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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

In re:) Case No. 2:16-cv-00060-JAD-GWF
)
AMERI-DREAM REALTY, LLC,) Case No.: 15-10110-LED
)
Debtor.) Chapter 7
)

_____)
VICTORIA NELSON, In Her Capacity As The)
Chapter 7 Trustee Of AMERI-DREAM)
REALTY, LLC,)
Plaintiff,) Adv. Proceeding No.: 15-01183-LED
)

FIRST AMENDED COMPLAINT

vs.)
)
XL AMERICA, INC.; XL INSURANCE)
)
AMERICA, INC.; XL SELECT)
)
PROFESSIONAL; XL SELECT)
)
PROFESSIONAL CLAIMS; PEARL)
)
INSURANCE GROUP, LLC; GREENWICH)
)
INSURANCE COMPANY; and DOES I)
)
through X; and ROE CORPORATE)
)
DEFENDANTS XI through XX,)
)
Defendants.)
)

FIRST AMENDED COMPLAINT

1
2 The Chapter 7 Trustee, Victoria L. Nelson (the “**Trustee**” or the “**Plaintiff**”), by and
3 through her attorneys, Schwartz Flansburg PLLC, complains and alleges against the Defendants
4 as follows:
5

6 **JURISDICTION, PARTIES AND VENUE**
7

8 1. Ameri-Dream Realty, LLC (the “**Company**”) was a real estate sales and property
9 management company based in Las Vegas, Nevada prior to filing for relief under Chapter 7 of
10 the United States Bankruptcy Code.
11

12 2. The Company is a resident of the State of Nevada and conducted significant
13 business activities in the District of Nevada.
14

15 3. The Plaintiff is the Court-appointed Chapter 7 Trustee over the Company in Case
16 No. 15-10110-LED, United States Bankruptcy Court for the District of Nevada (the “**Action**”).
17

18 4. XL America, Inc., XL Insurance America, Inc., XL Select Professional, and XL
19 Select Professional Claims (collectively, “**XL America**”) are U.S. Based insurers offering
20 insurance and reinsurance coverages and services.
21

22 5. Pearl Insurance Group, LLC (“**Pearl**”) is an Illinois limited liability company
23 which operates as an insurance broker, administrator, and marketer of custom insurance
24 solutions in the United States.
25

26 6. Greenwich Insurance Company (“**Greenwich**”) is a member of XL America and
27 a domestic insurance company which offers a variety of insurance coverage to individuals and
28 corporations throughout the United States.
29

30 7. XL America, Pearl and Greenwich are hereinafter at times each referred to as a
31 “**Defendant**” and collectively as the “**Defendants.**”
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COMPANY BACKGROUND

1
2 14. The Company was managed by John M. Brown (“**Mr. Brown**”) and his former
3 spouse, Elsie Pelada-Brown (“**Ms. Peladas-Brown**”).
4

5 15. As part of its business, the Company managed residential rental properties (the
6 “**Business**”). In the normal course of its Business, the Company received and held rental
7 security deposits on behalf of its customers’ tenants. At the time of the wrongful actions
8 asserted herein, the Company held in excess of \$1,200,000 of tenant security deposit money
9 (the “**Security Deposits**”).
10
11

12 16. Under Nevada Revised Statutes Section 645.310(1), security deposits for tenants
13 are to be retained until the termination of the underlying lease or rental transaction.
14

THE UNAUTHORIZED TRANSFERS

15
16
17 17. In late March 2014, the Company discovered that significant funds were missing
18 from the bank account designated to hold tenant security deposits. At the time of the discovery,
19 the Company held security deposits for more than 1,000 tenants.
20

21 18. Mr. Brown subsequently discovered that significant funds had been transferred
22 from a bank account designated to hold those tenant Security Deposits on behalf of the
23 Company.
24

25 19. Unknown to Mr. Brown or the Company, Ms. Peladas-Brown orchestrated
26 various unauthorized transactions, which transactions included the wire transfers of the majority
27 of the Security Deposits to the Philippines.
28

29
30 20. Specifically, on the following dates, Ms. Peladas-Brown transferred
31 money from the Company’s general account at JP Morgan Chase Bank (the “**General**”
32
33
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1 **Account”)** and/or security deposit account at JP Morgan Chase Bank (the “**Security Deposit**
2 **Account”)** to Unibank, Inc. Metro Philippines (the “**Philippines Bank**”):

