



Duane S. Horning

dhorning@cblg.biz
direct 619.325.1556

By email only

June 25, 2014

Charles Berwanger, Esq.
Gordon & Rees LLP
101 West Broadway, Suite 2000
San Diego, CA 92101

Re: Lease to Total Renal Care, Inc., a subsidiary of DaVita HealthCare Partners Inc.

Dear Mr. Berwanger:

As I mentioned on the phone several weeks ago, Medical Acquisition Company, Inc. ("MAC") has been negotiating with DaVita HealthCare Partners Inc. ("DaVita") for a lease in the Medical Office Building to DaVita's subsidiary, Total Renal Care, Inc. I understand Tri-City Healthcare District ("TCHD") was also negotiating with DaVita when the Transition Agreement was pending.

MAC and DaVita have now entered into a nonbinding letter of intent, which is enclosed. DaVita's intended space plan and modifications to the building exterior and site are also enclosed. The parties will now proceed to prepare a formal lease instrument and tenant improvement plans.

We do not believe MAC's entering into a lease with Total Renal Care, Inc. requires the approval of TCHD. However, we are providing these documents and keeping TCHD informed of this leasing effort as a courtesy.

We have informed DaVita of the pending litigation between MAC and TCHD, and TCHD's initiation of the eminent domain process. I will be responding to your correspondence on that and other issues separately. For now and for the limited purpose of informing TCHD of the lease negotiations with DaVita, I can confirm that DaVita and MAC recognize that at some point, potentially soon, TCHD may become the owner of the Medical Office Building. We also recognize TCHD's contention, though we dispute it, that the Ground Lease is void. Those issues are pending and the timing of their final resolution is not certain. Therefore, it seems to us that unless and until TCHD actually takes the building or the parties agree to a transfer, that it is prudent for MAC to continue its leasing efforts as if it were to own the building indefinitely.

I anticipate that MAC will continue with other leasing efforts, as well. MAC's continued leasing efforts including with DaVita are not intended to interfere with or prejudice either TCHD or MAC's respective positions, but only to put the Medical Office Building to productive use as soon as possible. Indeed, we expect that even if TCHD ends up owning the building, that TCHD and the public will benefit from DaVita's occupancy, not only as tenant providing an income stream, but by providing a vital and complimentary health care service adjacent to the hospital and on its campus.

Symphony Towers, 750 B Street, Suite 2330, San Diego, CA 92101 • 619.325.1555 • www.cblg.biz

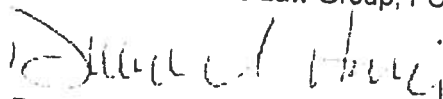
Charles Berwanger, Esq.
June 25, 2014
Page 2

If you have any questions or would like to discuss these matters, please call me.

Thank you for your attention to these matters.

Sincerely,

California Business Law Group, PC



Duane S. Horning

Enclosures

cc: Mr. Aaron Denike (by email only)
Tara Lusher, Esq. (by email only)

USI REAL ESTATE BROKERAGE SERVICES INC.

4695 MACARTHUR COURT
11TH FLOOR
NEWPORT BEACH, CA 92660

TELEPHONE: 949-798-5586
FACSIMILE: 949-798-5580
ADENIKE@USIREALESTATE.COM

June 11, 2014

MAC Counter
Medical Acquisition Company, Inc.
Attn: Tara Lusher, Vice President and General Counsel

RE: REQUEST FOR PROPOSAL: Tri City Medical Office Building, Oceanside, CA

Dear Ms. Lusher,

USI Real Estate Brokerage Services Inc. has been exclusively authorized by Total Renal Care, Inc. – a subsidiary of DaVita Healthcare Partners, Inc. to assist in securing a lease requirement. DaVita Healthcare Partners, Inc. is a Fortune 500 company with more than 1,800 locations across the US and revenues of approximately \$7 billion.

We are requesting that you provide us with a written proposal to lease the above referenced subject property. We request that you deliver your response no later than five (5) business days. *Please prepare the proposal to correspond to the following terms and conditions:*

LOCATION:

4004 Vista Way, Oceanside, CA 92056 -Prior to lease execution, Landlord must provide written confirmation from the US Postal Service of the exact mailing address, including the suite number and nine (9) digit zip code.

TENANT:

Total Renal Care, Inc., and/or another affiliated entity to be nominated, subject to Landlord's approval which approval shall not be unreasonably withheld or delayed. ("Tenant")

LANDLORD:

Medical Acquisition Company, Inc. ("Landlord" or "MAC")

MASTER LEASE:

The premises contemplated herein is part of a larger premises ("Master Lease Premises") which is subject to a Ground Lease by and between Tri-City Healthcare District ("TCHD") and Landlord dated December 29, 2010, covering 99,732.86 gross square feet, or approximately 2.29 acres located on the Hospital campus of some 31 acres. TCHD and MAC entered into two amendments to the ground lease: a First Amendment to Ground Lease dated May 5, 2011; and a Second Amendment to Ground Lease dated August 23, 2011. The original ground lease, First Amendment to Ground Lease, and Second Amendment to Ground Lease are collectively referred to as the "Ground Lease." This letter contemplates a sublease from Landlord as master lessor to Tenant ("Sublease"). The Sublease shall be subject to and subordinate to the Master Lease, and shall incorporate the Master Lease by reference. Tenant shall in all respects conform to and abide by the Master Lease. Entry into the Sublease is subject to TCHD's approval.

SPACE REQUIREMENTS:

The premises covered by the Sublease are part of a Medical Office Building ("Medical Office Building") of approximately 57,000 square feet located on the Master Lease Premises

Tenant shall occupy approximately 11,275 Rentable Square Feet and 9,899 usable square feet on the first floor of the Medical Office Building (per attached space plan). Tenant shall have the right to re-measure space based on most recent BOMA standards. (the "Premises")

USE:

The operation of an outpatient renal dialysis clinic, renal dialysis home training, apheresis services and similar blood separation and cell collection procedures, general medical offices, clinical laboratory, including all incidental, related and necessary

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6/11/2014

elements and functions of other recognized dialysis disciplines which may be necessary or desirable to render a complete program of treatment to patients of Tenant and related office and administrative uses or for any other lawful purpose.

