  
DEFENDANT’S MOTION TO  
DISMISS**

17 Before the Court is Defendant’s Motion to Dismiss Plaintiff’s First  
18 Amended Complaint, ECF No. 40. The motion was heard without oral argument.<sup>1</sup>  
19 Plaintiff is represented by Charles Macedo, David Goldberg, Jeffrey Jacobovitz,  
20 Justin Ferraro, Andrew Wagley and Carl Oreskovich. Defendant is represented by  
21 Alan Smith, Breanna Philips, Eric Wolff, James Williams, and Mason Ji.

22 Plaintiff is suing Defendant for breach of oral contract and breach of implied  
23 contract, as well as claims for right of accounting, unjust enrichment and  
24 promissory estoppel. Plaintiff alleges there was an oral agreement between him  
25 and Defendant to use his name and photograph through a joint venture program  
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27 <sup>1</sup> Pursuant to LR 7.1(i)(3)(iii), the Court has determined that oral argument is not  
28 necessary.

1 that involved the marketing and selling of premium beef to Defendant’s customer,  
2 Nippon Ham, located in Japan. Even though Plaintiff defrauded Defendant of  
3 nearly \$233 million by providing false invoices for cattle, Plaintiff alleges the  
4 focus of his Complaint is a separate agreement between himself and Defendant to  
5 market premium beef in Japan. The Court dismissed Plaintiff’s original Complaint  
6 with leave to amend. ECF No. 35. On May 5, 2023, Plaintiff filed his First  
7 Amended Complaint (FAC).

8 Defendant now moves to dismiss the FAC asserting the following  
9 arguments: (1) Plaintiff lacks standing to bring claims that if viable at all, belonged  
10 to Easterday Ranches and any claim asserted by Easterday Ranches were resolved  
11 through the global settlement in bankruptcy; (2) Plaintiff’s new allegations  
12 confirm, at best, that Plaintiff sought an unenforceable “agreement to agree” in the  
13 future; (3) Plaintiff’s claims are barred by Washington’s three-year statute of  
14 limitations; (4) Plaintiff’s right-of-accounting claim is meritless because Defendant  
15 had no intention of forming a partnership with Plaintiff; and (5) the unjust  
16 enrichment and promissory estoppel claims fail because of Plaintiff’s criminally  
17 unclean hands.

### 18 **Motion Standard**

19 To survive a motion to dismiss under Rule 12(b)(6), a complaint must allege  
20 “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corps*  
21 *v. Twombly*, 550 U.S. 544, 570 (2007). A claim is plausible on its face when “the  
22 plaintiff pleads factual content that allows the court to draw the reasonable  
23 inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*,  
24 556 U.S. 662, 678 (2009). As the Ninth Circuit explained:

25 To be entitled to the presumption of the truth, allegations in a  
26 complaint or counterclaim may not simply recite the elements of a  
27 cause of action but must contain sufficient allegations of underlying  
28 facts to give fair notice and to enable the opposing party to defend  
itself effectively. The factual allegations that are taken as true must

1 plausibly suggest an entitlement to relief, such that it is not unfair to  
2 require the opposing party to be subject to the expense of discovery  
3 and continued litigation.

4 *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011).

5 When evaluating a Rule 12(b)(6) motion, the Court must draw all reasonable  
6 inferences in favor of the non-moving party. *Wolfe v. Stankman*, 392 F.3d 358, 362  
7 (9th Cir. 2004). However, the Court is not required to accept conclusory  
8 allegations as true or to accept any unreasonable inferences in a complaint. *In re*  
9 *Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1054 (9th Cir. 2008).

### 10 **Plaintiff's Complaint**

11 Plaintiff alleges that beginning in 2013, Defendant approached him to obtain  
12 his permission to use his name and photograph in a joint venture known as  
13 “Cody’s Beef.” Plaintiff alleges there are two distinct agreements under this joint  
14 venture—the actual Cattle Feeding Agreement (CFA) between Defendant and  
15 Easterday Ranches and the subsequent marketing campaign between Defendant  
16 and himself.

17 Under the CFA, Easterday Ranches would feed and raise cattle on its  
18 feedlots. The beef was sold to Defendant, delivered to Defendant’s Pasco,  
19 Washington plant for harvesting, processing, and packaging, and then exported to  
20 Defendant’s customer, Nippon Ham, in Japan under the mark “Cody’s Beef.”  
21 From November 2015 to December 28, 2020, Easterday Ranches delivered  
22 approximately 65,000 heads of cattle, if not more, at less than premium beef  
23 market prices for resale to Nippon Ham.

24 The second agreement—Cody’s Beef Joint Venture Agreement—was  
25 between Plaintiff and Defendant and involved the marketing and selling of  
26 premium beef supplied by Easterday Ranches. Plaintiff alleges the Joint Venture  
27 provided that he and Defendant would equally share the profits and the risks  
28 generated by the Joint Venture.

