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Talitha Barela

JAMS

GREGORY BARELA, an individual, and
TALITHA BARELA, an individual;

Plaintiff,

v.

MICHAEL J. AVENATTI, an individual,
EAGAN AVENATTI LLP, a California
limited liability partnership, AVENATTI &
ASSOCIATES, a California Professional
Corporation, [REDACTED] an
individual, [REDACTED], an individual,
and DOES 1-100, inclusive,

Defendants.

CASE NO.

STATEMENT OF CLAIMS

- (1) Breach of Fiduciary Duty;**
- (2) Intentional Misrepresentation;**
- (3) Negligent Misrepresentation;**
- (4) Concealment;**
- (5) False Promise;**
- (6) Conversion;**
- (7) Breach of Contract;**
- (8) Unfair Business Practices;**
- (9) Professional Negligence; and**
- (10) Accounting.**

1 Plaintiffs, Gregory Barela and Talitha Barela (hereinafter "Plaintiffs"), by and through
2 their attorneys, on personal information and acting on information and belief, allege the following
3 against Defendants Michael J. Avenatti, an individual, Eagan Avenatti, LLP, a California limited
4 liability partnership, Avenatti & Associates, a California Professional Corporation, [REDACTED]
5 [REDACTED] an individual [REDACTED] an individual, and DOES 1 -100 (collectively, "Defendants"):

6 **INTRODUCTION**

7 1. Beginning in 2014, Plaintiff Gregory Barela sought legal advice from Michael
8 Avenatti and his firm regarding Mr. Barela's intellectual property dispute with an out-of-state
9 corporation¹ (hereafter "Settling Party"). (Ex. 1.) With Avenatti and his firm as his counsel of
10 record, Mr. Barela filed suit against the Settling Party alleging multiple causes of action. The
11 case was later compelled to arbitration.

12 2. Ultimately, a settlement was reached, wherein the Settling Party agreed to pay Mr.
13 Barela [REDACTED]
14 [REDACTED]. (Ex. 2.) The settlement
15 agreement provided [REDACTED]
16 [REDACTED]
17 [REDACTED]. (*Id.*)

18 3. Unbeknownst to Plaintiffs, however, Defendant Avenatti was operating his law
19 firm in a Ponzi scheme like manner, taking settlement proceeds received for clients to pay off
20 debts, pay the other individual Defendants' salaries and bonuses, and fund his lavish lifestyle,
21 while telling clients that the settlement proceeds had not been received or would be received at a
22 later date. As part of this scheme, Defendants falsified the payment dates in the copy of the
23 settlement agreement they provided to Mr. Barela to falsely state that the settlement payment
24 dates were March 10 of each year, [REDACTED]
25 [REDACTED]. (Exs. 3, 4.) They did this in order to hide when they actually received the
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27

28 ¹ The corporation is not identified by name in this Complaint due to the confidentiality of the settlement agreement.

1 settlement funds from the Settling Party and so they could use Mr. Barela's funds for their own
2 purposes.

3 4. Pursuant to the terms of the actual settlement agreement, and at the express
4 direction of Avenatti, the Settling Party made the [REDACTED] settlement payment [REDACTED]
5 [REDACTED] on January 5, 2018 to a client trust account specified by Avenatti. (Exs. 5, 6.) This [REDACTED]
6 [REDACTED] payment was not reported—and still has never been reported—to Mr. Barela despite
7 Defendants' receipt of the settlement payment on January 5, 2018. (Ex. 7.)

8 5. Beginning on March 10, 2018, the date Mr. Barela had been falsely informed by
9 Defendants that the [REDACTED] settlement payment was due, and for the next eight months, Mr.
10 Barela made numerous inquiries of Defendants asking for a status update on the Settling Party's
11 [REDACTED] settlement payment. Yet despite having received the [REDACTED] settlement payment
12 of [REDACTED] on January 5, 2018, Defendants told Mr. Barela that the Settling Party had not
13 made the [REDACTED] settlement payment and that they were working to obtain it. To date,
14 Defendants have refused to admit that on January 5, 2018, the Settling Party made the [REDACTED]
15 [REDACTED] settlement payment into the client trust account specified by Avenatti.

16 6. Defendants kept Mr. Barela's settlement funds despite knowing that Plaintiffs
17 were counting on those funds to pay their expenses and that the failure to disburse the settlement
18 proceeds to Mr. Barela was causing Plaintiffs great financial and personal hardship. Rather than
19 paying Mr. Barela the amounts he was owed, Avenatti made Mr. Barela plead with him for
20 advances against the [REDACTED] settlement payment that Avenatti repeatedly and falsely
21 represented to Mr. Barela had not been made by Settling Party. Thus, between April and
22 November 2018, Avenatti acted like he was doing Plaintiffs a huge favor by "advancing"
23 [REDACTED] to Plaintiffs to pay their expenses despite the fact that Defendants had received the [REDACTED]
24 [REDACTED] payment from the Settling Party and the money Avenatti was advancing to Plaintiffs was
25 only a fraction of the amount Defendants had received and owed to Mr. Barela in the first place.

26 7. Even worse, in October 2018, Avenatti informed Mr. Barela that he would no
27 longer advance Plaintiffs any funds, but that he could arrange for Mr. Barela to get a [REDACTED]
28 loan in January 2019, but that the loan would have to be with interest. On information and belief,

1 the [REDACTED] "loan" that Avenatti offered to procure for Mr. Barela was actually going to be
2 made by Avenatti with the proceeds of the [REDACTED] settlement payment that was [REDACTED]
3 [REDACTED], but that Plaintiffs had been falsely informed by Defendants
4 was not due until March 10, 2019.

5 8. After having been deceived by Avenatti and Defendants for eleven months, Mr.
6 Barela retained new counsel and by letter dated November 17, 2018, requested an accounting
7 from Avenatti, Eagan Avenatti, LLP, and Avenatti & Associates regarding any payment made by
8 the Settling Party and a written copy of his fee agreement. (Ex. 10.) Specifically, the letter from
9 Mr. Barela's new counsel stated:

10 We understand that Mr. Barela has been advised by you that [Settling Party] did
11 not make the initial [REDACTED] payment due under the terms of the Settlement
12 Agreement. We request that [sic] you provide written confirmation of [Settling
13 Party's] failure to make such payment. We further ask that you promptly provide
14 us with a true and correct copy of the Settlement Agreement and any fee
15 agreement that you have with Mr. Barela.

