

1 **LAW OFFICES OF MICHAEL R. KAISER**  
2 Michael R. Kaiser, SBN 74609  
3 Julie B. Isen, SBN 270380  
4 801 E. Tahquitz Canyon Way, Ste. 101  
5 Palm Springs, California 92262  
6 Tel: (760) 322-0806; Fax: (760) 322-8979

**FILED** *BM*  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF RIVERSIDE

JUL 14 2014

*Miller*

JUL 15 2014

Attorneys for Plaintiff Nanette Van Wyk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF RIVERSIDE, PALM SPRINGS BRANCH

11 NANETTE VAN WYK, an individual,

12 Plaintiffs,

13 vs.

14 CESARE ROSSI, an individual, MARZIA  
15 MANNINI ROSSI, an individual, JOHN PIRO,  
16 an individual, WINDERMERE REAL  
17 ESTATE SOCAL, a California Corporation,  
18 WINDERMERE REAL ESTATE SERVICES  
19 COMPANY, a Washington Corporation, Does  
1-25,

Defendants.

Case No. **PSC 1403783**

COMPLAINT FOR DAMAGES

20 COME NOW Plaintiff NANETTE VAN WYK and complains of defendants, and each of them, as  
21 follows.

22 GENERAL ALLEGATIONS

23 1. Plaintiff NANETTE VAN WYK is and was at all times an individual residing in  
24 Riverside County, California.

25 2. The true names and capacities of the Defendants, DOES 1 through 25, whether  
26 individual, corporate, associate or otherwise, are unknown to Plaintiff at the time of filing this  
27 Complaint and Plaintiff, therefore, sues said Defendants by such fictitious names and will ask leave of  
28 court to amend this Complaint to show their true names or capacities when the same have been

1 ascertained. Plaintiff is informed and believes, and therefore alleges, that each of the DOE Defendants is,  
2 in some manner, responsible for the events and happenings herein set forth and proximately caused  
3 injury and damages to the Plaintiff as herein alleged.

4 3. At all times herein mentioned, Cesare Rossi, Marzia Mannini Rossi and John Piro were  
5 individuals residing in Riverside County, California.

6 4. Plaintiff is informed and believes and thereon alleges that the defendants and each of  
7 them were the agents, servants, employees and joint venturers of the other named defendants, and were  
8 acting within the scope of their agency, employment, and joint venture, or with the knowledge and  
9 consent of their principals and employers..

10 5. Defendant, Windermere Real Estate SoCal is and was at all times mentioned, an active  
11 California corporation authorized to do business and doing business in the County of Riverside, State of  
12 California.

13 6. Defendant Windermere Real Estate Services Company is, and was at all times mentioned,  
14 an active Washington corporation authorized to do business and doing business in the County of  
15 Riverside, State of California.

16 7. At all times mentioned herein, Defendant John Piro was an agent of Defendants  
17 Windermere Real Estate SoCal and Windermere Real Estate Services Company and a licensed real  
18 estate agent.

19 8. The residence located at 2320 N. Sandra Road, Palm Springs, California 92262  
20 (hereinafter "SUBJECT PROPERTY") is the property over which this dispute arises. The SUBJECT  
21 PROPERTY is located in Palm Springs, County of Riverside, State of California.

22 9. SUBJECT PROPERTY was purchased by Plaintiff Nanette Van Wyk (hereinafter "VAN  
23 WYK") on July 9, 2012, from Cesare Rossi and Marzia Mannini Rossi (hereinafter "ROSSI") for the  
24 purpose of creating a live-in full time care facility for patients with Alzheimer's, dementia, and other  
25 disabilities and ROSSI had knowledge prior to said purchase that it was being purchased for this  
26 purpose.

