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RIVERSIDE, CALIFORNIA 92505

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES
11

12 DAN MOCK, an individual,
13 Plaintiff,

14 v.

15 Diana Yvonne Holliday, Trustee of the
MARY A. BEDROSIAN LIVING TRUST
16 dated August 5, 2005, DOES 1 through 10,
inclusive,
17

18 Defendants.

19
20 DIANA YVONNE HOLLIDAY, an
individual and as Trustee of the Mary A.
Bedrosian Living Trust dated August 5,
21 2005

22 Cross-Complainant,

23 v.

24 DAN MOCK, an individual; SHEILA
ELGART, an individual; EMPIRE
25 ESTATES INC., a California corporation
doing business as PRUDENTIAL
26 CALIFORNIA REALTY, and ROES 1-10,
inclusive
27

28 Cross-Defendants

Case No. [REDACTED]
Judge: Honorable Frederick C. Shaller

**NOTICE OF MOTION AND MOTION
FOR SANCTIONS PURSUANT TO CODE
OF CIVIL PROCEDURE SECTION 128.7**

Hearing:

Date: [REDACTED]

Time: [REDACTED]

Dept.: [REDACTED]

Action Filed : November 10, 2011
Trial Date: April 10, 2013

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1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on [REDACTED] at 8:30 a.m., or as soon as
3 thereafter as the matter may be heard in Department 46 of the above-entitled Court, located at 111
4 North Hill Street, Los Angeles, California, Plaintiff and Cross-Defendant Dan Mock will move
5 this Court to impose sanctions, jointly and severally, against Debra Zimmerman and Bet Tzedek
6 Legal Services, attorneys for Cross-Complainant Diana Yvonne Holliday, an individual and
7 Defendant/Cross-Complainant Diana Yvonne Holliday, as Trustee of the Mary A. Bedrosian
8 Living Trust dated August 5, 2005 ("Defendants and Cross-Complainants"). The sanctions
9 sought will be in the form of an award of reasonable attorneys' fees and costs, in an amount to be
10 determined, but estimated to be approximately \$50,000.00, incurred in defending against the
11 Cross-Complaint and all the affirmative defenses raised to the First Amended Complaint, and in
12 preparing and filing the within motion for sanctions.

13 This Motion is made pursuant to *Code of Civil Procedure* section 128.7 on the ground that
14 Ms. Zimmerman and Bet Tzedek Legal Services failed to perform pre-filing due diligence and
15 investigate or conduct an appropriate or adequate inquiry into the facts and merits of the Cross-
16 Complaint and defenses raised in the Answer to the First Amended Complaint and on the further
17 ground that they failed and refused to withdraw the unmeritorious Cross-Complaint and
18 affirmative defenses prior to expiration of the 21-day safe harbor period.

19 This Motion will be based upon this Notice, Memorandum of Points and Authorities, and
20 the pleadings and records on file in this action, and upon such further documents and evidence as
21 may be presented at the hearing of this motion to substantiate all fees and costs incurred up to that
22 point in time.

23 Dated: July 30, 2012

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24
25 By: 

JERRY R. DAGRELLA
Attorney for Plaintiff and Cross-Defendant
Dan Mock

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On May 4, 2011, plaintiff Dan Mock (“Mock”) entered into a purchase agreement to buy a home at 4525 Melbourne Ave., Los Angeles (“Subject Property”), from defendant Diana Yvonne Holliday, as trustee of the Mary A. Bedrosian Living Trust (“Bedrosian Trust”). As part of the agreement, Mock paid a deposit of \$21,000. The Bedrosian Trust used the deposit money to cure a loan default and stave off an impending foreclosure sale, but then refused to close escrow.

On November 10, 2011, after providing the Bedrosian Trust numerous extensions to close escrow, Mock filed this action for specific performance and damages. On May 4, 2012, Diana Yvonne Holliday, *individually* (“Holliday”) *and as trustee* of the Bedrosian Trust, filed an Answer and Cross-Complaint for damages claiming the purchase agreement violated *Civil Code* § 1695 (the “Home Equity Sales Contract Act”) and that Mock breach his fiduciary duties by not offering a higher price for the property and making false representations about its market value.

The Cross-Complaint has no merit and was filed for an ulterior purpose. It is abundantly clear that *Civil Code* § 1695 does not apply to this action and, even if it did, that the Bedrosian Trust sustained no damages because it never closed sale on the Subject Property nor lost any equity in it.¹ Moreover, as the buyer in a real estate transaction, Mock owed no fiduciary duty to “obtain the best possible price” for the seller, and the law is abundantly clear that expressions of market value are deemed opinions and not actionable as misrepresentations. Lastly, Holliday, *individually*, has no standing to challenge the purchase agreement nor has she sustained any personal damages arising therefrom.

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¹ On the other hand, Mock lost his \$21,000 deposit, which has never been returned to him.

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1 **III. LEGAL ANALYSIS**

2 California Code of Civil Procedure section 128.7 provides a basis for the imposition of
3 sanctions as the result of the filing of a frivolous pleading. Section 128.7, subdivision (b),
4 provides, in pertinent part, as follows:

5 (b) "By presenting to the court, whether by signing, filing,
6 submitting, or later advocating, a pleading, petition, written notice
7 of motion, or other similar paper, an attorney . . . is certifying that
8 to the best of the person's knowledge, information, and belief,
formed after an inquiry reasonable under the circumstances, all of
the following conditions are met:

9 (1) It is not being presented primarily for an improper
purpose, such as to harass or to cause unnecessary delay or
10 **needless increase in the cost of litigation.**

11 (2) The claims, defenses, and other legal contentions
therein are warranted by existing law or by a nonfrivolous argument
12 for the extension, modification, or reversal of existing law or the
establishment of new law.

