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ENDORSED FILED
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DAVID H. YAMASAKI
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
By _____ Deputy

Attorney for Plaintiff

T. NGO

8 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
9 SUPERIOR COURT FOR THE COUNTY OF SANTA CLARA
10 UNLIMITED JURISDICTION

12 RSTP INVESTMENTS, LLC.

Case No.: **16CV291967**

13 Plaintiff,

COMPLAINT FOR DAMAGES:
1) BREACH OF CONTRACT;
2) BREACH OF THE IMPLIED
COVENANT OF GOOD FAITH AND
FAIR DEALINGS;
3) COMMON ACCOUNTS; and
4) UNJUST ENRICHMENT

14 vs.

15 THE REDEVELOPMENT AGENCY OF THE
16 CITY OF SAN JOSE, SUCCESSOR AGENCY
17 TO THE REDEVELOPMENT AGENCY TO
18 THE CITY OF SAN JOSE, CITY OF SAN
19 JOSE and DOES 1 through 10, inclusive,

Defendants

21
22 Plaintiff RSTP INVESTMENTS, LLC (hereinafter referred to as "Plaintiff") bring this civil
23 action against defendants THE REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE,
24 SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY TO THE CITY OF SAN
25 JOSE, CITY OF SAN JOSE and DOES 1 through 10, inclusive, (hereinafter referred to

1 collectively as "Defendants") and complains and alleges upon their own knowledge with respect
2 to himself and upon information and belief with respect to all other matters, as follows:

3 1. At all times relevant herein, Plaintiff was and is a legally form limited liability
4 company under the laws for the State of California with its principal place of business in the
5 County of Santa Clara.

6 2. Plaintiff manages and owns certain commercial real property more commonly
7 known as 100 East Santa Clara Street, San Jose, California 95113 (hereinafter referred to as the
8 "premises"), which is the subject of this Action.

9 3. Plaintiff is informed and believes and alleges herein that at all relevant times,
10 defendant THE REDEVELOPMENT AGENCY OF THE CITY OF SAN JOSE, SUCCESSOR
11 AGENCY TO THE REDEVELOPMENT AGENCY TO THE CITY OF SAN JOSE (hereinafter
12 referred to as "defendant Agency") is public agency under the relevant California law
13 responsible for creating jobs, development of affordable housing and redevelopment projects.
14

15 4. Plaintiff is informed and believes and alleges herein that at all relevant times,
16 defendant Agency was an agency and part of defendant CITY OF SAN JOSE (hereinafter
17 referred to as "defendant City"), who is the controlling governing body of the local government
18 for the City of San Jose and authorized for defendant Agency's actions as herein alleged and is
19 ultimately liable and/or responsible for defendant Agency.
20

21 5. The true names and capacities, whether individual, corporate, associate, or
22 otherwise, of defendants DOES 1 to 10, inclusive, are unknown to Plaintiff, whom therefore sues
23 said Defendants by such fictitious names. Plaintiff is informed and believes, and on that basis
24 alleges, that each of the Defendants designated herein as a DOE defendant is legally responsible
25 in some manner for the acts, conduct, occurrences, events, happenings, and damages herein
26
27

1 referred to, and directly and proximately caused or contributed to the injuries and damages of
2 Plaintiff as alleged herein.

3 6. On information and belief, at all times mentioned herein, each and every
4 defendant was the agent, employee, servant, partner, or joint venturer of each of its or his or her
5 co-Defendants, and in doing the actions described below was acting within the scope of his or
6 her authority as such agent, employment, service, partnership, and joint venture and with the
7 permission and consent of each co-defendant.
8

9 7. Plaintiff is informed and believes, and on that basis alleges, that at all times herein
10 mentioned, each of the remaining Defendants in doing the things alleged herein, were acting
11 within the course and scope of his or their agency, employment and representation and with the
12 knowledge, ratification and consent of each of the other Defendants.
13

14 **GENERAL ALLEGATIONS**

15 8. On or about September 15, 2009, Plaintiff and defendant Agency entered into a
16 written Lease (hereinafter referred to as the "Lease"), whereby defendant Agency leased from
17 Plaintiff the premises for a term of five (5) years term commencing on October 1, 2009, and
18 expiring on September 30, 2014.