27 10. On or about February 7, 2014, VAN WYK discovered that the enclosed dining room  
28 created from the garage was not permitted by the City of Palm Springs and was in fact in violation of

1 local building codes. VAN WYK discovered this fact when she sought to have the SUBJECT  
2 PROPERTY licensed and in connection therewith it was inspected by the fire department. Additionally,  
3 returning the enclosure to a garage was not a "simple fix" as stated by sellers and their agents, but would  
4 require a significant amount of work and the loss of a bedroom as well.

5 **FIRST CAUSE OF ACTION**

6 **(BREACH OF CONTRACT)**

7 (Against Cesare Rossi and Marzia Mannini Rossi Only)

8 11. Plaintiff incorporates by reference paragraphs 1- 10 of this complaint.

9 12. On July 9, 2012, ROSSI and VAN WYK entered into a written Residential Purchase  
10 Agreement (a true and correct copy of which is attached herein as Exhibit "A") for the SUBJECT  
11 PROPERTY.

12 13. Section 26 of the Residential Purchase Agreement is entitled Dispute Resolution and details  
13 the method of alternative dispute resolution to be taken prior to filing a lawsuit.

14 14. When the conflict arose, VAN WYK attempted to contact ROSSI to schedule a mediation.

15 15. VAN WYK, through her counsel, sent three letters to ROSSI on March 27, 2014, April 22,  
16 2014 and on June 17, 2014. The first two letter contained suggested mediators and requests to mediate. The  
17 final letter again requested that ROSSI choose a mediator and respond to VAN WYK's request to mediate.

18 16. ROSSI responded to the letters but refused to select a mediator or suggest dates for  
19 mediations.

20 17. ROSSI breached the contract which requires them to mediate any dispute or claim arising  
21 from the Residential Purchase Agreement, leaving VAN WYK with no alternative but to expend costs and  
22 attorney's fees to file a lawsuit.

23 18. VAN WYK has demanded ROSSI comply with the Residential Purchase Agreement by  
24 agreeing to select a mediator and provide available dates but ROSSI has refused, and continues to refuse to  
25 do so.

26 19. Additionally, section 9A of the Residential Purchase Agreement requires the Seller to  
27 "DISCLOSE KNOWN MATERIAL FACTS AND DEFECTS affecting the Property" within seven days  
28 after the Agreement was signed. (Emphasis in original, as seen in Exhibit A).



1           27. All Defendants knew that the garage-to-dining room conversion was more involved than  
2 a mere transformation of a garage into a single room. A true and accurate copy of the Fire Safety  
3 Inspection Request with attached home diagram is attached herein as **Exhibit "B"**. In fact, the garage  
4 had been turned into a dining room and parts of bedrooms number 4 and 6 as seen in **Exhibit B**.

5           28. Instead of disclosing the facts above, Defendants told VAN WYK that the dining room  
6 could easily be turned back into a garage, thereby not disclosing that what used to be the garage was now  
7 the dining room and part of a downstairs bedroom.

8           29. The home listing clearly states that the "[g]arage is currently not being used and exterior  
9 door is decoratively covered. The garage space is currently being used as the formal dining room, but  
10 can be easily returned to original status by owner." A true and correct copy of the home listing is  
11 attached herein as **Exhibit "C"**. This assertion was clearly incorrect and misleading.

12           30. In his Agent Visual Inspection Disclosure (a true and correct copy of which is attached  
13 herein as **Exhibit "D"**), agent John Piro stated that the "garage door sealed shut with decorative  
14 covering. Can be easily removed and returned to working garage door."

15           31. Defendant ROSSI failed to disclose in the Real Estate Transfer Disclosure Statement  
16 required by California Civil Code §1102, et seq. that the garage was not permitted.

17           32. VAN WYK relied upon the Disclosure Statement of ROSSI and the Agent Visual  
18 Inspection Disclosure.

19           33. VAN WYK's reliance was justified since Defendants knew the garage had been  
20 converted and should have known if the conversion was permitted.

21           34. VAN WYK could not have known that information was incorrect until she contacted the  
22 fire department to obtain fire clearance as required for the lawful operation of her facility.