Tenant to verify use complies with zoning requirements

A copy of the Ground Lease is being provided separately to the Tenant.

TERM:

Ten (10) years.

RENTAL RATE:

Please indicate the annual rate per rentable square foot. (FSG, MG, NNN)

\$3.15 per square foot per month, including \$0.35 per square foot per month operating expense stop. Rent shall be based on rentable area. The common area factor is 13.9%. Rent shall be increased every five years by 10%.

ADDITIONAL EXPENSES:

This shall be a modified gross lease and All utilities including without limitation electricity and natural gas separately metered for the Premises, cable television, telephone, internet, and all utilities and costs attributable to the Premises that are not otherwise covered by the CAM charges shall be paid by Tenant.

LANDLORD'S MAINTENANCE:

Landlord, at its sole cost and expense, shall be responsible for the structural and capitalized items (per GAAP standards) for the Property. The extent of recovery of such maintenance expenses, if any, in CAM charges, will be addressed during drafting of the Lease.

**POSSESSION &
RENT COMMENCEMENT:**

Tenant Possession for construction of tenant improvements shall be upon lease execution and Rent Commencement shall be the earlier of occupancy and operations, or six months after possession.

LEASE FORM:

Lease form shall be building standard.

PARKING:

Tenant, Tenant's employees, patients, guests and invitees shall share with other occupants of the Medical Office Building, their employees, patients, guests and invitees, non-exclusive use of approximately 128 parking spaces located on the Master Lease Premises, plus non-exclusive use of 160 parking spaces provided by TCHD on TCHD's hospital campus at such location as TCHD shall designate from time to time. The hospital is believed to have approximately 1100 spaces on its campus. Tenant shall require a dedicated drop off area next to their private entrance. They will also require dedicated handicap parking stalls next to the entrance as is required by law or regulation.

BASE BUILDING

Landlord shall deliver to the premises, the Base Building improvements in their current, as is condition. Tenant shall be responsible to satisfy itself as the current condition and suitability for the Tenant's purposes. Landlord acknowledges that Tenant will be allowed to make, but not be limited to, the following changes to the Base Building. Tenant will offer to pay for a preliminary floor plan at our costs and supply the FP to Landlord for Landlord's approval prior to lease execution. (Design documents to be submitted for review and approval prior to Lease execution. Lease execution is subject to Landlord approval of changes.):

1. Modify Tenant's dedicated front entry and door.
2. Add additional HVAC units to the roof (There are no HVAC units presently on the roof for the Premises. All heat pumps must be added.)
3. Add a back door for delivery next to the stock room
4. Modify the main water line into the building

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5. Cut the floor slab to allow for additional plumbing.

TENANT IMPROVEMENTS:

No tenant improvement allowance. Tenant to pay for all tenant improvements and modifications to base building, all of which must be approved in advance by Landlord. Tenant to engage contractor. Tenant to submit names of up to three contractors for review and approval by Landlord prior to Lease execution. Selection of any other contractor subject to Landlord's approval. Construction activities and schedule subject to hours and operational limits so as not to interfere with other tenants or building operation.

OPTION TO RENEW:

Tenant desires three, five-year options to renew the lease. Option rent shall be at market.

**RIGHT OF FIRST OPPORTUNITY ON
ADJACENT SPACE:**

Tenant shall have the on-going right of first opportunity on any adjacent space that may become available during the initial term of the lease and any extension thereof, under the same terms and conditions of Tenant's existing lease.

**FAILURE TO DELIVER
PREMISES:**

If Landlord has not delivered the premises to Tenant with all base building items substantially completed by 90 days from lease execution, Tenant may elect to a) terminate the lease by written notice to Landlord or b) elect to receive two days of rent abatement for every day of delay beyond the 90 day delivery period.

HOLDING OVER:

Tenant shall be obligated to pay 110% for the then current rate.

TENANT SIGNAGE:

Tenant shall have the right at Tenant's expense to install building, monument and pylon signage at the Premises subject to advance written approval by Landlord and TCHD in their sole and absolute discretion, and subject to compliance with all applicable laws and regulations. Landlord, at Landlord's expense, will furnish Tenant with any standard interior building directory signage.

BUILDING HOURS:

Tenant requires building hours of 24 hours a day, 7 days a week. Tenant areas are all separately conditioned. Common areas will be conditioned during normal business hours. *Please indicate building hours for HVAC and utility services.*

SUBLEASE/ASSIGNMENT:

We'll table this for now to be discussed further in the Lease document. Tenant's attorney will need to review the ground lease.

ROOF RIGHTS:

Tenant shall have the right to place a satellite dish on the roof at no additional fee and at no cost to Landlord. The location and manner of installation is subject to Landlord's sole and absolute discretion. Tenant shall not penetrate any roof surface or membrane, or install any equipment on the roof without Landlord's prior written consent.

NON COMPETE:

Landlord agrees not to lease space to another dialysis provider within a two mile radius of Premise during the initial 10-year lease term, provided Tenant is not in default, and is occupying the Premises and providing dialysis services in the Premises.

HVAC:

Split system, fan coils to be in tenant spaces, heat pumps on the roof.

TRUCK DELIVERIES:

No truck deliveries shall be made during regular business hours of the Medical Office Building. All truck deliveries shall be made through the western entrance only.

OTHER CONCESSIONS:

Two months free rent for each year of initial lease term of 10 years for a total 20 months free. Free rent to be at the end of each year of lease term.