19 9. The Lease provided the following relevant terms:

20 a) Approximately 26,075 rentable square feet;

21 b) Five-year lease with one five-year option;

22 Base rent of \$1.50 per square foot for months 1-24 or \$39,112.50 and
23 \$1.53 per square foot for months 25-36 or \$39,894.75, and \$1.53 per
24 square foot plus CPI adjustment not to exceed 3% per annum applied on
25 months 37 and 49 for each following 12 month period for months 37-60;
26
27

- 1 c) Base rent for the lease option period would be 95% of the fair market
2 value;
- 3 d) Security deposit of approximately \$39,112.50;
- 4 e) Tenant would be liable for insurance, maintenance, property taxes, trash
5 and recycling, utilities, and janitorial services;
- 6 e) Lease term commences on October 1, 2019;
- 7 f) Five (5%) percent late charge if rent is not paid within 10 business when
8 due pursuant to Paragraph 6; and
- 9 g) There shall be no waiver of any term by landlord by acceptance of rent
10 pursuant to Paragraph 29
11

12 10. On or about June 28, 2011, the Governor for the State of California at that
13 specific time signed into law AB X1 26, as subsequently amended by AB 1484, which provided
14 for the dissolution and winding down of redevelopment agencies throughout the State of
15 California (hereinafter referred to as the "Dissolution Legislation").
16

17 11. On January 24, 2012, pursuant to the Dissolution Legislation, defendant City of
18 San Jose elected for defendant Agency to be the successor agency to the original Redevelopment
19 Agency to the City of San Jose (hereinafter referred to as the "original agency") to administer
20 the dissolution and winding down of the original agency.
21

22 12. On February 1, 2012, pursuant to AB X1 26, the Agency was dissolved and, upon
23 dissolution, all assets, properties and contracts of the original agency, including the Lease, were
24 transferred, by operation of law, to defendant Agency pursuant to the terms of Health and Safety
25 Code Section 34175(b).
26
27

1 13. Beginning approximately June of 2012, defendant Agency breached the Lease,
2 *inter alias*, by failing to fully pay Plaintiff the rent as it came due under the Lease.

3 14. Subsequently, Plaintiff and defendant Agency entered into a Tolling and
4 Standstill Agreement (hereinafter referred to as "Agreement"), whereby defendant Agency
5 agreed that any statute of limitations, contractual defenses, equitable defense of laches or any
6 other time-related defense (including those relating to claims against government entities) would
7 be tolled. Furthermore, the Agreement provided that defendant Agency would waive and not
8 plead, argue or otherwise raise any statute of limitations, contractual time defense, laches or any
9 other time-related defenses to the extent the defense is inapplicable.
10

11 15. On September 30, 2014, the Lease terminated and to date, Plaintiff has received
12 the approximate sum of \$370,802.36 from defendant Agency and from other occupants as
13 payment towards amounts owing by defendant Agency under the Lease.
14

15 16. It is estimated that defendant Agency still owes approximately \$774,974.80 in
16 Base Rent to Plaintiff.

17 17. Pursuant to section 6 of the Lease, defendant Agency is obligated to pay Plaintiff
18 a late charge equal to five percent (5%) of the amount of rent due each month that is not received
19 within ten (10) business days of the date such rent is due. As of this date, it is estimated that
20 defendant Agency owes the sum of \$40,166.56 in late fees.
21

22 18. Pursuant to section 23.2 of the Lease, defendant Agency is obligated to pay all
23 possessory interest taxes associated with the premises, the Lease, and any so-called value added
24 tax. It is estimated that defendant Agency owes the sum of \$45,219.70 in possessory interest
25 taxes to Plaintiff as of this date.
26
27

1 27. Defendants breached the Lease by failing to make timely payments pursuant to
2 the Lease when demanded and when due, and continue to breach the Lease now by refusing to
3 make these payments as alleged herein.

4 28. Defendants also breached Agreement by denying Plaintiff's claim when it was
5 originally submitted.