16 Finally, in the event [Settling Party] made the [REDACTED] payment
17 provided for by the Settlement Agreement, we ask that you provide an immediate
18 accounting concerning such funds.

19 9. By separate letter dated November 19, 2018, Mr. Barela directed Avenatti, Eagan
20 Avenatti, LLP, and Avenatti & Associates to transfer his client files and the balance of any funds
21 paid by Settling Party pursuant to the settlement agreement to the client trust account of his new
22 attorneys. (Ex. 11.)

23 10. Mr. Barela reiterated these requests in a letter dated December 3, 2018. (Ex. 13.)
24 To date, Defendants have not responded to Mr. Barela's request for an accounting, and have
25 refused to provide a copy of his fee agreement, transfer his files to his new counsel or to transfer
26 the balance of any funds paid by Settling Party pursuant to the settlement agreement to the client
27 trust account of his new attorneys.

28

1 11. Defendants' conduct has caused serious financial injury to Plaintiffs, as well as
2 extensive emotional and mental distress. Defendants acted with malice, oppression and fraud,
3 purposely taking advantage of and intentionally damaging Plaintiffs.

4 **PARTIES**

5 12. Plaintiff Gregory Barela is an individual and is currently, as well as at all times
6 relevant to this Complaint, a resident of the State of California. He resides in the city of Irvine,
7 California, County of Orange. Mr. Barela is married to Plaintiff Talitha Barela, and has been
8 during all times relevant to this Complaint.

9 13. Plaintiff Talitha Barela is an individual and is currently, as well as at all times
10 relevant to this Complaint, a resident of the State of California. She also resides in the city of
11 Irvine, California, County of Orange. Mrs. Barela is married to Plaintiff Gregory Barela, and has
12 been during all times relevant to this Complaint.

13 14. Defendant Michael J. Avenatti is resident of the State of California. On
14 information and belief, Avenatti now resides in the city of Los Angeles, California, County of
15 Los Angeles.

16 15. On information and belief, Defendant Eagan Avenatti, LLP (hereafter "Eagan
17 Avenatti") is, and at all times herein mentioned was, a limited liability partnership with its
18 principal place of business in Orange County, California.

19 16. On information and belief, Defendant Avenatti & Associates is a law firm and a
20 California Professional Corporation with its principal places of business in Newport Beach and
21 Santa Monica, California. On information and belief, Avenatti & Associates is the successor in
22 interest to Eagan Avenatti, LLP.

23 17. Defendant [REDACTED] is an individual, and currently, as well as at all times
24 relevant to this Complaint, a resident of the State of California.

25 18. Defendant [REDACTED] is an individual, and currently, as well as at all times
26 relevant to this Complaint, a resident of the State of California.

1 JURISDICTION AND VENUE

2 19. Plaintiff Gregory Barela and Defendants entered into an Attorney-Client Fee
3 Contract (Ex. 1) which specified that any dispute arising under that contract or related to
4 Defendants' services thereunder, "shall be resolved by binding arbitration before JAMS located in
5 Orange County California." Accordingly, the Judicial Arbitration and Mediation Service
6 ("JAMS") office in Orange County, California has jurisdiction and is the proper venue.

7 GENERAL ALLEGATIONS

8 20. In early 2014, Mr. Barela was referred to Avenatti and his firm Eagan Avenatti in
9 order to pursue legal action against the Settling Party. Mr. Barela entered into an engagement
10 agreement with Defendants in 2014 in Orange County, California for purposes of the legal action
11 against the Settling Party. (Ex. 1.) After initially filing a lawsuit, Mr. Barela and the Settling
12 Party subsequently entered into arbitration (the "Arbitration").

13 21. Throughout the course of the proceedings, Mr. Barela met with Avenatti, [REDACTED]
14 [REDACTED] numerous times. Avenatti and [REDACTED]
15 [REDACTED]
16 [REDACTED] Additionally, [REDACTED] [REDACTED]
17 [REDACTED] Avenatti, [REDACTED], and [REDACTED] were very friendly with
18 Mr. Barela, meeting together often with him to discuss case related matters. Mr. Barela
19 considered Avenatti, [REDACTED], and [REDACTED] friends during the course of the Arbitration.

20 22. On December 20, 2017, Mr. Barela and the Settling Party agreed to a final
21 compromise and settlement of the Arbitration, with the Settling Party agreeing to pay [REDACTED]
22 [REDACTED] to Mr. Barela, [REDACTED]. (Ex. 2.) The [REDACTED]
23 [REDACTED]. (Id.)

24 23. The terms of the settlement were negotiated by the parties' attorneys. On
25 December 28, 2017, a week after agreeing to the [REDACTED] settlement at Avenatti's request,
26 Mr. Barela met with Avenatti at the Eagan Avenatti law offices to sign the settlement agreement.
27 The settlement agreement Avenatti presented to Mr. Barela on December 28, 2017 to sign

1 contained payment dates of [REDACTED],
2 respectively, for the Settling Party's settlement payments to Mr. Barela. (Exs. 2, 3.)

3 24. After signing the settlement agreement, Mr. Barela asked how much money he
4 would receive in total after paying Defendants' contingency fee and costs. Avenatti represented
5 that he believed that the costs were between \$100,000 and \$125,000, but that his [REDACTED]
6 and [REDACTED] was conducting a final accounting of costs. Based on those
7 representations, Avenatti told Mr. Barela that he would receive over [REDACTED] of the settlement
8 proceeds. On January 3, 2018, Mr. Barela requested an accounting of costs. Neither Avenatti,
9 [REDACTED], nor any other Defendant ever provided the requested accounting.

10 25. On information belief, on December 28, 2017, a signed confidential settlement
11 agreement was executed by both Mr. Barela and the Settling Party. (Ex. 2.) On information and
12 belief, Defendants provided Barela's signature page to the Settling Party.

13 26. Pursuant to Paragraph 12 of the actual settlement agreement, the Settling Party was
14 required to [REDACTED]
15 [REDACTED]. (Ex. 2.) Moreover, paragraph 14 of the settlement agreement
16 provided that [REDACTED]
17 [REDACTED]
18 [REDACTED] (Id.)

