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FILED
Superior Court of California
County Of Los Angeles

APR 21 2014

Sherri K. Valdez EXECUTIVE UJicer/Clerk
By Judi Lara Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

11 ROCHELLE H. STERLING, as a married
12 woman seeking to protect and recover
13 community property in her individual capacity,

14 Plaintiff,

15 v.

16 V STIVIANO, aka VANESSA MARIA
17 PEREZ, aka MONICA GALLEGOS, aka
18 MARIA MONICA PEREZ GALLEGOS, aka
19 MARIA VALDEZ, an individual; and all
20 Persons Unknown, claimin any legal or
equitable right, title, estate, lien or interest in the
Property adverse to Plaintiff's title, or any cloud
on Plaintiff's title to the Property; and DOES 1
Through 50, inclusive

Defendants.

Case No. BC 538659

**DEFENDANT V STIVIANO'S NOTICE OF
DEMURRERS AND DEMURRERS TO
PLAINTIFF'S COMPLAINT;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

[Filed Concurrently With Motion To Strike]

Date: 7/18/14
Time: 8:30 AM
Dept: 15

[Assigned for all purposes to the
Honorable Richard Fruin, Superior Court Judge]

21 TO PLAINTIFF AND HER COUNSEL OF RECORD:

22 PLEASE TAKE NOTICE that on July 8, 2014, 2014 at 8:30 AM in Department
23 15 of the above-entitled Court, located at 111 North Hill Street, Los Angeles, California 90012, the
24 Honorable Richard Fruin, Superior Court Judge, presiding, the defendant V STIVIANO, for herself,
25 and herself alone (incorporating any claimed "dba" and or claimed alias' as asserted by Plaintiff BUT
26 without any acknowledgment and or admission thereof), an individual, will specifically and generally
27 demur to the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and Tenth causes of
28 action of the Complaint.

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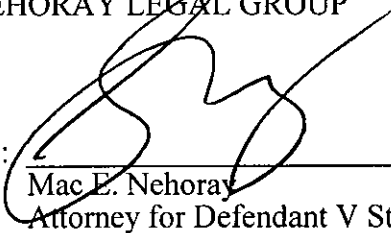
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1 Grounds for the Demurrers are set forth in the accompanying statement of demurrers. The
2 Demurrers are based on this notice, the statement of Demurrers, the Memorandum of Points and
3 Authorities, and the Verified Complaint which this Honorable Court may take "Judicial Notice" of
4 (Pursuant to Evidence Code §452) and any appendix of federal/additional authority, on the records and
5 file(s) herein, and on such additional evidence as may be presented at the hearing on the demurrer and
6 upon Movants' argument to be provided at the hearing of this Noticed Motion accompanied by any
7 concurrently filed Motion To Strike irrelevancies and or surplussage from the Complaint.

8
9 Respectfully submitted,
NEHORAY LEGAL GROUP

10 Dated: 4-18-14

11
12 By: 
13 Mac E. Nehoray
Attorney for Defendant V Stiviano

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11 Civil Code §1148 Page 3,4,5,7,15

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24 *Farmers Ins. Exchange v. Zerlin (1997) 53 Cal.App.4th 445, 460* ..Page 13

25 *[61 Cal. Rptr.2d 707]*,

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1 **STATEMENT OF DEMURRERS**

2 The First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and Tenth Causes of
3 fail to state facts sufficient to constitute a causes of action and are uncertain. (Code of Civil
4 Procedure ["CCP"] §430.10(e)). The complaint in its entirety and every cause of action as set forth
5 therein is uncertain and as such term is used, "uncertain" includes ambiguous and unintelligible.
6 (Code of Civil Procedure §430.10(f)).

7 1. **First Cause of Action: "Set Aside of Community Property Without Spousal**
8 **Consent:"**

9 Plaintiff fails to state a cause of action for "Set Aside of Community Property Without Spousal
10 Consent" as there is no discernable claim for such relief under California law. This claim (and all other
11 claims plead against this responding party) are unsupported by The California Civil Code ("CC"),
12 California Probate Code ("ProbC") and or the California Family Code ("FC").