1 Plaintiff asserts as part of the Joint Venture, he participated in photo shoots,  
2 authorized Tyson to utilize his photograph (“Cody’s Beef”) in Japan, provided  
3 tours to Nippon Ham executives and personnel, and allowed for the use of his  
4 name, photograph, and good will. He also alleges that under the “Cody’s Beef”  
5 Joint Venture, he supervised the raising of the cattle by Easterday Ranches on the  
6 feedlots. Plaintiff also arranged for Nippon ham executives and personnel to tour  
7 the Washington feedlots where Easterday Ranches was raising the cattle for the  
8 Cody’s Beef Program. Tours occurred multiple times each year.

9 No formal written contract was signed by Plaintiff or Defendant. Plaintiff  
10 asserts that in May 2020, a series of emails provides written evidence of the  
11 parties’ agreement. In the trail of emails, Plaintiff at one point asked, “How much  
12 of a cut do I get? and the response was “heck yes!”

13 Plaintiff brings five claims: 1) Breach of Oral Contract; 2) Breach of Implied  
14 Contract; 3) Right of Accounting; 4) Unjust Enrichment; and 5) Promissory  
15 Estoppel.

### 16 Analysis

17 Plaintiff is suing Defendant in federal court under diversity jurisdiction. It is  
18 well settled that a federal court exercising diversity jurisdiction must apply federal  
19 procedural law and state substantive law. *Erie R. Co. v. Tompkins*, 304 U.S. 64, 78  
20 (1938); *Freund v. Nycomed Amersham*, 347 F.3d 752, 761 (9th Cir. 2003).

#### 21 1. Breach of Oral Contract

22 Plaintiff alleges he and Defendant were parties to a valid and enforceable  
23 oral contract for the use of Plaintiff’s name and photograph and other related  
24 performances in exchange for a share of the profits gained from the “Cody’s Beef”  
25 joint venture.

26 Under Washington law, there are three essential elements to establish a  
27 breach of contract.: 1) the parties entered into an enforceable contract; 2)  
28 Defendant breached the contract as claimed by Plaintiff; and 3) Plaintiff was

1 damaged because of Defendant’s breach. *Nw. Indep. Forest Mfrs v. Dep’t of Labor*  
2 *& Indus.*, 78 Wash.App. 707, 712 (1995).

3 Oral contracts will be recognized in equity, but “they are not favored and  
4 will be enforced only upon strong evidence that the promise was made in exchange  
5 for valuable consideration and deliberately entered into.” *Bale v. Allison*, 173  
6 Wash.App. 435, 453 (2013). As such, “[t]he burden of proving a contract, whether  
7 expressed or implied, is on the party asserting it, and he must prove each essential  
8 fact, including the existence of a mutual intention.” *Cahn v. Foster & Marshall,*  
9 *Inc.*, 33 Wash.App 838, 840 (1983) (citation omitted).

10 Washington follows the objective manifestation test for contracts. *Keystone*  
11 *Land & Dev. Co. v. Xerox Corp.*, 152 Wash.2d 171, 177 (2004). Thus, for a  
12 contract to exist, the parties must objectively manifest their mutual assent. *Id.*  
13 (quotation omitted). Additionally, the terms assented to must be sufficiently  
14 definite. *Id.* (citation omitted). For example, if a term is so indefinite that a court  
15 cannot decide just what it means, and fix exactly the legal liability of the parties,  
16 there cannot be an enforceable agreement. *Id.* (citation omitted). Finally, the  
17 contract must be supported by consideration to be enforceable. *Id.* The primary  
18 concern for the courts is to avoid trapping parties in surprise contractual  
19 obligations.” *Id.* (citation omitted). Generally, manifestations of mutual assent will  
20 be expressed by an offer and acceptance. *Id.*

21 Here, Plaintiff has not alleged sufficient facts to demonstrate offer,  
22 acceptance and an objective manifestation that Defendant intended to enter into an  
23 agreement with Plaintiff. Moreover, the terms of the alleged oral contract are so  
24 indefinite that the Court would not be able to enforce it. For example, suppose  
25 Plaintiff failed to participate in a necessary marketing campaign. Would Defendant  
26 be in a position to bring suit? There is nothing in the oral contract identifying  
27 important details, namely, how many times he needed to participate and the scope  
28 of the participation. The sharing of the profits 50-50 presumably would not be the

1 only terms of the alleged oral contract.

2       Moreover, the terms of the oral contract, as suggested by Plaintiff, are not  
3 plausible. For instance, Plaintiff alleges that Easterday Ranches agreed to feed,  
4 raise and sell beef to Defendant for resale to Nippon Ham in Japan. Plaintiff asserts  
5 that typically the CFAs provide for a 50-50 share of the profits between Defendant  
6 and Easterday Ranches, and he is relying on the prior business arrangements to  
7 assert that clearly Plaintiff and Defendant intended they would share in the profits  
8 50-50 from the Cody Beef Joint Venture.