19 27. Mr. Barela was unaware of the [REDACTED] since the version of the
20 settlement agreement he was provided by Defendants included falsified payment dates of [REDACTED]
21 [REDACTED]. (Ex. 3.) On information and
22 belief, the draft settlement agreements exchanged between the parties contained [REDACTED]
23 [REDACTED] and the copy of the settlement agreement provided to Mr. Barela was
24 deliberately falsified by one or more of Defendants so that they could get and use the proceeds of
25 the settlement for a period of time before Mr. Barela believed that they were even due.

26 28. On January 2, 2018, Avenatti sent an email to the Settling Party's counsel
27 specifying the client trust account and providing wire instructions for the Settling Party to make
28

1 the settlement payments according to the terms of the settlement agreement. (Ex. 5.) The
2 January 2, 2018 email instruction from Avenatti provided:

3 Below please find the wire instructions. Please confirm receipt and that we are on
4 track. Thanks, Michael

5 City National Bank
6 500 Newport Center Drive Ste. #150
7 Newport Beach, Ca 92660

8 ABA/Routing # [REDACTED]
9 Account number # [REDACTED]

10 Account title: [REDACTED]
11 520 Newport Center Dr. Ste. 1400
12 Newport Beach, Ca. 92660

13 29. On January 5, 2018, Settling Party made the [REDACTED] settlement
14 payment by wire transfer to the client trust account specified by Avenatti on January 2, 2018.
15 (Exs. 6, 7.) Defendants have never informed Plaintiffs of the Settling Party's January 5, 2018
16 payment. Plaintiffs were unaware of the [REDACTED] provided for in the
17 final settlement agreement and were also unaware that the Settling Party had made the [REDACTED]
18 [REDACTED] settlement payment by wire transfer to the client trust account specified by Avenatti on
19 January 5, 2018.

20 30. Mr. Barela relied upon Avenatti's representations regarding the Settling Party's
21 March 10, 2018 [REDACTED] payment date and made plans to receive the money. Mr. Barela had
22 planned to use the settlement proceeds to help fund his business ventures, as well as provide
23 sufficient monies to pay for Plaintiffs' living expenses.

24 31. On the morning of March 10, 2018, Mr. Barela sent a text message to Avenatti
25 stating that he "was just thinking is this a big day from our friends at [Settling Party]?" On
26 information and belief, given that he was knowingly engaged in fraudulent conduct, Avenatti was
27 careful not to respond in writing to Mr. Barela's text message, but orally assured Mr. Barela that
28 he would follow up with counsel for the Settling Party and work to obtain the proceeds of the
settlement agreement.

1 32. On March 12, 2018, Mr. Barela sent Avenatti a text message with his account
2 information for a wire transfer. On information and belief, given that he was knowingly engaged
3 in fraudulent conduct, Avenatti was careful not to respond in writing to the text message, but
4 orally assured Mr. Barela that he would follow up with counsel for the Settling Party and work to
5 obtain the proceeds of the settlement agreement.

6 33. On March 13, 2018, Mr. Barela sent another text message to Avenatti asking if
7 there was “any word on that wire from [the Settling Party]?” Mr. Barela asked Avenatti to let
8 him know and sought an update regarding his settlement payment. On information and belief,
9 given that he was knowingly engaged in fraudulent conduct, Avenatti was careful not to respond
10 in writing to the text message, but orally assured Mr. Barela that he had discussed the matter with
11 counsel for Settling Party and that he was working to obtain the settlement payment.

12 34. Mr. Barela had anticipated the settlement payment to occur on March 10, 2018,
13 and planned to use part of his portion of the ██████████ for other business ventures he had
14 started. On March 14, 2018, he sent a text message to Avenatti stating: “Hi Michael[,] just
15 checking in on the [Settling Party] issue. I’ve been going pretty deep and credit cards and a little
16 loan to keep both businesses going. Any updates?” Again, Avenatti did not respond in writing to
17 Mr. Barela’s text message.

18 35. During this same time in March 2018, during an in-person conversation with Mr.
19 Barela, Avenatti stated that he had no idea what was going on with the settlement payment.
20 Avenatti said that he had spoken with counsel for the Settling Party, and that counsel for the
21 Settling Party was in disbelief that the Settling Party had not made the ██████████
22 settlement payment. Avenatti informed Mr. Barela that he genuinely believed that counsel for the
23 Settling Party did not know or understand why Settling Party had not made the payment.

24 36. Again in March 2018, Mr. Barela went to the Eagan Avenatti law office. ██████████
25 ██████████ congratulated Mr. Barela on the settlement, and led him to believe that the ██████████
26 settlement payment had been made. During the course of that conversation, Mr. Barela saw ██████████
27 ██████████’s reflection in the glass wall of the conference room and observed ██████████ gesturing
28 towards ██████████ by waiving ██████████ hand across ██████████ throat to signal to ██████████ to stop discussing ██████████

1 Barela's settlement payment. After seeing [REDACTED]'s gesture, [REDACTED] immediately
2 became quiet and stopped discussing Mr. Barela's settlement.

3 37. Thereafter, between March 2018 and October 2018, during Mr. Barela's visits to
4 the Eagan Avenatti law offices, Mr. Barela would often attempt to discuss the Settling Party's
5 failure to make the settlement payment with [REDACTED] and [REDACTED]. In response to Mr.
6 Barela's attempts to discuss the failure of Settling Party to make the [REDACTED] settlement
7 payment, [REDACTED] and [REDACTED] would avoid discussing the topic with Mr. Barela. For
8 example, at one point Mr. Barela asked [REDACTED] whether [REDACTED] had heard from Settling Party, and
9 [REDACTED] responded that Defendants had heard nothing. Moreover, in direct contrast to their
10 friendly relationship with Mr. Barela during the Arbitration, after March 2018, [REDACTED] and
11 [REDACTED] did everything they could to avoid Mr. Barela, going so far as to avoid eye contact
12 with Mr. Barela during his visits to the Eagan Avenatti offices. On information and belief, [REDACTED]
13 [REDACTED] and [REDACTED] were aware that the Settling Party had made the [REDACTED]
14 payment into the firm's client trust account on January 5, 2018, yet never told Mr. Barela in their
15 numerous communications with him.