**GOVERNMENTAL
COMPLIANCE:**

Landlord shall represent and warrant to Tenant that Landlord, at Landlord's sole expense, at the inception of the Sublease, to Landlord's actual knowledge and belief, will cause the Premises, common areas, the building and parking facilities to be in full compliance with any governmental laws, ordinances, regulations or orders relating to, but not limited to, compliance with the Americans with Disabilities Act (ADA), and environmental conditions relating to the existence of asbestos and/or other hazardous materials, or soil and ground water conditions. Tenant shall at all times comply with applicable governmental laws and regulations including without limitation the ADA with respect to the Sublease premises, and shall indemnify and defend Landlord and TCHD with respect to same.

BROKERAGE FEE:

Landlord agrees that it recognizes USI Real Estate Brokerage Services Inc. as representatives and a brokerage fee of four percent (4%) of the gross rent due over the first five years, and two percent (2%) over the remainder that shall be paid to USI Real Estate Brokerage Services Inc., per separate commission agreement to be fully executed by all parties. The Commission shall be due and payable 100% to USI REBS in accordance with a separate commission agreement. No commission shall be payable for any option terms whether or not exercised. The parties represent that they have dealt with no other real estate brokers with respect to the Sublease.

SECURITY DEPOSIT:

Tenant to post security deposit in the amount equal to 120% of first month's rent.

It should be understood that this Request for Proposal is subject to the terms of Exhibit A attached hereto. The information in this email is confidential and may be legally privileged. It is intended solely for the addressee. Access to this information by anyone but addressee is unauthorized.

Thank you for your time and consideration to partner with DaVita.

Sincerely,

TENANT:

Agreed & Accepted:

Signature

Title

LANDLORD:

Agreed & Accepted:

Signature

Title

EXHIBIT A

NON-BINDING NOTICE

USI REAL ESTATE BROKERAGE SERVICES INC.
A JCI COMPANY

6/11/2014

NOTICE: THE PROVISIONS CONTAINED IN THIS LETTER OF INTENT ARE AN EXPRESSION OF THE PARTIES' INTEREST ONLY. SAID PROVISIONS TAKEN TOGETHER OR SEPERATELY ARE NEITHER AN OFFER WHICH BY AN "ACCEPTANCE" CAN BECOME A CONTRACT, NOR A CONTRACT. BY ISSUING THIS LETTER OF INTENT NEITHER TENANT NOR LANDLORD (OR USI) SHALL BE BOUND TO ENTER INTO ANY (GOOD FAITH OR OTHERWISE) NEGOTIATIONS OF ANY KIND WHATSOEVER. TENANT RESERVES THE RIGHT TO NEGOTIATE WITH OTHER PARTIES. NEITHER TENANT, LANDLORD OR USI INTENDS ON THE PROVISIONS CONTAINED IN THIS LETTER OF INTENT TO BE BINDING IN ANY MANNER, AS THE ANALYSIS FOR AN ACCEPTABLE TRANSACTION WILL INVOLVE ADDITIONAL MATTERS NOT ADDRESSED IN THIS LETTER, INCLUDING, WITHOUT LIMITATION, THE TERMS OF ANY COMPETING PROJECTS, OVERALL ECONOMIC AND LIABILITY PROVISIONS CONTAINED IN ANY LEASE DOCUMENT AND INTERNAL APPROVAL PROCESSES AND PROCEDURES. THE PARTIES UNDERSTAND AND AGREE THAT A CONTRACT WITH RESPECT TO THE PROVISIONS IN THIS LETTER OF INTENT WILL NOT EXIST UNLESS AND UNTIL THE PARTIES HAVE EXECUTED A FORMAL, WRITTEN LEASE AGREEMENT APPROVED IN WRITING BY THEIR RESPECTIVE COUNSEL. USI IS ACTING SOLELY IN THE CAPACITY OF SOLICITING, PROVIDING AND RECEIVING INFORMATION AND PROPOSALS AND NEGOTIATING THE SAME ON BEHALF OF OUR CLIENTS. UNDER NO CIRCUMSTANCES WHATSOEVER DOES USI HAVE ANY AUTHORITY TO BIND OUR CLIENTS TO ANY ITEM, TERM OR COMBINATION OF TERMS CONTAINED HEREIN. THIS LETTER OF INTENT IS SUBMITTED SUBJECT TO ERRORS, OMISSIONS, CHANGE OF PRICE, RENTAL OR OTHER TERMS; ANY SPECIAL CONDITIONS IMPOSED BY OUR CLIENTS; AND WITHDRAWAL WITHOUT NOTICE. WE RESERVE THE RIGHT TO CONTINUE SIMULTANEOUS NEGOTIATIONS WITH OTHER PARTIES ON BEHALF OF OUR CLIENT. NO PARTY SHALL HAVE ANY LEGAL RIGHTS OR OBLIGATIONS WITH RESPECT TO ANY OTHER PARTY, AND NO PARTY SHOULD TAKE ANY ACTION OR FAIL TO TAKE ANY ACTION IN DETRIMENTAL RELIANCE ON THIS OR ANY OTHER DOCUMENT OR COMMUNICATION UNTIL AND UNLESS A DEFINITIVE WRITTEN LEASE AGREEMENT IS PREPARED AND SIGNED BY TENANT AND LANDLORD