6 29. Plaintiff, on the other hand, fulfilled all terms, and conditions of the Lease and the
7 Agreement.

8 30. As a direct and proximate result of Defendants' acts and/or omissions, Defendants
9 breached the Lease and Agreement between them and Plaintiff.
10

11 31. As a direct and proximate result of Defendants' breaches and/or conduct, Plaintiff
12 suffered general, special and consequential damages and attorneys' fees and cost, in excess of the
13 jurisdictional limit of this Court. The exact amount of these damages will be presented at trial.
14

15 32. Plaintiff is also entitled to interest under the Lease. The exact amount of the legal
16 interest will be presented at trial.

17 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as set
18 forth below.

19 **SECOND CAUSE OF ACTION**
20 **(BREACH OF COVENANT OF**
21 **GOOD FAITH AND FAIR DEALING)**

22 33. As a Second Cause of Action standing alone and pled in the alternative, Plaintiff
23 complains against Defendants and including DOES 1 to 10, inclusive, and for a cause of action
24 alleges:

25 34. Plaintiff incorporates into this Cause of Action the allegations contained in
26 Paragraphs 1 through 32 of this Complaint as if the same were set out in full herein.
27

1 35. Implied in the Lease and the Agreement are covenants by Defendants that they
2 would act in good faith and deal fairly with Plaintiff and that they would do nothing to interfere
3 with the benefits provided to Plaintiff under the Lease and Agreement.

4 36. Plaintiff is informed and believes and alleges herein that Defendant s breached the
5 implied covenant of good faith and fair dealing contained within and arising out of the Lease and
6 the Agreement as more specifically alleged herein above as relates it relates to payments that
7 should have been timely made and the denying of Plaintiff's claim.
8

9 37. As a direct and proximate result of the unreasonable conduct of Defendants,
10 Plaintiff was required to retain counsel to obtain the benefits due to him under the Lease and the
11 Agreement and the Guaranty Agreement.

12 38. As a direct and proximate result of Defendants' acts and/or omissions, Plaintiff
13 suffered general, special and consequential damages and attorneys' fees and cost, in satisfaction
14 of the jurisdictional limit of this Court. The exact amount of these damages will be presented at
15 trial.
16

17 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as set
18 forth below.

19 **THIRD CAUSE OF ACTION**
20 **(COMMONS ACCOUNTS)**

21 39. As a Third Cause of Action standing alone and pled in the alternative, Plaintiff
22 complains against Defendants and including DOES 1 to 10, inclusive, and for a cause of action
23 alleges:
24

25 40. Plaintiff incorporates into this Cause of Action the allegations contained in
26 Paragraphs 1 through 38 of this Complaint as if the same were set out in full herein.
27

1 41. Within the past two years, Defendants became indebted to Plaintiff under the
2 Lease.

3 42. Under the Lease and in exchange for the lease of the premises, Defendants agreed
4 to pay Plaintiff the sums as alleged herein, but failed to do so.

5 43. As a direct and as a proximate result of Defendants' acts and/or omissions, they
6 breached the Lease between them and Plaintiff.

7 44. As a direct and proximate result of Defendants' conduct, Plaintiff suffered
8 general, special and consequential damages and attorneys' fees and cost, in satisfaction of the
9 jurisdictional limit of this Court. The exact amount of these damages will be presented at trial.

10 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as set
11 forth below.
12

13 **FOURTH CAUSE OF ACTION**
14 **(UNJUST ENRICHMENT)**

15 45. As a Fourth Cause of Action standing alone and pled in the alternative, Plaintiff
16 complains against Defendants, including DOES 1 to 10, inclusive, and for a cause of action
17 alleges:
18

19 46. Plaintiff incorporates into this cause of action the allegations contained in
20 Paragraphs 1 through 44 of this Complaint as if the same were set out at full herein.

21 47. At all relevant times herein, Defendants agreed to lease the premises from
22 Plaintiff and agreed to pay the amounts on a timely basis as alleged in this Complaint, but failed
23 to do so.
24

25 48. Defendants has been unjustly enriched by breaching the Lease and the Agreement,
26 and by failing to pay the monies due to Plaintiff as alleged herein.
27