16 38. On March 19, 2018, Mr. Barela sent a text message to Avenatti telling him he
17 wanted to be "aggressive with [the Settling Party] this week" and asked Avenatti to let him know
18 if he heard anything from [the Settling Party]. Once again, Avenatti did not respond in writing to
19 the text message, but orally assured him that things would be resolved soon.

20 39. On March 21, 2018, Mr. Barela wrote to Avenatti, "Any word from [the Settling
21 Party]?" Again, Avenatti failed to respond in writing.

22 40. On March 22, 2018, Mr. Barela again checked in regarding the settlement payment
23 from the Settling Party. He sent a text to Avenatti asking "Did they step up with the transfer? If
24 not what are we doing next?" Avenatti again avoided responding in writing.

25 41. On March 23, 2018, facing financial burdens, Mr. Barela told Avenatti he needed
26 help and was worried. Avenatti responded: "Greg – don't worry. Let's chat tmrw. We will figure
27 this out. Michael". When Mr. Barela eventually spoke with Avenatti, Avenatti told him that
28

1 another lawsuit would need to be filed in order to force Settling Party to make the settlement
2 payments.

3 42. Given that Mr. Barela had relied on receiving his portion of the [REDACTED]
4 payment by March 2018, he was facing a dire financial situation. On April 2, 2018, Mr. Barela
5 emailed Avenatti asking for a loan. Mr. Barela was in the early stages of setting up two
6 businesses and Mr. Barela told Avenatti that he was "out of pocket about 250k right now for both
7 businesses." Later that day Mr. Barela asked Avenatti via text message whether there was any
8 word from the Settling Party regarding the settlement payment. In a phone call, Avenatti
9 reiterated that he had spoken with counsel for Settling Party and that counsel for Settling Party
10 did not understand why the Settling Party had not responded to his requests for payment.
11 Avenatti assured Mr. Barela on the call that he and the other Defendants were working to make
12 sure Settling Party would make the settlement payment as soon as possible. Avenatti also agreed
13 to provide an advance of money to Mr. Barela while Defendants were purportedly seeking
14 payment from the Settling Party. After the call, Mr. Barela texted Avenatti, "Thanks again for the
15 call. Whatever you can do is so appreciated." Avenatti responded: "All good. No worries."

16 43. On April 3, 2018, Mr. Barela asked Avenatti whether he was able to advance him
17 "any amount if at all?" Avenatti responded that he could "probably send a wire tmrw."

18 44. On April 5, 2018, Mr. Barela emailed Avenatti his Bank information to make a
19 wire transfer of [REDACTED], the money Avenatti had agreed to advance Mr. Barela. Mr. Barela also
20 stated that he would like to discuss his options for collections on the Settling Party. Shortly
21 thereafter, Mr. Barela received a wire transfer of [REDACTED].

22 45. On April 15, 2018, Mr. Barela again inquired via email to Avenatti about the status
23 of the settlement money from the Settling Party. He also inquired about steps to take against the
24 Settling Party if the money is not collected. He told Avenatti he needed a plan as soon as possible
25 as he was facing financial difficulties. Once again, Avenatti was careful to not respond in
26 writing. Instead, during a telephone call, Avenatti assured Mr. Barela that Defendants were filing
27 another claim against Settling Party in federal court in Los Angeles, and they were waiting for a
28 response.

1 46. On April 22, 2018, Mr. Barela emailed Avenatti asking if the Settling Party
2 responded. Again, on April 25, 2018 and April 26, 2018, Mr. Barela texted Avenatti asking
3 whether there was any word from the Settling Party. Avenatti again did not respond in writing.
4 Avenatti continued to assure Mr. Barela over the phone and in-person that Defendants were
5 working to force the Settling Party to make the settlement payment.

6 47. On May 7, 2018, Mr. Barela again asked Avenatti what the next actions were
7 against the Settling Party. Mr. Barela also told Avenatti, "If [the Settling Party] does not pay
8 soon I may need a little help in the next two weeks."

9 48. On May 15, 2018, Mr. Barela sent an email to Avenatti expressing that since he
10 planned on collecting the settlement money in March and had not seen any of it, he was losing
11 credibility with his other business ventures and his wife, and was now facing a difficult financial
12 position. Mr. Barela asked Avenatti, "Did [the Settling Party] respond or pay? If no what are we
13 filing this week?"

14 49. Rather than respond in writing, Avenatti and Mr. Barela had a telephone call
15 wherein Avenatti agreed to provide another advance to Mr. Barela on the settlement payment—
16 which, unbeknownst to Plaintiffs, Defendants had received five months earlier. Avenatti also
17 assured Mr. Barela that Defendants were working to force Settling Party to pay.

18 50. On May 20, 2018, Mr. Barela sent wire instructions for an additional loan from
19 Avenatti. Avenatti responded, "Got it. Thanks."

20 51. On May 25, 2018, Avenatti advanced Mr. Barela an additional [REDACTED].

21 52. On June 25, 2018, Mr. Barela sent Avenatti a list of reminders for the week,
22 including a reminder about filing a lawsuit against the Settling Party for failing to pay the [REDACTED]
23 [REDACTED] due to Mr. Barela.

24 53. During this time frame, Avenatti assured Mr. Barela that whenever he needed an
25 advance of money, to let him know, and he would wire him money.

26 54. On June 27, 2018, Avenatti advanced Mr. Barela an additional [REDACTED].

27 55. On June 29, 2018, Mr. Barela reached out via email to [REDACTED] and asked for
28 a copy of the signed settlement agreement which included the signatures from the Settling Party's

1 representatives. [REDACTED] provided Mr. Barela with a copy of the fully executed settlement
2 agreement which contained falsified payment dates of [REDACTED]
3 [REDACTED] for Settling Party's settlement payments to Mr.
4 Barela, when in reality the settlement agreement called for [REDACTED]
5 [REDACTED]. (Ex. 4.) On information and belief, [REDACTED] was
6 aware that the Settling Party had made the [REDACTED] payment into the firm's client trust
7 account on January 5, 2018, yet never told Plaintiffs in her numerous communications to him.

