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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN DIEGO, HALL OF JUSTICE

14 RICARDO VIDAL d.b.a. SCHNELLZUG

15 CAPITAL;

16 Plaintiff,

17 v.

18 PICK AXE HOLDINGS, LLC, a California limited

19 liability company; CHRISTOPHER WILLIAMS,

20 an individual; and DOES 1 through 50, inclusive,

21 Defendants.

CASE NO. 37-2018-00044217-CU-BC-CTL

COMPLAINT FOR:

- 1) **BREACH OF CONTRACT; AND**
- 2) **INTENTIONAL MISREPRESENTATION**

JURY TRIAL DEMANDED

22 **TO ALL PARTIES AND THEIR ATTORNEY OF RECORD:**

23 Plaintiff RICARDO VIDAL d.b.a. SCHNELLZUG CAPITAL (“VIDAL”) brings this action
24 against defendants PICK AXE HOLDINGS, LLC (“PICK AXE”), CHRISTOPHER WILLIAMS
25 (“WILLIAMS”), and DOES 1 through 50 (collectively, “Defendants”) and alleges the following:

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1 **INTRODUCTION**

2 This is a two-count unlimited complaint for breach of contract and intentional misrepresentation
3 stemming from a disputed future use agreement of a property, wherein VIDAL alleges that PICK AXE,
4 an alter ego of WILLIAMS, had no intention to fulfill its obligations under the agreement terms. VIDAL
5 alleges that PICK AXE'S conduct is part of a large plan or scheme wherein these intentional
6 misrepresentations are regularly negotiated to secure future use agreements at PICK AXE'S request.

7 **THE PARTIES**

8 1. VIDAL, at all relevant times, is an individual residing in San Diego County, California,
9 and a party to the future use agreement at issue.

10 2. PICK AXE, at all relevant times, is a California limited liability company, doing business
11 in, and with its principal place of business located in, the City of San Diego, San Diego County, and a
12 party to the future use agreement at issue.

13 3. WILLIAMS is a natural person residing in San Diego County, California, and managing
14 member of PICK AXE.

15 4. Defendants named herein by fictitious names DOES 1 through 50, inclusive, are persons,
16 individuals, corporations, partnerships, associations, or otherwise. The true names and identities and
17 capacities of each fictitiously named Defendant are unknown to Plaintiff at this time. Leave of Court will
18 be requested to amend this Complaint to show their true names and capacities when they have been
19 ascertained.

20 5. Plaintiff is informed and believes, and based upon such information and belief, alleges
21 that, at all times herein mentioned, each of the Defendants, including the fictitiously named Defendants,
22 and each of them, was the duly authorized agent, employee, alter ego or partner of each other Defendant
23 and in doing the thing herein mentioned, Defendants, including fictitiously named Defendants, and each
24 of them, were acting within the scope of their agency, employment or partnership, and that all acts or
25 omissions hereinafter alleged were committed with the knowledge, permission, or consent, or any
26 combination thereof, of the other Defendants, including the fictitiously named Defendants and each of
27 them.

1 VENUE AND JURISDICTION

2 6. PICK AXE is, and at all relevant times mentioned in this complaint has been, a California
3 limited liability company, doing business in California, with its principal place of business in the City of
4 San Diego, County of San Diego, State of California.

5 7. The amount sought exceeds the jurisdictional minimum of this Court.

6 FACTUAL BACKGROUND

7 8. VIDAL owns the real property known as 314 South Melrose Drive, Vista, CA 92081 (the
8 “Property”).

9 9. On November 28, 2017, VIDAL and PICK AXE entered into a future use agreement
10 involving the Property (the “Agreement”), wherein VIDAL is the property owner and PICK AXE is the
11 future property user. A true copy of this agreement is attached hereto as **Exhibit 1** and incorporated by
12 this reference.

13 10. The Agreement required PICK AXE to put forth its best efforts to help identify a tenant
14 for the second floor of the Property, as an essential term.

15 11. PICK AXE did not advertise or otherwise promote the property.

16 12. PICK AXE did not show the property to any potential tenants.

17 13. PICK AXE failed to identify a tenant for the vacant area in the property.

18 14. PICK AXE did not put forth its best efforts to identify a tenant for the property.

19 15. Accordingly, VIDAL attempted to mitigate his losses from PICK AXE’s failure to put
20 forth best efforts to help find a tenant.

21 16. VIDAL advertised the property.

22 17. VIDAL made several requests that PICK AXE put its best efforts and help identify
23 potential tenants.

24 18. As of today, VIDAL has lost more than seven months’ rent from PICK AXE’s failure to
25 help identify potential tenants.

26 19. The fair market value of the vacant area in the property for seven months is at least
27 \$21,420.00.

28 20. WILLIAMS is the sole manager of PICK AXE.

1 will follow if corporate separateness is respected because, on information and belief, PICK AXE is
2 insolvent, or will be, should judgment be issued against it.

3 29. Thus, judgment against PICK AXE only would go unfulfilled – an inequitable result for
4 VIDAL.

5 **FIRST CAUSE OF ACTION**
6 **Breach of Contract**
7 **(Against all Defendants)**

8 30. In order to bring a cause of action for breach of contract, a plaintiff must allege: (1) the
9 existence of the contract, (2) plaintiff’s performance or excuse for nonperformance, (3) defendant’s
10 breach, and (4) the resulting damages to the plaintiff. Oasis W. Realty, LLC v. Goldman, 51 Cal.4th 811,
11 821 (2011).

12 31. Here, the Agreement was entered into on November 28, 2017, between VIDAL and PICK
13 AXE.

14 32. VIDAL fully and timely performed all obligations.

