

1 LAW OFFICES OF PHILIP DEITCH

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8 Attorney For Defendant:

9 AZTLAN COLD STORAGE, INC.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF LOS ANGELES**

12 **CENTRAL DISTRICT**

13 MERCO GROUP – 3185 E.  
14 Washington Boulevard, LLC, Delaware  
15 Limited Liability Company,  
16 Plaintiff,

17 vs.

18 AZTLAN COLD STORAGE, INC., a  
19 California Corporation, et al.  
20 Defendants.

**CASE NO. 12U04551**

**NOTICE OF DEMURRER AND  
DEMURRER TO COMPLAINT FOR  
UNLAWFUL DETAINER; POINTS  
AND AUTHORITIES; REQUEST  
FOR JUDICIAL NOTICE**

Date: May 25, 2012

Time: 9:15 AM

Dept: 80

Honorable Rafael Ongkeko

23  
24 **DEFENDANT AZTLAN COLD STORAGE, INC., a California corporation, by**  
25 **its Counsel Philip Deitch, demurs to the Complaint for Unlawful Detainer filed**  
26 **herein by Plaintiff MERCO GROUP – 3185 E WASHINGTON BOULEVARD, LLC, a**  
27 **Delaware limited liability company, as follows:**

28 Section 403.010(f), the pleading is uncertain because the verified complaint directly  
contradicts an earlier filed verified complaint over the same issues.

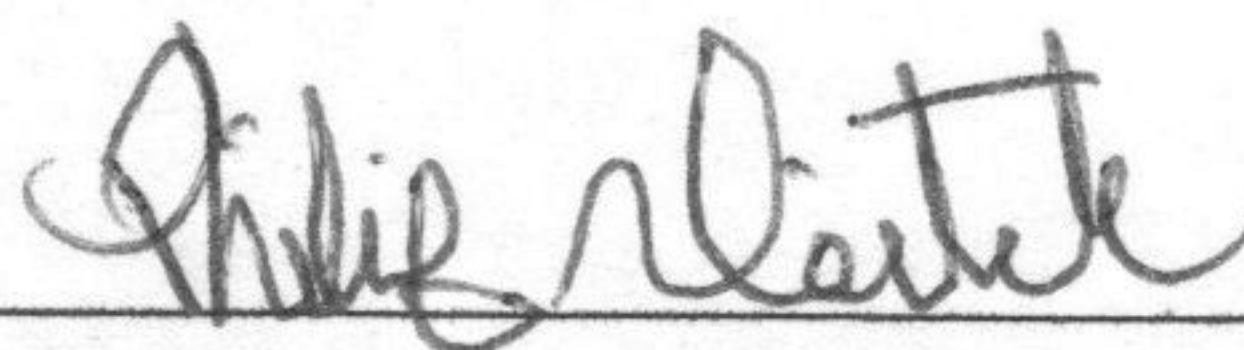
1 2. Section 430.010(b), the entity which filed the action lacks the legal capacity to  
2 sue in that the persons who purport to be the owners of Plaintiff are not lawfully the  
3 owners;

4 3. Section 430.010(d), there is a defect in the party to the action in that the persons  
5 who purport to be the owners of Plaintiff are not lawfully the owners;

6 This demurrer will be based upon this Notice of Demurrer and Demurrer, the  
7 papers and pleadings of this court, the Points & Authorities herein, and upon a request  
8 for Judicial Notice of Case No. BC 479498, and upon such other and further evidence  
9 as may be presented upon hearing of this Demurrer, oral or written.

10  
11 Dated: April 19, 2012

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16 Philip Deitch, Attorney For:  
17 Defendant Aztlan Cold Storage, Inc.

1 **POINTS & AUTHORITIES**

2 **I**

3 **STATEMENT OF PROCEEDINGS**

4 On February 28, 2012, Plaintiff filed a verified Complaint for Unlawful Detainer  
5 against this responding Defendant, Los Angeles Superior Court Case No. BC 479498  
6 (Exhibit A). Defendant demurred to this Complaint on March 13, 2012. On March 26,  
7 2012, the Plaintiff unilaterally dismissed the case without prejudice in its entirety.

8 The instant case was filed in this court on April 6, 2012. It too is a verified  
9 Complaint for Unlawful Detainer.

10 **II**

11 **THE VERIFIED PLEADINGS**

12 **DIRECTLY CONTRADICT EACH OTHER**

13 If there is one thing that is clear and unambiguous about the pleadings in this  
14 matter it is that they cannot possibly be reconciled with each other. Assuming  
15 ***arguendo*** that neither of the signatures on the verifications is a forgery (which this  
16 Defendant only assumes for the sake of demurrer since Defendant has obtained a  
17 voluntary handwriting exemplar from one of the purported signers and already knows  
18 that one of the signatures is a forgery in violation of Section 470 of the Penal Code) then  
19 at least one of the signers has committed perjury in violation of Section 118 of the  
20 California Penal Code.