8 56. Still unaware that the [REDACTED] payment had been made in January 2018,
9 on August 15, 2018, Mr. Barela emailed Avenatti about initiating a lawsuit against the Settling
10 Party for failing to abide by the terms of the settlement agreement and failing to make the [REDACTED]
11 [REDACTED] payment.

12 57. At a meeting shortly thereafter, Defendants represented to Mr. Barela that they
13 were filing a motion to compel arbitration to enforce the settlement agreement, and that Settling
14 Party would have 30 days to respond.

15 58. On September 10, 2018, Mr. Barela emailed Avenatti and [REDACTED] wire
16 instructions for an additional advance. The following day, Avenatti and [REDACTED] advanced
17 Mr. Barela via wire an additional [REDACTED].

18 59. On September 11, 2018, after receiving the wire, during a phone call, Avenatti told
19 Mr. Barela he had no additional updates regarding Defendants' efforts to obtain the settlement
20 payment.

21 60. On October 10, 2018, Mr. Barela again asked for an update on the status of
22 collecting the settlement proceeds from the Settling Party. Mr. Barela also asked for more
23 financial help, requesting an additional advance to "keep moving".

24 61. On October 14, 2018, Mr. Barela asked Avenatti in an email if the Settling Party
25 had responded and what the next steps were being taken to ensure payment. Mr. Barela stated, "It
26 will be one year in December and they will owe [REDACTED] in March...Can we discuss a
27 go forward strategy till this is handled?" Mr. Barela also asked Avenatti for "a copy of the last
28 thing that we filed". Avenatti never responded to the email.

1 62. On October 17, 2018, Mr. Barela again reached out to Avenatti expressing to him
2 that he was in a financial hardship and asked for another advance. He again texted Avenatti on
3 October 19, 2018, asking him if he could borrow money. Avenatti again did not respond in
4 writing.

5 63. On October 22, 2018, Mr. Barela emailed Avenatti again stressing the financial
6 troubles he was facing. He told Avenatti that he was working on trying to get a loan from a third-
7 party creditor and was trying to use the settlement agreement to secure it. Mr. Barela again asked
8 for an update on the payment and what the next action steps would be. He also asked for copies
9 of all the paperwork related to the alleged filing against the Settling Party so that he could use it
10 to secure a personal loan. Avenatti never responded to the email.

11 64. On October 28, 2018, Mr. Barela texted Avenatti again highlighting his dire
12 financial situation. Once again, he asked Avenatti to forward the documents that had been filed
13 against the Settling Party so that he could use it to secure a personal loan. Avenatti did not
14 respond.

15 65. On October 29, 2018, Mr. Barela again reached out to Avenatti. Avenatti wrote
16 back stating that he would call Mr. Barela shortly. Later that same day, because Mr. Barela had
17 not heard back from Avenatti, Mr. Barela sent him another message. Avenatti wrote back in
18 response: "Let's chat in the am. Working on a solution." Mr. Barela responded by again stressing
19 his financial difficulties.

20 66. The following day, on October 30, 2018, Mr. Barela followed up with Avenatti to
21 check in and asked if there was "any word." Avenatti responded in writing, stating that he was
22 "making progress."

23 67. On October 31, 2018, Mr. Barela sent wire information for an additional advance
24 from Defendants. Defendants made an additional and final advance of \$4,000 to Mr. Barela on
25 November 5, 2018.

26 68. In early November 2018, Mr. Barela began searching for a creditor to loan him
27 approximately [REDACTED] in order to operate his business, using the settlement agreement and
28 promise by the Settling Party to pay as collateral. After Avenatti heard of Mr. Barela's search for

1 a loan, Avenatti dissuaded Mr. Barela from seeking a loan from another third party, and instead
2 promised Mr. Barela he would be able to provide a loan of [REDACTED] by January 15, 2019, at an
3 interest rate between 8-10%. Avenatti told Mr. Barela to “hang tight” until the 15th, and “don’t
4 ask again until then.”

5 69. At the time Avenatti told Mr. Barela to “hang tight” until January 15, Mr. Barela
6 did not know that Avenatti was expecting another payment from the Settling Party of [REDACTED]
7 [REDACTED]. On information and belief, Avenatti was planning to loan to Mr. Barela the
8 very settlement funds that were due to be paid to Mr. Barela by Settling Party [REDACTED]
9 [REDACTED], at an interest rate of between 8-10%.

10 70. From April 5, 2018 until November 5, 2018, Avenatti advanced Mr. Barela a total
11 of [REDACTED]. During this same time period, Defendants had received [REDACTED] from the
12 Settling Party and failed to inform Mr. Barela of the amount received or grant him access to the
13 proceeds of the settlement, despite knowing the serious financial difficulties facing Plaintiffs.

14 71. Defendants illegal conduct in taking the [REDACTED] settlement funds was
15 happening at the same time Avenatti was leading a lavish lifestyle. Avenatti was reportedly
16 renting a \$14,000-a-month apartment at the Ten Thousand skyscraper in Los Angeles, California,
17 while also reportedly paying his ex-wife over \$100,000 a month in child and spousal support
18 payments. On information and belief, Avenatti was using Mr. Barela’s settlement funds to fund
19 his lavish lifestyle, pay other financial obligations, and pay salaries and bonuses to [REDACTED] and
20 [REDACTED].

21 72. On information and belief, Defendants were using their legal practice in a Ponzi-
22 like scheme to pay prior creditors and fund their lifestyles with the proceeds from new settlement
23 monies received on behalf of other clients, with the hope that additional monies would later be
24 received by the firm in order to pay the clients whose settlement proceeds had been wrongfully
25 used to pay prior obligations. In this case, Mr. Barela’s settlement funds were used by
26 Defendants to continue to fund their lifestyles and pay creditors, all while falsely promising Mr.
27 Barela that they were working to get the Settling Party to pay the settlement proceeds—proceeds
28 which they had already received.

1 73. In November 2018, Mr. Barela hired Larson O'Brien, LLP to represent him in
2 connection with his efforts to collect the proceeds due to him pursuant to the terms of the
3 settlement agreement. On November 17, 2018, Mr. Barela's new counsel sent a letter to Avenatti
4 asking him to (1) confirm any representations Avenatti made to Mr. Barela that the Settling Party
5 had failed to make the [REDACTED] payment due under the settlement agreement; (2)
6 promptly provide a true and correct copy of the settlement agreement and any fee arrangement
7 between Avenatti and Mr. Barela; and (3) provide an immediate accounting in the event the
8 Settling Party made the [REDACTED] payment provided for in the settlement agreement.
9 (Ex. 10.)