23           35. The true facts were the garage conversion was not permitted and returning the garage to  
24 its proper condition would require the removal of two bedrooms from a five bedroom facility, causing  
25 VAN WYK to lose income as well as causing delay to the facility opening.

26           36. Defendants knew that VAN WYK would have been unable to determine that the  
27 bedrooms were also part of the original garage without significant further inspection.

28

1 37. Without covered parking for two vehicles, VAN WYK is unable to get a permit for the  
2 conversion and without the permit to obtain a license to open her facility. As stated above, even if the  
3 garage was returned to its original condition and the facility could get clearance, two of the resident  
4 bedrooms would no longer be there.

5 38. VAN WYK invested a considerable amount of money into the SUBJECT PROPERTY  
6 for improvements necessary to use it as a live-in full time care facility.

7 39. As a direct and proximate result of the defendants' negligent misrepresentation and  
8 nondisclosure as aforesaid, plaintiff has suffered consequential damages, loss of income and general  
9 damages according to proof.

10 **THIRD CAUSE OF ACTION**

11 **(Concealment/Deceit)**

12 (Against All Defendants)

13 40. Plaintiff incorporates by reference paragraphs 1-10 and 21-37 of this Complaint.

14 41. Defendants intended for VAN WYK to rely on their statements regarding the garage. The  
15 assertion that the dining room could be easily turned back into a garage was prominently displayed on  
16 the listing for the house. **Exhibit C.**

17 42. The offer to return the garage to its original form was intended to assure the buyer that the  
18 fix was simple. It was intended to lead the buyer to believe that the dining room was the only part of the  
19 home that was where the garage used to be.

20 43. The offer was intended to conceal from VAN WYK and all potential buyers that  
21 bedrooms number 4 and 6 were also part of the original garage. See **Exhibit B.**

22 44. As a direct and proximate result of the defendants' concealment as aforesaid, plaintiff has  
23 suffered consequential damages, loss of income and general damages according to proof.

24 **FOURTH CAUSE OF ACTION**

25 **Suppression of Material Fact**

26 (Against All Defendants)

27 45. Plaintiff incorporates by reference paragraphs 1-10 and 21-41 of this Complaint.

28 ///

1           46. Defendants knew that the number of rooms in the home was an important factor in VAN  
2 WYK's decision to purchase it. It was known to defendants that two of the bedrooms were part of the  
3 original garage. This fact would have been material to VAN WYK's decision to purchase.

4           47. Defendants knew that the home did not comply with Palm Springs Zoning and was not  
5 permitted. It was known to defendants that VAN WYK would have to make the SUBJECT PROPERTY  
6 comply with the Palm Springs requirement that it have covered parking for two vehicles to get fire  
7 clearance, have the conversion permitted and obtain licensing as a live-in care facility.

8           48. Defendants knew that the garage conversion was not merely a decorative covering as  
9 stated in **Exhibit D** and that restoring the SUBJECT PROPERTY to a two car garage would require  
10 significant work and expense, including the loss of a bedroom.

11           49. Defendants suppressed the aforementioned facts by not disclosing them to Plaintiff and  
12 by allowing Plaintiff to think the restoration of the garage would be easy and inexpensive.

13           50. As a direct and proximate result of the defendants' negligence as aforesaid, plaintiff  
14 purchased the home without the above facts and has been financially harmed in an amount according to  
15 proof.

16           Plaintiff Nanette Van Wyk prays for judgment against the Defendants, and each of them as  
17 follows:

18 **FIRST CAUSE OF ACTION**

- 19           A. General damages according to proof;  
20           B. Consequential damages according to proof;  
21           C. Attorney fees as provided by the Purchase Agreement;  
22           D. Difference in what was paid for and the true value of the Property;  
23           E. Costs of suit; and  
24           F. For such other and further relief as the court deems proper.