6/11/2014

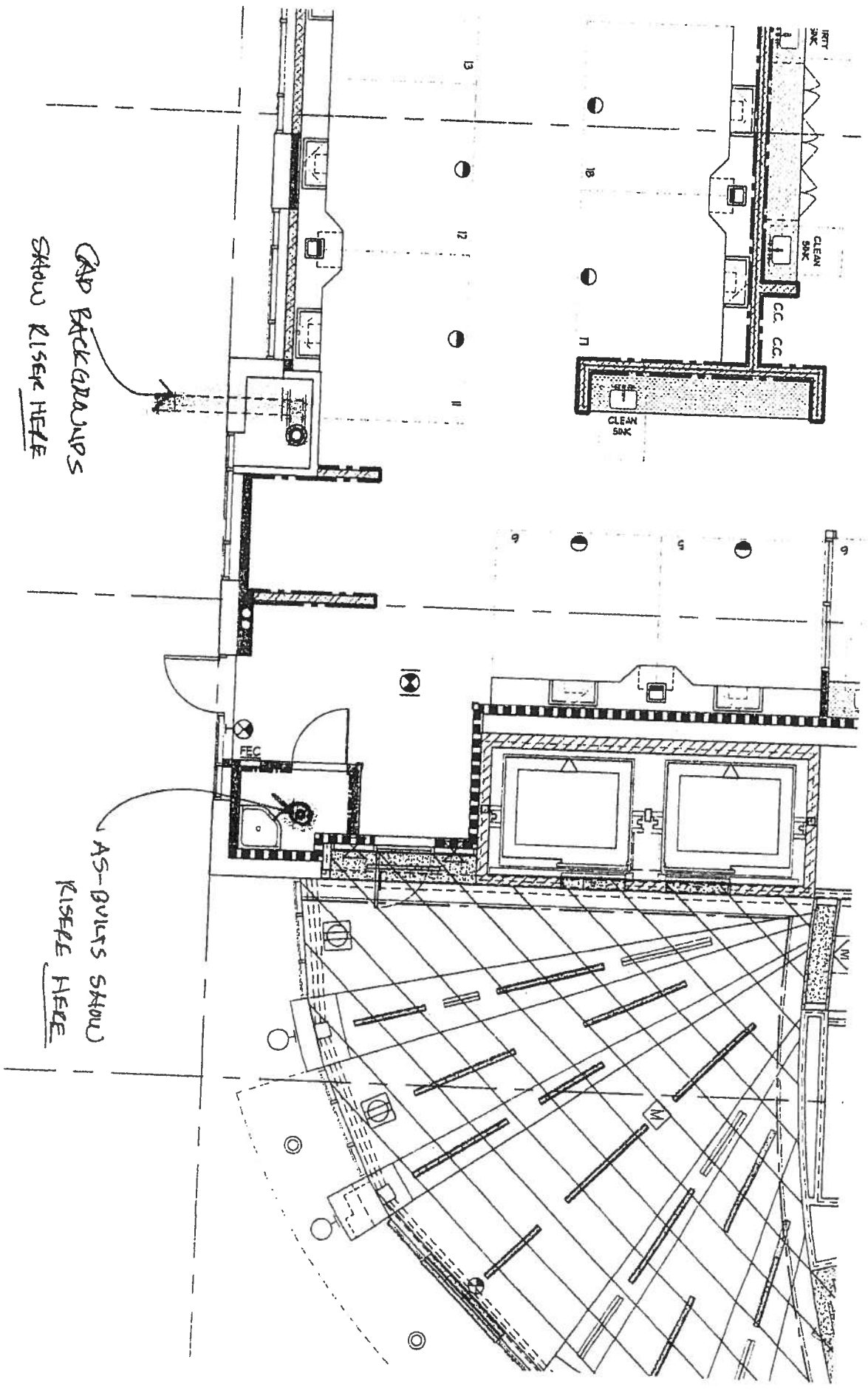
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A JCI COMPANY

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2012-037-
 CLEANUP
 9/17/2013



CHARLES V. BERWANGER
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DIRECT DIAL: (619) 230-7784

GORDON & REES LLP

ATTORNEYS AT LAW
101 W. BROADWAY
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SAN DIEGO, CA 92101
PHONE: (619) 696-6700
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WWW.GORDONREES.COM

July 1, 2014

VIA EMAIL AND U.S. MAIL

Duane Horning, Esq.
California Business Law Group, PC
Symphony Towers
750 B Street, Suite 2330
San Diego, CA 92101
duhorning@cblg.biz

Re: Letter of Intent With DaVita Healthcare Partners, Inc.

Dear Mr. Horning:

We have reviewed your letter of June 25, 2014 and the attached Letter of Intent and related documents.

As you know, it is the District's position that the ground lease is void by reason of the conflicts which Mr. Anderson and Ms. Reno had incident to the negotiation and the execution of the ground lease. Thus, MAC has no authority to negotiate or enter into a lease for the MOB.

Having noted the foregoing, and understanding that the MOB is in need of tenants, a further purpose of this letter is to advise MAC that the proposed tenant and specifically the proposed use are not allowed by the ground lease. The use described in the letter of intent is "the operation of an outpatient renal dialysis clinic, renal dialysis home training..." etc., which are prohibited by Section 4.2 of the ground lease. By Section 4.2 the MOB is to be used as a "medical office building" and that section then prohibits "diabetes services and classes" in the building. DaVita's proposed use is violative of that provision.

Also relevant is Section 4.3. It provides that the "space in the MOB will be leased to tenants pursuant tenant leases reasonably acceptable to Lessor and Lessee." The District, pursuant to the power invested in it to determine that a tenant is not acceptable, determines that the proposed occupancy is not acceptable. The purpose for the construction of the MOB is to provide space for physicians to serve the community and a dialysis center does not serve that purpose and limits office space available for physicians.

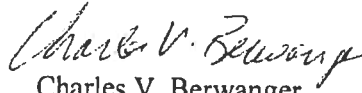
Duane Horning
July 1, 2014
Page 2

Finally, please note that the space which is proposed to be occupied by DaVita's subsidiary is space that the District by email dated March 13, 2014 to you identified as space to be occupied by the District.

Should you have questions or comments please advise.

Very truly yours,

GORDON & REES LLP


Charles V. Berwanger

CVB/mab:kfs



Duane S. Horning

dhorning@cblg.biz
direct 619.325.1556

By email only

July 3, 2014

Charles Berwanger, Esq.
Gordon & Rees LLP
101 West Broadway, Suite 2000
San Diego, CA 92101

Re: *Medical Acquisition Company, Inc. v. Tri-City Healthcare District*,
San Diego Superior Court Case No. 37-2014-00009108-CU-BC-CTL

Dear Mr. Berwanger:

Your letter to me dated July 1, 2014, on behalf of Tri-City Health Care District ("TCHD"), objects to Medical Acquisition Company, Inc. ("MAC") entering into or even negotiating for a lease with Total Renal Care, Inc., a subsidiary of DaVita HealthCare Partners Inc. (collectively "DaVita") for DaVita to provide dialysis services.

