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7 Attorneys for Razuki Investments, LLC,
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

) **ANSWER TO COMPLAINT**

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22 Defendants Razuki Investments, LLC, San Diego Private Investments, LLC, SH
23 Westpoint Group, LLC, Salam Razuki and Marvin Razuki (“Defendants”) answer the Complaint
24 as follows:

25 1. Pursuant to the California Code of Civil Procedure, Defendants deny each and
26 every allegation of the unverified complaint and deny that Plaintiff Avail Shipping, Inc.
27 (“Plaintiff” or “Avail Shipping”) suffered or sustained any damages or injuries whatsoever, and
28 denies that Plaintiff is entitled to any relief of any kind.

1 FIRST AFFIRMATIVE DEFENSE

2 The Complaint against Defendants fails to allege facts sufficient to constitute a cause of
3 action against Defendant.

4 SECOND AFFIRMATIVE DEFENSE

5 The Complaint against Defendants is barred by the doctrine of laches.

6 THIRD AFFIRMATIVE DEFENSE

7 The Complaint against Defendants is barred by the applicable statutes of limitation
8 including, without limitation, the provisions of Code of Civil Procedure sections 335.1, 337, 338,
9 339, 340 and 343.

10 FOURTH AFFIRMATIVE DEFENSE

11 The Complaint against Defendants is barred by the doctrine of waiver.

12 FIFTH AFFIRMATIVE DEFENSE

13 The Complaint against Defendants is barred by the doctrine of estoppel.

14 SIXTH AFFIRMATIVE DEFENSE

15 The Complaint against Defendants is barred by the doctrine of unclean hands.

16 SEVENTH AFFIRMATIVE DEFENSE

17 The Complaint against Defendants was not brought in good faith or with reasonable
18 cause. Defendants are entitled to recover costs of defense.

19 EIGHTH AFFIRMATIVE DEFENSE

20 At all times and places mentioned in the Complaint, Plaintiff failed to mitigate the
21 amount of its alleged damages. The alleged damages claimed by Plaintiff could have been
22 mitigated by due diligence on his part or by one acting under similar circumstances. Plaintiff's
23 failure to mitigate is a bar to his recovery under the Complaint. Plaintiff has failed to take
24 adequate steps to minimize, alter, reduce or otherwise diminish the damages, if any, with respect
25 to the matters alleged in the Complaint, and by reason of the foregoing, Plaintiff is barred from
26 recovery thereof.

1 NINTH AFFIRMATIVE DEFENSE

2 Plaintiff's claims, if any, are barred in whole or in part by the contributory and
3 comparative negligence and fault of Plaintiff.

4 TENTH AFFIRMATIVE DEFENSE

5 Plaintiff's negligent and/or intentional misconduct was a legal cause of the incident
6 which forms the basis for the Complaint. Plaintiff's recovery, if any, should be reduced by an
7 amount proportionate to the amount by which Plaintiff's negligence and/or intentional
8 misconduct contributed to the happening of the alleged incident.

9 ELEVENTH AFFIRMATIVE DEFENSE

10 The acts or omissions of third persons, other than these answering Defendants, legally
11 caused or contributed to the events leading up to the incident which forms the basis for the
12 Complaint. Defendants are entitled to a judicial determination of the percentage of fault of each
13 person who is a legal cause of the alleged injuries sustained.

14 TWELTH AFFIRMATIVE DEFENSE

15 Any and all injuries, if any, sustained or suffered by Plaintiff were proximately caused,
16 contributed to or aggravated by the acts or omissions of the Plaintiff or other person or entities.
17 Such acts or omissions are an intervening and/or superseding cause of the injuries, if any, and
18 damages, if any, thus barring Plaintiff from any recovery against Defendants.

19 THIRTEENTH AFFIRMATIVE DEFENSE

20 The Complaint is barred by the doctrine of offset of amounts owed by Plaintiff to
21 Defendants.

22 FOURTEENTH AFFIRMATIVE DEFENSE

23 The Complaint is barred by Plaintiff's misconduct.

24 FIFTEENTH AFFIRMATIVE DEFENSE

25 The Complaint is barred by Plaintiff's lack of standing to bring the causes of action
26 asserted in the Complaint.

1 SIXTEENTH AFFIRMATIVE DEFENSE

2 The Complaint is barred by Plaintiff's failure to include an indispensable party or parties.

3 SEVENTEENTH AFFIRMATIVE DEFENSE

4 The Complaint is barred due to its uncertainty.

5 EIGHTEENTH AFFIRMATIVE DEFENSE

6 The Complaint is barred because any action taken by Defendants regarding Plaintiff was
7 permitted by law.

8 NINETEENTH AFFIRMATIVE DEFENSE

9 The Complaint is barred by the applicable Statute Of Frauds.

10 TWENTIETH AFFIRMATIVE DEFENSE

11 The Complaint is barred because Defendants fully performed all that was required.

12 TWENTY-FIRST AFFIRMATIVE DEFENSE

13 The Complaint is barred by mistake, fraud, duress or undue influence.

14 TWENTY-SECOND AFFIRMATIVE DEFENSE

15 Plaintiff's claim for attorneys' fees is barred by Plaintiff's failure to request mediation
16 prior to the filing of the Complaint.

17 TWENTY-THIRD AFFIRMATIVE DEFENSE

18 The Complaint is barred by the deposit with the Court.

19 TWENTY-FOURTH AFFIRMATIVE DEFENSE

20 The Complaint is barred as the alleged fraudulent transfers were made in the ordinary
21 course of business.

22 TWENTY-FIFTH AFFIRMATIVE DEFENSE

23 The Complaint is barred as the alleged fraudulent transfers were made for value.

24 TWENTY-FIFTH AFFIRMATIVE DEFENSE

25 The Complaint is barred as the alleged fraudulent transfers were not made when the
26 transferring party was insolvent.

1 TWENTY-SIXTH AFFIRMATIVE DEFENSE


2 Defendants reserve the right to assert additional affirmative defenses in the event
3 investigation and discovery indicates that they would be appropriate.
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5 WHEREFORE, Defendants request the following relief:

- 6 A. An order that Plaintiff be awarding nothing and that the Complaint be dismissed;
7 B. Reasonable attorneys' fees;
8 C. Costs of suit; and
9 D. Such other and further relief as the Court deems just and proper.
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11 Dated: November 19, 2018

12 LAW OFFICES OF DOUGLAS JAFFE

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16 Douglas Jaffe
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2 PROOF OF SERVICE

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

5 On November 19, 2018, I served the foregoing:

6 **ANSWER TO COMPLAINT**

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

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

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

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

21 I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct. Executed on November 19, 2018 at San Diego, California.

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Douglas Jaffe