

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

HEADING

The heading of the complaint identifies the person filing the complaint, identifies the City, County, and State where the complaint is being filed, identifies the parties to the action, provides a space for the Court Clerk to add the case number, and describes the causes of action in the complaint.

Law Offices Of
Eugene E. Kinsey
1198 Pacific Coast Hwy.
Suite D-353
Seal Beach, CA 90740
Bar No. 71499
Telephone: (562) 596-8177

Attorneys for Plaintiff,
JOHN DOE

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES**

JOHN DOE,

Plaintiff,

vs.

ROBERT ROE; JANE ROE; BIG TEXAS COMPANY, LLC, A TEXAS LIMITED LIABILITY COMPANY; ALL PERSONS UNKNOWN CLAIMING ANY LEGAL OR EQUITABLE RIGHT, TITLE, ESTATE, LIEN, OR INTEREST IN THE PROPERTY ADVERSE TO PLAINTIFFS' TITLE, OR ANY CLOUD ON PLAINTIFFS' TITLE TO THE PROPERTY DESCRIBED IN THE COMPLAINT; and, DOES 1 Through 10, INCLUSIVE,

Defendants.

CASE NO.

**COMPLAINT FOR
1. PARTITION OF REAL
PROPERTY, AND
2. OUSTER.
3. ACCOUNTING**

Plaintiff, Antonio De La Torre Reyes (hereinafter "Plaintiff"), complains, and for causes of action, alleges as follows:

1 **JURISDICTIONAL ALLEGATIONS**

2 Jurisdictional allegations describe the parties, establish the jurisdiction of the
3 court to hear the case, and establish the basis for the filing of an action within a
4 particular branch court.

5 1. Plaintiff is informed and believes and, thereon, alleges that Defendant, Robert
6 Roe (hereinafter referred to as "Robert"), is and was at all times mentioned herein a
7 resident of the County of Los Angeles, State of California.

8 2. Plaintiff is informed and believes and, thereon, alleges that Defendant, Jane
9 Roe (hereinafter referred to as "Jane"), is and was at all times mentioned herein a
10 resident of the County of Los Angeles, State of California.

11 3. Defendant, Big Texas Company, LLC, a Texas Limited Liability Company
12 (hereinafter "Pacific"), is the beneficial owner of a promissory note in the original amount of
13 \$332,722 secured by a deed of trust recorded with the Los Angeles County Recorder on
14 December 19, 2018 – instrument number _____.

15 4. The real property which is the subject of this action is located in State of
16 California, County of Los Angeles, City of Los Angeles, at _____, (hereinafter "the
17 Real Property") and more particularly described as follows:

18 **LOT ___ OF TRACT ___, IN THE COUNTY OF LOS**
19 **ANGELES, STATE OF CALIFORNIA, AS PER MAP**
20 **RECORDED IN BOOK __ PAGES __ AND __ OF**
21 **MAPS, IN THE OFFICE OF THE COUNTY RECORDER**
22 **OF SAID COUNTY.**

23 The APN Number of the property is _____

24 5. Plaintiff is unaware of the true names and capacities, whether individual,
25 corporate, associate or otherwise of the Defendants sued herein *"All persons unknown*
26 *claiming any legal or equitable right, title, estate, lien, or interest in the property adverse*
27 *to plaintiffs' title, or any cloud on plaintiffs' title to the property described in the complaint"*
28

1 Plaintiff will seek leave to amend this Complaint to set forth the true names and capacities
2 of said Defendants when the same have been ascertained.

3 6. Plaintiff is unaware of the true names and capacities, whether individual,
4 corporate, associate or otherwise of the Defendants sued herein as DOES 1 through 10,
5 inclusive. Plaintiff will seek leave to amend this Complaint to set forth the true names and
6 capacities of said Defendants when the same have been ascertained.

7 7. Plaintiff is informed and believes and thereon alleges that at all times herein
8 mentioned, the Defendants, and each of them, at all times herein mentioned, were the
9 agents or employees of each other, and were at all times acting within the purpose, scope
10 and course of said agency, and employment, and with full knowledge and consent of
11 each other.

12 8. The above named Defendants, and each of them, claim some right, title,
13 estate, lien or interest in the Real Property.

14 **CAUSES OF ACTION**

15 A "Cause of Action" is a recitation of all of the facts necessary to establish a legal
16 theory upon which your suit is brought. Causes of action have distinct elements and all
17 such elements must be plead. For example, a Breach of Contract action has basically
18 four elements, a contract, the Plaintiff's performance of the contract, the defendant's
19 breach of the contract, and damages resulting from the breach. To establish a cause of
20 action for breach of contract, sufficient facts must be described to establish each of
21 these elements.

22 Causes of action must be individually plead.

23 **FIRST CAUSE OF ACTION**

24 (Partition Against All Defendants)

25 9. Plaintiff incorporates by reference paragraphs 1 through 8 herein the same as
26 though fully set out herein at length.

27 10. Plaintiff and the Defendants, Robert and Jane, are joint tenants in the Real
28 Property. The Plaintiff owns a one-third title interest in the Real Property. Marcelano and
Maria each own one-third interests in the Real Property.

1 11. The liens and encumbrances on the Real Property appearing of record or
2 otherwise known to Plaintiff or apparent from an inspection of the property and which
3 Plaintiff reasonably believes will be materially affected by this action are as described in
4 the Lot Book report attached hereto and incorporated herein by reference as Exhibit A.

5 12. Prior to the commencement of this action, plaintiff was required to obtain a
6 title report at a reasonable cost of \$175.00. The title report is in the possession of
7 plaintiff's counsel and is available for inspection and copying. The cost of the title report
8 was incurred for the common benefit of the Plaintiff and Defendants.