- 13 • CC § 1148. "A gift, other than a gift in view of impending death, cannot be revoked by
14 the giver."
15 • The ProbC is inapplicable as Mr. Donald T. Sterling is living at this time.
16 • FC 1100 et. seq. is solely applicable to claims as between spouses then engaged in
17 dissolution actions. Presently, there is no pending dissolution action by and between
18 Rochelle H. Sterling and her husband, Donald T. Sterling.

19 **The three (3) foregoing "bullet points" are specifically incorporated into the general and**
20 **special Demurrers as to each of the Second through and including Tenth Causes of action that**
21 **follow hereinafter. As to each of the succeeding eight (8) additional "Causes of Action" any defect**
22 **and or disability in pleading in each of the preceding "Causes of Action" are hopelessly recast in**
23 **each following theory of recovery by the wholesale "incorporation" of all prior paragraphs of the**
24 **complaint. Responding party will not repeat and reallege hereinafter.**

25 The First Cause of Action is hopelessly vague, ambiguous, unintelligible and never susceptible
26 of being repleaded to ever state a cause of action. Consequently, it is respectfully requested that this
27 Demurrer to the First Cause of Action be sustained without leave to amend.
28

1 **Second of Action: "Conversion of Community Property:"**

2 California Approved Jury Instructions (hereinafter "CACI") 2100 sets forth the elements of a
3 claim of "conversion" as follows: "2100. Conversion—Essential Factual Elements": 1. "Rochelle H.
4 Sterling claims that V Stiviano wrongfully exercised control over her personal property. To establish
5 this claim, Plaintiff must prove all of the following: 2. that V Stiviano intentionally and substantially
6 interfered with Mrs. Sterling's property by [taking possession of the *[item]*]; [or][preventing
7 *[plaintiff]* from having access to the *[item]*]; [or] [destroying the *[item]*]; [or] [refusing to return the
8 *[item]* after *[plaintiff]* demanded its return.]"

9 Nowhere is it alleged that defendant "took" possession of any items of real or personal property
10 from either Mr. or Mrs. Sterling. Plaintiff's "husband" is the exquisitely involved "on top of his
11 game" infamous real estate mogul, professional basketball team, the Los Angeles Clippers, owner
12 who, in accord with the verified complaint of Mrs. Sterling, at paragraph 9, page 3 is alleged to have
13 "transferred ... community property ...to or for the benefit of defendant Stiviano...." further that Mr.
14 Sterling apparently quite voluntarily and without any duress "regularly provided community property
15 funds to defendant Stiviano ..." (page 4, lines 7-8 of complaint) (over a near four (4) year period) and
16 further, that "D. Sterling transferred at least \$1,800,000 of community funds to or for the benefit of
17 defendant Stiviano to acquire a duplex..." (page 4, lines 18-19). Mrs. Sterling also alleges voluntary
18 gifts *without a taking* at paragraph 19, page 5 stating that monies and automobiles were "...provided
19 by D. Sterling ... and used by defendants to pay their living expenses" It is axiomatic that Mrs.
20 Sterling is not even hinting that her billionaire philandering husband had performed any clandestine
21 *acts behind her*, as it is alleged that Mr. Sterling was making gifts to V Stiviano since 2010 "for the
22 benefit of defendant Stiviano as part and parcel of their sexual relationship" [not either acknowledged
23 or admitted] at page 3, paragraph 9, line 14. If anything is plead, Mrs. Sterling pleads her absolute
24 knowledge of a long standing history of similar acts of Mr. Sterling who is infamous for his gold
25 plated dalliances. it is absurd to even hint that Mrs. Sterling did not consent to the gifts as alleged.

26 Clearly the requisite elements of a cause of action for "conversion" have not been set forth. The
27 verified complaint is to be taken as truthful: the allegations are that of gifts. See CC §1148.

