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6 In Pro Per

FILED
Clerk of the Superior Court

APR 19 2021

By: _____, Deputy

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO-CENTRAL DIVISION**

10 CHRIS HAKIM, an individual,

11 Plaintiff,

12 vs.

13 NINUS MALAN, an individual; SALAM
14 RAZUKI, an individual; RM PROPERTIES,
15 LLC, a California limited liability company;
16 SAN DIEGO UNITED HOLDINGS GROUP,
17 LLC, a California limited liability company;
18 BALBOA AVE COOPERATIVE, a California
19 nonprofit mutual benefit corporation; SUNRISE
20 PROPERTY INVESTMENTS, LLC, a California
21 limited liability company; SUPER 5 HIGHWAY
22 CONSULTING GROUP, LLC; a California
23 limited liability company; ALL PERSONS OR
24 ENTITIES UNKNOWN, CLAIMING ANY
LEGAL OR EQUITABLE RIGHT, TITLE,
ESTATE, LIEN OR INTEREST IN THE
PROPERTY DESCRIBED IN THE
COMPLAINT ADVERSE TO PLAINTIFF'S
TITLE, OR ANY CLOUD UPON PLAINTIFF'S
TITLE THERETO, and; DOES 1 THROUGH 50,

Defendants.

) Case No. 37-2020-00045859-CU-BC-CTL
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) **IMAGED FILE**
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) MEMORANDUM OF POINTS AND
) AUTHORITIES IN SUPPORT OF
) DEMURRER BY DEFENDANT NINUS
) MALAN TO COMPLAINT BY
) PLAINTIFF CHRIS HAKIM

) [Code of Civil Procedure §§430.10(e),
) 430.10(f), 761.020 and 761.020(a)]

) Date: May 28, 2021
) Time: 11:00 a.m.
) Judge: Hon. Katherine Bacal
) Dept.: C-69

) Date Filed: December 14, 2020
) Trial Date: Not Set

25 Defendant Ninus Malan ("Malan" or "Responding Party") respectfully submits this
26 Memorandum of Points and Authorities in Support of his Demurrer ("Demurrer") to the
27 Complaint filed by Chris Hakim ("Plaintiff" or "Hakim" on December 14, 2020 ("Complaint")
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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
DEMURRER BY DEFENDANT NINUS MALAN TO COMPLAINT BY PLAINTIFF
CHRIS HAKIM

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Plaintiff filed a Notice of Related Cases in this action on January 20, 2021 as to another pending case, Razuki v. Malan, et. Case No. 37-2018-00034229-CU-BC-CTL (“Related Case”). Plaintiff Hakim had previously stated in a Supplemental Declaration he filed in the Related Case involving some of the same parties, including Malan, *under penalty of perjury* that “I have no ownership interest in the Balboa facility.” [Exhibit 1; page 6; paragraph 10, lines 10-11] A Memorandum of Points and Authorities filed by Hakim in the same matter states that Hakim “does not really have a ‘dog in the fight’ between plaintiff [Salam Razuki, also a named defendant in the Complaint] and defendant Ninus Malan. Mr. Hakim has to interest in the Balboa facility.” [Exhibit 2; page 2; paragraph 1(1), lines 23-25]

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I

STANDARD OF REVIEW

A demurrer under *Code of Civil Procedure* §430.10(e) can be used to challenge defects that appear on the face of the pleading or from matters outside the pleading of which judicial notice may or shall be taken. *Blank v. Kirwan* 1985) 39 Cal.3rd 311, 318. For the purpose of testing the sufficiency of the pleading as a whole or one or more component causes of action, the demurrer admits the truth of all material facts properly pleaded. *Aubry v. Tri-City Hospital District* (1992) 2 Cal.4th 962, 966-967. The issue raised by a general demurrer is whether the facts pleaded state a valid cause of action. *Del E. Webb Corporation v. Structural Materials Co.* (1981) 123 Cal.App.3rd 593.

The court need not accept as true “contentions, deductions or conclusions of fact or law.” *Young v. Gannon* (2002) 97 Cal.App.4th 209, 220. “Allegations must be factual and specific, not vague or conclusory. *Rakestraw v. Cal. Physicians’ Serv.* (2000) 81 Cal.App.4th 39, 44.

A trial court does not abuse its discretion by sustaining a demurrer without leave to amend if it appears that there is no reasonable possibility that an amendment can cure the defect in a complaint. *Blickman Turkus, LP v. MF Downtown Sunnyvale, LLC* (2008) 162 Cal.App.4th 858 867. *See also, Blank v. Kirwan, supra*, 39 Cal.3rd at 318. It is the plaintiff’s burden to prove that a reasonable possibility exists that the defect can be cured by amendment. *Torres v. City of Yorba Linda* (1993) 13 Cal.App.4th 1035, 1041; *Blank v. Kirwan, supra*, 39 Cal.3rd at 318.

II

THE COMPLAINT IS SUBJECT TO DEMURRER

1. Plaintiff has made judicial admissions in the Related Case that he does have any ownership interest “in the Balboa facility.”

