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**CONFORMED COPY**  
OF ORIGINAL FILED  
Los Angeles Superior Court

DEC 31 2008

John A. Clarke, Executive Officer/Clerk

*M. Garcia*  
BY MARY GARCIA, Deputy

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **FOR THE COUNTY OF LOS ANGELES**

11  
12 HOVEN GAROYAN, individually, and on  
13 behalf of others similarly situated,

14 Plaintiffs,

15 v.

16 SANDEEP BAWEJA; ERNEST J.  
FRANCESCHI, JR.; ERNEST J.  
FRANCESCHI, JR., A LAW  
17 CORPORATION; THE GARDEN CITY  
GROUP, INC.; and DOES 1 through 100;  
18 inclusive,

19 Defendants.

CASE NO. BC 404851

COMPLAINT

- 1) PROFESSIONAL NEGLIGENCE
- 2) NEGLIGENCE
- 3) BREACH OF FIDUCIARY DUTY
- 4) CONVERSION
- 5) FRAUD

CLASS ACTION

DEMAND FOR JURY TRIAL



1 true names and capacities when ascertained. Plaintiff is informed and believes, and  
2 thereon alleges, that each of these fictitiously named Defendants is responsible in some  
3 manner for the occurrences herein alleged, and that Plaintiff's damages as herein alleged  
4 were proximately caused by those Defendants. Each reference in this complaint to  
5 "Defendant" or "Defendants" or to a specifically named Defendant refers also to all  
6 Defendants sued under fictitious names.

7 7. Plaintiff is informed and believes, and thereon alleges, that at all times  
8 herein mentioned each of the Defendants, including all Defendants sued under fictitious  
9 names, and each of the persons who are not parties to this action but are identified by  
10 name or otherwise throughout this complaint, was the alter ego of each of the remaining  
11 Defendants, was the successor in interest or predecessor in interest, and was the agent and  
12 employee of each of the remaining Defendants and in doing the things herein alleged was  
13 acting within the course and scope of this agency and employment.

#### 14 15 CLASS ALLEGATIONS 16

17 8. Plaintiff is a member of a class of persons who are similarly situated to  
18 each other member of that class. The class is defined as follows:

19 All persons who were class members in the *Lubocki, et al. v.*  
20 *ZipRealty, Inc.*, Case No. CV 07 2959 SJO (JCX) (C.D. Cal.)  
21 (hereinafter, the "*ZipRealty Action*") and eligible to share in  
22 the settlement funds from the *ZipRealty Action*, but to whom  
23 settlement funds have not been distributed.

24 9. Numerosity. Plaintiff is informed and believes, and thereupon alleges, that  
25 the class of person that Plaintiff represents includes over 600 persons who were to receive  
26 their share over \$2,000,000 in settlement funds from the *ZipRealty Action*. The identity  
27 of the members of the class is ascertainable from Defendants' own records, or those of  
28 their agents, which would reflect the identity of the class members.

1           10.    Common Questions Predominate. The Plaintiff and class members' claims  
2 against Defendants involve questions of law or fact common to the class that are  
3 substantially similar and predominate over questions affecting individual class members,  
4 including, without limitation:

- 5                   a. Whether Defendants Baweja and Franceschi's acts and/or omissions  
6                   as alleged herein constituted professional malpractice;
- 7                   b. Whether Defendant GCG's acts and/or omissions as alleged herein  
8                   constituted negligence;
- 9                   c. Whether Defendants breached the fiduciary duties owed to the  
10                  Plaintiff and other class members;
- 11                  d. Whether Defendants acted with knowledge or with reckless  
12                  disregard for the truth in misrepresenting and/or omitting material  
13                  facts;
- 14                  e. Whether Defendant Baweja's representations to Plaintiff and other  
15                  class members misrepresented and/or omitted material facts;
- 16                  f. Whether Defendant Baweja's acts as alleged herein constituted  
17                  conversion of funds held in trust for the benefit of Plaintiff and other  
18                  class members; and
- 19                  g. The extent of damages sustained by Plaintiff and other members of  
20                  the class and the proper measure of damages.

