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Attorneys for Defendants
Haig Berberian, Haig Berberian
Corporation, Isabel Berberian,
Isabel Berberian Corporation,
Berberian Orchards, and
Sexton Nut Processors, Inc.

FILED
San Francisco County Superior Court

JUL 13 1984

DONALD W. DICKINSON, Clerk
BY S. Douglas Deputy Clerk

§ 281
179142

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

RICHARD BERBERIAN,)
)
Plaintiff,)
)
vs.)
)
WELLS FARGO BANK, et al.,)
)
Defendants.)

No. 813484
ANSWER TO SECOND AMENDED
COMPLAINT

Defendants Haig Berberian, Haig Berberian Corporation,
Isabel Berberian, Isabel Berberian Corporation, Berberian
Orchards, and Sexton Nut Processors, Inc. answer the unverified
second amended complaint of Richard Berberian as follows:

1. Defendants deny each and every allegation of
plaintiff's second amended complaint.

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FIRST AFFIRMATIVE DEFENSE

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2. The complaint and each cause of action in the complaint fails to state facts sufficient to constitute a cause of action.

SECOND AFFIRMATIVE DEFENSE

3. Each of the purported causes of action in the complaint is barred by one or more of the applicable statutes of limitation including without limitation California Code of Civil Procedure §§336, 337, 338, 339, 340, and 343.

THIRD AFFIRMATIVE DEFENSE

4. Plaintiff has no standing to assert the claims for relief pleaded in each cause of action in the complaint.

FOURTH AFFIRMATIVE DEFENSE

5. The complaint and each cause of action in the complaint is barred by the laches of plaintiff and/or his predecessor(s) in interest.

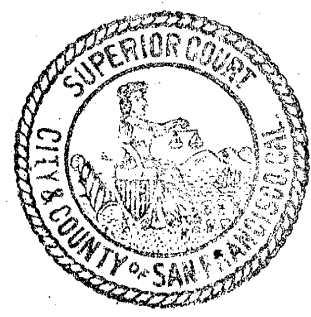
FIFTH AFFIRMATIVE DEFENSE

6. The complaint and each cause of action in the complaint is barred by the unclean hands of plaintiff and/or plaintiff's predecessor(s) in interest.

SIXTH AFFIRMATIVE DEFENSE

7. The terms of the trust sued upon exonerate defendants and each of them from the claims for relief alleged in the complaint and each cause of action in the complaint.

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SEVENTH AFFIRMATIVE DEFENSE

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2 8. Plaintiff lacks the capacity to assert the claims
3 for relief pleaded in each cause of action in the complaint.

EIGHTH AFFIRMATIVE DEFENSE

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5 9. Defendants and each of them acted at all times in
6 good faith in dealing with the trust that is the subject of this
7 lawsuit, thus barring the claims for relief pleaded in each
8 cause of action of the complaint.

NINTH AFFIRMATIVE DEFENSE

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10 10. By plaintiff's conduct and representations, and
11 by the conduct and representations of plaintiff's predecessor(s)
12 in interest, plaintiff has waived any right to the relief sought
13 in each cause of action in the complaint.

TENTH AFFIRMATIVE DEFENSE

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15 11. By plaintiff's conduct and representations, and
16 by the conduct and representations of plaintiff's predecessor(s)
17 in interest, plaintiff is estopped from asserting the claims for
18 relief pleaded in each cause of action in the complaint.

ELEVENTH AFFIRMATIVE DEFENSE

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20 12. By plaintiff's conduct and representations, and
21 by the conduct and representations of plaintiff's predecessor(s)
22 in interest, plaintiff has ratified the actions complained of,
23 thus barring the relief sought in each cause of action in the
24 complaint.

TWELFTH AFFIRMATIVE DEFENSE

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26 13. By plaintiff's conduct and representations, and

1 by the conduct and representations of plaintiff's predecessor(s)
 2 in interest, plaintiff has consented to the actions complained
 3 of, thus barring the relief sought in each cause of action in
 4 the complaint.