3
4 a. On February 27, 2013, Ms. Peladas-Brown transferred \$25,000 from the
5 General Account to the Philippines Bank;

6
7 b. On May 14, 2013, Ms. Peladas-Brown transferred \$50,000 from the
8 Security Deposit Account to the Philippines Bank;

9
10 c. On April 10, 2013, Ms. Peladas-Brown transferred \$49,263 from the
11 Security Deposit Account to the Philippines Bank;

12
13 d. On April 17, 2013, Ms. Peladas-Brown transferred \$24,600 from the
14 Security Deposit Account to the Philippines Bank;

15
16 e. On May 17, 2013, Ms. Peladas-Brown transferred \$97,930 from the
17 Security Deposit Account to the Philippines Bank;

18
19 f. On May 24, 2013, Ms. Peladas-Brown transferred \$49,000 from the
20 Security Deposit Account to the Philippines Bank;

21
22 g. On June 25, 2013, Ms. Peladas-Brown transferred \$71,500 from the
23 Security Deposit Account to the Philippines Bank;

24
25 h. On July 18, 2013, Ms. Peladas-Brown transferred \$35,000 from the
26 security deposit account to the Philippines Bank;

27
28 i. On September 10, 2013, Ms. Peladas-Brown transferred \$7,670 from the
29 Security Deposit Account to the Philippines Bank;

30
31 j. On September 23, 2013, Ms. Peladas-Brown transferred \$18,700 from
32 the Security Deposit Account to the Philippines Bank;
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1 k. On September 27, 2013, Ms. Peladas-Brown transferred \$23,255 from
2 the Security Deposit Account to the Philippines Bank;

3
4 l. On October 9, 2013, Ms. Peladas-Brown transferred \$10,020 from the
5 Security Deposit Account to the Philippines Bank;

6
7 m. On October 22, 2013, Ms. Peladas-Brown transferred \$13,960 from the
8 Security Deposit Account to the Philippines Bank;

9
10 n. On October 24, 2013, Ms. Peladas-Brown transferred \$11,700 from the
11 Security Deposit Account to the Philippines Bank; and

12
13 o. On December 20, 2013, Ms. Peladas-Brown transferred \$8,000 from the
14 Security Deposit Account to the Philippines Bank.

15 21. Including, but not limited to, the specific transactions listed above, Ms. Peladas-
16 Brown embezzled a total of \$1,174,373.63 in Security Deposits from the Company.

17
18 **THE INNOCENCE OF THE COMPANY AND MR. BROWN**

19
20 22. Neither the Company nor Mr. Brown had any knowledge of Ms. Peladas-
21 Brown's scheme; and on May 4, 2015, Mr. Brown was divorced from Ms. Peladas-Brown. The
22 divorce decree, which was uncontested, requires Ms. Peladas-Brown to indemnify Mr. Brown
23 and the Company for her unilateral embezzlement of the Security Deposits.

24
25 23. At all times relevant herein, Ms. Peladas-Brown was a member, manager and the
26 property manager for the Company. Ms. Peladas-Brown was also a licensed real estate agent
27 and property manager in the State of Nevada, and a member of the Greater Association of Las
28 Vegas Realtors.
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THE PROSECUTION OF MS. PELADAS-BROWN

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2 24. As a licensed realtor and property manager in the State of Nevada, Ms. Peladas-
3 Brown is charged with the knowledge and responsibility of safeguarding the Security Deposits.
4 It is undeniable in light of Ms. Peladas-Brown's licenses that she knew sending the Security
5 Deposits to the Philippines would be a violation of the law, and would cause her to lose her real
6 estate licenses, which licenses are now inactive. Ms. Peladas-Brown also knew she had a duty
7 to manage the Security Deposits prudently and in a fashion that minimized risk.
8
9

10
11 25. In sum, Ms. Peladas-Brown had the knowledge and the motive to breach her
12 fiduciary duties to the Company, its customers and its tenants, and in fact did breach such duties
13 by failing to safeguard the Security Deposits and secretly transferring the Security Deposits to
14 the Philippines. The transfers of the Security Deposits were made for no consideration at all,
15 and Ms. Peladas-Brown understood the Security Deposits could not possibly be repaid.
16
17