MAC disregards TCHD's erroneous contention that the Ground Lease is void. TCHD relies on provisions from the very Ground Lease it claims is void as grounds to object to the DaVita lease.

You state that the use clause of the Ground Lease, prohibiting diabetes services and classes, somehow bars dialysis services, as if these are the same thing. The fact that they are not is obvious to any reasonable person. Much more disturbing is the government, specifically a public agency whose mission is to serve the healthcare needs of its citizen constituents, opposing either diabetes services and classes, or dialysis services. One would have expected a public healthcare agency to be thrilled with the provision of either. Does TCHD really object to its constituents being provided with dialysis?

You quote part but not all of Section 4.3. You omit the sentence following the one you quote, which states, "All changes to the Prohibited Services and use restrictions contained therein, and all changes which affect or may affect Lessor's rights in the Ground Leased Premises or hereunder, shall require the prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed." Thus, nothing permits or requires TCHD to approve each lease for the Medical Office Building, but only those that change or affect use or Lessor rights. The DaVita lease does neither. But even then, approval is not to be unreasonably withheld.

In this case, TCHD has stated the DaVita lease is "unacceptable." The only grounds stated are that TCHD believes the purpose of the MOB is to provide only space for physicians. This is not a reasonable ground for the lease to be unacceptable. Nothing in the Ground Lease limits occupancy to physicians. The Ground Lease merely states that MAC is to construct a medical office building. Providing dialysis services is

Charles Berwanger, Esq.
July 3, 2014
Page 2

unquestionably a proper function in a medical office building. TCHD's current claim that DaVita and its use are unacceptable, or a violation of the use clause, are belied by the fact that TCHD itself was actively negotiating to put DaVita into the MOB when TCHD had it under contract to buy.

TCHD has been contending in this letter and elsewhere that its premises under its Medical Office Building Lease with MAC ("MOB Lease") are as TCHD unilaterally identified in your letter to me dated March 13, 2014. However, the MOB Lease states that the premises are to be "at a mutually agreeable location," and that the selection was to be made during the Contingency Period, which expired November 30, 2011. During that period the parties agreed that TCHD's premises would be on the third floor. TCHD's different, belated and unilateral selection is ineffective. DaVita's use requires a ground floor location. TCHD has no basis to object to the DaVita lease based on location.

TCHD's positions with respect to the DaVita lease extend to MAC's other leasing efforts. TCHD's positions, including your argument that MAC does not even have the right to negotiate or enter into any leases, chill and frustrate all leasing efforts. On one hand, you acknowledge the MOB needs to be leased, and in other correspondence complain that it is lying fallow. On the other hand, TCHD's history under the Transition Agreement, tactics and positions are the very cause for the MOB not yet being occupied.

TCHD's actions including with respect to the DaVita lease are a breach of the Ground Lease, a breach of the covenant of quiet enjoyment, a breach of the covenant of good faith and fair dealing, and are an interference with MAC's prospective economic advantage. We are amending MAC's claims accordingly.

MAC seeks TCHD's affirmation that MAC should proceed with the DaVita lease as well as other leasing efforts, and that TCHD will act reasonably with respect to all such leasing efforts. MAC remains available to confer with TCHD about the location for TCHD's premises in the MOB.

Sincerely,

California Business Law Group, PC


Duane S. Horning

cc: Tara Lusher, Esq.
Tracy L. Schimelfenig, Esq.



Duane S. Horning

dhorning@cblg.biz
direct 619.325.1556

**CONFIDENTIAL AND INADMISSIBLE
MEDIATION COMMUNICATION
SETTLEMENT NEGOTIATIONS AND OFFER OF COMPROMISE
CAL. EVID. CODE §§ 1115 – 1128; 1152 AND 1154**

April 8, 2014

Mr. Larry W. Schallock, Chairperson
Cyril F. Kellett, MD, Vice Chairperson
Ms. Julie Nygaard, Secretary
Ms. RoseMarle V. Reno, RN, Treasurer
Ms. Ramona Finnila, Assistant Secretary
Mr. James Dagostino, DPT, PT, Assistant Treasurer
Paul V. L. Campo, Esq. Member, Board of Directors
Tri-City Healthcare District
4002 Vista Way
Oceanside, CA 92056

Re: *Medical Acquisition Company, Inc. v. Tri-City Healthcare District*,
San Diego Superior Court Case No. 37-2014-00009108-CU-BC-BTL

Dear Ladies and Gentlemen:

As you may know, a mediation was conducted in the referenced case on April 7, 2014. The matter did not resolve, and there was very little if any progress made.

One obstacle was the absence of any Board members. Only attorneys attended for Tri-City Hospital District. In contrast, both Mr. Charly Perez and Tara Lusher, Esq., attended. We understand a settlement would likely be subject to Board approval, but the absence of any District principals and presence of only counsel, who are not the decision makers, prevented the kind of dynamic normally needed to make progress to attempt to settle claims.

Another obstacle was the District's attorneys continued to take the legally erroneous and fantastically unjust position that the Ground Lease and other instruments are void, and that Medical Acquisition Company, Inc. must forfeit its entire economic interest to the District, with no or nominal compensation. This made the mediation a non-starter.

One interim issue that came up was doing what is necessary to allow occupancy of the building as soon as possible. This would serve the public by providing additional medical resources, and the District by having referring physicians on campus.