28 The Second Cause of Action is hopelessly vague, ambiguous, unintelligible and never

1 susceptible of being repleaded to ever state a cause of action. Consequently, it is respectfully requested
2 that this Demurrer to the Second Cause of Action be sustained without leave to amend.

3 **2. Third Cause of Action: "For Imposition of Constructive Trust:"**

4 This purported cause of action states unequivocally, under oath that "the community property
5 and ownership in the Property ... was subverted by the gift of such Property by D. Sterling to Stiviano
6" See page 6, paragraph 25, lines 10-11. [emphasis added]. Again, under oath Mrs. Sterling
7 generally avers that her husband made a gift or gave property to this responding party. CC §1148
8 makes this gift irrevocable as to V Stiviano. See page 6, paragraph 25, lines 11-12 wherein Mr.
9 Donald T. Sterling is alleged to have made a "gift of such property by D. Sterling to Stiviano...."

10 The Third cause of Action consists of wholly conclusory allegations, wholly unsupported by
11 any peppercorn of a fact that there was "fraud, undue influence, or violation of a trust or other wrongful
12 acts" At no time does Plaintiff allege that Stiviano was an actual trustee or even tangentially
13 occupied a position of trust and confidence such that the exceptionally successful and business brilliant
14 Donald T. Sterling was duped, taken advantage of, cajoled or in any manner or fashion, outsmarted.
15 The allegations in paragraph 5 that "...Defendant Stiviano ...engages in conduct designed to target,
16 befriend, seduce, and then entice, cajole, borrow from, cheat, and/or receive as gift transfers of wealth
17 from wealthy older men whom she targetsd for such purpose." Nowhere in the complaint is it alleged
18 that Defendant so acted nor that the feminine wiles of Ms. Stiviano overpowered the iron will of
19 Donald T. Sterling who is well known as one of the most shrewd businessmen in the world.

20 **Most importantly, clearly, and without argument, there is no such thing as a Cause of Action**
21 **for "Constructive Trust" which is a remedy and not a Cause of Action under California law.**

22 The Third Cause of Action is hopelessly vague, ambiguous, unintelligible and never susceptible
23 of being repleaded to ever state a cause of action. Consequently, it is respectfully requested that this
24 Demurrer to the Third Cause of Action be sustained without leave to amend.

25 **3. Fourth Cause of Action: "Community Property Had and Received"**

26 Essentially, Plaintiff attempts to allege "COMMON COUNTS" here and asserts that Ms.
27 Stiviano became "indebted to Plaintiff" because her husband, Donald T. Sterling "provided" property to
28 V Stiviano "in amounts unknown." See page 7, paragraph 30 lines 8-9 of complaint. This "claim" is a

1 bastardization of the theory of recovery of "Money Had and Received." See CACI "370. Common
2 Count: Money Had and Received." Mrs. Sterling "...claims that [V Stiviano] owes [her] money. To
3 establish this claim, [Rochelle H. Sterling] must prove the following:

4 1. That [V. Stiviano] received money that was intended to be used for the benefit of [Rochelle
5 H. Sterling]...." At no time has Plaintiff stated a Cause of Action for Common Count of a sum certain.
6 This is required under California Law. At best Plaintiff has provided an estimate of some nondescript
7 benefit over a four year period all relating to irrevocable gifts to Defendant Stiviano by Donald T.
8 Sterling which Mrs. Sterling now takes umbrage. Mrs. Rochelle H. Sterling avoids like the plague, any
9 allegation that the gifts to V Stiviano were actually "intended to be used for the benefit of [Rochelle H.
10 Sterling]...." as that would be a fraud and a bald faced lie.

11 Clearly, and without argument, the requisite elements of a Cause of Action for "Common
12 Counts" have not been set forth.

13 The Fourth Cause of Action is hopelessly vague, ambiguous, unintelligible and never
14 susceptible of being repleaded to ever state a cause of action. Consequently, it is respectfully requested
15 that this Demurrer to the Second Cause of Action be sustained without leave to amend.