25 **SECOND CAUSE OF ACTION**

- 26           A. General damages according to proof;  
27           B. Consequential Damages according to proof;  
28           C. Attorney fees as provided by the Purchase Agreement;

1 D. Costs of suit; and

2 E. For such other and further relief as the court deems proper.

3 **THIRD CAUSE OF ACTION**

4 A. General damages according to proof;

5 B. Consequential Damages according to proof;

6 C. Attorney fees as provided by the Purchase Agreement;

7 D. Costs of suit; and

8 E. For such other and further relief as the court deems proper.

9 **FOURTH CAUSE OF ACTION**

10 A. General damages according to proof;

11 B. Consequential Damages according to proof;

12 C. Attorney fees as provided by the Purchase Agreement;

13 D. Costs of suit; and

14 E. For such other and further relief as the court deems proper.

15 Dated: July 11, 2014

**LAW OFFICES OF MICHAEL R. KAISER**

16  
17 By:   
18 **Michael R. Kaiser**  
**Julie B. Isen**  
19 Attorneys for Plaintiff Nanette Van Wyk



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>Michael R. Kaiser</b> SBN: 74609 <b>LAW OFFICES OF MICHAEL R. KAISER</b> 801 E. Tahquitz Canyon Way, Suite 101, PALM SPRINGS, CA 92262 TELEPHONE NO.: 760-322-0806 FAX NO.: 760-322-8979 ATTORNEY FOR (Name): Plaintiff, Nanette Van Wyk	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE STREET ADDRESS: 3255 E. Tahquitz Canyon Way MAILING ADDRESS: 3255 E. Tahquitz Canyon Way CITY AND ZIP CODE: Palm Springs, CA 92262 BRANCH NAME: Palm Springs	
CASE NAME: Nanette Van Wyk v. Cesare Rossi, et al.	
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> <b>Unlimited</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>Limited</b> (Amount demanded is \$25,000 or less)	<b>Complex Case Designation</b> <input type="checkbox"/> <b>Counter</b> <input type="checkbox"/> <b>Joinder</b> Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
	CASE NUMBER: <div style="font-size: 24pt; font-weight: bold; text-align: center;">PSC 1403783</div> JUDGE: DEPT:

*Items 1-6 below must be completed (see instructions on page 2).*

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (48) <b>Other P/PI/D/W/D (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other P/PI/D/W/D (23) <b>Non-P/PI/D/W/D (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-P/PI/D/W/D tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input checked="" type="checkbox"/> Other real property (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
--	---	--

2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties   | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial postjudgment judicial supervision  |
3. Remedies sought (check all that apply): a.  monetary    b.  nonmonetary; declaratory or injunctive relief    c.  punitive
4. Number of causes of action (specify): 4
5. This case  is  is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: July 14, 2014

Michael R. Kaiser \_\_\_\_\_  
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

## INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

### CASE TYPES AND EXAMPLES

#### Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

#### Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability (not asbestos or toxic/environmental) (24)  
Medical Malpractice (45)  
Medical Malpractice—Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PI/PD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PI/PD/WD

#### Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice (not medical or legal)  
Other Non-PI/PD/WD Tort (35)

#### Employment

Wrongful Termination (36)  
Other Employment (15)

#### Contract

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract (not unlawful detainer or wrongful eviction)  
Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage (not provisionally complex) (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

#### Real Property

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

#### Unlawful Detainer

Commercial (31)  
Residential (32)  
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

#### Judicial Review

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor  
Commissioner Appeals

#### Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

#### Enforcement of Judgment

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment (non-domestic relations)  
Sister State Judgment  
Administrative Agency Award (not unpaid taxes)  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

#### Miscellaneous Civil Complaint

RICO (27)  
Other Complaint (not specified above) (42)  
Declaratory Relief Only  
Injunctive Relief Only (non-harassment)  
Mechanics Lien  
Other Commercial Complaint Case (non-tort/non-complex)  
Other Civil Complaint (non-tort/non-complex)

#### Miscellaneous Civil Petition

Partnership and Corporate Governance (21)  
Other Petition (not specified above) (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief From Late Claim  
Other Civil Petition