

AUSTIN LEGAL GROUP, APC
3990 Old Town Ave, Ste A-112
San Diego, CA 92110

1 Gina M. Austin (SBN 246833)
E-mail: gaustin@austinlegalgroup.com
2 Tamara M. Leetham (SBN 234419)
E-mail: tamara@austinlegalgroup.com
3 AUSTIN LEGAL GROUP, APC
3990 Old Town Ave, Ste A-112
4 San Diego, CA 92110
Phone: (619) 924-9600
5 Facsimile: (619) 881-0045

6 Attorneys for Defendants
7 Ninus Malan, American Lending and Holdings, LLC,
and San Diego United Holdings Group, LLC

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
06/27/2018 at 04:33:00 PM
Clerk of the Superior Court
By Erika Engel, Deputy Clerk

8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO**

10 AVAIL SHIPPING, INC., a California
corporation;

11 Plaintiff,

12 v.

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14 RAZUKI INVESTMENTS, LLC, a
California limited liability company,
15 SALAM RAZUKI, an individual;
MARVIN RAZUKI, an individual;
16 AMERICAN LENDING AND
HOLDINGS, LLC, a California limited
17 liability company; SAN DIEGO PRIVATE
INVESTMENTS, LLC, a California
18 limited liability company; SH
WESTPOINT GROUP, LLC, a limited
19 liability company; SAN DIEGO UNITED
HOLDINGS GROUP, LLC, a California
20 limited liability company; and DOES 1-
100, inclusive.

21 Defendants.
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CASE NO. 37-2018-00022710-CU-FR-CTL

**ANSWER TO COMPLAINT BY
DEFENDANT NINUS MALAN**

Complaint Filed: May 8, 2018

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1 Defendant Ninus Malan ("Malan" or "Defendant") hereby submits this answer to the
2 Complaint of plaintiff Avail Shipping, Inc. ("Avail" or "Plaintiff");

3 Pursuant to the provisions of Code of Civil Procedure section 431.30, Malan generally and
4 specifically denies each, every, and all of the allegations in the Complaint, including each and
5 every purported cause of action contained therein. Malan further denies that Plaintiff has or will
6 sustain damages in an amount alleged or in any amount whatsoever.

7 **AFFIRMATIVE DEFENSES**

8 Defendant alleges the following defenses as separate and distinct affirmative defenses to
9 the Complaint, and to each and every cause of action stated therein, but in asserting these
10 defenses, Defendant does not assume the burden of proof as to matters that are Plaintiff's burden
11 to prove.

12 **FIRST AFFIRMATIVE DEFENSE**

13 1. The conduct set forth in the Complaint, if and to the extent it occurred, was
14 privileged and justified and done with a good faith belief it was correct and no action may be
15 taken against Defendant on account of such conduct, if any.

16 **SECOND AFFIRMATIVE DEFENSE**

17 2. The causes of action alleged against Defendant are barred by each and every
18 applicable statute of limitations, including, but not limited to Code of Civil Procedure section
19 339.

20 **THIRD AFFIRMATIVE DEFENSE**

21 3. The Complaint, and each and every purported cause of action alleged therein
22 against Defendant, is barred by the doctrine of laches due to Plaintiff's unreasonable delay in
23 bringing the action and the resulting prejudice to Defendant.

24 **FOURTH AFFIRMATIVE DEFENSE**

25 4. Plaintiff, with actual or constructive knowledge of the facts alleged in the
26 Complaint, was under a duty to mitigate damages, if any, and has failed to fulfill such duty; as a
27 consequence, Defendant was and is exonerated from any liability to Plaintiff, and damages, if
28 any, are the sole and approximate result of Plaintiff's failure to mitigate damages.

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FIFTH AFFIRMATIVE DEFENSE

5. The Complaint, and each and every purported cause of action alleged therein against Defendant, is barred by the doctrines of waiver and estoppel.

SIXTH AFFIRMATIVE DEFENSE

6. The actions taken by Defendant as alleged in the Complaint fall under the manager’s privilege.

SEVENTH AFFIRMATIVE DEFENSE

7. The actions taken by Defendant as alleged in the Complaint were in good faith and, to the extent Plaintiff seeks punitive damages for any purported acts of the Defendant, the Complaint, and each cause of action allege therein, fails to state facts sufficient to justify an award of punitive damages, and that the Complaint and each cause of action alleged therein, fails to state specific facts to support the underlying allegations of malice, oppression and/or reckless indifference.

EIGHTH AFFIRMATIVE DEFENSE

8. Defendant was a bona fide purchaser.

NINTH AFFIRMATIVE DEFENSE

9. Defendant is informed and believes and thereon alleges that each and all of the alleged rights, claims and obligations which Plaintiff seeks by way of the Complaint have been released.

TENTH AFFIRMATIVE DEFENSE

10. Defendant is informed and believes and thereon alleges that Plaintiff has unclean hands with respect to matters alleged in the Complaint and is therefore barred from recovering against Defendant.

ELEVENTH AFFIRMATIVE DEFENSE

11. Without conceding that any damages are owed to Plaintiff, which supposition is made solely for the purposes of this affirmative defense, Defendant is informed and believes and thereon alleges that any damage or loss proven to have been sustained by Plaintiff is as a direct and approximate result of the independent acts and unlawful conduct of Plaintiff and/or third

1 parties or its agents or employees, not foreseen by any act or admission on the part of Defendant.
2 By reason thereof, any right of recovery of Plaintiff from Defendant should be reduced by that
3 amount which the fault of the persons or entities other than Defendant contributed to any of the
4 damages allegedly sustained by Plaintiff.

5 **TWELFTH AFFIRMATIVE DEFENSE**

6 12. Defendant is informed and believes and thereon alleges that Plaintiff is barred
7 from relief sought by the Complaint in that the equities do not preponderate in favor of Plaintiff,
8 but rather in favor of Defendant.

9 **THIRTEENTH AFFIRMATIVE DEFENSE**

10 13. Defendant is informed and believes that attorneys' fees and punitive or exemplary
11 damages are not permissible.

12 **FOURTEENTH AFFIRMATIVE DEFENSE**

13 14. Defendant is informed and believes and thereon alleges that he presently has
14 insufficient knowledge or information to form a belief as to whether there are additional, as of yet
15 unstated, affirmative defenses available. Defendant, therefore, reserves the right to assert
16 additional affirmative defenses in the event discovery indicates such would be appropriate

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18 **PRAYER**

19 WHEREFORE, having fully answered the Complaint, Defendant prays as follows:

- 20 1. That Plaintiff take nothing by way of the Complaint;
21 2. For reasonable expenses, including attorneys fees;
22 3. For costs of suit incurred herein;
23 4. For such other and further relief as the Court may deem just and proper.

24 DATED: June 27, 2018

AUSTIN LEGAL GROUP, APC

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26 By: *Tamara H. Leatham*
27 Gina Austin/Tamara Leatham
28 Attorneys for Defendants Ninus Malan, San
Diego United Holdings Group, LLC, and
American Lending and Holdings, LLC