18 26. On September 16, 2015, in Case No. RES 14-05-80-1060, the Nevada Real
19 Estate Commission held a hearing regarding Ms. Peladas-Brown's actions, where her attorney,
20 Mr. Lance Maningo, indicated Ms. Peladas-Brown's acquiescence to the factual allegations
21 listed above, and admitted the funds were used to support Ms. Peladas-Brown's family and
22 friends in the Philippines after catastrophic events.
23
24

25 27. On October 5, 2015, the Nevada Real Estate Division issued its written decision
26 in Ms. Peladas-Brown's case, Case No. RES 14-05-80-1060, and ruled, among other things, that
27 Ms. Peladas-Brown violated NRS 645.633(1)(i), pursuant to NAC 645.605(1), by failing to do
28 her utmost to protect the public against fraud, misrepresentation or unethical practices to real
29 estate.
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1 28. The Security Deposits were disbursed by Ms. Peladas-Brown in the Philippines
2 and are not recoverable. Ms. Peladas-Brown disbursed the Security Deposits to friends and
3 family in need after the damage caused by catastrophic events in the Philippines.
4

5 **ADVERSARY PROCEEDING AGAINST MS. PELADAS-BROWN**

6 29. On May 21, 2015, the Trustee, in her capacity as Chapter 7 Trustee for the
7 Company, initiated that certain adversary proceeding against Ms. Peladas-Brown in the United
8 States Bankruptcy Court for the District of Nevada, Adversary Case No. 15-01087-LED.
9

10 30. In her complaint, the Trustee asserted four claims for relief against Ms. Peladas-
11 Brown: (i) breach of fiduciary duty to the Company; (ii) common law misrepresentation to the
12 Company; (iii) negligent misrepresentation to the Company; and (iv) declaratory relief that the
13 Company and Mr. Brown are innocent and had no knowledge of Ms. Peladas-Brown's
14 wrongdoings (collectively, the "**Peladas-Brown Claims for Relief**").
15
16
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18 31. On October 26, 2015, the United States Bankruptcy Court (the "**Bankruptcy**
19 **Court**") held a hearing on the Trustee's motion for summary judgment on all of the Peladas-
20 Brown Claims for Relief.
21

22 32. On October 27, 2015, the Bankruptcy Court entered an order granting summary
23 judgment on all Peladas-Brown Claims for Relief, with findings of fact and conclusions of law.
24 See Adv. Case No. 15-01087-LED, Docket Nos. 20 and 21 (the "**BK Court Findings and**
25 **Conclusions**").
26
27

28 33. The Judgment against Ms. Peladas-Brown is in the amount of \$1,174,373.63,
29 together with prejudgment interest at the rate of 5.75%, compounded annually and compounded
30 from February 1, 2013, and post-judgment interest at the rate established by 28 U.S.C. § 1961,
31 compounded annually. See Adv. Case No. 15-01087-LED, Docket No. 21.
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INSURANCE CLAIMS

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2 34. On April 9, 2014, Ryan J. Works, Esq., as counsel for the Company and Mr.
3 Brown, sent a Notice of Claim letter to XL America regarding the actions of Ms. Peladas-
4 Brown.

5
6 35. Pursuant to the terms of the Policy, Greenwich agreed to pay for claims, up to
7 \$1,000,000.00, resulting from an act or omission in the performance of real estate services for
8 which the insured (the Company) is obligated to pay.
9

10
11 36. Although the Policy excludes coverage under Section IV(C) for claims “based on
12 arising out of any dishonest, intentionally fraudulent, criminal or malicious act or omission by
13 the Insured,” under the facts described herein, the Company and Mr. Brown constitute
14 “Innocent Insureds” under Section VI(D) of the Policy:
15

16 D. Innocent Insureds
17

18 If coverage of this policy would not apply because of Exclusion C. or
19 because of noncompliance with Condition B., such Exclusion or Condition
20 will not apply to any Insured who did not commit, participate in, or have
21 knowledge of any of the acts described in Exclusion C. and whose conduct
22 did not violate Condition B.

23 37. Ms. Peladas-Brown’s breach of her fiduciary duties to the Company, tenants and
24 others, and/or her unilateral wrongdoings triggered Greenwich’s obligation to indemnify the
25 Company for the loss of the Security Deposits.
26

27 38. Ms. Pelada-Brown’s failure to safeguard the Security Deposits resulted in a
28 breach of her fiduciary duties to the Company, its tenants and customers, thereby triggering
29 coverage under the Policy.
30

31 39. On April 10, 2014, Mr. Works, as counsel for the Company and Mr. Brown,
32 submitted a claim report form to the Defendants (the “**Claim**”), providing additional notice of a
33
34

1 claim under the Policy and the obligations of the Defendants to reimburse the Company based
2 on Ms. Peladas-Brown's actions.