15 33. PICK AXE materially breached the Agreement by failing to put forth best efforts to
16 identify a tenant for more than seven months after the Agreement was executed.

17 34. As a direct and proximate cause of the breach, VIDAL has been damaged in the amount
18 to be proven at trial, but that is, at least, \$21,420.00, exclusive of pre-judgment interest.

19 35. Based on information and belief, DOES 1 through 50 are members, or other responsible
20 people, of PICK AXE, an alter-ego. Accordingly, under the theory of alter-ego liability outlined in
21 Paragraphs 26 through 29 above, DOES 1 through 50 are also liable for breach of the Agreement.

22 **SECOND CAUSE OF ACTION**
23 **Intentional Misrepresentation**
24 **(Against Pick Axe and Williams)**

25 36. The essential elements for a cause of action for intentional misrepresentation are: (1) a
26 misrepresentation, (2) knowledge of falsity, (3) intent to induce reliance, (4) actual and justifiable
27 reliance, and (5) resulting damage. Chapman v. Skype Inc., 220 Cal.App.4th 217, 230-31 (2013).

28 37. Pursuant to the Agreement, PICK AXE represented to VIDAL that he would put forth his

1 best efforts to help identify a tenant to rent the vacant second floor of the Property.

2 38. Those representations were false. PICK AXE had knowledge that its representations were
3 false when they were made because, based on information and belief, PICK AXE has a larger plan or
4 scheme where it was motivated to negotiate agreements for future use of commercial properties when it
5 had no intention to meet its obligations and had no intention to put forth best efforts to find a tenant for
6 the vacant area of the Property.

7 39. PICK AXE intended that VIDAL detrimentally rely on these representations.

8 40. VIDAL actually and justifiably relied upon these false representations that best efforts had
9 been put forth to find a tenant for the second floor of the Property.

10 41. VIDAL's reliance on these false representations was a substantial factor causing him
11 harm. As a proximate cause of PICK AXE's intentional misrepresentations, VIDAL detrimentally relied
12 on such misrepresentations and suffered economic damages in an amount to be proven at trial, but that is
13 at least, \$21,420.00.

14 42. Alternatively, because VIDAL was fraudulently induced to enter into the Agreement, he
15 is entitled to rescission and/or restitution in an amount to be proven at trial, but that is at least, \$21,420.00.

16 43. VIDAL is further entitled to punitive damages against PICK AXE because its actions
17 constituted malice, oppression, and fraud pursuant Cal. Civ. Code § 3294.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, VIDAL prays for judgment against all defendants as follows:

- 20 A. For economic damages of, at least, \$21,420.00;
21 B. For punitive damages pursuant to Cal. Civ. Code § 3294;
22 C. For pre-judgment interest;
23 D. For costs of suit;
24 E. For attorneys' fees to the extent permitted by law;
25 F. For rescission of the Agreement and restitution in an amount to be proven at trial; and
26 G. For such other and further relief as the Court deems just and proper

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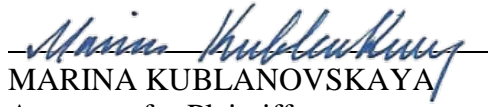
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3 Date: August 30, 2018

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LAW OFFICES OF MICHAEL E. CINDRICH, APC

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By: 

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MARINA KUBLANOVSKAYA

7

Attorneys for Plaintiff

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**RICARDO VIDAL d.b.a. SCHNELLZUG
CAPITAL**

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EXHIBIT 1

Property

314 South Melrose Drive, Vista, CA 92081. Comprised of a stand alone two story commercial building.

Terms

- \$5,000 non-refundable earnest money deposit will be made paid by check/cash to secure the properties rights to apply for a conditional use permit for medical or recreational marijuana activity. An additional \$5,000 will be due within 30 days of the city approving an initiative.
- Pick Axe Holdings management will be responsible for all associated fees and expenses to apply for a conditional use permits with the city of Vista including but not limited to corporate and land use attorney, permits, architect, building inspectors, public affairs, lobbyist and other third party consultants.

Terms Continued

- At the issuance of conditional use permit Pick Axe Holdings lease payments will begin on mutually approved move in date \$Fair Market Rent/month during building and tenant improvement period.
- Lease payments will increase from \$9,000.00 month for the available upstairs area to \$13,000/month for the whole building (if tenants vacate the occupied offices) from the time the dispensary doors open and are legally allowed to retail.
- Triple net five year lease with five, five year options. Plus a 2% yearly increase.
- Lessee agrees to pay up to \$350,000 in tenant improvements for the conditional use permit and any taxes associated with the tenant improvements

Terms Continued

- Lessee is responsible for any improvement correction costs (including architect and engineer.
- Lessee agrees to put forth their best effort to help identify sub lease to rent the second floor at FMV per sq ft.
- Lessee agrees to grant lessor a first right of refusal to manufacture and supply certain products that management wishes to distribute in the dispensary.
- Lessee will assist lessor with licensing, branding, marketing and advertising his manufacturing services and products. We will provide tools to promote the manufacturing business, acquire and retain customers and drive sales and profits.

Terms Continued

- Lessor is responsible for any previous fines.
- Lessee holds the first right of refusal to purchase the property at a sliding scale TBD by third party BPO.
- The lease will be a five year exclusive option to only apply for a MMJ or recreational conditional use permit.
- The Lessor has a buyout option of Three million to apply or take over the permi

Signatures

R

(Rick Vidal (Nov 29, 2017))

Rick Vidal
Lessor

11/28/17

Date

Christopher O. Williams

Christopher Williams
Lessee

11/28/17

Date

This is an agreement to work on the actual lease terms to the best of our abilities.