16 **4. Fifth Cause of Action: "Unjust Enrichment:"**

17 California DOES NOT recognize an independent Cause of Action for unjust enrichment; rather,
18 it's merely a basis for obtaining restitution based on quasi-contract or imposition of a constructive trust.
19 Clearly, and without argument, the requisite elements for this purported Fifth Cause of Action do not
20 exist and regardless of artful pleading, can never be cured nor state a cause of action.

21 The Fifth Cause of Action is hopelessly vague, ambiguous, unintelligible and never susceptible
22 of being repleaded to ever state a cause of action. Consequently, it is respectfully requested that this
23 Demurrer to the Second Cause of Action be sustained without leave to amend.

24 **5. Sixth Cause of Action: "For Accounting of Community Property:"**

25 Although California recognizes an independent Cause of Action for "Accounting;" rather, it's
26 merely a basis for obtaining some form of equitable relief that should have been "tied" to another
27 Cause of Action *that is viable* and is susceptible to a demand or request for equitable relief.

28 Here, Plaintiff has NOT plead that Ms. Stiviano occupied any claimed relationship to Mr.

1 Sterling as a fiduciary and in fact Plaintiff merely only claims a relationship between Mr. Sterling and
2 Ms. Stiviano as lovers for nearly four (4) years. Ms. Sterling DOES NOT allege the existence of a
3 fiduciary relationship *or contract* with demands that are so extensive and complicated that it is not
4 clear what damages may be adequate. This claimed Cause of Action fails in toto. In California
5 practice, an action for an accounting lies whenever a fiduciary relation exists between the parties and
6 a duty rests on the defendant to render an account. NO SUCH DUTY has been alleged here. The
7 action also lies in cases in which the accounts involved are so complicated that an ordinary action at
8 law demanding a fixed sum is not practicable. This has NOT been alleged in this case.

9 Clearly, the requisite elements for this purported Sixth Cause of Action do not exist and
10 regardless of artful pleading, can never be cured nor state a cause of action.

11 The Sixth Cause of Action is hopelessly vague, ambiguous, unintelligible and never susceptible
12 of being repleaded to ever state a cause of action. Consequently, it is respectfully requested that this
13 Demurrer to the Second Cause of Action be sustained without leave to amend.

14 **7. Seventh Cause of Action: "To Quiet Title:"**

15 In this purported Cause of Action, Mrs. Sterling avers that D. Sterling ... gifted to Stiviano ...
16 community funds for [the] purchase of the Property...." See page 9, paragraph 42, lines 21-23. Tthe
17 "gift" is irrevocable (CC §1148) and there was, as plead, absolutely no gift of community real property
18 held by one spouse as trustee for both spouses, there cannot be any "quiet title," rather, a failed attempt
19 at a claim for a sum certain in US Dollars. There is no claim for a sum certain here as discussed above.

20 At page 10, paragraph 44, lines 1-5, Plaintiff seeks to "quiet title" to property that is
21 unspecified, not identified and wholly imaginary as pleaded.

22 Clearly, and without argument, the requisite elements for this purported Seventh Cause of
23 Action do not exist and regardless of artful pleading, can never be cured nor state a cause of action.

24 The Seventh Cause of Action is hopelessly vague, ambiguous, unintelligible and never susceptible of
25 being repleaded to ever state a cause of action. Consequently, it is respectfully requested that this
26 Demurrer to the Second Cause of Action be sustained without leave to amend.