21           11.    Typicality. Plaintiff's claims are typical of the claims of the class  
22 members, in that Defendants' common course of wrongful and unlawful conduct as  
23 alleged herein and the resulting deprivation of Plaintiff's rights to settlement funds is  
24 common to the class.

25           12.    Adequacy. Plaintiff is qualified to, and will, fairly and adequately represent  
26 the interests of each class member. Plaintiff has no interest that is adverse to the interests  
27 of the other class members.

28           13.    Superiority. Class action adjudication is superior to other available

1 methods since individual joinder of all members of the class is impracticable. Class  
2 action treatment will permit a large number of similarly situated persons to prosecute  
3 their common claims in one forum, thereby achieving economies of time, effort, and  
4 expense, without unnecessary duplication of effort and expense. Moreover, class action  
5 adjudication will avoid inconsistent outcomes, as the same issues can be adjudicated in  
6 the same manner for the entire class.

### 7

### 8 ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

### 9

10 14. On May 4, 2007, Defendants Baweja and Franceschi filed a class action  
11 complaint against ZipRealty, Inc. on behalf of its former employees in the *ZipRealty*  
12 *Action*. The claims in the *ZipRealty Action* stemmed from ZipRealty, Inc.'s deduction of  
13 business expenses and failure to pay commissions on sales that were pending but not yet  
14 final at the time the class members in the *ZipRealty Action* stopped working for  
15 ZipRealty, Inc. Defendant Franceschi was co-lead counsel for the representative  
16 plaintiffs and class members, and worked together with Defendant Baweja in the  
17 *ZipRealty Action*.

18 15. On October 18, 2007, the parties in the *ZipRealty Action* agreed to settle for  
19 \$3,550,000.

20 16. On December 19, 2007, the Court in the *ZipRealty Action* preliminarily  
21 approved the class action settlement and directed that notice be mailed to members of the  
22 class. The Court set a briefing and hearing schedule and deadlines for submission of  
23 claims, objections, and opt-outs by class members.

24 17. Within a few months, on or about March 10, 2008, the Court in the  
25 *ZipRealty Action* issued a final order and judgment, approving the Class Action  
26 Settlement terms. The Court issued an order awarding representative plaintiffs incentive  
27 awards and issued an order awarding attorneys fees of twenty-five percent (25%) of the  
28 gross settlement amount (\$3,500,000) plus expenses.

1 18. Accordingly, after the *ZipRealty Action* Court approved costs and fees, the  
2 settlement class was entitled to approximately \$2,600,000.

3 19. At or about the same time, Defendants retained and the *ZipRealty Action*  
4 Court approved the appointment of Defendant GCG as the Claims Administrator.

5 20. Defendants Baweja, Franceschi, and GCG accepted the duty and therefore  
6 had the duty to disburse the settlement funds to Plaintiff and the other class members.

7 21. In his declaration to the Court filed on February 14, 2008, Defendant  
8 Franceschi stated that he and Defendant Baweja oversaw the administration of the case  
9 along with Defendant GCG, and that Defendant Franceschi discussed the claims  
10 administration process with Defendant Baweja weekly, if not more often.

11 22. Within days of the Court's final order and judgment in the *ZipRealty*  
12 *Action*, Defendants received the full settlement amount of \$3,550,000 on March 19, 2008.  
13 Upon information and belief, Defendants promptly took their respective shares in fees  
14 and reimbursement of costs leaving the remainder to be disbursed to the class members.  
15 The remaining settlement funds which were to be disbursed to Plaintiff and the class  
16 members were approximately in the amount of \$2,600,000.

17 23. On September 24, 2008, months after Defendants received the full  
18 settlement amount, ZipRealty, Inc. filed a Request for OSC or Case Management  
19 Conference asking that the Court look into the issue of class distributions that had not yet  
20 been made.

21 24. On October 2, 2008, Defendant Baweja filed a declaration with the Court in  
22 reply to ZipRealty, Inc.'s request for an "OSC or CMC re: Failure to Make Distribution  
23 to Class Member." In his declaration, Defendant Baweja represented that:

- 24 a. Distributions to class members had commenced and been mailed out  
25 to class members who returned claims forms;
- 26 b. Delays in disbursement of settlement funds to class members were a  
27 result of claims which were outstanding and inconclusively finalized  
28 and conflicting tax advice regarding the distribution of settlement

1 funds; and  
2 c. The amount calculated for distribution includes interest accrued  
3 through the end of September 2008.

