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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY SAN DIEGO – CENTRAL DISTRICT**

12 GELACIO ESPINOZA,

13 Plaintiff,

14 v.

15 Razuki Investments, LLC; SH Westpoint
16 Group, LLC; Avail Shipping Inc.; IWP
17 Capital, LLC; SH Westpoint Investments
18 Group LLC; Cavarro Capital LLC; Salam
19 Betty; Salam Razuki; Sarah Razuki; Haith
20 Razuki; Jose L Soriano; ERIC
21 RAUTERKUS; Mario A Garcia; Alejandra
22 Garcia; Carlos Vargas; LEMON GROVE
23 MARKET, INC.; SAN DIEGO PRIVATE
24 INVESTMENTS, LLC; STONECREST
25 PLAZA, LLC; WELLS FARGO BANK,
26 NATIONAL ASSOCIATION; RUSHMORE
27 LOAN MANAGEMENT SERVICES LLC;
28 and DOES 1-25, inclusive,

Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
12/01/2020 at 07:00:58 AM
Clerk of the Superior Court
By Mallori Dixon, Deputy Clerk

– **CASE NO:** 37-2020-00043536-CU-OR-CTL
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COMPLAINT FOR:

- 1) **INTENTIONAL MISREPRESENTATION**
- 2) **VIOLATIONS OF CIVIL CODE §2945, ET SEQ.**
- 3) **CANCELLATION OF INSTRUMENTS**
- 4) **QUIET TITLE**

1 **COMES NOW**, plaintiff Gelacio Espinoza (“PLAINTIFF”), by and through his counsel, alleges
2 as follows:

- 3 1. PLAINTIFF is, and at all relevant times mentioned herein was a resident of San Diego
4 County, California, and is the rightful and lawful owner of real property commonly known as 3215
5 Glancy Drive, San Diego, CA 92173 (“Subject Property”), and is its owner’s personal residence.
- 6 2. Defendants Razuki Investments, LLC; SH Westpoint Group, LLC; SH Westpoint Investments
7 Group LLC; Salam Betty; Salam Razuki; Sarah Razuki; Haith Razuki; LEMON GROVE
8 MARKET, INC.; SAN DIEGO PRIVATE INVESTMENTS, LLC; and STONECREST
9 PLAZA, LLC (“Razuki Defendants”) are limited liability companies and/or individuals that
10 regularly transaction business in San Diego County, California and/or having claim to an
11 interest of the Subject Property.
- 12 3. Defendants Avail Shipping Inc.; IWP Capital, LLC; Cavarro Capital LLC; Jose L Soriano; ERIC
13 RAUTERKUS; Mario A Garcia; Alejandra Garcia; and Carlos Vargas; limited liability
14 companies and/or individuals having claim to an interest of the Subject Property.
- 15 4. Defendant WELLS FARGO BANK, NATIONAL ASSOCIATION is a corporation having
16 claim to an interest of the Subject Property.
- 17 5. Defendant RUSHMORE LOAN MANAGEMENT SERVICES LLC is a limited liability
18 company having claim to an interest of the Subject Property.
- 19 6. In or around May 2017, Plaintiff was suffering from financial difficulties and was unable to
20 meet his monthly mortgage obligation with Defendant WELLS FARGO BANK, NATIONAL
21 ASSOCIATION.
- 22 7. Responding to an advertisement for real estate services, Plaintiff met the Razuki Defendants
23 whom told Plaintiff that for \$46,810 they could assist Plaintiff in obtaining foreclosure relief
24 and/or a mortgage loan modification.
- 25 8. Plaintiff paid the Razuki Defendants \$46,810 and signed various documents the Razuki
26 Defendants indicated were necessary to obtain foreclosure relief and/or a mortgage loan
27 modification.
- 28 9. In May 2019, Plaintiff was served with an Unlawful Detainer evicting him from the Subject
Property. In September 2019, Plaintiff was evicted from the Subject Property.

- 1 10. Plaintiff has since discovered what happened. In or around May 2017, when Plaintiff “signed
2 various documents the Razuki Defendants indicated were necessary to obtain foreclosure relief
3 and/or a mortgage loan modification” the Razuki Defendants actually had Plaintiff sign a grant
4 deed transferring the property from Plaintiff’s ownership to ownership by the Razuki
5 Defendants.
- 6 11. The Razuki Defendants then obtained a loan for \$110,000 from IWP Capital, LLC secured
7 against the Subject property. IWP Capital, LLC knew or should have known that Razuki
8 Defendants were not valid owners of the property.
- 9 12. Avail Shipping Inc. also had various instruments recorded against the subject property. Avail
10 Shipping Inc. knew or should have known that Razuki Defendants were not valid owners of the
11 property.
- 12 13. Cavarro Capital LLC; Salam Betty; Jose L Soriano; ERIC RAUTERKUS; Mario A Garcia;
13 Alejandra Garcia; and Carlos Vargas had various instruments recorded against the subject
14 property. These parties knew or should have known that Razuki Defendants were not valid
15 owners of the property.

