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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**03/02/2021** at 11:23:00 AM  
Clerk of the Superior Court  
By Lee McAlister, Deputy Clerk

Attorneys for Defendants Salam Razuki;  
RM Property Holdings, LLC;  
Sunrise Property Investments, LLC; and  
Super 5 Consulting Group, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO - CENTRAL

CHRIS HAKIM,

Plaintiff,

vs.

NINUS MALAN, et. al.,

Defendants.

Case No.: 37-2020-00045859-CU-BC-CTL

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
DEMURRER TO COMPLAINT**

DATE: July 2, 2021  
TIME: 11:00 a.m.  
DEPT: 69  
JUDGE: Hon. Katherine A. Bacal

Defendants Salam Razuki; RM Property Holdings, LLC; Sunrise Property Investments, LLC; and Super 5 Consulting Group, LLC (erroneously sued as Super 5 Highway Consulting Group, LLC) submit their Memorandum In Support Of The Demurrer To Complaint as follows:

## I. Introduction

An action in this Court has been ongoing since 2018 involving the parties included in this action, the same properties, and the same subject matter. *See, Salam Razuki v. Ninus Malan, Chris Hakim, et. al.*, San Diego Superior Court Case No.37-2018-00034229-CU-BC-CTL (the “Other Hakim Action”). A copy of the Amended Complaint in the Other Hakim Action is attached to the accompanying Request For Judicial Notice as Exhibit 1. The Other Hakim Action also includes the appointment of a receiver over the properties Hakim includes in this action.

Plaintiff in this action Chris Hakim (“Hakim”) filed an Answer in the Other Hakim Action with no cross-complaint. A copy of Hakim’s Answer is attached to the accompanying Request For Judicial Notice as Exhibit 2. Hakim’s claims in this action are barred by his failure to assert them in the Other Hakim Action by mandatory cross-complaint, and as the Other Hakim Action is still pending and set for trial in January, 2022.

The Complaint in this action is also subject to demurer as the allegations against Defendant RM Property Holdings, LLC (“RM”) are conclusions of law, and do not plead a claim for alter ego; The cause of action against Defendant Salam Razuki (“Razuki”) fails to allege a claim for breach of fiduciary duty; The claim for declaratory relief is improperly pled as it fails to plead the necessary contractual relationship with these demurring parties and an actual, present controversy regarding these demurring parties; and The claim for quiet title fails to comply with the requirements of CCP section 761.020 and fails to plead facts to even allege a real property interest by Hakim.

The first and third causes of action expressly state that they are not directed at these demurring defendants.

The demurrer should be granted without leave to amend.

## II. Legal Standard

Objections to a pleading may be taken by demurrer if defects appear on the face of the pleading or from any matter of which the court is required to or may take judicial notice. *See*, CCP section 430.30(a).

Code of Civil Procedure section 430.10 states in pertinent part:

The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in Section 430.30, to the pleading on the grounds:

• • •

(e) The pleading does not state facts sufficient to constitute a cause of action.

(f) The pleading is uncertain. As used in this subdivision, “uncertain” includes ambiguous and unintelligible.

In considering a demurrer, the Court may look to not only the complaint itself but also to “any matter of which the court is required to or may take judicial notice . . . .” Code Civ. Proc. § 430.30(a). Further, the court treats “all material facts properly pled as admitted, but not contentions, deductions, or conclusions of law or fact.” *Blank v. Kirwan* (1985) 39 Cal.3d 311, 318. “[A] trial court does not abuse its discretion by sustaining a demurrer without leave to amend if it appears from the complaint that, under applicable substantive law there is no reasonable possibility that an amendment could cure the complaint’s defect.” *Heckendorn v. City of San Marino* (1986) 42 Cal.3d 481, 486.