13 (3) The allegations and other factual contentions have
14 evidentiary support or, if specifically so identified, are likely to
15 have evidentiary support after a reasonable opportunity for further
investigation or discovery. . . ."

16 (Emphasis added.) Additionally, Section 128.7(c) provides that after notice and a reasonable
17 opportunity to be heard, if the Court determines that subdivision (b) has been violated, the court
18 may impose sanctions on the attorneys, law firms or parties that violated subdivision (b) or are
19 responsible for the violation.

20 Section 128.7 imposes certification requirements for pleadings and similar papers, and
21 authorizes courts to impose sanctions for violations of those requirements upon "the attorneys,
22 law firms, or parties that have violated" the certification requirements. (Garcia v. McCutchen
23 (1997) 16 Cal.4th 469, 481.) Section 128.7 imposes a lower threshold for sanctions than is
24 required under Section 128.5, as section 128.7 requires only that the conduct be "objectively
25 unreasonable," while section 128.5 also required "a showing of subjective bad faith." (Guillemin
26 v. Stein (2002) 104 Cal.App.4th 156, 167.) Under Section 128.7, "there are basically three types
27 of submitted papers that warrant sanctions: factually frivolous (not well grounded in fact); legally
28

1 frivolous (not warranted by existing law or a good faith argument for the extension, modification,
2 or reversal of existing law); and papers interposed for an improper purpose.” (*Id* at 167-168.)

3 Here, the Cross-Complaint and affirmative defenses to the First Amended Complaint that
4 challenge the purchase agreement based on an alleged violation of *Civil Code* § 1695 is legally
5 and factually frivolous. Ms. Zimmerman and Bet Tzedek Legal Services failed to perform pre-
6 filing due diligence and investigate or conduct an appropriate or adequate inquiry into the facts
7 and merits of the Cross-Complaint and defenses raised in the Answer to the First Amended
8 Complaint.

9 It is wholly unreasonable, and without factual basis for counsel to surmise that Mock
10 intended to purchase the Subject Property for any reason other than for use as a principal
11 residence, especially since there is no evidence to substantiate the implication that Mock is a
12 property flipper or “equity purchaser”. It is further unreasonable, and without factual or legal
13 basis for counsel to conclude that *Civil Code* § 1695 has any application to this action when
14 Diana Yvonne Holliday, individually, owns no interest in the Subject Property. It is also illogical
15 to claim that Mock should have provided a useless notice of cancellation disclosure to the seller,
16 when it was the seller who approached Mock and begged him to make a deal with her literally
17 hours from the trustee sale auction.

18 Moreover, it is without factual or legal basis for counsel to claim the purchase price was
19 not fair and reasonable, especially when counsel failed to perform any due diligence whatsoever:
20 an inspection of the Subject Property would have revealed that it has serious structural damage,
21 rodent infestation, mold growth and housing code violations that made the Subject Property
22 legally uninhabitable in its current state. For counsel to imply that their client is a victim is
23 tasteless, particularly when their client abuses and neglects her children, forcing them to sleep on
24 mattresses covered in cat feces.

25 Furthermore, it is wholly unreasonable, and without factual or legal basis for counsel to
26 file a cross-complaint for damages when it is abundantly clear that their clients sustained no
27 damages because the sale never closed on the Subject Property—in fact, their clients obtained a
28 windfall in the form of a \$21,000 deposit that they have failed and refused to return to Mock.

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1 Lastly, it is clearly frivolous for counsel to file a cross-complaint on behalf of Holliday,
2 *individually*, who was not a party to the real estate transaction and has sustained no damages
3 whatsoever.

4 **IV. CONCLUSION**

5 For the foregoing reasons, Plaintiff/Cross-Defendant Dan Mock respectfully requests that
6 this Court impose sanctions against Debra Zimmerman and Bet Tzedek Legal Services, attorneys
7 for Cross-Complainant Diana Yvonne Holliday, an individual and Defendant/Cross-Complainant
8 Diana Yvonne Holliday, as Trustee of the Mary A. Bedrosian Living Trust dated August 5, 2005,
9 and award Plaintiff/Cross-Defendant Dan Mock his reasonable attorneys' fees and costs incurred
10 in defending against the Cross-Complaint and all the affirmative defenses raised to the First
11 Amended Complaint, and in preparing and filing the within motion for sanctions, in an amount to
12 be determined, but presently estimated at approximately \$50,000.00.

13 **Notice: This Memorandum of Points and Authorities is served on July 30, 2012.**
14 ***Code of Civil Procedure* Section 128.7 provides for a mandatory 21-day safe-harbor period.**
15 **If Defendant/Cross-Complainants do not withdraw their frivolous Cross-Complaint and all**
16 **the affirmative defenses raised to the First Amended Complaint before the 21-day deadline**
17 **expires, then Plaintiff/Cross-Defendant Dan Mock may file this motion for section 128.7**
18 **sanctions.**

19 Dated: July 30, 2012

DAGRELLA LAW FIRM

21 By: _____

22 JERRY R. DAGRELLA
23 Attorney for Plaintiff and Cross-Defendant
24 Dan Mock