21 In the 1st complaint (BC479498 – Feb.28.2012) the Plaintiff attached a Notice to  
22 Pay Rent or Quit, contended that the Defendant had not paid rent since March 1, 2011,  
23 and claims the amount due and outstanding as being \$1,200,245.00.

24 In the 2nd complaint (12U04551 – Apr.6.2012) the Plaintiff now contends that  
25 Defendant owes \$200,000.00 and not \$1,200,245.00, and states that the amount of  
26 \$200,000.00 is amount due thru April 2. 2012.

27 **Analyzed by the science of mathematics these two sets of facts are**  
28 **irreconcilable**

1 Analyzed from the science of logic these two sets of facts are  
2 irreconcilable

3 Analyzed from the standpoint of the law, these two sets of facts create an  
4 irreconcilable ambiguity.

5 **III**

6 **WHEN FACTS CAN BE SUBJECT**

7 **TO MORE THAN A SINGLE**

8 **INTERPRETATION AND**

9 **CANNOT BE RECONCILED THEY ARE AMBIGUOUS**

10 **AS A MATTER OF LAW**

11 Language in contracts [*Fremont Indemnity Co. v. Fremont General Corp.*  
12 (2007) 148 Cal.App.4th 97, 55 Cal.Rptr.3d 621], insurance policies [*Boeing Co. v.*  
13 *Continental Casualty Co.* (2007) 157 Cal.App.4th 1258, 69 Cal.Rptr.3d 322, CDM  
14 *Investors v. Travelers Casualty & Surety Co.* (2006) 139 Cal.App.4th 1251, 43  
15 Cal.Rptr.3d 669, *Palacin v. Allstate Ins. Co.* (2004) 119 Cal.App.4th 855], and statutes  
16 [*In re Social Services Payment Cases* (2008) 166 Cal.App.4th 1249] that is subject to  
17 more than one interpretation is ambiguous. In the context of contracts, insurance  
18 policies and statutes, the courts have recognized various ways to construe and  
19 reconcile the appropriate interpretation, but it has been held that "...ambiguous  
20 language is construed against the party who caused the uncertainty to exist..." when  
21 there is no way to reconcile the subject matter.

22 In the instant matter, unlike contracts, insurance policies and statutes, the court is  
23 presented with two completely different sets of factual allegations that leave no room to  
24 wiggle. There was no clerical error, computer glitch, or typographical error. The Plaintiff  
25 has simply lied either in Case No. BC 497498 or in the instant case (or maybe in both)  
26 and the lie or lies have been made under penalty of perjury.

1 is legitimately the owner of the Plaintiff and that this action is not authorized by 1248  
2 Figueroa LLC. The argument concerning legitimacy is:

3 (a) in some way, shape or form, 1248 Figueroa (hereinafter "1248") is the holder of a  
4 certain secured promissory note in the original principal amount of \$33,000,000 dated  
5 January 30, 2007 (the "Note"), which Note was issued and delivered by the Meruelo  
6 Parties (Meruelo Family Trust, Richard Meruelo Trust, and Richard Meruelo) to Key  
7 Bank National Association ("Key Bank"). Pursuant to a Purchase and Sale  
8 Agreement dated April 21, 2009, the Note was sold, assigned and transferred by Key  
9 Bank to Belinda Meruelo, as evidenced by the endorsement by the Allonge dated April  
10 21, 2009 (the Allonge") affixed to the Note.

11 (b) The obligations under the Note are secured by a series of assignments of  
12 interests in the shares of MMPI (Meruelo Maddux Properties, Inc. aka EVOQ) by the  
13 Meruelo Parties to Key Bank (the "Assignments") by which Assignments the Meruelo  
14 Parties pledged and delivered to Key Bank the original share certificates.

15 (c) By the letter of instructions dated January 30, 2007, the Meruelo Parties gave MMPI,  
16 and MMPI agreed to, irrevocable instructions to pay to Key Bank, all of the proceeds of  
17 the shares of stock that 20 had been assigned by the Meruelo Parties to Key Bank.

18 (d) By Acknowledgments dated January 30, 2007, MMPI acknowledged its receipt of  
19 and agreement to the assignment of stock interests to Key Bank.

20 (e) On April 22, 2009, pursuant to that certain Assignment of Loan Documents,  
21 Belinda Meruelo assigned the Note and all collateral securing the Note to 1248  
22 Figueroa.

23 (f) By virtue of the Allonge, Assignments, Letter of Instructions, Acknowledgments  
24 (Exhibit D), and the Assignment of Loan Documents, Defendant now holds a security  
25 interest in all of the shares of stock in MMPI (Evoq) issued to or owned by the Meruelo  
26 Parties.

1 (f) 1248 Figueroa LLC perfected its interest in the share certificates by taking  
2 possession of the certificates. 1248 Figueroa LLC or its predecessors in interest also  
3 filed UCC-1 Financing Statements for each pledge and assignment of the share  
4 certificates.

5 (g) 1248 Figueroa's interest was perfected prior in time to the Order of the Los  
6 Angeles Superior Court assigning to Canpartners up to \$1,360,000 of the proceeds of a  
7 sale of the share certificates.