A general demurrer lies when “the pleading does not state facts sufficient to constitute a cause of action.” Code Civ. Proc., §§ 430.30(a) and 430.10(e). Bare allegations that a defendant “breached” or “violated” its contract, for example are conclusory and insufficient to survive general demurrer. *Wise v. Southern Pacific* (1963) 223 Cal.App.2d 50, 60. Equally conclusory and defective are allegations that an act was “wrongful,” “illegal,” “without authority,” “unlawful,” “unjust,” “arbitrary,” or “fraudulent,” which without additional allegations raise no triable issue. *Id.* “Doubt in the complaint may be resolved against plaintiff and facts not alleged are presumed not to exist.” *Kramer v. Intuit Inc.* (2004) 121 Cal.App.4th 574, 578.

1 Finally, where, as here, the basis for sustaining a demurrer is legal and cannot be  
2 overcome by amendment, the court should sustain the demurrer without leave to amend. *Kilgore*  
3 *v. Younger* (1982) 30 Cal.3d 770, 781.

### 4 5 **III. There Is Ongoing Action Which Bars This Action**

6 The Other Hakim Action has been ongoing since 2018 and involves the parties included  
7 in this action, the same properties, and the same subject matter. *See, Razuki v. Malan, et. al.*, San  
8 Diego Superior Court Case No.37-2018-00034229-CU-BC-CTL (A copy of the Complaint in the  
9 Other Hakim Action is attached to the accompanying Request For Judicial Notice as Exhibit 1.

10 Plaintiff in this action Chris Hakim (“Hakim”) filed an Answer in the Other Hakim  
11 Action with no cross-complaint. A copy of Hakim’s Answer is attached to the accompanying  
12 Request For Judicial Notice as Exhibit 2. Hakim’s claims in this action are barred by his failure  
13 to assert them in the Other Hakim Action by mandatory cross-complaint. *See*, CCP section  
14 426.30(a)(“Except as otherwise provided by statute, if a party against whom a complaint has  
15 been filed and served fails to allege in a cross-complaint any related cause of action which (at the  
16 time of serving his answer to the complaint) he has against the plaintiff, such party may not  
17 thereafter in any other action assert against the plaintiff the related cause of action not pleaded.”).

18 Hakim has actively litigated the Other Hakim Action, including an appeal regarding the  
19 appointment of a receiver over properties included in this action. On February 24, 2021,  
20 Hakim’s appeal was denied and the receiver orders affirmed.

21 The Other Hakim Action is still pending and set for trial in January, 2022.

### 22 23 **IV. The Complaint Fails To State A Claim Against Razuki For Breach Of 24 Fiduciary Duty (Second Cause Of Action)**

25 The elements of a cause of action for breach of fiduciary duty are the existence of a  
26 fiduciary relationship, its breach, and damage proximately caused by that breach. *See, Hasso v.*  
27 *Hapke* (2014) 227 Cal. App. 4<sup>th</sup> 107, 140.

1 The Complaint fails to allege the existence of a fiduciary relationship between Hakim and  
2 Razuki. The Complaint denies such a relationship. *See*, Complaint at paragraph 38.

3 The Complaint also fails to allege any duty on behalf of Razuki to Hakim. Hakim does  
4 not allege that he placed trust and confidence in Razuki and/or justifiably relied upon Razuki as a  
5 fiduciary as Hakim alleges with regard to Defendant Ninus Malan. *See*, Complaint at paragraph  
6 35.

#### 7 8 **V. The Complaint Fails To State A Claim For Alter Ego**

9 Hakim alleges RM is the alter ego of every defendant in the case (*See*, Complaint at  
10 paragraph 12), and pleads legal conclusions, not facts, regarding the alter ego allegation (*See*,  
11 Complaint at paragraphs 11-12).