Occupancy will require payment for tenant improvements and offsite improvements. MAC has a disincentive to spend those further sums while the District is contending the Ground Lease is void and the value of such expenditures should be forfeited to the

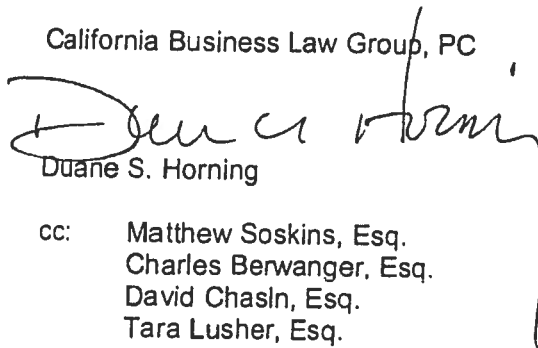
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District. Even if the District were to agree the funds were recoverable, MAC runs the risk that the District would later contend its agreement was void, as it has with the Ground Lease.

How does the District propose to address this? It seems the only practical solution is for the District to fund those expenses. Please advise me if the District has an interest in cooperating to achieve occupancy of the building, and if so, how the District proposes to solve the funding issue.

Sincerely,

California Business Law Group, PC



Duane S. Horning

cc: Matthew Soskins, Esq.
Charles Berwanger, Esq.
David ChasIn, Esq.
Tara Lusher, Esq.

1 DUANE S. HORNING (Bar No. 174995)
2 TRACY SCHIMELFENIG (Bar No. 243714)
3 CALIFORNIA BUSINESS LAW GROUP, PC
4 Symphony Towers
5 750 B Street, Suite 2330
6 San Diego, CA 92101
7 619-325-1555
8 Attorneys for Plaintiff, MEDICAL ACQUISITION
9 COMPANY, INC. a California corporation
10

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
04/01/2014 at 08:00:00 AM
Clerk of the Superior Court
By Alicia Fletes, Deputy Clerk

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO

MEDICAL ACQUISITION COMPANY,
INC. a California corporation,

Plaintiff,

v.

TRI-CITY HEALTHCARE DISTRICT, a
California local healthcare district, and
DOES 1 through 100,

Defendants.

CASE NO. 37-2014-00009108-CU-BC-CTL

COMPLAINT

Plaintiff MEDICAL ACQUISITION COMPANY, INC. a California corporation ("MAC"
or "Plaintiff") brings this complaint against the above-named Defendants and alleges as follows:

PARTIES

1. MAC is a California corporation with its principle place of business in San Diego
County, California.

2. MAC is informed and believes that Defendant TRI-CITY HEALTHCARE
DISTRICT ("TCHD") is a California local healthcare district with its principle place of business
located in San Diego County, California.

3. MAC is unaware of the true names and capacities of the Defendants sued in this
action by the fictitious names DOES 1 through 100. MAC will amend the complaint when those
names and capacities become known to it. MAC is informed and believes that each of the

1 fictitiously named Defendants is in some manner responsible for the events and allegations set
2 forth in this complaint.

3 4. MAC alleges on information and belief that, at all material times, each of the
4 Defendants was the agent, employee or several of these, of each of the remaining Defendants.

5 5. MAC has submitted the claims alleged herein to TCHD, but TCHD has denied the
6 claims. MAC has exhausted all of its administrative remedies against TCHD.

7 **FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

8 6. This is a case of a public entity, TCHD, abusing its position of public trust and
9 resources to manipulate and exploit a private enterprise to provide TCHD with valuable property
10 and services, and attempting to seize those assets and retain the services without paying for them.

11 7. TCHD owns and operates Tri-City Medical Center in Oceanside, California
12 ("Hospital").

13 8. MAC coordinates healthcare services for patients involved in personal injury
14 claims in a manner consistent with the laws of the United States and the State of California.
15 MAC's business is to provide resources for injured individuals to obtain medical care. Injured
16 individuals may have personal injury claims, but may not have means to pay for and obtain
17 needed medical care. When a medical provider provides services, it has the right to a lien on
18 proceeds from the personal injury claim. Generally, MAC's business is to pay a hospital for
19 medical services, either in advance, or after services have been rendered. MAC purchases from
20 the hospital the hospital's right to payment from the patient, including lien rights. In exchange,
21 the hospital assigns to MAC the hospital's right to collect from the patient, including lien rights.
22 This service is sometimes known as "factoring." MAC has been providing such services for
23 approximately 23 years at numerous hospitals throughout the United States.

24 **Institutional Provider Agreement**

25 9. In or about 2009, TCHD approached MAC about providing its factoring services
26 to TCHD, and to otherwise increase the revenues of the Hospital. On or about December 15,
27 2009, TCHD and MAC entered into an Institutional Provider Agreement covering MAC
28 providing its services to TCHD and its patients. ("IPA"). In addition, in or about that time, MAC

1 consulted with and advised TCHD on how to recruit and work with prominent physicians who
2 would admit patients at the Hospital and perform procedures there. MAC materially contributed
3 to recruiting some eight physicians. MAC also consulted and advised TCHD how to cooperate in
4 marketing the physician's practices to build their practices and increase the Hospital's revenue.

5 **Medical Office Building and Ground Lease**

6 10. One of the difficulties TCHD faced in recruiting new physicians was the lack of
7 quality office space for them in close proximity to the Hospital. TCHD asked MAC to build a
8 Class A medical office building on TCHD's campus in which MAC would lease space or sell
9 condominium interests to physicians, and thereby aid in attracting physicians to the area.

10 11. TCHD and MAC entered into a ground lease dated December 29, 2010, covering a
11 portion of the Hospital campus. TCHD and MAC entered into two amendments to the ground
12 lease: a First Amendment to Ground Lease dated May 5, 2011; and a Second Amendment to
13 Ground Lease dated August 23, 2011. The original ground lease, First Amendment to Ground
14 Lease, and Second Amendment to Ground Lease are collectively referred to herein as the
15 "Ground Lease," and copies of them are attached as Exhibit A and incorporated by reference.
16 Unless otherwise stated, capitalized terms herein have the same definition as stated in the Ground
17 Lease.