3
4 40. On May 7, 2014, Mr. Works sent a follow-up letter to XL America in connection
5 with the claim.

6
7 41. On May 14, 2014, Mr. Lee Santos, on behalf of XL America, e-mail Mr. Works
8 asking for copies of any civil or regulatory claims that had been filed in connection with the
9 claim.

10
11 42. On May 21, 2014, Mr. Works e-mailed Mr. Santos informing XL America that
12 two cases had been opened: Case No. RES-14-05-80-1060, Brown Jr. v. Peladas-Brown; and
13 Case No. RES 14-05-81-1061, Nevada Real Estate Division ("NRED") v. Brown. Mr. Works
14 also asked if the Defendants would now make a determination as to whether the claims stated
15 are claims that are covered under the Policy or if any other coverage is available.
16

17
18 43. On June 1, 2014, Mr. Works again e-mailed Mr. Santos noting that Mr. Santos
19 had not received a response to the May 21, 2014, e-mail.
20

21 44. On June 3, 2014, Mr. Santos responded to Mr. Works and stated that he received
22 the prior communication but that it appears "no civil or NRED claims being made by others at
23 that point that can ben seen."
24

25 45. That same day, on June 3, 2014, Mr. Works responded to Mr. Santos and
26 explained that the second action he previously referenced was in fact initiated by NRED against
27 Ms. Paladas-Brown as the insured.
28

29
30 46. On June 11, 2014, Seth Floyd, an associate and Mr. Works' firm, McDonald
31 Carano Wilson, followed up with XL America and Mr. Santos seeking confirmation that XL
32
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1 America has all of the information necessary to confirm that NRED had indeed initiated an
2 action against the insured.

3
4 47. On June 12, 2014, Mr. Santos, on behalf of XL America, sent e-mail
5 correspondence to Messrs. Works and Floyd acknowledging Mr. Floyd's June 11, 2014 e-mail,
6 and noting that the NRED complaint is separate from any civil action and thus will be subject to
7 a Disciplinary Proceedings limit.
8

9
10 48. On October 17, 2014, Kristen Gallagher, another lawyer for the Company, again
11 reached out to XL America and Mr. Santos in relation to the claim.

12
13 49. On October 22, 2014, Mr. Santos e-mailed counsel for the Company and stated:
14 "Please note that after our review of said matter we do not feel that there would be coverage for
15 the claims as noted in said letter involving the two real estate agents that have independently
16 contracted with the Insured and have given notice that they intend to terminate written
17 agreement and seek the return of monies deposited with Insured."
18

19
20 50. On October 23, 2014, Ms. Gallagher replied and asked Mr. Santos, "On what
21 basis do you believe there is not coverage?"

22
23 51. On October 23, 2014, Mr. Santos responded to Ms. Gallagher by simply stating,
24 "There are exclusions on the policy that we believe are applicable."

25
26 52. On October 23, 2014, Ms. Gallagher responded and asked XL America and Mr.
27 Santos to: "Please identify the provisions that you believe bar coverage."

28
29 53. On October 23, 2014, Mr. Santos advised Ms. Gallagher to: "Please see my
30 communication to you from yesterday and comply should you seek further information."
31
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1 54. On January 30, 2015, Mr. Works e-mailed XL America and Mr. Santos that the
2 Company had filed for protection under Chapter 7 of the United States Bankruptcy Code and
3 that several claims had been made against the Company.
4

5 55. On February 11, 2015, Mr. Works again e-mailed Mr. Santos indicated that he
6 had not received a response from XL America regarding the Company's bankruptcy filing, and
7 the Company's claims made to the Defendants under the Policy.
8

9 56. On February 12, 2015, Mr. Works e-mailed Mr. Santos to let him know that Ms.
10 Kathy Huang, who was an agent for Ameri-Dream, was copied on the e-mail message and
11 wanted to make a claim with XL.
12

13 57. On February 23, 2015, Mr. Works e-mailed Mr. Santos advising him that the
14 Chapter 7 Trustee and her counsel would like to schedule a conference call with Mr. Santos to
15 discuss the claim.
16
17