10 74. Later that same day, Avenatti made multiple calls to Mr. Barela. Avenatti sent an
11 email asking Mr. Barela to call Avenatti "ASAP." Additionally, Avenatti sent a text message to
12 Mr. Barela asking "What is this all about? Pls call me ASAP." Avenatti never responded to new
13 counsel's November 17, 2018 letter.

14 75. On November 18, 2018, new counsel for Mr. Barela sent an email to Avenatti
15 requesting that Avenatti stop attempting to communicate directly or indirectly with Mr. Barela
16 and that all future communications be made through Mr. Barela's new counsel. Counsel also
17 requested that Avenatti and all of his current and prior firms preserve all documents and writings
18 relating to this matter. Avenatti did not respond to the email.

19 76. On November 19, 2018, Mr. Barela sent an email to Avenatti requesting that he
20 transfer all paper and electronic files to Larson O'Brien LLP. Mr. Barela also request that
21 Avenatti transfer the balance of any funds paid by Settling Party to Larson O'Brien LLP. (Ex.
22 11.) New counsel provided Avenatti with the wire transfer information. Avenatti did not respond
23 to either communication.

24 77. At the request of Mr. Barela, on November 21, 2018, the Settling Party provided
25 Mr. Barela with a true and correct copy of the fully executed settlement agreement. (Exs. 2, 12.)
26 The true and correct copy of the fully executed settlement agreement [REDACTED]
27 [REDACTED]
28 [REDACTED]. (Ex. 2.)

1 78. The Settling Party subsequently provided proof of the [REDACTED] payment it
2 made on January 5, 2018 to the client trust account specified by Avenatti and confirmed that there
3 were no versions of the settlement agreement exchanged between Defendants and Settling Party
4 that included settlement payment dates in March. (Exs. 2, 6, 7, 12.)

5 **FIRST CAUSE OF ACTION**

6 **Breach of Fiduciary Duty**

7 **(On Behalf of Greg Barela Against All Defendants)**

8 79. Plaintiffs re-allege and incorporate each allegation in Paragraphs 1 through 78 of
9 this Complaint as through fully set forth herein.

10 80. As attorneys and counselors, each of the Defendants owe fiduciary duties of care,
11 loyalty and faith to their clients, including Plaintiff Greg Barela. Defendants' fiduciary duties
12 include an obligation to act prudently in the representation of clients, to discharge their actions in
13 good faith, to act in the best interests of the client, and to put the interests of the client before their
14 own.

15 81. Defendants breached their fiduciary duties by, among other things,
16 misappropriating Plaintiff's settlement funds, making untruthful representations to Plaintiff,
17 misrepresenting documents to Plaintiff, and failing to inform and timely respond to Plaintiff's
18 communications.

19 82. Defendants [REDACTED] and [REDACTED] knew of Avenatti's conduct and assisted him in the
20 misappropriation of client funds, making untruthful representations, and misrepresenting
21 documents. Additionally, as an employee for the Defendants' law firms, [REDACTED] provided
22 Mr. Barela a falsified settlement agreement containing March payment dates. (Ex. 4.)

23 83. Plaintiff has been damaged by the Defendants' intentional breach of their fiduciary
24 duties. Moreover, because Defendants acted maliciously, fraudulently and oppressively within
25 the meaning of those terms as set forth in California Civil Code Section 3294, Plaintiff is entitled
26 to recover punitive damages from Defendants.

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1 **SECOND CAUSE OF ACTION**

2 **Fraud & Deceit – Intentional Misrepresentation**

3 **(On Behalf of Greg Barela Against All Defendants)**

4 84. Plaintiffs re-allege and incorporate each allegation in Paragraphs 1 through 83 of
5 this Complaint as though fully set forth herein.

6 85. On or about December 28, 2017, Avenatti falsely and fraudulently, with the
7 malicious intent to defraud and deceive Plaintiffs, made written and oral representations to
8 Plaintiffs, including but not limited to, providing Mr. Barela on December 28, 2017 with a partial
9 copy of the settlement agreement which contained falsified payment dates of [REDACTED]
10 [REDACTED] for the Settling Party's
11 settlement payments to Mr. Barela, and falsely representing to Mr. Barela that the settlement
12 payments were payable in March of each year, not in [REDACTED] as set forth in the actual settlement
13 agreement. (Ex. 3.)

14 86. As detailed in this Complaint, from December 28, 2017 onward, Defendants
15 falsely and fraudulently, and with malicious intent to defraud and deceive Plaintiffs, made written
16 and oral representations to Plaintiffs that the Settling Party's [REDACTED] settlement
17 payment was never made. Avenatti also misrepresented to Plaintiffs that he was working on
18 filing and pursuing claims against the Settling Party for the alleged nonpayment of the settlement.

19 87. As a further example of Defendants' fraud, in March 2018, [REDACTED]
20 congratulated Mr. Barela on the settlement, and initially led him to believe that the payment had
21 been made. During the course of that conversation, Mr. Barela saw [REDACTED]'s reflection in the
22 glass wall of the conference room and observed [REDACTED] gesturing towards [REDACTED] to stop
23 discussing Mr. Barela's settlement payment. Both [REDACTED] and [REDACTED] thereafter actively
24 deceived Mr. Barela by not disclosing that the settlement payment had been received.

25 88. On June 29, 2018, Mr. Barela reached out via email to [REDACTED], the office
26 manager and paralegal at Defendant Eagan Avenatti, LLP, and asked for a copy of the signed
27 settlement agreement which included the signatures from the Settling Party's representatives.
28 [REDACTED] provided Mr. Barela with a falsified copy of the fully executed settlement agreement

1 which contained March payment dates. (Ex. 4.) At no time did [REDACTED] inform Mr. Barela
2 that the Settling Party had paid the settlement money. Moreover, [REDACTED] assisted Avenatti
3 in advancing funds to Mr. Barela by conducting the wire transfers to Mr. Barela, as directed by
4 Avenatti, from March 2018 through November 2018. [REDACTED] did this despite [REDACTED] knowledge that the
5 settlement money had been paid.