18 12. The Ground Lease provides, *inter alia*, that:

19 (a) The Ground Lease covered 99,732.86 gross square feet, or approximately
20 2.29 acres on a portion of the Hospital campus of some 31 acres. Recital B, as amended.

21 (b) MAC was to build at its expense a medical office building on the Ground
22 Leased Premises of approximately 60,000 square feet ("Medical Office Building" or "MOB").
23 Recital B, as amended, and Section 1.10.

24 (c) TCHD intended to construct a parking lot on a portion of the Hospital
25 campus outside the Ground Leased Premises, sometimes referred to by the parties, and referred to
26 herein, as the "Parking Area" or "Northwest Parking Area." Recital C.

27 (d) TCHD granted to MAC certain easements including a non-exclusive
28 easement for 160 parking spaces on the Parking Area. TCHD reserved the right to relocate the

1 Parking Area provided TCHD was to provide sufficient replacement parking spaces to comply
2 with all applicable laws and ordinances then in effect, and the relocation was not to unreasonably
3 interfere with MAC and the Medical Office Building occupants' use and occupancy of the
4 Ground Leased Premises and Medical Office Building. Sections 1.5(c), as amended, 1.8, and 6.2

5 (e) To secure MAC's obligations under the Ground Lease to construct the
6 Medical Office Building, MAC was required to post, and did post, as collateral an assignment for
7 security purposes in \$5,000,000 in accounts receivable, and a deed of trust against MAC's office
8 building located at 2772 Gateway Road, Carlsbad, California. Section 1.10(d), as amended. On
9 or about August 24, 2011, MAC executed and delivered to TCHD a Security Agreement covering
10 the accounts receivable ("Security Agreement"), a Power of Attorney, and a Deed of Trust
11 covering the office building. TCHD continues to hold such collateral.

12 13. TCHD and MAC also entered into a Medical Office Building Lease dated
13 December 29, 2010 ("MOB Lease" or Medical Office Building Lease"). The Medical Office
14 Building Lease provides, *inter alia*, that TCHD would lease from MAC approximately 25,000
15 square feet of the Medical Office Building.

16 14. TCHD and MAC agreed that they would share equally the funding for
17 construction of the Medical Office Building. TCHD would fund its share of the capital in the
18 form of prepaid rent under the Medical Office Building Lease. The parties estimated the total
19 construction costs to be no more than \$15,000,000. TCHD's share was to be \$7,500,000.

20 15. Section 3(b) of the Medical Office Building Lease states, "At any time after
21 Landlord [MAC] has obtained all governmental approvals for construction of the [Medical Office
22 Building] and related improvements, including, without limitation, all grading and building
23 permits from the City of Oceanside, Tenant [TCHD] may, upon request of Landlord or upon its
24 own initiative, make prepayments of Base Rent under this Lease to Landlord during the course of
25 construction of the Improvements in accordance with a mutually acceptable payment schedule;
26 provided, however, in no event shall the sum of such prepayments of Base Rent hereunder exceed
27 the costs incurred and actually paid to date by Landlord for construction of the Building and
28 related improvements. In no event shall such prepayment of Base Rent exceed the Base Rent

1 payable under this Lease for first one hundred (100) months of the Term of this Lease." This
2 amount was \$7,500,000 (25,000 square feet x \$3.00 per square foot x 100 months).

3 16. The parties also agreed that in lieu of MAC funding tenant improvements for
4 TCHD under the Medical Office Building Lease in the amount of \$50 per square foot, or
5 \$1,250,000, that TCHD would fund MAC's share in the form of prepaid rent. The parties agreed
6 this funding would be part of TCHD's share of capital to fund construction of the Medical Office
7 Building and thereby reduce its remaining funding commitment to \$6,250,000.

8 17. TCHD assured MAC and MAC's general contractor that TCHD would in fact fund
9 shell construction cost in the amount of \$6,250,000 and TCHD's tenant improvement costs in the
10 amount of \$1,250,000. TCHD deposited \$6,250,000 into a separate account for the purpose of
11 funding construction costs of the Medical Office Building in accordance with the parties'
12 agreement and Section 3(b) of the Medical Office Building Lease. MAC and MAC's general
13 contractor relied on TCHD's assurance in commencing construction.

14 18. MAC obtained all plans, permits and governmental approvals to construct the
15 Medical Office Building, and commenced construction in or about October 2011.

16 19. As part of MAC's obtaining permits to build the Medical Office Building, MAC
17 obtained a Development Plan and Conditional Use Permit, D-1100002 and CUP-110002, from
18 the City of Oceanside ("CUP"). Condition No. 22 of the CUP states, "Unless superseded by this
19 project's precise grading plan, the owner/developer shall construct all incomplete improvements
20 required in the resolution of approval for Administrative Development Plan number ADP-3-2005,
21 (shown on the approved Grading Permit number 2333) ["ADP-3-2005"] prior to the issuance of
22 the building permit to the satisfaction of the City Engineer." This was an obligation that TCHD
23 had that long predated any involvement by MAC. TCHD's construction of parking
24 improvements in the Parking Area was intended for TCHD to both provide parking to MAC as
25 required under the Ground Lease, and satisfy the requirements of ADP-3-2005.

26 20. MAC is informed and believes that at the time TCHD entered into the Ground
27 Lease and Medical Office Building Lease, and induced MAC to commence construction of the
28 Medical Office Building, TCHD believed MAC would not be able to fund construction and finish

1 the building. TCHD intended for MAC not to finish, and take the building to the extent
2 completed without paying for costs incurred up to that point.

3 21. Through approximately June 2012, MAC incurred construction and other
4 development costs of approximately \$6.1 million. Each month MAC presented information
5 concerning the progress of construction and expenses incurred, and requested contribution of half
6 of the expenses from TCHD which TCHD provided. Pursuant to TCHD and MAC's agreement,
7 each provided approximately half, with MAC funding \$3.1 million, and TCHD funding
8 \$3 million.

