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1 **BERENS, KOZUB, KLOBERDANZ & BLONSTEIN, PLC**
Daniel L. Kloberdanz, #012231
2 7047 E. Greenway Parkway, Suite 140
Scottsdale, Arizona 85254
3 (480) 624-2777
dkloberdanz@bkl-az.com

4 *Attorneys for Plaintiff Saypo Cattle Co.*

5 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

6 **IN AND FOR THE COUNTY OF MARICOPA**

7 SAYPO CATTLE CO., a Montana corporation,
8 Plaintiff,

9 v.

10 REALTY EXECUTIVES, INC., an Arizona
11 corporation; RICHARD A. RECTOR and
12 JANE DOE RECTOR, husband and wife;
JOHN and JANE DOES 1 through 10,
13 Defendants.

CV 2011-051263

COMPLAINT

14 Plaintiff Saypo Cattle Co. ("Plaintiff"), by and through its undersigned counsel, for its
15 complaint against Defendants, alleges as follows:

16 1. Plaintiff is a Montana corporation and is the owner of a certain commercial building
17 located at 23200 N. Pima Road, Scottsdale, Arizona 85255 (the "Property").

18 2. Defendant Realty Executives, Inc. is an Arizona corporation ("Realty Executives"),
19 and is a real estate brokerage company doing business in the State of Arizona.

20 3. Upon information and belief, Defendant Richard A. Rector is a resident of Maricopa
21 County and at all relevant times, an officer of Realty Executives. Upon information and belief that
22 Rector is married, his spouse is hereby named as Jane Doe Rector because Rector was acting on
23 behalf of his community property.

24 4. Defendants John and Jane Does 1 through 10 are fictitious persons or entities whose
25 true names and identities are presently unknown to Plaintiff but who, upon information and belief,
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1 are liable to the Plaintiff along with the named Defendants as stated above. Plaintiff reserves the
2 right to amend this Complaint to show the true names and identities of these fictitious individuals
3 and persons as those true names and identities become known to Plaintiff.

4 5. Upon information and belief, Defendants Realty Executives, Rector and the Doe
5 Defendants have committed acts in Maricopa County, Arizona in relation to the Lease described
6 below, thereby making them subject to the jurisdiction of this Court.

7
8 6. Plaintiff, as the landlord (the "Landlord"), and Realty Executives, as the tenant,
9 entered into a lease for certain premises located at the Property dated February 12, 1998 (the
10 "Lease").

11 7. Pursuant to the terms of the Lease, Realty Executives agreed to pay to the Plaintiff
12 certain scheduled rent, including monthly rent which was due on the first day of every month, plus
13 other charges including certain costs and late fees (collectively the "Rent").

14 8. At various times in the year 2010, Realty Executives breached the Lease by failing to
15 pay the Rent when due.

16
17 9. On or about September 27, 2010, and while in default under the Lease, Realty
18 Executives executed a Third Amendment to Lease ("Third Amendment") to address certain issues in
19 light of Realty Executives' previous defaults under the Lease. Defendant Rich Rector executed the
20 Third Amendment on behalf of Realty Executives.

21 10. Realty Executives made a partial payment of reduced rent in the amount of
22 \$22,461.00 on or about October 1, 2010. However, Realty Executives has not made any payments
23 since that date.

24
25 11. Pursuant to the terms of the Third Amendment, Realty Executives was required to pay
26 rent pursuant to the schedule included in that amendment, including payments due on November 1,
27
28

1 2010, December 1, 2010, and the first day of every month thereafter.

2 12. Pursuant to the terms of the Third Amendment, the right of Realty Executives to
3 receive any reduction of rent is expressly predicated on Realty Executives' timely payment of each
4 and every payment due under the Third Amendment.