6 89. At all times herein mentioned, Defendants were aware that the above-reference
7 misrepresentations were false and intended that Plaintiffs rely on the above-mentioned
8 misrepresentations. Plaintiffs reasonably relied on the Defendants' false and fraudulent
9 misrepresentations.

10 90. Defendants intentionally designed and implemented the above misrepresentations
11 and fraudulent scheme maliciously, fraudulently and oppressively, with the wrongful intention of
12 injuring Plaintiffs and benefitting Defendants' own personal and individual purposes.

13 91. Accordingly, as a result of Defendants' intentional and fraudulent
14 misrepresentation of material facts and misappropriation of funds, Plaintiffs have suffered harm.
15 Moreover, because Defendants acted maliciously, fraudulently and oppressively within the
16 meaning of those terms as set forth in California Civil Code Section 3294, Plaintiffs are entitled
17 to recover punitive damages from Defendants.

18 **THIRD CAUSE OF ACTION**

19 **Fraud & Deceit – Negligent Misrepresentation**

20 **(On Behalf of Greg Barela Against All Defendants)**

21 92. Plaintiffs re-allege and incorporate each allegation in Paragraphs 1 through 91 of
22 this Complaint as though fully set forth herein.

23 93. Beginning on or about December 28, 2017, and continuing to the present,
24 Defendants falsely and fraudulently made written and oral representations to Plaintiffs regarding
25 the Settling Party's initial settlement payment, including but not limited to, the fact that
26 Defendants provided Mr. Barela a partial copy of the settlement agreement that contained

27 [REDACTED]
28 [REDACTED] for the Settling Party's settlement payments to Mr. Barela. (Ex. 3.) Defendants

1 represented to Mr. Barela that the settlement payments [REDACTED], not in
2 [REDACTED] as memorialized in the final agreement.

3 94. As detailed in this Complaint, from December 28, 2017 onward, Defendants
4 falsely and fraudulently, and with malicious intent to defraud and deceive Plaintiffs, made written
5 and oral representations to Plaintiffs that the Settling Party's [REDACTED] settlement
6 payment was never made. Avenatti also misrepresented to Plaintiffs that he was working on
7 filing and pursuing claims against the Settling Party for the alleged nonpayment of the settlement.

8 95. As a further example of Defendants' fraud, in March 2018, [REDACTED]
9 congratulated Mr. Barela on the settlement, and initially led him to believe that the payment had
10 been made. During the course of that conversation, Mr. Barela saw [REDACTED]'s reflection in the
11 glass wall of the conference room and observed [REDACTED] gesturing towards [REDACTED] to stop
12 discussing Mr. Barela's settlement payment. Both Mr. [REDACTED] and [REDACTED] thereafter actively
13 deceived Mr. Barela by not disclosing that the settlement payment had been received.

14 96. On June 29, 2018, Mr. Barela reached out via email to [REDACTED], the [REDACTED]
15 [REDACTED] at Defendant Eagan Avenatti, LLP, and asked for a copy of the signed
16 settlement agreement which included the signatures from the Settling Party's representatives.
17 [REDACTED] provided Mr. Barela with a falsified copy of the fully executed settlement agreement
18 which contained March payment dates. At no time did [REDACTED] inform Mr. Barela that the
19 Settling Party had paid the settlement money. Moreover, [REDACTED] assisted Avenatti in
20 advancing funds to Mr. Barela by conducting the wire transfers to Mr. Barela, as directed by
21 Avenatti, from March 2018 through November 2018. [REDACTED] did this despite [REDACTED] knowledge that the
22 settlement money had been paid.

23 97. At all times herein mentioned, Defendants were aware that the above-reference
24 representations were false and intended that Plaintiffs rely on the above-mentioned
25 misrepresentations. As a result of the above-mentioned misrepresentations, Plaintiffs have
26 suffered harm.

27 ///

28 ///

1 109. However, on information and belief, Defendants did not intend to perform this
2 promise when it was made. Instead, Defendants intended to use any such money for their own
3 personal use and gain.

4 110. This false promise regarding payment to Mr. Barela for any favorable judgment
5 was material to Mr. Barela. Moreover, Mr. Barela relied on this promise in engaging Defendants
6 to represent him in the dispute with the Settling Party.

7 111. Defendants have failed to perform this promise and instead have continually
8 concealed the [REDACTED] payment from the Settling Party since it was received by them in
9 January 2018. Defendants have failed to make Mr. Barela's portion of the settlement payment
10 funds available to him.

11 112. Accordingly, as a result of Defendants' intentional and fraudulent
12 misrepresentations and false promises, failure to disclose certain facts, and active concealment,
13 Plaintiffs have been damaged and suffered injury. Moreover, because Defendants acted
14 maliciously, fraudulently and oppressively within the meaning of those terms as set forth in
15 California Civil Code Section 3293, Plaintiffs are entitled to recover punitive damages from
16 Defendants.

17 **SIXTH CAUSE OF ACTION**

18 **Conversion**

19 **(On Behalf of Plaintiffs Against All Defendants)**

20 113. Plaintiffs re-allege and incorporate each allegation in Paragraphs 1 through 112 of
21 this Complaint as though fully set forth herein.

22 114. Pursuant to the terms of the settlement agreement, Plaintiffs were to be paid [REDACTED]
23 [REDACTED] from the Settling Party by [REDACTED]. (Ex. 2.)

24 115. Defendants substantially interfered with Plaintiffs' property by knowingly or
25 intentionally preventing Plaintiffs from having access to their portion of the [REDACTED] that was
26 transferred to Defendants' client trust account on January 5, 2018. Defendants knowingly failed
27 to inform Mr. Barela of his settlement payment and instead took steps to actively conceal that the
28 money had been received. Moreover, on numerous occasions, Defendants misrepresented that

1 settlement payment had not been received. Plaintiffs have informed Defendants numerous times
2 of their need for their portion of the settlement proceeds, yet Defendants have continually refused
3 to inform Defendants of their receipt of the money or make the settlement funds available.