8 (h) By that certain Forbearance Agreement dated as of April 22, 2009, and as  
9 amended by the Amendment to Forbearance Agreement dated as of April 30, 2011, the  
10 Meruelo Parties acknowledged and agreed that defaults or Events of Default as defined  
11 therein have existed and continue to exist under the Note, and under the Loan  
12 Documents, as defined therein.

13 (i) 1248 has declared a default on this note and has filed an action to foreclose on  
14 the \$40,000,000.00 it now contends that it is owed.

15 **The present situation concerning the legitimacy of who owns and**  
16 **legitimately should control the Plaintiff is beyond ambiguous. It is convoluted in**  
17 **the extreme.**

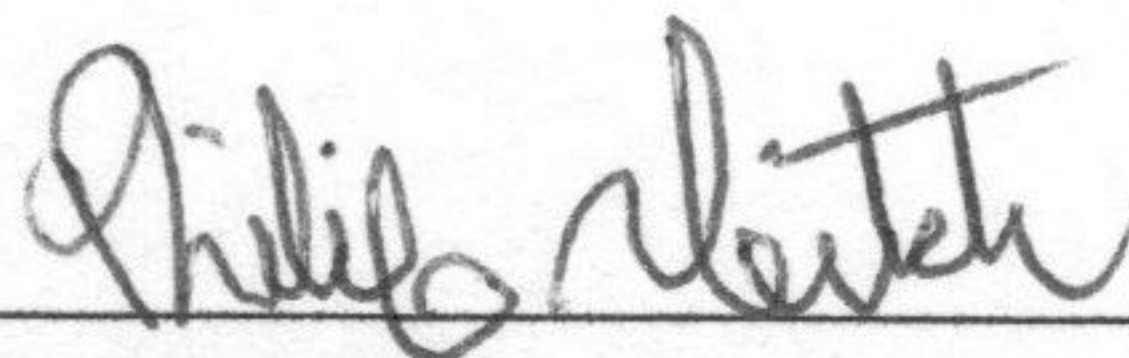
18 **CONCLUSION**

19 For the reasons stated above:

20 (a) The court should sustain the demurrer without leave to amend;

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22 Dated: April 19, 2012

LAW OFFICE OF PHILIP DEITCH

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27 Philip Deitch, Attorney For:  
28 Defendant Aztlan Cold Storage, Inc.

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**PROOF OF SERVICE BY MAIL**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

On April 19, 2012 I served the foregoing document described as: **NOTICE OF DEMURRER AND DEMURRER TO COMPLAINT FOR UNLAWFUL DETAINER; POINTS AND AUTHORITIES; REQUEST FOR JUDICIAL NOTICE** on the interested parties in this action by placing true copies thereof enclosed in sealed envelope(s) addressed as follows:

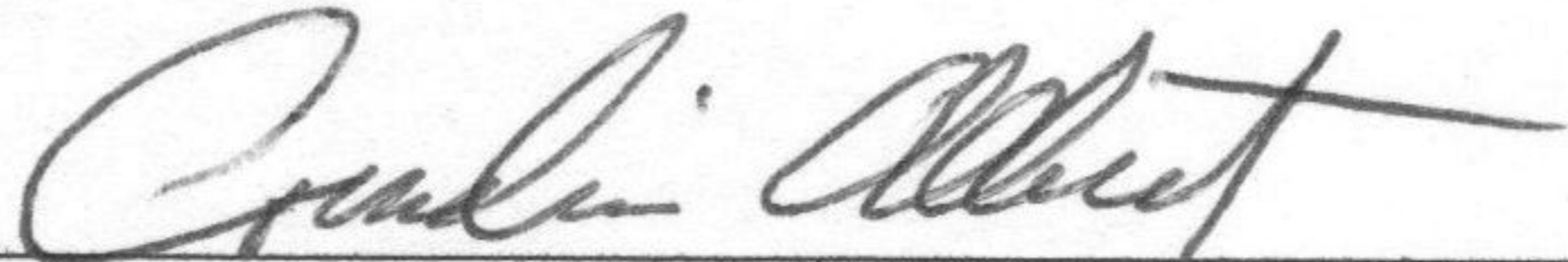
**Peter E. Garrell, Esq (SBN: 155177)**  
**LINER GRODE STEIN YANKELEVITZ**  
**SUNSHINE REGENSTREIF & TAYLOR, LLP**  
**1100 Glendon Ave., 14th Floor**  
**Los Angeles, CA 90024 -3503**

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

       (BY FACSIMILE TRANSMISSION) I caused a true facsimile thereof to be electronically transmitted to the parties, by using their facsimile number.

  X   (BY E-mail) By personally e-mailing a copy of this document to the party indicated.

I declare under penalty of perjury the laws of the State of California that the foregoing is true and correct. Executed on April 19, 2012 at Santa Monica, California.

  
\_\_\_\_\_  
Cornelius Albert