4 25. Moreover, since receipt of the settlement funds, Defendants had uniformly  
5 represented to the class members in the *ZipRealty Action*, through notices to the class  
6 members, that settlement funds of approximately \$2,600,000 were being held in trust in  
7 interest in interest accruing accounts to be distributed to the class members.

8 26. Unbeknownst to the Court and the class, approximately one month after  
9 receiving the funds, Defendants did not hold the settlement funds in an interest-bearing  
10 client trust account as required.

11 27. As confirmed in Defendant Baweja's declaration filed with the Court in the  
12 *ZipRealty Action* on December 24, 2008, Defendant Baweja had in fact began  
13 transferring the settlement funds into an online brokerage account for the purpose of  
14 buying and selling stocks in the stock market.

15 28. Upon and information and belief, up until the filing of Defendant Baweja's  
16 declaration on December 24, 2008, Defendant Franceschi was in weekly and sometimes  
17 daily discussions with Defendant Baweja regarding the settlement funds. Accordingly,  
18 Defendants Franceschi and GCG either consented or turned a blind eye to the transfer of  
19 these funds to Defendant Baweja when he began buying and selling stocks. Defendants  
20 Franceschi and GCG failed to oversee and supervise the settlement funds which were  
21 required to be in an interest-bearing client trust account until disbursed to the members of  
22 the class.

23 29. Defendant Baweja transferred approximately \$2,720,000, from April 2008  
24 to June 24, 2008, into the online brokerage account. Defendant Baweja used the  
25 settlement funds in the online brokerage account to buy and sell various stocks even  
26 though, as he admits in his December 24 declaration to the Court, he had no prior  
27 experience trading in the stock market. To make matters worse, Defendant Baweja  
28 traded on margin with the settlement funds. Buying on margin is the act of borrowing

1 money from a broker to purchase stock allowing someone like Defendant Baweja to buy  
2 more stock than he would otherwise be able to do.

3 30. As a result of Defendant Baweja's conduct, and the failure of Defendant  
4 Franceschi and Defendant GCG to supervise the disbursement of the settlement funds, by  
5 December 16, 2008, the value of the online brokerage account containing the settlement  
6 funds had dwindled to \$54,846.90.

7 31. As of December 24, 2008, Defendant Baweja apparently distributed over  
8 \$500,000 to approximately 150 class members, as he contends in his declaration, largely  
9 from money borrowed from his family and friends. However, the remaining class  
10 members are still owed over \$2,000,000.

11  
12 **FIRST CAUSE OF ACTION**

13 **Professional Negligence**

14 (By Plaintiff Individually and on Behalf of All Class Members

15 Against Defendants Sandeep Baweja, Ernest J. Franceschi, Jr., and Ernest J.

16 Franceschi, Jr., a Law Corporation, and DOES 1-100)

17  
18 32. Plaintiff incorporates in this cause of action the allegations contained in  
19 paragraphs 1 through 31, inclusive.

20 33. At all relevant times, Defendants Sandeep Baweja, Ernest J. Franceschi, Jr.,  
21 and Ernest J. Franceschi, Jr., a Law Corporation (collectively, "Attorney Defendants")  
22 held themselves out to the public to be attorneys licensed to practice law with that degree  
23 of skill, ability and learning common to legal practitioners in the community

24 34. When the *ZipRealty Action* Court certified the class and approved the  
25 settlement agreement in which Plaintiff and the class members were to receive the  
26 settlement funds, the Attorney Defendants had a duty to render professional legal services  
27 with the care, skill, diligence and knowledge exercised by professional attorneys  
28 practicing in California which included following ethical and statutory guidelines in the

1 care, custody, and disbursement of the settlement funds which were required to be placed  
2 in an interest bearing client trust account pursuant to, among others, Rule 4-100 of the  
3 *Rules of Professional Conduct*.