5 THIRTEENTH AFFIRMATIVE DEFENSE

6 14. The complaint, and each cause of action in the
 7 complaint, is barred by res judicata.

8 FOURTEENTH AFFIRMATIVE DEFENSE

9 15. The complaint, and each cause of action in the
 10 complaint, is barred by an accord and satisfaction between the
 11 parties to this action.

12 FIFTEEN AFFIRMATIVE DEFENSE

13 16. Plaintiff has failed to take reasonable steps to
 14 mitigate the damages, losses, and injuries alleged in each cause
 15 of action in the complaint. If plaintiff had taken such
 16 reasonable steps, plaintiff would have suffered no such damages,
 17 losses, or injuries whatsoever (if any there were).

SIXTEENTH AFFIRMATIVE DEFENSE

18 17. The complaint and each cause of action in it is
 19 barred by a compromise between the parties to this action.

SEVENTEENTH AFFIRMATIVE DEFENSE

20 18. The complaint and each cause of action in it is
 21 barred by a settlement between the parties to this action.

EIGHTEENTH AFFIRMATIVE DEFENSE

22 19. Plaintiff was careless, negligent, and guilty of
 23 willful misconduct in and about the matters referred to in said
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1 complaint, and such carelessness, negligence, and willful
 2 misconduct on the part of plaintiff proximately caused and
 3 contributed to the damages complained of (if any there were).

4 NINETEENTH AFFIRMATIVE DEFENSE

5 20. Should the court determine that defendants were
 6 liable to plaintiff for damages, the amount of said liability
 7 must be reduced by the percentage of liability attributable to
 8 plaintiff.

9 TWENTIETH AFFIRMATIVE DEFENSE

10 21. The injuries sustained by plaintiff (if any there
 11 were) were in whole or in part negligently caused by persons,
 12 firms, corporations, or entities other than the answering
 13 defendants, and said negligence reduces the percentage of
 14 negligence, if any, attributable to the answering defendants.

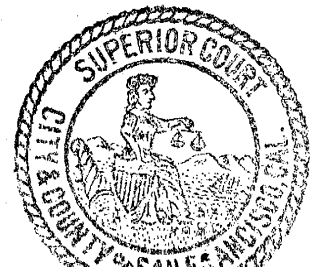
15 WHEREFORE, defendants pray that the complaint be
 16 dismissed and plaintiff take nothing by this action, and that
 17 defendants be awarded costs and all other just relief.

18 TITCHELL, MALTZMAN, MARK, BASS,
 19 OHLEYER & MISHEL
 A Professional Corporation

20 By Geoffrey M. Faust

21 Geoffrey M. Faust
 22 Attorneys for Defendants Haig
 23 Berberian, Haig Berberian
 24 Corporation, Isabel Berberian,
 25 Isabel Berberian Corporation,
 26 Berberian Orchards, and Sexton Nut
 Processors, Inc.

S06317.35



PROOF OF SERVICE BY MAIL

1
2 I declare that:

3 I am employed in the City and County of San Francisco,
4 State of California. I am over the age of eighteen years and am
5 not a party to the within-entitled cause. My business address
6 is 650 California Street, 29th Floor, San Francisco, California
7 94108. On July 13, 1984 I served the attached ANSWER TO SECOND
8 AMENDED COMPLAINT on the interested parties in said cause, by
9 placing true copies thereof enclosed in a sealed envelope with
10 first-class postage thereon fully prepaid, in the United States
11 mail at San Francisco, California addressed as follows:

12 Laurence E. Drivon
13 215 N. San Joaquin
14 Stockton, CA 95202

15 Robert B. Pringle
16 Thelen, Marrin, Johnson & Bridges
17 Two Embarcadero Center
18 San Francisco, CA 94111

19 I declare under penalty of perjury under the laws of
20 the State of California that the foregoing is true and correct,
21 and that this declaration was executed on July 13, 1984 at San
22 Francisco, California.
23
24
25
26

Beth A. Hudson
BETH A. HUDSON

