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5 Attorney for Plaintiff, Aman Malik

6 **SUPERIOR COURT OF CALIFORNIA**
7 **COUNTY OF SAN BERNARDINO**

9 **AMAN MALIK,**

10 **Plaintiff**

11 vs

12 **THOMAS CALDWELL; PATRICIA**
13 **CALDWELL and DOES 1 through 20,**
14 **inclusive,**

15 **Defendant(s)**

) No. _____
)
) **COMPLAINT FOR DAMAGES FOR**
) **BREACH OF CONTRACT;**
) **ALTERNATIVELY FOR SPECIFIC**
) **PERFORMANCE**

16 _____
17
18 Plaintiff alleges:

19
20 1. Plaintiff is a resident of California doing business in the County of San Bernardino,
21 California.

22
23 2. Defendants were at all times mentioned here individuals residing in Apple Valley, in the
24 County of San Bernardino, California.

25
26 3. Venue in the Superior Court for the County of San Bernardino is proper because the
27 property at issue is located in Apple Valley, County of San Bernardino, California.
28

1 4. Plaintiff is unaware of the true names, capacities, or basis for liability of defendants Does 1
2 through 20, inclusive, and therefore sues said defendants by their fictitious names. Plaintiff will
3 amend this complaint to allege their true names, capacities, or basis for liability when the same
4 have been ascertained. Plaintiff is informed and believes and on that basis alleges that defendants
5 Does 1 through 20, inclusive, and each of them, are in some manner liable to plaintiff, or claim
6 some right, title, or interest in the subject property that is junior and inferior to that of plaintiff, or
7 both.

8 5. At all times relevant to this action, each defendant, including those fictitiously named, was
9 the agent, servant, employee, partner, joint venturer, or surety of the other defendants and was
10 acting within the scope of said agency, employment, partnership, venture, or suretyship, with the
11 knowledge and consent or ratification of each of the other defendants in doing the things alleged
12 in this complaint.

13
14 6. On or about January 30, 2006, defendants were and now is the owner of real property
15 located in San Bernardino County, California, commonly known as 26026 Mountain View Lane,
16 Apple Valley, California and more particularly described as:

17 Property located in the County of San Bernardino, in the State of California described: The
18 Southeast $\frac{1}{4}$ of the East $\frac{1}{2}$ of Government Lot 1 of then Fraction Northwest $\frac{1}{4}$ and the South $\frac{1}{2}$
19 of the Northeast $\frac{1}{4}$ of the East $\frac{1}{2}$ of Governmnet Lot 1 of the Fraction Northwest $\frac{1}{4}$ of Section 4
20 Township 5 North, Range 2 West, San Bernardino Base and Meridian, in the County of San
21 Bernardino, State of California, according to the Official Government Plan thereof.

22
23 7. On or about January 30, 2006, in Apple Valley, San Bernardino County, California, plaintiff
24 and defendant entered into a written agreement in which Plaintiff agreed to buy and Defendant
25 agreed to sell the property described in Paragraph 6. Under the agreement the anticipated closing
26 date of the sale was April 03, 2006. A copy of this agreement, marked Exhibit A, is attached to
27 and incorporated in this complaint.
28

1 8. The filing of this complaint enables the recording of a notice of pending action to be filed
2 against the property referenced in paragraph 6 above, and does not constitute a waiver of the
3 mediation and arbitration provisions in accordance with the written agreement described in
4 Paragraph 7 above.

5
6 **FIRST CAUSE OF ACTION (Breach of Contract by Plaintiff Aman Malik**
7 **Against Defendants Thomas Caldwell and Patricia Caldwell)**
8

9 9. Plaintiff hereby realleges and incorporates by reference the allegations in paragraphs 1
10 through 7 as though fully set forth in this cause of action.
11

12 9. Plaintiff has performed all duties, promises, and obligations required of plaintiff and all
13 conditions precedent that plaintiff agreed to perform in the agreement described in Paragraph 7.
14

15 10. Under the terms of the agreement described in Paragraph 7, defendant was obligated to
16 transfer and convey to plaintiff the real property described in Paragraph 6.
17

18 11. Defendant has failed and refused, and continues to fail and refuse, to transfer and convey
19 the real property described in Paragraph 6 to the plaintiff.
20

21 12. Defendants' failure and refusal to convey the real property described in Paragraph 6
22 constitutes a breach of the agreement described in Paragraph 7.
23

24 13. Because of defendants' breach of the agreement described in Paragraph 7, plaintiff has
25 suffered general and consequential damages, including title and escrow expenses, expenses in
26 preparing to enter the property, the difference in price agreed upon and value of property at time
27 of breach. Plaintiff is therefore entitled to damages of **\$26,000**.
28

14. Defendant is liable for all attorney's fees paid by the Plaintiff to enforce the agreement
described in Paragraph 7, pursuant to provision 22 of said agreement.

1
2 WHEREFORE, plaintiff prays for judgment as hereafter set forth.

3
4 **SECOND CAUSE OF ACTION (Action for Specific Performance by**
5 **Plaintiff Aman Malik Against Defendants Thomas Caldwell and Patricia**
6 **Caldwell)**

7 15. Plaintiff hereby realleges and incorporates by reference the allegations in paragraphs 1
8 through 14 as though fully set forth in this cause of action.

9 16. At the time plaintiff and defendant entered into the agreement referred to in Paragraph 7,
10 the consideration plaintiff was to pay under the agreement was adequate and the agreement is
11 just and reasonable as to defendant, as the agreed sales price reflected, at the time the agreement
12 was entered, the fair market value for the property.

13 17. Within the time prescribed by the agreement, plaintiff has offered to pay the full
14 consideration called for in the agreement and continues to be ready, willing, and able to pay the
15 consideration to defendant.

16 18. Plaintiff has demanded that defendant convey the property described in Paragraph 6, under
17 the terms of the agreement described in Paragraph 7.

18 19. Defendant has refused and continues to refuse to convey to plaintiff the property described
19 in Paragraph 6, as required by the terms of the Agreement described in Paragraph 7.

20 20. Plaintiff has no adequate remedy at law to enforce the provisions of the agreement
21 described in Paragraph 7 other than specific enforcement of the agreement.

22 21. Plaintiff is entitled to specific performance of the terms, conditions, and provisions of the
23 agreement described in Paragraph 7, by court decree, among other things, ordering defendant to
24 complete conveyance of the property described in Paragraph 6.
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1
2 22. Plaintiff is entitled to compensation incidental to a decree of specific performance by
3 virtue of the delay of defendant in conveying of the property described in Paragraph 7 in that
4 Plaintiff was deprived of fair rental value of the property during the period of the delay.

5
6 WHEREFORE, plaintiff prays for damages as follows:

7
8 **FIRST CAUSE OF ACTION**

- 9 1. Legal damages by virtue of defendant's breach of contract in the amount of \$26,000.
10 2. Attorney fees and costs according to proof;
11
12 3. Such other and further relief as the court deems just and proper.

13
14 **SECOND CAUSE OF ACTION**

- 15 1. For an order decreeing that defendants shall convey the property described in Paragraph 6,
16 and plaintiff to pay the purchase price of \$255,000, as set forth in the agreement described in
17 Paragraph 7.
18
19 2. For compensation incidental to the decree of specific performance as set forth above,
20 according to proof;
21
22 3. Attorney fees and costs according to proof;
23
24 4. Such other and further relief as the Court deems just and proper.

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26 Date: _____

27 _____
28 Masood R. Khan
Attorney for Plaintiff Aman Malik

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