18 58. On February 23, 2015, Mr. Santos replied and stated that he has "some time to
19 discuss this matter either tomorrow at 1 p.m. my time (east coast) or Thursday 11 a.m. my time.
20 However, I will speak with you only at those times. We can conference with the other parties
21 you mention at another date & time after you & I speak."
22

23 59. On March 30, 2015, Mr. Lee Santos, on behalf of XL America, sent the
24 Company a letter denying coverage under the Policy.
25
26

27 60. Upon initiation of the Adversary Proceeding, on May 27, 2015, Defendants were
28 once again provided Notice of the Claim, particularly that Defendants were ignorant and
29 innocent of Ms. Peladas-Brown's unilateral wrongdoings.
30

31 61. Shortly thereafter, Defendants reiterated their denial of coverage under the
32 Policy.
33
34

1 76. Ms. Peladas-Brown's breach of her fiduciary duties by failing to safeguard the
2 Security Deposits proximately caused the damage to the Company because the Company
3 received no consideration for the loss of Security Deposits.
4

5 77. Ms. Peladas-Brown is liable to the Company and legally obligated to pay the
6 Company for the loss of the Security Deposits.
7

8 78. As an officer, director and manager of the Company, Ms. Peladas-Brown is an
9 insured under the Policy.
10

11 79. As an insurer under the Policy, the Defendants are obligated to reimburse the
12 Company for the loss of Security Deposits due to Ms. Peladas-Brown's breach of her fiduciary
13 duties to the Company.
14

15 80. The Plaintiff has been required to obtain the services of counsel to prosecute this
16 claim, and is entitled to recover reasonable attorneys' fees and other costs incurred in this matter
17 as special damages, in addition to any other relief to which it may be entitled.
18

19 **THIRD CLAIM FOR RELIEF**
20 **(Breach of Fiduciary Duty to Tenants and Customers)**
21

22 81. The Plaintiff hereby realleges the allegations set forth in paragraphs 1 through
23 80, as if fully set forth herein.
24

25 82. As a licensed real estate agent and property manager in the State of Nevada, Ms.
26 Peladas-Brown owed fiduciary duties to the various tenants and customers (the "**Tenants and**
27 **Customers**") of the Company.
28

29 83. By reason of Ms. Peladas-Brown's fiduciary duties, Ms. Peladas-Brown owed
30 the highest duties of good faith, fair dealing, loyalty and care to the Tenants and Customers.
31

32 84. Ms. Peladas-Brown breached her fiduciary duties to the Tenants and Customers
33 by failing to safeguard the Security Deposits.
34

1 85. The United States Bankruptcy Court for the District of Nevada found that Ms.
2 Peladas-Brown owed fiduciary duties to the Tenants and Customers and breached those duties.

3 86. The Nevada Real Estate Division also found that Ms. Peladas-Brown breached
4 her fiduciary duties by failing to do her utmost to protect the public against fraud,
5 misrepresentation or unethical practices to real estate.
6

7 87. Ms. Peladas-Brown's breach of her fiduciary duties by failing to safeguard the
8 Security Deposits proximately caused damage to the Tenants and Customers because the
9 Company received no consideration for the loss of Security Deposits.
10

11 88. Over 1,000 claims have been made by the Tenants and Customers in the
12 Company's Chapter 7 bankruptcy case, all arising from the loss of the Security Deposits.
13

14 89. As an officer, director and manager of the Company, Ms. Peladas-Brown is an
15 insured under the Policy.
16

17 90. As an insurer under the Policy, the Defendants are obligated to reimburse the
18 Plaintiff, on behalf of the Tenants and Customers as Chapter 7 Trustee for the Company's
19 bankruptcy estate, for the loss of Security Deposits due to Ms. Peladas-Brown's breach of her
20 fiduciary duties to the Tenants and Customers.
21

22 91. The Plaintiff has been required to obtain the services of counsel to prosecute this
23 claim, and is entitled to recover reasonable attorneys' fees and other costs incurred in this matter
24 as special damages, in addition to any other relief to which it may be entitled.
25

26 WHEREFORE, the Plaintiff prays for judgment as follows:
27

- 28
- 29 1. For general damages in excess of \$75,000.00;
 - 30 2. For special damages determined at the time of trial;
 - 31 3. For punitive damages;
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