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1 **8. Eighth Cause of Action: "Reformation of Deed:"**

2
3 In this purported Cause of Action, unquestionably missing are the What, Where, When, Why
4 and the How as to Mr. Sterling, as the brilliant businessman he is, somehow got "taken" by Ms.
5 Stiviano. Mrs. Sterling alleges that the property was "supposed to" have been purchased in the name
6 of the Sterlings as a married couple. Why Donald T. Sterling didn't drag his wife to the Escrow
7 Office for her signatures, is really not a mystery. Curiously, it is not alleged that the commercial
8 Escrow company made any mistakes, just that the property "somehow" became titled to Ms.
9 Stiviano. Instead of chastising her philandering husband, let alone curtailing his carousing, Mrs.
10 Sterling seeks to punish Defendant who has done nothing wrong.
11

12 Mrs. Sterling clearly alleges that there was a contract between her husband and Ms. Stiviano.
13 She alleges at page 10, paragraph 47, lines 19-20 "...the ... Deed does not express the intentions of
14 the parties to the agreement" Further it cannot be ascertained if this "agreement" or contract
15 between Mr. Sterling and Ms. Stiviano was written or oral. Hence, if a "contract" was plead, its
16 vagaries belie the statement of a Cause of Action.
17

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19 Clearly, and without argument, the requisite elements for this purported Eighth Cause of Action
20 do not exist and regardless of artful pleading, can never be cured nor state a cause of action.
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22 The Eighth Cause of Action is hopelessly vague, ambiguous, unintelligible and never
23 susceptible of being repleaded to ever state a cause of action. Consequently, it is respectfully requested
24 that this Demurrer to the Eighth Cause of Action be sustained without leave to amend.

25 **9. Ninth Cause of Action: "Declaratory Relief"**

26 This purported Cause of Action fails to state with any clarity any Cause of Action inasmuch as
27 the preceding 50 paragraphs of the complaint (as addressed heretofore with respect to the 1st through
28 the 8th Causes of Action) were "incorporated" wholesale without regard to the requisite elements of any

1 Cause of Action. This 9th Cause is unintelligible. This purported Cause asserts that Mr. and Mrs.
2 Sterling are “owners” of all the property [despite irrevocable gifts] (paragraph 53, lines 17-19 of
3 Complaint) and despite title of each item to the contrary. To state further the absurdity of the claims,
4 Mrs. Sterling, under oath avers at paragraph 55, lines 24-26 that the “property” was “transferred by D.
5 Sterling to or for the benefit of the Defendants”

6
7 Clearly, and without argument, the requisite elements for this purported Ninth Cause of Action
8 do not exist and regardless of artful pleading, can never be cured nor state a cause of action.

9
10 The Ninth Cause of Action is hopelessly vague, ambiguous, unintelligible and never susceptible
11 of being repleaded to ever state a cause of action. Consequently, it is respectfully requested that this
12 Demurrer to the Ninth Cause of Action be sustained without leave to amend.

13 **10. Tenth Cause of Action: “Declaration That Gifts of Community Personal Property are**
14 **Void:”**

15 The wholly inconsistent allegations that Mr. Donald T. Sterling “made gifts” as previously
16 described, and in this purported Cause of Action and that he made “attempted gifts” (page 12,
17 paragraph 58, line 14) render the entire complaint theater of the absurd. Since paragraphs 1-56 are
18 “incorporated” in a wholesale manner into this purported Cause, this Cause (and the entire complaint
19 for that matter) is so vague, ambiguous, unclear and absurd as to defy imagination.

20 To make it clearer, this “Declaration” declares absolutely nothing and seeks absolutely
21 nothing in this complaint. The “Prayer” related to this Cause is wholly unconnected and unrelated.

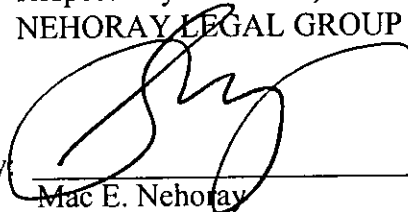
22 Clearly, and without argument, the requisite elements for this purported Tenth Cause of Action
23 do not exist and regardless of artful pleading, can never be cured nor state a cause of action.