9       But, if Easterday Ranches typically is entitled to 50% of the profits for  
10 providing the beef, and Plaintiff is entitled to 50% of the profits from the joint  
11 venture, what is left for Defendant? Under Plaintiff's facts, it is more plausible that  
12 because three parties were involved, the profit sharing would be split three ways.  
13 Yet, Plaintiff maintains that the terms of the oral contract are that he personally  
14 should receive 50% of the profits, Defendant receives 50% of the profits and  
15 Easterday Ranches presumably would not receive any, which would be opposite of  
16 the normal course of business between Easterday Ranches and Defendant.

17       Either way, Plaintiff has failed to allege sufficient facts to show there was a  
18 meeting of the minds regarding the terms of the alleged oral contract. As such,  
19 Plaintiff has failed to allege facts to support a claim that there was a legally  
20 enforceable contract between himself and Defendant. Similarly, he has failed to  
21 allege sufficient facts to show there was a legally enforceable implied contract in  
22 fact between Plaintiff and Defendant. Finally, Plaintiff has not alleged sufficient  
23 fact to show there was a legally enforceable joint venture between himself and  
24 Defendant so he has no right to an accounting.

## 25       **2. Equitable Claims**

26       “Dismissal under Rule 12(b)(6) on the basis of an affirmative defense is  
27 proper only if the defendant shows some obvious bar to securing relief on the face  
28 of the complaint.” *ASARCO, LLC v. Union Pac. R. Co.*, 765 F.3d 999, 1004 (9th

1 Cir. 2014) (citation omitted). “A dismissal under Rule 12(b)(6) is likely to be  
2 granted by the district court only in the relatively unusual case in which Plaintiff  
3 includes allegations that show on the face of the complaint that there is some  
4 insuperable bar to securing relief.” *Id.* (quotation omitted). In order to dismiss  
5 based on affirmative defenses, the Court must ask whether the affirmative defenses  
6 present such a high obstacle, that it would be impossible for Plaintiff to overcome.  
7 *Id.* As such, while Defendant may show it would be difficult for Plaintiff to obtain  
8 relief, this does not necessarily bar a plaintiff’s claim. *Id.*

9 A party with unclean hands cannot recover in equity. *Miller v. Paul M.*  
10 *Wolff Co.*, 178 Wash.App. 957, 966 (2014). Those who act unjustly or in bad faith  
11 are deemed to act with unclean hands. *Id.*

12 Here, Plaintiff’s unclean hands prevent him from recovering any damages in  
13 equity. On March 31, 2021, Plaintiff plead guilty to committing wire fraud. *See*  
14 *United States v. Cody Easterday*, 4:21-CR-0612-SAB, ECF No. 10. He admitted to  
15 submitting false and fraudulent invoices for non-existent cattle, which caused  
16 Defendant to suffer a loss of approximately \$233,008.042. *Id.*

17 The Court presided over the criminal proceedings. It is clear that the fraud  
18 he perpetrated on Defendant relates directly to the claims he is asserting in his  
19 FAC. Under the facts alleged in the FAC, the Cody Beef Joint Venture was  
20 dependent on the CFAs that Easterday Ranches honored. His claims for equitable  
21 relief are directly derived from the cattle subject to the CFAs, which were the  
22 vehicles for perpetrating the fraud on Defendant. As the facts set forth in Plaintiff’s  
23 FAC, the relationship between Plaintiff and Easterday Ranches is virtually  
24 inseparable and the actions undertaken by Plaintiff on account of the Cody Beef  
25 Joint Venture was in furtherance of the relationship between Defendant and  
26 Easterday Ranches, and not based on a separate oral agreement with Defendant.

27 Plaintiff’s equitable claims are barred by the unclean hands doctrine.  
28 Plaintiff cannot overcome this insuperable bar to obtain the relief he is seeking.

1           **3. Statute of Limitations**

2           Washington law imposes a three-year statute of limitations for oral contract,  
3 unjust enrichment, promissory estoppel and right to accounting claims. Plaintiff  
4 has not asserted sufficient fact to show that his claims asserted in the FAC accrued  
5 after the statute of limitations expired. Thus, in the alternative, Plaintiff's claims are  
6 dismissed as time-barred.

7           Accordingly, **IT IS HEREBY ORDERED:**

- 8           1. Defendant's Motion to Dismiss, ECF No. 40 is **GRANTED**.  
9           2. Plaintiff's First Amended Complaint is **dismissed**, with prejudice.  
10          3. The Clerk of Court is directed to enter judgment in favor of Defendant  
11 and against Plaintiff.

12          **IT IS SO ORDERED.** The District Court Executive is hereby directed to  
13 file this Order, provide copies to counsel, and close the file.

14          **DATED** this 31th day of October 2023.



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A handwritten signature in blue ink that reads "Stanley A. Bastian".

20                               Stanley A. Bastian  
21                               Chief United States District Judge