16 **FIRST CAUSE OF ACTION**
17 **INTENTIONAL MISREPRESENTATION**
18 **(AGAINST RAZUKI DEFENDANTS)**

- 19 14. Plaintiff incorporates allegations 1 through 12 by reference.
- 20 **15. RAZUKI DEFENDANTS** made multiple false representations to PLAINTIFF that for a fee of
21 \$46,810, they would assist PLAINTIFF to avoid foreclosure of the Subject Property and obtain
22 a loan modification. RAZUKI DEFENDANTS concealed the fact that no such upfront fees
23 could be charged to PLAINTIFF, and in doing so, RAZUKI DEFENDANTS violated Civ.Code
24 §2944.7(a)(1).
- 25 **16. RAZUKI DEFENDANTS** promised PLAINTIFF if he paid \$46,810 and signed various
26 documents he would obtain a loan modification.
- 27 **17. RAZUKI DEFENDANTS** accepted the \$46,810 but never performed any work regarding a loan
28 modification. In fact, RAZUKI DEFENDANTS actually had Plaintiff sign a grant deed
transferring the property from Plaintiff’s ownership to ownership by the Razuki Defendants.

1 Then, the Razuki Defendants then obtained a loan for \$110,000 from IWP Capital, LLC secured
2 against the Subject property.

3 18. As a result of the fraud by RAZUKI DEFENDANTS, Plaintiff has been evicted from his home,
4 incurred astronomical attorney's fees, and suffered severe emotional distress.

5 19. Plaintiff seeks damages in an amount to be proven at trial but in no case less than \$1,000,000.
6 Plaintiff also seeks punitive and exemplary damages.

7 **SECOND CAUSE OF ACTION**
8 **VIOLATIONS OF CIVIL CODE §2945**
9 **(AGAINST RAZUKI DEFENDANTS)**

10 20. Plaintiff incorporates allegations 1 through 18 by reference.

11 21. Civil Code 2945 et seq makes it illegal for a foreclosure consultant to "(a) Claim, demand,
12 charge, collect, or receive any compensation until after the foreclosure consultant has fully
13 performed each and every service the foreclosure consultant contracted to perform or
14 represented that he or she would perform. (b) Claim, demand, charge, collect, or receive any
15 fee, interest, or any other compensation for any reason which exceeds 10 percent per annum of
16 the amount of any loan which the foreclosure consultant may make to the owner. (c) Take any
17 wage assignment, any lien of any type on real or personal property, or other security to secure
18 the payment of compensation. That security shall be void and unenforceable. (d) Receive any
19 consideration from any third party in connection with services rendered to an owner unless that
20 consideration is fully disclosed to the owner. (e) Acquire any interest in a residence in
21 foreclosure from an owner with whom the foreclosure consultant has contracted. Any interest
22 acquired in violation of this subdivision shall be voidable, provided that nothing herein shall
23 affect or defeat the title of a bona fide purchaser or encumbrancer for value and without notice
24 of a violation of this article. Knowledge that the property was "residential real property in
25 foreclosure," does not constitute notice of a violation of this article. This subdivision may not
26 be deemed to abrogate any duty of inquiry which exists as to rights or interests of persons in
27 possession of residential real property in foreclosure. (f) Take any power of attorney from an
28 owner for any purpose. (g) Induce or attempt to induce any owner to enter into a contract which
does not comply in all respects with Sections 2945.2 and 2945.3. (h) Enter into an agreement at
any time to assist the owner in arranging, or arrange for the owner, the release of surplus funds

1 after the trustee's sale is conducted, whether the agreement involves direct payment, assignment,
2 deed, power of attorney, assignment of claim from an owner to the foreclosure consultant or any
3 person designated by the foreclosure consultant or any person designated by the foreclosure
4 consultant, or any other compensation.” See Civil Code 2945.4.

5 22. Furthermore, the statute provides “[a]n owner may bring an action against a foreclosure
6 consultant for any violation of this chapter. Judgment shall be entered for actual damages,
7 reasonable attorneys' fees and costs, and appropriate equitable relief. The court also may, in its
8 discretion, award exemplary damages and shall award exemplary damages equivalent to at least
9 three times the compensation received by the foreclosure consultant in violation of subdivision
10 (a), (b), or (d) of Section 2945.4, and three times the owner's actual damages for any violation
11 of subdivision (c), (e), or (g) of Section 2945.4, in addition to any other award of actual or
exemplary damages. See Civil Code 2945.6.

12 23. Razuki Defendants violated numerous provisions of Civil Code 2945 et seq when they: 1) had
13 Plaintiff provide a power of attorney in favor of Defendants concerning the subject property; 2)
14 took payments for services not rendered for foreclosure prevention services concerning the
15 subject property; 3) received an interest in the subject property via transfer deed.