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25 The Tenth Cause of Action is hopelessly vague, ambiguous, unintelligible and never susceptible
26 of being repleaded to ever state a cause of action. Consequently, it is respectfully requested that this
27 Demurrer to the Tenth Cause of Action be sustained without leave to amend.
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Dated: 4-18-14

Respectfully submitted,
NEHORAY LEGAL GROUP

By: 

Mac E. Nehoray
Attorneys for Defendant V Stiviano

1
2 MEMORANDUM OF POINTS AND AUTHORITIES

3 1. INTRODUCTION

4 This is an action brought by a very angry wife whose husband is a highly public figure and who
5 is well known to be "keeping women" other than his wife and who has done so for very many years
6 with a big toothy grin brandishing his sexual prowess in the faces of the Paparazzi and caring less what
7 anyone else thought, the least of which, his own wife.

8 Donald T. Sterling, curiously not a party in this action, has flaunted that grotesque lifestyle in
9 front of and in his wife's face for nearly their entire marriage of 50 years. The person least fooled and
10 least affected and least "robbed of her due" is Mrs. Rochelle H. Sterling.

11 At a minimum, she has been complicit for over 50 years and, here, particularly, has "looked the
12 other way" if not put hands over her mouth, covered her eyes and attempted to cover her ears. Further,
13 this not the "first rodeo" as the expression goes. Mr. Sterling has been very publicly involved with
14 numerous women time and time again, whether for a particularly short "contracted" period of time, or a
15 near four (4) relationship as is the alleged case in this matter. It is clear from past conduct, that Mrs.
16 Sterling has at a minimum, either "enabled" Mr. Donald T. Sterling to do, over and over again what he
17 does, or that she approved of the varied and many gifts as described in the complaint.

18 The "relationship" [whatever it may have been or not been] between Mr. Donald T. Sterling and
19 Ms. V Stiviano was open, notorious, obvious and long standing. Ms. Stiviano attended hundreds of
20 events, participated in myriad charity functions sponsored by Mr. Sterling, and was a veritable "fixture"
21 at his business offices over the last four (4) years. Mrs. Sterling was very frequently accompanying Mr.
22 Sterling at events wherein she and V Stiviano were integrally involved in the charitable functions
23 themselves. Ms. Stiviano was neither hidden, closeted, nor a clandestine "affair" at any time. Mrs.
24 Sterling absolutely tacitly if not openly approved of the relationship and the gifts.

25 CCP §430.10 (e) "The party against whom a complaint or cross-complaint has been filed may object,
26 by demurrer ... on any one or more of the following grounds:

27 (e) The pleading does not state facts sufficient to constitute a cause of action.
28

//

1 (f) The pleading is uncertain. As used in this subdivision, "uncertain" includes ambiguous
2 and unintelligible.

3 (g) In an action founded upon a contract, it cannot be ascertained from the pleading whether
4 the contract is written, is oral, or is implied by conduct."

5 Each of the ten (10) Causes of Action are subject to Demurrer for each of the three reasons
6 set forth above under CCP §430.10 (e)

7
8 CONSTRUCTIVE TRUST: "A constructive trust is an involuntary equitable trust created as a
9 remedy to compel the transfer of property from the person wrongfully holding it to the rightful owner."
10 In re Real Estate Associates Ltd. Partnership Litig., 223 F. Supp. 2d 1109, 1139 (C.D. Cal. 2002). "The
11 imposition of a constructive trust requires: (1) the existence of res (property or some interest in
12 property); (2) the right of the complaining party to that res; and (3) some wrongful acquisition or
13 detention of the res by another party who is not entitled to it." See Burlesci v. Petersen, 68 Cal. App.
14 4th 1062, 1069 (1998). Here in the Complaint, there is absolutely no allegation of "wrongful
15 acquisition." The complaint avers under oath that Mr. Sterling "gifted" the items to Ms. V Stiviano.
16 Such a gift is irrevocable under CC 1148. The Cause fails. Since the Complaint is "verified" it is NOT
17 anticipated that Mrs. Sterling will create "new and different facts" as the proverbial "kitchen sink" is
18 already in there!