4 35. The Attorney Defendants breached their duty to Plaintiff and the other  
5 *ZipRealty Action* class members by failing to adequately take care and custody of the  
6 settlement funds which were required to be placed in an interest bearing client trust  
7 account. Instead, the Attorney Defendants failed to supervise the client trust account in  
8 which the settlement funds were located, causing the loss of over \$2,000,000 in the  
9 settlement funds in a stock trading junket by Defendant Baweja.

10 36. Had the Attorney Defendants exercised reasonable care and skill in  
11 protecting Plaintiff and the other *ZipRealty Action* class members, the settlement funds  
12 would have not have been lost.

13 37. Plaintiff and the class members have suffered economic damage as a direct  
14 and proximate result of the failure of the Attorney Defendants to properly take care and  
15 custody of the settlement funds to be disbursed to the class members. The exact amount  
16 of loss is to be determined at the time of trial, but believed to be in excess of \$2,000,000.

## 17 18 SECOND CAUSE OF ACTION

### 19 **Negligence**

20 (By Plaintiff Individually and on Behalf of All Class Members

21 Against Defendant Garden City Group, Inc. and DOES 1-100)

22  
23 38. Plaintiff incorporates in this cause of action the allegations contained in  
24 paragraphs 1 through 37, inclusive.

25 39. Defendant GCG owed a duty of care to Plaintiff and the class members in  
26 the *ZipRealty Action* by virtue of its assumption of duties and responsibilities as the  
27 Claims Administrator. Defendant GCG therefore also had an independent duty to  
28 oversee the administration and disbursement of settlement funds to Plaintiff and the class

1 members.

2 40. Upon information and belief, Defendant GCG knew Plaintiff and the class  
3 members were the beneficiaries of the settlement funds, and therefore Defendant GCG  
4 owed a duty of care to Plaintiff and the class members to properly oversee the  
5 administration and disbursement of settlement funds to Plaintiff and the class members.

6 41. Defendant GCG breached that duty of care through their acts or omissions  
7 by negligently failing to adequately supervise the care, custody, and disbursement of the  
8 settlement funds which were required to be placed in an interest bearing client trust  
9 account. Upon information and belief, Defendant GCG either consented to the Attorney  
10 Defendants' request to transfer the settlement funds somewhere with a "higher rate of  
11 return" than the interest bearing client trust account or failed to notify anyone of this  
12 unauthorized and unpermitted transfer.

13 42. Had Defendant GCG properly and adequately supervise the care, custody,  
14 and disbursement of the settlement funds which were required to be placed in an interest  
15 bearing client trust account, Plaintiff and the class members would not have lost over  
16 \$2,000,000 in the settlement funds.

17 43. Plaintiff and the class members have suffered economic damage as a direct  
18 and proximate result of the failure of Defendant GCG to properly take care and custody  
19 of the settlement funds to be disbursed to the class members. The exact amount of loss is  
20 to be determined at the time of trial, but believed to be in excess of \$2,000,000.

21  
22 **THIRD CAUSE OF ACTION**

23 **Breach of Fiduciary Duty**

24 (By Plaintiff Individually and on Behalf of All Class Members

25 Against All Defendants and DOES 1-100)

26  
27 44. Plaintiff incorporates in this cause of action the allegations contained in  
28 paragraphs 1 through 43, inclusive.

1 45. Defendants Baweja, Franceschi, and GCG owed Plaintiff and the class  
2 members a fiduciary duty of utmost loyalty, including but not limited to the duty for the  
3 care, custody, and disbursement of the settlement funds which were required to be placed  
4 in an interest bearing client trust account.

5 46. Defendant Baweja and Franceschi had this duty by virtue of their attorney-  
6 client relationship to Plaintiff and the class members.

7 47. Defendant GCG had this duty by virtue of its role as Claims Administrator.

8 48. Defendants Baweja, Franceschi, and GCG breached their fiduciary duty of  
9 loyalty to Plaintiff and the class members by placing their own interests ahead of those of  
10 Plaintiff and the class members while failing to protect their interests by permitting or  
11 failing to prevent the settlement funds to be used as Defendant Baweja's stock trading  
12 junket.

