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8 San Diego Private Investments, LLC,
9 SH Westpoint Group, LLC, Salam Razuki
10 and Marvin Razuki

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 FOR THE COUNTY OF SAN DIEGO - CENTRAL

13 AVAIL SHIPPING, INC.,

14 Plaintiff,

15 vs.

16 RAZUKI INVESTMENTS, LLC, et. al.,

17 Defendants.

Case No.: 37-2018-00022710-CU-FR-CTL

**REPLY IN SUPPORT OF DEMURRER
TO COMPLAINT**

DATE: November 9, 2018
TIME: 9:00 a.m.
DEPT: 67
JUDGE: Hon. Eddie C. Sturgeon

Filed: May 8, 2018
Trial Date: Not set

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20 Defendants Razuki Investments, LLC, San Diego Private Investments, LLC, SH
21 Westpoint Group, LLC, Salam Razuki and Marvin Razuki submit their Reply In Support Of The
22 Demurrer To Complaint as follows:

23 The opposition acknowledges that Plaintiff Avail Shipping, Inc. (“Avail Shipping”) must
24 allege a claim for fraud, not conspiracy, in order to properly plead a claim pursuant to the
25 Uniform Voidable Transactions Act, Civil Code § 3439, et. seq. General and conclusory
26 allegations do not suffice. *See, Lo v. Lee* (2018) 24 Cal.App.5th 1065 (demurrer to UVTA
27 claims sustained without leave to amend).

1 Avail Shipping's Complaint tries to use conspiracy allegations as a substitute for actually
2 pleading fraud, but since conspiracy claims could easily be invoked to draw in defendants in
3 many different circumstances, a civil conspiracy is not sufficiently alleged by bare legal
4 conclusions, inferences, generalities, presumptions, and conclusions. *See, Nicholson v.*
5 *McClatchy Newspapers* (1986) 177 Cal.App.3d 509, 521. More than mere association is
6 required to establish a conspiracy. *See, Davis v. Superior Court In and For Marin County*
7 (1959) 175 Cal.App.2d 8, 23.

8 Avail Shipping improperly attempts to lump all the Defendants together with bare legal
9 conclusions, inferences, generalities, presumptions, and conclusions. *See, Complaint at*
10 *paragraphs 13 through 16. "From this point on, the term "Defendant" or "Defendants" shall*
11 *mean and refer to all DOE Defendants and all named Defendants, and to each of them." See,*
12 *Complaint at paragraph 13. "Uncertain" includes ambiguous and unintelligible. See, C.C.P.*
13 *section 430.10(f); See also, Hawley Bros. Hardware Co. v. Brownstone* (1899) 123 Cal. 643,
14 645-648 (holding that a demurrer should have been sustained for uncertainty where the
15 complaint indiscriminately used "defendant" to refer to several possible parties).

16 The alleged fraudulent transfers in this action were made in the ordinary course of
17 business. Razuki Investments has deposited the full amount of the judgment with the Court. The
18 amount deposited is at least \$45,000 more than the amount of the judgment since Avail Shipping
19 has failed to pay its rent to Razuki Investments for the last 7 months as an alleged "offset".

20 Avail Shipping is pursuing this action without support, just as its claims against Salam
21 Razuki individually in the arbitration were so unsupported that the Arbitrator granted a non-suit
22 in favor of Mr. Razuki and against Avail Shipping. *See, Exhibit A to the Complaint.*

23 Avail Shipping is pursuing this action to try and get the Razuki Defendants in this action
24 to pay the alleged damages which the Arbitrator rejected.

1 Defendants Razuki Investments, LLC, San Diego Private Investments, LLC, SH
2 Westpoint Group, LLC, Salam Razuki and Marvin Razuki request the Court sustain the demurrer
3 and dismiss the Complaint without leave to amend.
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5 Dated: November 2, 2018

6 LAW OFFICES DOUGLAS JAFFE

7 BY: 
8 Douglas Jaffe, Esq.

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1 **PROOF OF SERVICE**

2 I am over the age of 18 years and not a party to or interested in the within entitled action.
3 My business address is 501 West Broadway, Suite 800, San Diego, California 92101.

4 On November 2, 2018, I served the foregoing

5 **REPLY IN SUPPORT OF DEMURRER TO COMPLAINT**


6 by electronic service through One Legal, by email addressed as follows:

7 Kyle Yaege, Esq.
8 Hickman & Robinson
9 701 B Street, Suite 1310
10 San Diego, CA 92101
11 kyle@hickmanrobinsonlaw.com

12 Tamara Leetham, Esq.
13 Austin Law Group
14 3990 Old Town Avenue, Suite A-112
15 San Diego, CA 92110
16 tamara@austinlegalgroup.com

17 I am readily familiar with the firm's practice of collection and processing for service
18 through One Legal. It is submitted to One Legal and sent by email to the above email addresses
19 on the same day in the ordinary course of business.

20 I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct. Executed on November 2, 2018 at San Diego, California.

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Douglas Jaffe