19 This Cause fails.

20 COMMON COUNTS: 'This kind of action to recover back money which ought not in justice
21 to be kept is very beneficial, and, therefore, much encouraged. It lies for money paid by mistake, or
22 upon a consideration which happens to fail, or extortion, or oppression, or an undue advantage of the
23 plaintiff's situation contrary to the laws made for the protection of persons under those
24 circumstances.' " (Minor v. Baldrige (1898) 123 Cal. 187, 191 [55 P. 783], internal citation
25 omitted.)

26
27 There is at best a paucity of "facts" as alleged that even hint that Ms. V Stiviano extorted or
28 oppressed the famous Donald T. Sterling or that he was unduly "taken advantage of" by Ms. Stiviano.

1 The only mistake alleged is in one Cause related to the purchase of real property by Ms. Stiviano with
2 monies she possessed. There is, therefore, absolutely no basis for a Common Count Cause. Further,
3 the claim is for an amount uncertain which renders a common count case defective and deficient.
4

5 In California, it has long been settled that the only essential allegations of a common count
6 are '(1) the statement of indebtedness in a certain sum, (2) the consideration, i.e., goods sold, work
7 done, etc., and (3) nonpayment.' A cause of action for money had and received is stated if it is
8 alleged the defendant 'is indebted to the plaintiff in a certain sum "for money had and received by the
9 defendant for the use of the plaintiff." ' " (Farmers Ins. Exchange v. Zerlin (1997) 53 Cal.App.4th
10 445, 460 [61 Cal.Rptr.2d 707], internal citations omitted.). Again, Mrs. Rochelle H. Sterling HAS
11 NOT alleged that Ms. Stiviano got something that was intended for the use and benefit of Mrs.
12 Sterling, rather, Mrs. Sterling alleges "its all mine and I want it." There is no specificity in the
13 demands other than "It's all mine." There is no sum certain to be sure. The Common Count fails.
14

15 UNJUST ENRICHMENT: California courts are split as to whether there is an independent
16 cause of action for unjust enrichment. Baggett v. Hewlett-Packard Co., 582 F. Supp. 2d 1261, 1270-
17 71 (C.D. Cal. 2007) (applying California law). One view is that it is a general principle underlying
18 various legal doctrines and remedies. McBride v. Boughton, 123 Cal. App. 4th 379, 387 (2004).
19 Another view is that it is a cause of action and its elements are receipt of a benefit and unjust
20 retention of the benefit at the expense of another. Lectrodryer v. SeoulBank, 77 Cal. App. 4th 723,
21 726 (2000). Determining whether it is unjust for a person to retain a benefit may involve policy
22 considerations. First Nationwide Sav. v. Perry, 11 Cal. App. 4th 1657, 1663 (1992). For instance, "a
23 customary way of regarding a particular type of transaction may justify the inference that the payor
24 has assumed the risk of mistake." Id.
25

26 It is very reasonable that Mr. Donald T. Sterling "assumed the risk" of his wife's alleged
27 wrath and just shrugged his shoulders as he has done so many times in the past. Regardless, with Mr.
28

1 Sterling's apparent wealth, that which Ms. Stiviano did receive is Mr. Sterling's pocket change and at
2 a minimum his to throw away, sour grapes aside.

3 The Court in Melcher v. New Line Productions, Inc., 106 Cal. App. 4th 779, 793 (Cal. App.
4 2003) stated in part that there is no cause of action for unjust enrichment; rather, it's merely a basis
5 for obtaining restitution based on quasi-contract or imposition of a constructive trust as otherwise
6 alleged. See argument pertaining to Constructive Trust above.

8 ACCOUNTING: To state a cause of action for an accounting, only the simplest pleading is
9 required:

11 1. The fiduciary relationship or other circumstances appropriate to the remedy (infra, §777 et seq.).

13 2. A balance due from the defendant to the plaintiff that can only be ascertained by an accounting.