5 13. Without the knowledge of the Landlord, on or about the weekend of November 13,
6 2010, Realty Executives moved out of the Property, thus vacating the premises and further breaching
7 the terms of the Lease.
8

9 14. The Landlord provided a formal notice to Realty Executives that its act of vacating
10 the premises constitutes a breach of the Lease and must be cured by Realty Executives. Despite such
11 request, Realty Executives has not cured its default.
12

13 **COUNT ONE**
14 **Breach of Lease**
(Against Defendant Realty Executives only)

15 15. Pursuant to the terms of the Third Amendment, Realty Executives was required to pay
16 rent pursuant to the schedule included in that amendment, including payments due on November 1,
17 2010, December 1, 2010, and the first day of every month thereafter.

18 16. Pursuant to the terms of the Third Amendment, the right of Realty Executives to
19 receive any reduction of rent is expressly predicated on Realty Executives' timely payment of each
20 and every payment due under the Third Amendment.
21

22 17. Without the knowledge of the Landlord, Realty Executives moved out of the Property,
23 thus vacating the premises and further breaching the terms of the Lease.

24 18. Pursuant to the terms of the Lease, the abandonment of the Premises is a further
25 material breach of the Lease.
26

27 19. As of April 1, 2011, the amount of unpaid rent and other sums due under the Lease is
28

1 no less than \$142,964.03, plus interest and other charges.

2 20. Additional rent is also owed through the term of the Lease, through May 13, 2014.

3 21. Plaintiff has performed all of its duties and obligations under the Lease, and Realty
4 Executives' obligations under the Lease are not excused by law or otherwise justified.
5

6 **WHEREFORE**, Plaintiff prays for judgment against Defendant Realty Executives, as
7 follows:

8 A. For actual damages for non-payment of rent and other sums due under the Lease, in
9 the amount of \$142,964.03 for rent due as of April 1, 2011, plus rent due from May 1, 2011 through
10 May 13, 2014, plus late fees, interest and other charges due under the Lease;

11 B. For any other incidental damages incurred by Plaintiff by reason of the Defendants'
12 breach of the Lease, in an amount to be proven at trial, including but not limited to real estate
13 commissions incurred in reletting the premises and any costs of alteration, tenant improvements, and
14 repair in reletting the premises;

15 C. For Plaintiff's reasonable attorneys' fees and costs incurred herein, pursuant to A.R.S.
16 §12-341.01 and the Lease, which in the event of default, shall be no less than \$2,500.00;

17 D. For pre-judgment and post-judgment interest at the maximum legal rate on all money
18 portions of the amounts owed under the Lease; and
19

20 E. For such other and further relief as the Court deems just and proper.
21

22 **COUNT TWO**

23 **Fraud**

24 **(Against Defendants Realty Executives and Rector)**

25 22. Plaintiff incorporates herein by reference all previous allegations.

26 23. Realty Executives and many of the real estate licensees and employees of Realty
27 Executives who were working out of the subject Property moved to another Scottsdale location
28

1 shortly after the Third Amendment was executed by Rich Rector.

2 24. Upon information and belief, at the time Rector negotiated and executed the lease
3 extension, Realty Executives had already planned on moving its offices to the other location, and
4 failed to disclose such fact to the Landlord.

5 25. Therefore, upon information and belief, Realty Executives entered into the Third
6 Amendment—and obtained deferment of rent from the Landlord—under fraudulent pretenses.

7 26. Upon information and belief, Rector executed the Third Amendment, and induced the
8 Landlord to defer rent and a forbear taking legal action against Realty Executives, with complete
9 knowledge that Realty Executives did not intend to stay in the premises.

10 27. The individual principals of Realty Executives who held such knowledge should be
11 held accountable and liable for any damages caused by such nondisclosure to the Landlord.

12 28. Defendants Realty Executives and Rector, individually and/or in concert with one
13 another, made material misrepresentations and omissions to Plaintiff calculated to induce Plaintiff
14 into believing and relying upon the fact that Realty Executives intended to stay in the premises
15 through May, 2014.