16 24. Plaintiff seeks actual damages, reasonable attorneys' fees and costs, the amount of which will
17 be proven at trial but in no case less than \$1,000,000.

18 25. In addition, Plaintiff seeks exemplary damages equivalent to at least three times the
19 compensation received by the foreclosure consultant in violation of subdivision (a), (b), or (d)
20 of Section 2945.4, and three times the owner's actual damages for any violation of subdivision
21 (c), (e), or (g) of Section 2945.4.

22 **THIRD CAUSE OF ACTION**
23 **CANCELLATION OF INSTRUMENTS**
24 **(AGAINST ALL DEFENDANTS)**

25 26. Plaintiff incorporates allegations 1 through 24 by reference.

26 27. To prevail on a claim to cancel an instrument, a plaintiff must prove (1) the instrument is void
27 or voidable due to, for example, fraud; and (2) there is a reasonable apprehension of serious
28 injury including pecuniary loss or the prejudicial alteration of one’s position.

- 1 28. In this case, Plaintiff seeks to void the following instruments recorded against the Subject
2 Property: Document # 2017-0215687 BK-PG; Document # 2017-0364104 BK-PG; Document #
3 2018-0192009 BK-PG; 2018-0198661 BK-PG; Document # 2019-0052400 BK-PG; Document
4 # 2019-0140245 BK-PG; Document # 2019-0204502 BK-PG; Document # 2019-0391444 BK-
5 PG; and Document # 2019-0561751 BK-PG.
- 6 29. All of these instruments are void and were recorded in connection with the fraud undertaken by
7 Razuki Defendants.
- 8 30. The Razuki Defendants then obtained a loan for \$110,000 from IWP Capital, LLC secured
9 against the Subject property. IWP Capital, LLC knew or should have known that Razuki
10 Defendants were not valid owners of the property.
- 11 31. Avail Shipping Inc. also had various instruments recorded against the subject property. Avail
12 Shipping Inc. knew or should have known that Razuki Defendants were not valid owners of the
13 property.
- 14 32. Cavarro Capital LLC; Salam Betty; Jose L Soriano; ERIC RAUTERKUS; Mario A Garcia;
15 Alejandra Garcia; and Carlos Vargas had various instruments recorded against the subject
16 property. These parties knew or should have known that Razuki Defendants were not valid
17 owners of the property.
- 18 33. Plaintiff requests the Court issue a judgment a to cancelling and declaring the following
19 instruments recorded against the Subject Property void: Document # 2017-0215687 BK-PG;
20 Document # 2017-0364104 BK-PG; Document # 2018-0192009 BK-PG; 2018-0198661 BK-
21 PG; Document # 2019-0052400 BK-PG; Document # 2019-0140245 BK-PG; Document #
22 2019-0204502 BK-PG; Document # 2019-0391444 BK-PG; and Document # 2019-0561751
23 BK-PG.

24 **FOURTH CAUSE OF ACTION**
25 **QUIET TITLE**
26 **(AGAINST ALL DEFENDANTS)**

- 27 34. Plaintiff incorporates allegations 1 through 33 by reference.
- 28 35. Due to the fraud undertaken by Razuki Defendants, there is cloudy title to the subject property.

36. Plaintiff seeks to quiet title making him the owner of the Subject Property, subject to the First Lien Deed of Trust recorded against the Subject Property by Defendant WELLS FARGO BANK, NATIONAL ASSOCIATION.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment in its favor and against DEFENDANTS and each of them as follows:

1. For compensatory, special and general damages in an amount subject to proof at trial but in no case less than \$1,000,000 against RAZUKI DEFENDANTS Razuki Investments, LLC; SH Westpoint Group, LLC; SH Westpoint Investments Group LLC; Salam Betty; Salam Razuki; Sarah Razuki; and Haith Razuki;
2. For judgment cancelling the void or voidable written instruments recorded against the Subject Property: Document # 2017-0215687 BK-PG; Document # 2017-0364104 BK-PG; Document # 2018-0192009 BK-PG; 2018-0198661 BK-PG; Document # 2019-0052400 BK-PG; Document # 2019-0140245 BK-PG; Document # 2019-0204502 BK-PG; Document # 2019-0391444 BK-PG; and Document # 2019-0561751 BK-PG;
4. For a judgment quieting title in favor of Plaintiff as against all adverse parties except Defendant WELLS FARGO BANK, NATIONAL ASSOCIATION;
5. For reasonable costs of suit and attorney's fees;
6. For punitive and exemplary damages; and
7. For any other relief as it may deem just and proper.

DATED: November 30, 2020

CDLG, PC



BY:

TONY CARA, ESQ
Attorney for Plaintiff
GELACIO ESPINOZA