14 Thus, a complaint does not state a cause of action for an accounting where it shows on its face that
15 none is necessary; i.e., where the plaintiff alleges his right to recover a sum certain or a sum that can
16 be made certain by calculation.

18 Clearly, Plaintiff DOES NOT allege a fiduciary relationship or other circumstances appropriate
19 to the remedy. Because an action for an accounting is an equitable action (Verdier v Superior Court
20 (1948) 88 CA2d 527, 530, 199 P2d 325, 327), the action must be tried by the court without a jury
21 (United States Fid. & Guar. Co. v Superior Court (1988) 204 CA3d 1513, 1529, 252 CR 320, 330;
22 Strauss v Summerhays (1984) 157 CA3d 806, 811, 204 CR 227, 230). Mrs. Rochelle H. Sterling has
23 demanded a jury trial. Her choices are to bifurcate the trial, drop the claim for accounting and or waive
24 jury.

25 QUIET TITLE and REFORMATION OF DEED and DECLARATORY RELIEF and lastly,
26 DECLARATION THAT GIFTS OF COMMUNITY PROPERTY ARE VOID:

27 The Seventh, Eighth, Ninth and Tenth Causes of Action are addressed jointly hereinafter.

28 The Quiet Title and Deed Reformation assert essentially that monies were "gifted" to Ms. V

1 Stiviano but that they shouldn't have been! The complaint clearly and adequately states under oath that
2 the relevant "gifts" were in fact made. CC §1148 renders all of the gifts, without exception,
3 irrevocable. Since Mrs. Sterling is clearly NOT seeking to overturn CC §1478 in this action, the claims
4 in these four Causes of Action are not only without merit, but unintelligible. Mrs. Sterling cannot plead
5 under oath that the gifts on one hand were made and then with the next breath, assert that the gifts are
6 mistakes and or revocable. These Causes of Action are hopelessly vague and unintelligible.

7 **CONCLUSION**

8 For the foregoing reasons, Ms. Stiviano respectfully requests an order sustaining its demurrers
9 and dismissing all causes of action against her without leave to amend.

10 Dated: 4-18-2014

NEHORAY LEGAL GROUP

11
12 By:  _____

13 Mae E. Nehoray
14 Attorneys for Defendant Stiviano
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3 COUNTY OF LOS ANGELES) ss.

4 I am employed in the County of Los Angeles, State of California. I am over the age of 18 and
5 not a party to the within action; my business address is 23945 Calabasas Road, Suite 212, Calabasas,
6 CA 91302.

7 On the date below, I served the following document(s) described as:

8 **DEFENDANT V STIVIANO'S NOTICE OF DEMURRERS AND DEMURRERS TO
9 PLAINTIFF'S COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES**

10 on the interested parties in this action by placing ___ the original x a true and correct copy in an
11 enclosed sealed envelope as follows:

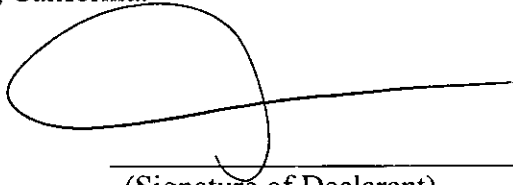
12 Laura A. Wasser, Esq.
2029 Century Park East, Suite 1200
Los Angeles, California 90067-2957

13 **(BY MAIL):** I am readily familiar with the firm's practice of collection and processing
14 correspondence by mailing. Under that same practice it would be deposited with U.S. Postal
15 Service on that same day with postage fully prepaid at Pasadena, California in the ordinary
16 course of business. I am aware that on motion of the party served, service is presumed invalid if
17 postal cancellation date or postage meter date is more than one day after date of deposit for
18 mailing in affidavit.

19 **(STATE):** I declare under penalty of perjury under the laws of the State of California that the
20 above is true and correct.

21 Executed on April 21, 2014, in Calabasas, California.

22 Mark Geyer
23 (Print or Type Name)

24 
25 (Signature of Declarant)

26
27
28