16 29. The above-stated misrepresentations and omissions were material, and Plaintiff relied
17 and acted upon those misrepresentations and omissions.

18 30. Defendants Realty Executives and Rector owed a duty to inform Plaintiff of the
19 above-stated material omitted facts, including, but not limited to Realty Executives' decision to
20 move out of the premises to another location.

21 31. Defendants Realty Executives and Rector intended that Plaintiff rely and act upon the
22 truth of such representations, and in ignorance of omissions made to Plaintiff, and as a direct and
23 proximate result of such misrepresentations and omissions of Defendants, Plaintiff have been
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1 damaged for the delays in enforcing the lease default against Realty Executives, and not securing
2 another tenant.

3 32. Defendants Realty Executives and Rector acted with an evil mind, with an intent to
4 harm the economic interests of Plaintiff, and their conduct was so outrageous as to the rights and
5 interests of Plaintiff that punitive damages should be awarded to punish them and deter others from
6 similar conduct.
7

8 WHEREFORE, Plaintiff respectfully requests the following relief against Defendants Realty
9 Executives and Rector, joint and severally, as follows:

10 A. As to all Defendants, for actual damages resulting from the failure to disclose the fact
11 that Realty Executives was planning on moving out of the premises when negotiating the lease
12 extension and rent deferment;
13

14 B. For Plaintiff's costs and expenses of maintaining this action;

15 C. For Plaintiff's reasonable attorneys' fees in accordance with A.R.S. §12-341.01(C),
16 and in the event of default, not less than \$2,500.00;

17 D. For prejudgment and post-judgment interest on the foregoing amounts at the
18 maximum legal rate until paid in full;
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20 E. For punitive damages to be determined by the Court; and

21 F. For all other relief just and proper in this cause.

22 **COUNT THREE**

23 **Negligent Misrepresentation**

24 **(Against Defendants Realty Executives and Rector)**

25 33. Plaintiff incorporates herein by reference all previous allegations.

26 34. Defendants Realty Executives and Rector intentionally or negligently made false
27 representations and omissions to Plaintiff as stated above in Count Two.
28

1 35. Defendants Realty Executives and Rector owed a duty to disclose to Plaintiff the
2 whole truth concerning the status of Realty Executives' plans to vacate the premises and move its
3 offices to another location.

4 36. Defendants Realty Executives and Rector knew or should have known that said
5 representations were false when made and failed to exercise reasonable care in communicating that
6 information.
7

8 37. Plaintiff justifiably relied upon said representations and omissions when deferring
9 collection of rent and allowing Realty Executives to stay in the premises, and Plaintiff has suffered
10 damages as a direct and proximate result of said acts of such Defendants.

11 WHEREFORE, Plaintiff respectfully requests the following relief against Realty Executives
12 and Rector, jointly and severally, as follows:
13

14 A. As to all Defendants, for actual damages resulting from the failure to disclose the fact
15 that Realty Executives was planning on moving out of the premises when negotiating the lease
16 extension and rent deferment;

17 B. For Plaintiff's costs and expenses of maintaining this action;

18 C. For Plaintiff's reasonable attorneys' fees in accordance with A.R.S. §12-341.01(C),
19 and in the event of default, not less than \$2,500.00;
20

21 D. For prejudgment and post-judgment interest on the foregoing amounts at the
22 maximum legal rate until paid in full;

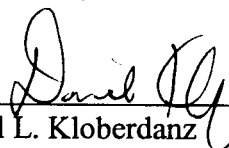
23 E. For punitive damages to be determined by the Court; and

24 F. For all other relief just and proper in this cause.
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Dated this 31st day of March, 2011.

BERENS, KOZUB, KLOBERDANZ & BLONSTEIN, PLC

By: 
Daniel L. Kloberdanz
7047 E. Greenway Parkway, Suite 140
Scottsdale, AZ 85254
Attorney for Plaintiff Saypo Cattle Co.