9 13. Plaintiff requests that the Real Property be partitioned by sale. Such mode
10 of partition is more equitable in the circumstances than division of interests in kind
11 because the Real Property is a single family residence and there is no practical way to
12 otherwise partition the property.

13 14. This action is brought and partition of the Real Property is being sought
14 herein for the common benefit of the parties, to preserve and secure to each of them his
15 or her respective interests and rights in the property, and Plaintiff has received and will
16 incur, costs of partition herein, including reasonable attorney fees, for the common benefit
17 of the parties hereto in an amount not yet ascertainable.

18
19 **SECOND CAUSE OF ACTION**
20 (Ouster Against Robert And Jane)

21 **INCORPORATION PARAGRAPH**

22 Each new cause of action usually, at minimum, incorporates the Common Allegations,
23 and also often incorporates every preceding paragraph. Paragraph 15 below
24 incorporates all of the preceding paragraphs.

25 15. Plaintiff incorporates by reference paragraphs 1 through 14 herein the same
26 as though fully set out herein at length.
27
28

1 16. From _____, 2020 until the present, Defendants Robert and Jane, without
2 legal right therefore, ousted plaintiff from the Real Property have refused to allow the
3 Plaintiff access thereto.

4 17. Written demand is hereby made for defendants Marcelano and Maria to
5 allow plaintiff possession of the Real Property pursuant to Civil Code § 843(b) within 60
6 days after this complaint is served upon the said Defendants. Until such possession is
7 allowed by the said Defendants, Plaintiff seeks to recover one one-third of the rental value
8 of the property from the said Defendants for the period of time in which possession is
9 denied to Plaintiff by the said Defendants.

10
11 **THIRD CAUSE OF ACTION**
12 (Accounting Against All Defendants)

13 18. Plaintiff incorporates by reference paragraphs 1 through 17 herein the same
14 as though fully set out herein at length.

15 19. A present and actual controversy exists between Plaintiff and Defendants.
16 The Plaintiff contends he is entitled to one-third of the fair rental value of the property,
17 compensatory adjustments for expenditures in excess of the Plaintiff's fractional share for
18 necessary repairs, improvements that enhance the value of the property, taxes, payments
19 of principal and interest on mortgages and other liens, insurance for the common benefit
20 and protection and preservation of title as described in Code Civ. Proc. § 872.140 and an
21 order for allowance, accounting, contribution, or other compensatory adjustment among
22 the parties according to the principles of equity under Code Civ. Proc. § 872.140
23 according to proof at trial.

24 20. Plaintiff seeks an accounting of all transactions relative to the interests of the
25 Plaintiff and Defendants, and each of them, in the Real Property.

26 21. Plaintiff requires a judicial determination and declaration of Plaintiff's and
27 Defendants' respective rights and duties with regard to the payment by the parties of liens
28 against the Real Property and the amounts to be debited and credited to the parties upon

1 sale of the Real Property. Such a declaration is necessary and appropriate at this time
2 because the disputes of the parties may not be fully resolved without such a declaration.

3
4 **PRAYER**

5 The Prayer is the portion of a complaint in which the plaintiff describes the remedies that
6 the plaintiff seeks from the court. For example, the plaintiff may ask for an award
7 of compensatory damages, punitive damages, attorney's fees, an injunction to make the
8 defendant stop a certain activity, or all of these

9 WHEREFORE, Plaintiff demands judgment as follows:

- 10 1. For a determination by the court that Plaintiff, Robert, and Jane are co-
11 owners of the Real Property – each with a one-third interest therein;
- 12 2. For a determination by the court that no other persons have any title
13 interest in the Real Property;
- 14 3. For an order and judgment that the real property be sold and that from
15 the proceeds of the sale any encumbrance be paid, together with the
16 costs and expenses of this action and the sale, and the net proceeds
17 then be divided between Plaintiff, Robert, and Jane in accordance with
18 their respective interests;
- 19 5. For an accounting of all transactions relative to the interests of Plaintiff,
20 Robert, and Jane in the Real Property.
- 21 6. For a judicial determination and declaration of the respective rights and
22 duties of Plaintiff, Robert, and Jane with regard to the payment of liens
23 against the Real Property and the amounts to be debited and credited to
24 the parties upon sale of the Real Property.
- 25 7. For costs pursuant to Code of Civ. Proc., §§ 874.010 and 874.040; and
- 26 8. For reasonable attorney fees incurred in prosecuting this action for the
27 common benefit of the parties;
- 28 9. For such further relief as the Court considers proper.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SIGNATURE

The complaint must be dated and signed. If a plaintiff is unrepresented by an attorney, he/she signs as *Plaintiff In Pro Per*.

Dated: _____
EUGENE E. KINSEY
Attorney for Plaintiff,
JOHN DOE

EXHIBITS

If you have made reference to exhibits in the body of the complaint, be sure to attach them. Each exhibit should be preceded by a cover page with the Exhibit number or letter printed at the bottom; i.e. "Exhibit A" or "Exhibit 1"

ATTACHED EXHIBITS:

EXHIBIT A: Lot Book Report

VERIFICATION

Civil complaints in California can be either unverified or verified. If a complaint is verified the answer to the complaint must be verified.

VERIFICATION

I, JOHN DOE, am the Plaintiff in the above-entitled action. I have read the foregoing *COMPLAINT FOR PARTITION OF REAL PROPERTY, OUSTER, AND ACCOUNTING* and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe it to be true.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I declare under penalty of perjury that the foregoing is true and correct and that
this declaration was executed at _____, California.

DATED: _____

JOHN DOE