Hakim stated, *under penalty of perjury*, in a Supplemental Declaration he filed in the Related Case that “I have no ownership interest in the Balboa facility.” [Exhibit 1; page 6; paragraph 10, lines 10-11] A Memorandum of Points and Authorities filed by Hakim in the same matter states that Hakim “does not really have a ‘dog in the fight’ between plaintiff [Salam Razuki, also a named defendant in the Complaint] and defendant Ninus Malan. Mr. Hakim has to

1 interest in the Balboa facility.” [Exhibit 2: page 2; paragraph 1(1), lines 23-25]

2 Whether described as “Balboa [Balboa Ave. Cooperative]” or the retail cannabis business
3 located at the Balboa Properties,” as alleged in the Complaint, Plaintiff Hakim has judicially
4 admitted that he has no interest of any kind in the Balboa Properties or the business operated by
5 Balboa Ave. Cooperative at those locations. Those judicial admissions were made in August
6 2018 nearly seven months *after* the February 1, 2018 date set forth in the Hakim-Malan
7 Agreement.

8 Judicial admissions are binding on a litigant. A pleader cannot circumvent those
9 admissions by simply amending without explanation. *Womack v. Lovell* (2015) 237 Cal.App.4th
10 772, 787. Otherwise known as the “Sham Pleading Doctrine,” judicial admissions, even those
11 made on information and belief, contained in prior pleadings cannot be avoided in subsequent
12 filings. *Womack, supra*, 237 Cal.App.4th at 787 citing *Hendy v. Losse* (1991) 54 Cal.3rd 723, 742-
13 743.

14 Plaintiff’s judicial admissions of non-ownership as to the Balboa Properties and the
15 business of Balboa Ave Cooperative are not made on “information and belief.” Even if the
16 admissions set forth in the Memorandum of Points and Authorities [Exhibit B] could be
17 disregarded as advocacy by his lawyer, Plaintiff Hakim expressly and directly disclaimed any
18 ownership in Balboa himself in a sworn declaration. That cannot be disregarded.

19 That defect infects every purported cause of action set forth in the Complaint. The Balboa
20 Properties and Balboa Ave. Cooperative are integral parts of each claim. The Complaint,
21 therefore, is defective as a whole. *Code of Civil Procedure* §430.10(e). This Demurrer should be
22 sustained. Malan submits that leave to amend as to the Balboa Properties and Balboa Ave.
23 Collective should not be granted given Hakim’s judicial admissions of non-ownership. He
24 cannot “plead around” those admissions.

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1 **2. The term(s) “Balboa [Balboa Ave. Cooperative]” as used in the Complaint**
2 **is/are uncertain and ambiguous.**

3 *Code of Civil Procedure* §430.10(f) authorizes a party to demur if “[t]he pleading is
4 uncertain. As used in this subdivision, ‘uncertain’ includes ambiguous and unintelligible.”

5 Among the “businesses/properties” encompassed within the Hakim-Malan Agreement.
6 Are what is described as “Balboa [Balboa Ave. Cooperative]” [Complaint: page 3; paragraph 15,
7 lines 10-12] That language is incorporated in all five causes of action comprising the Complaint.
8 That term is uncertain and ambiguous. It does not distinguish between the real estate described
9 in the Complaint as the “Balboa Properties” and the retail cannabis operations conducted by
10 Balboa Ave. Cooperative. They are lumped together as one although the two forms of interest
11 (real estate and business operations) are distinct and separate. What are the allegations as to each
12 of those separate interests? That, as pled, is uncertain and ambiguous.

13 This Demurrer should be sustained as to the Complaint as a whole since the uncertainty
14 and ambiguity pervades the entire document.

15 **3. The Fifth Cause of Action does not state a claim for Quiet Title.**

16 *Code of Civil Procedure* §761.020, which applies to actions for Quiet Title, states, in
17 part, in the opening sentence that “[t]he complaint shall be verified” Plaintiff’s Complaint is
18 not verified which renders his Fifth Cause of Action defective on its face. *Code of Civil*
19 *Procedure* §430.10(e).

20 The same opening sentence of *Code of Civil Procedure* §761.020 goes on to say “. . . .
21 and shall include all of the following:” Among “the following” is subsection (a) which states:
22 “A description of the property that is the subject of the action.” In the case of tangible personal
23 property, the description shall include its usual location. In the case of real property, the
24 description shall include both the legal description and its street address or common designation,
25 if any.”

26 It appears that Plaintiff’s Fifth Cause of Action seeks to quiet title to the Balboa
27 Properties (real estate) and an interest in Balboa Ave. Cooperative (personal property). That is
28 uncertain as discussed above.


1 Plaintiff's Fifth Cause of Action is defective as to the Balboa Properties under *Code of*
2 *Civil Procedure* §761.020(a) because the Complaint does not state the legal description nor the
3 complete street address of those properties. This Demurrer must also be sustained under *Code of*
4 *Civil Procedure* §761.020(a) and *Code of Civil Procedure* §430.10(e) as to the Balboa
5 Properties.

6 Plaintiff's Fifth Cause of Action is also defective as to its claim to an undivided one-
7 have interest in Balboa Ave. Cooperative. It does not state the nature of the interest being
8 claimed (Membership, stock, etc.) or where that interest is usually located. That, too, is a defect
9 under *Code of Civil Procedure* §761.020(a). This Demurrer must be sustained as to Plaintiff's
10 claim to an interest in Balboa Ave. Cooperative. *Code of Civil Procedure* §430.10(e).

11 **CONCLUSION**

12 Malan asks that this Demurrer be sustained for the reasons discussed above. Responding
13 Party further requests that this Demurrer be sustained without leave to amend as to Responding
14 Party's alleged interests in the Balboa Properties and Balboa Ave. Collective in light of judicial
15 admissions made by Hakim disclaiming any ownership interest in either of those in the Related
16 Action.

17 Dated: February 23, 2021

18 By: 
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