13 49. Upon information and belief, several inquiries were made to Defendants  
14 and each of them from April 2008 until December 2008 regarding when payment from  
15 the settlement funds would be made. In an effort to conceal the breaches of fiduciary  
16 duty and constructive fraud, Defendants concocted one excuse after another regarding,  
17 among others, seeking tax consultation and advice and finalization of claims. Had  
18 Defendants not concealed the truth, the settlement funds would not have been squandered  
19 to the extent that it had.

20 50. Plaintiff and the class members have suffered economic damage as a direct  
21 and proximate result of Defendants' breaches of fiduciary duties. The exact amount of  
22 loss is to be determined at the time of trial, but believed to be in excess of \$2,000,000.

23 51. The above acts of Defendants were committed with oppression, fraud  
24 and/or malice warranting an assessment of punitive damages in an amount appropriate to  
25 punish Defendants and deter others from engaging in similar misconduct.

26

27

28



1 **FIFTH CAUSE OF ACTION**

2 **Fraud**

3 (By Plaintiff Individually and on Behalf of All Class Members

4 Against Defendant Baweja and DOES 1-100)

5  
6 58. Plaintiff incorporates in this cause of action the allegations contained in  
7 paragraphs 1 through 57, inclusive.

8 59. Since receiving settlement funds on March 19, 2008, Defendant Baweja  
9 made uniform misrepresentation and/or omissions to Plaintiff and other class members by  
10 repeatedly informing Plaintiff and other class members, through class notice and other  
11 communications to the class during the claims administration process, that settlement  
12 funds of approximately \$2,600,000 were being held in trust in an interest accruing  
13 account for distribution to the class members in the *ZipRealty Action*.

14 60. These material misrepresentations and/or omissions were in fact false, as  
15 the settlement funds were not being held in an interest accruing account, but, rather, had  
16 been unlawfully placed in an online brokerage account by Defendant Baweja, where the  
17 funds were eventually substantially depleted to \$54,846.90.

18 61. At the time Defendant Baweja made these representations, he knew them to  
19 be false, and he made these representations with intention to deceive Plaintiff and other  
20 class members. Further, Defendant Baweja made these representations to induce Plaintiff  
21 and other class members to act in reliance on these representations or with the  
22 expectation that Plaintiff and other class members would so act. Plaintiff and other class  
23 member's reliance was justifiable and reasonable, since these representations were made  
24 in the context of an attorney-client relationship.

25 62. Had Plaintiff and other members of the class known of the material facts  
26 that Defendant Baweja wrongfully concealed and misrepresented, and the falsity of  
27 Defendant Baweja's representations, Plaintiff and other class members would not have  
28 idly waited for distribution of settlement funds as directed by Defendants.

1 63. As a result of Defendant Baweja's material misrepresentations and/or  
2 omissions, Plaintiff and all other members of the class have been deprived of their rights  
3 to receive their portion of settlement funds in the *ZipRealty Action*.

4 64. Defendant Baweja's acts were committed with oppression, fraud and/or  
5 malice warranting an assessment of punitive damages in an amount appropriate to punish  
6 Defendant and deter others from engaging in similar misconduct.

7  
8 **PRAYER FOR RELIEF**

9  
10 WHEREFORE, Plaintiff prays for judgment on all causes of action against  
11 Defendants as follows:

- 12 1. For an order certifying this matter as a class action;
- 13 2. For compensatory and consequential damages in an amount to be proven at  
14 trial, but in any case within the jurisdiction of this Court;
- 15 3. For punitive damages on Plaintiff's Third, Fourth, and Fifth Causes of Action  
16 in an amount sufficient to punish defendants for the wrongful conduct alleged herein and  
17 to deter such conduct in the future;
- 18 4. For prejudgment interest at the legal rate;
- 19 5. For reasonable attorney fees;
- 20 6. For costs of suit incurred herein;
- 21 7. For such other and further relief as the court may deem proper.

22  
23 Respectfully submitted,

24 DATED: December 31, 2008

LEE TRAN & LIANG APLC

25  
26  
27 By

JAMES LEE / EHL

James M. Lee  
Attorneys for Plaintiffs

1 **DEMAND FOR JURY TRIAL**

2  
3 DATED: December 31, 2008

4 LEE TRAN & LIANG APLC

5  
6 By: JAMES LEE/EHL  
7 James M. Lee  
8 Attorneys for Plaintiffs  
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