4 116. Defendants [REDACTED] and [REDACTED] knew of Avenatti's conduct and assisted him in the
5 misappropriation of client funds. Additionally, [REDACTED] provided Mr. Barela the settlement
6 agreement with the March payment dates as part of Defendants' scheme to mislead Mr. Barela.
7 Their actions were made as a part of a scheme to defraud Plaintiffs.

8 117. At all times herein mentioned, Plaintiffs were and still are entitled to the
9 possession of their portion of the [REDACTED] that was transferred from the Settling Party to
10 Plaintiffs' client trust fund at the direction of Avenatti on January 5, 2018. Defendants
11 wrongfully and substantially interfered with Plaintiffs' right to their portion of the [REDACTED] of
12 settlement money. Defendants' wrongful actions proximately resulted in defendants converting
13 Plaintiffs' money for their own use.

14 118. As a natural, reasonable, and proximate result of Defendants' wrongful conversion
15 of Plaintiffs' property, Plaintiffs have been damaged and suffered harm for which Defendants'
16 conduct was a substantial factor.

17 119. Defendants, and each of their conduct described in this Complaint, intended to
18 cause injury to Plaintiffs with a willful and conscious disregard of Plaintiffs' rights. Moreover,
19 because Defendants acted maliciously, fraudulently and oppressively within the meaning of those
20 terms as set forth in California Civil Code Section 3293, Plaintiffs are entitled to recover punitive
21 damages from Defendants.

22 **SEVENTH CAUSE OF ACTION**

23 **Breach of Contract**

24 **(On Behalf of Greg Barela Against Defendants Michael Avenatti,
25 Eagan Avenatti, LLP, and Avenatti & Associates)**

26 120. Plaintiffs re-allege and incorporate each allegation in Paragraphs 1 through 119 of
27 this Complaint as though fully set forth herein.

28

1 unlawful business practices during the pendency of this action, and for a temporary restraining
2 order, a preliminary injunction, and a permanent injunction, all enjoining defendants from
3 engaging in the unlawful business practices described herein.

4 **NINTH CAUSE OF ACTION**

5 **Professional Negligence**

6 **(On Behalf of Greg Barela Against Michael Avenatti,**
7 **Eagan Avenatti, LLP, and Avenatti & Associates)**

8 128. Plaintiffs re-allege and incorporate each allegation in Paragraphs 1 through 127 of
9 this Complaint as though fully set forth herein.

10 129. Defendants have failed to provide competent representation on behalf of Mr.
11 Barela. As Mr. Barela's attorney representatives in his dispute with the Settling Party,
12 Defendants owed a duty to Mr. Barela to use such skill and prudence as members of the
13 profession commonly possess.

14 130. Throughout the course of their dealings with Mr. Barela, Defendants held
15 themselves out as skilled attorneys, having superior knowledge regarding their ability to
16 successfully recover payment from the Settling Party. Defendants intended that Plaintiff rely, and
17 Plaintiff did rely, on Defendants alleged expertise and advice in connection with the
18 representation of Mr. Barela.

19 131. Defendants, in the course of their representation of Mr. Barela, breached their
20 duty, among other things, by misappropriating client funds, making numerous misrepresentations
21 regarding the status of the funds, making numerous misrepresentations to Mr. Barela regarding
22 the date of the payment under the terms of the settlement agreement, failing to timely respond to
23 Mr. Barela, and misrepresenting to Mr. Barela the status of the settlement payment.

24 132. On information and belief, Defendants Avenatti and Eagan Avenatti failed to
25 adequately represent Plaintiff when negotiating the terms of the settlement agreement with the
26 Settling Party. Plaintiff believes and alleges that the settlement terms should have been of a
27 significantly greater value, but in order to obtain easy access to and misappropriate Plaintiff's
28 settlement funds, Defendants Avenatti and Eagan Avenatti persuaded Mr. Barela to settle for a

1 lesser amount. On information and belief, Defendants Avenatti and Eagan Avenatti did not
2 represent Plaintiff with the skill and prudence as members of the profession commonly possess.

3 133. Plaintiff is informed and believes, and on that basis alleges, that Defendants
4 Avenatti and Eagan Avenatti failed to use the skill and care that a reasonably careful attorney
5 would have used in similar circumstances.

6 134. As a direct and proximate cause of Defendants Avenatti and Eagan Avenatti's
7 negligence, Plaintiff has suffered damages.

8 **TENTH CAUSE OF ACTION**

9 **Accounting**

10 **(On Behalf of Plaintiffs Against All Defendants)**

11 135. Plaintiffs re-allege and incorporate each allegation in Paragraphs 1 through 134 of
12 this Complaint as though fully set forth herein.

13 136. As attorneys, Defendants represented Mr. Barela and owed him a fiduciary duty.

14 137. As described above, Mr. Barela is entitled to money that was received by
15 Defendants on January 5, 2018 relating to the Settling Party's payment under the terms of the
16 settlement agreement. Mr. Barela has not received from or been made aware of the monies
17 received by Defendants. However, the Settling Party has provided Mr. Barela with confirmation
18 that on January 5, 2018, the [REDACTED] was transferred via wire to
19 Defendants' client trust account as specified by Avenatti on January 2, 2018.

20 138. Accordingly, a balance due from the Defendants to the Plaintiffs can only be
21 ascertained by an accounting.

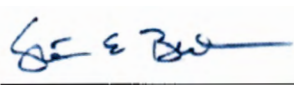
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment and relief as follows:

1. For compensatory damages of an amount to be proven at trial, but exceeding [REDACTED].
2. For general damages according to be proven at trial;
3. For actual and/or special damages to be proven at trial;
4. For restitution of money lost;
5. For punitive and exemplary damages against Defendants in an amount to be determined at trial;
6. For costs of suit, reasonable attorneys' fees as allowed by law, costs, expenses to Plaintiffs, and interest in an amount to be proven at trial;
7. For pre-judgment and post-judgment interest;
8. For a temporary restraining order, a preliminary injunction, and a permanent injunction, all enjoining defendants from engaging in the unlawful business practices described herein;
9. Such other and further relief as the Arbitrator shall find just and proper.

Dated: January 14, 2019

LARSON O'BRIEN LLP

By: 

Stephen G. Larson
Steven E. Bledsoe
R.C. Harlan

Attorneys for Plaintiffs
GREG BARELA and TALITHA BARELA