12 “[W]hen the court is asked to take some action upon an alter ego theory at the pleading  
13 stage, more is required than was pleaded here.” *Leek v. Cooper* (2011) 194 Cal.App.4<sup>th</sup> 399,  
14 414. “To recover on an alter ego theory, a plaintiff need not use the words ‘alter ego,’ but must  
15 allege sufficient facts to show a unity of interest and ownership, and an unjust result if the  
16 corporation is treated as the sole actor.” *Id.* at 415 quoting *Vasey v. California Dance Co.* (1977)  
17 70 Cal.App.3d 742, 749. “An allegation that a person owns all of the corporate stock and makes  
18 all of the management decisions is insufficient to cause the court to disregard the corporate  
19 entity.” *Id.* at 415 quoting *Meadows v. Emmett & Chandler* (1950) 99 Cal.App.2d 496, 499.

#### 20 21 **VI. The Complaint Fails To State A Claim For Declaratory Relief** 22 **(Fourth Cause Of Action)**

23 Declaratory relief has two elements a Plaintiff must satisfy: 1) a proper subject of  
24 declaratory relief; 2) an actual controversy involving justiciable questions relating to the  
25 Plaintiff’s rights or obligations. *See, Jolley v. Chase Home Finance, LLC* (2013) 213 Cal. App.  
26 4<sup>th</sup> 872, 909.

1 Hakim has not satisfied either pleading requirement with regarding to these demurring  
2 Defendants. Hakim has not asserted any contractual relationship with them. These demurring  
3 Defendants should not be subject to a lawsuit because Hakim's alleged contract with Malan  
4 might someday allegedly involve them. "The fundamental basis for declaratory relief is the  
5 existence of an *actual, present controversy* over a proper subject." *Kronemyer v. Internet* (2007)  
6 150 Cal.App.4th 941, 947 (Emphasis in the original). "The court may refuse to exercise the  
7 power granted by this chapter in any case where its declaration or determination is not necessary  
8 or proper at the time under all the circumstances." CCP § 1061.

9 **VII. The Complaint Fails To Allege A Claim For Quiet Title**  
10 **(Fifth Cause Of Action)**

11 Code of Civil Procedure section 761.020 states:

12 The complaint shall be verified and shall include all of the following:

13 (a) A description of the property that is the subject of the action. In the  
14 case of tangible personal property, the description shall include its usual location.  
15 In the case of real property, the description shall include both its legal description  
16 and its street address or common designation, if any.

17 (b) The title of the plaintiff as to which a determination under this chapter  
18 is sought and the basis of the title. If the title is based upon adverse possession,  
19 the complaint shall allege the specific facts constituting the adverse possession.

20 (c) The adverse claims to the title of the plaintiff against which a  
21 determination is sought.

22 (d) The date as of which the determination is sought. If the determination  
23 is sought as of a date other than the date the complaint is filed, the complaint shall  
24 include a statement of the reasons why a determination as of that date is sought.

25 (e) A prayer for the determination of the title of the plaintiff against the  
26 adverse claims.

27 The Complaint does not comply with the Code of Civil Procedure section 761.020  
28 pleading requirements for a quiet title action. The Complaint is not verified; it does not contain  
the legal description of the subject property; it does not include the title of the plaintiff as to  
which the determination of quiet title is sought and the basis of the title; it does not include the  
adverse claims to title against which a determination is sought; it does not include the date as of  
which the quiet title determination is sought; and it does not include a prayer against adverse title  
claims since it does not include the adverse claims.

1 Hakim has also failed to file a lis pendens as required by CCP section 761.010(b) with a  
2 quiet title claim, and file a copy with this Court. Hakim has not done so because he has no real  
3 property claim.

4  
5 **VIII. Conclusion**

6 Defendants Salam Razuki; RM Property Holdings, LLC; Sunrise Property Investments,  
7 LLC; and Super 5 Consulting Group, LLC request the Court sustain the demurrer and dismiss the  
8 Complaint without leave to amend.

9 Dated: March 1, 2021

LAW OFFICES DOUGLAS JAFFE

10 BY: /S/ DOUGLAS JAFFE  
11 Douglas Jaffe, Esq.  
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