9 22. In or about July 2012, MAC submitted a regular monthly pay request to TCHD for
10 TCHD's share of the capital costs for that month. TCHD issued its check, Check No. 10009,
11 dated July 24, 2012, in the amount of \$752,490.80, payable to MAC, and delivered the check to
12 MAC. Before MAC could deposit the check, TCHD contacted MAC and stated the check was
13 cancelled. MAC contacted the bank and verified the check was cancelled. MAC asked for an
14 explanation of why the check was cancelled. TCHD provided none.

15 23. MAC continued construction, providing all further capital costs, other than as
16 stated herein.

17 **First Attempt by TCHD to Confiscate the Medical Office Building**

18 24. On August 10, 2012, TCHD's counsel, Jeffrey Lewis, Esq. of Broedlow Lewis
19 LLP, sent a letter to MAC ("2012 Letter"). The 2012 Letter purported to be a Notice of Default
20 under the referenced Ground Lease, threatened termination of the Ground Lease, threatened to
21 seize MAC's equity in the Medical Office Building for TCHD, and implied the District would
22 cease using its segregated prepaid rent to fund construction costs.

23 25. On or about August 20, 2012, TCHD recorded the deed of trust on MAC's office
24 building that it had been holding for approximately one year. The deed of trust was recorded in
25 the official records of the San Diego County Recorder as Document No. 2012-0494524.

26 26. The 2012 Letter made demands for documents and actions by MAC not required
27 in the Ground Lease or otherwise, and stated that MAC must satisfy TCHD's extra demands
28 before TCHD would consider further payments. The 2012 Letter threatened substantial adverse

1 consequences to MAC's general contractor. TCHD did in fact cease funding capital for
2 construction costs except as stated herein.

3 27. MAC was not in default, and TCHD's threats were factually and legally
4 groundless. TCHD ultimately abandoned its claims of default.

5 **Transition Agreement**

6 28. Using the pressure of TCHD's withholding of its half of construction costs and
7 TCHD's claims of default, on November 7, 2012, TCHD induced MAC to enter into a Transition
8 Agreement ("Transition Agreement"). Under the terms of the Transition Agreement, MAC was
9 to sell its leasehold interest under the Ground Lease and the Medical Office Building, then still
10 under construction, to TCHD. MAC was to terminate its construction contract. Any cost to
11 terminate the construction contract was to be solely that of TCHD and not MAC. TCHD was to
12 take over construction of the then partially finished Medical Office Building at TCHD's sole
13 expense. TCHD was to pay MAC \$8,541,128, part in cash, and part in the form of a promissory
14 note. In addition, TCHD was to pay MAC for any further expenses incurred in construction after
15 entry into the Transition Agreement and before closing. The closing date was scheduled for
16 November 16, 2012, with an outside "Closing Deadline" of November 30, 2012.

17 29. TCHD failed satisfy the conditions and requirements for closing and requested a
18 series of extensions from MAC, which MAC granted. TCHD and MAC entered into five
19 amendments to the Transition Agreement. A copy of the original Transition Agreement and each
20 of the five amendments are attached hereto as Exhibit B, and incorporated by reference. Each of
21 the five amendments extended the Closing Deadline, ultimately to August 31, 2013. The Fourth
22 and Fifth Amendments each provided that TCHD was to pay MAC two payments of \$1,000,000,
23 each which were to be treated as prepaid rent under the Medical Office Building Lease if the
24 Transition Agreement did not close. TCHD made those payments.

25 30. Transferring construction under the Transition Agreement from MAC to TCHD
26 implicated a limitation that TCHD has as a public agency. TCHD must publically bid
27 construction contracts that are more than \$25,000. Therefore, TCHD was not free to simply
28 assume pending contracts or subcontracts that had work remaining of more than \$25,000. To

1 address this issue, TCHD directed MAC and MAC's contractor to complete work under existing
2 subcontracts down to less than \$25,000 remaining, and not enter into any new subcontracts for
3 more than \$25,000. MAC and its general contractor complied. MAC's general contractor
4 arranged for subcontractors, material suppliers, professionals and others to terminate their
5 contracts once they each were completed to \$25,000 or less remaining. MAC and its general
6 contractor ceased entering into new subcontracts that it otherwise would have, solely in order to
7 accommodate TCHD's requests and the transition of the responsibility for construction from
8 MAC to TCHD.

9 31. During the pendency of the Transition Agreement, TCHD directed MAC and
10 MAC's contractor not to build the offsite traffic mitigation improvements, including a traffic
11 signal. TCHD stated that it would pay for and complete all offsite improvements.

12 32. In the Fifth Amendment to the Transition Agreement ("Fifth Amendment"), the
13 parties agreed that MAC would complete the traffic signal only and that TCHD would assume
14 responsibility for the remaining offsite mitigations. The Substantial Completion Outside date of
15 the Medical Office Building under the Ground Lease was changed to August 31, 2013.

16 33. In the Fifth Amendment to the Transition Agreement, TCHD and MAC
17 acknowledged that the on-site Medical Office Building including common areas had achieved
18 Substantial Completion as of May 31, 2013. The project architect, MAA Architects, issued a
19 Certificate of Substantial Completion of the Medical Office Building as of May 31, 2013.

20 34. TCHD failed to place into escrow required funds and documents, satisfy
21 conditions to closing, or otherwise close escrow under the Transition Agreement by August 31,
22 2013, or at any time.

23 35. Selling the Medical Office Building carried with it the responsibility for leasing.
24 Throughout the pendency of the Transition Agreement, from November 7, 2012, through August
25 31, 2013, MAC did not engage in leasing efforts of the Medical Office Building because MAC
26 was expecting and relying on TCHD to complete the purchase.

27 36. Since TCHD failed to complete purchase of the Medical Office Building, MAC
28 has diligently and in good faith continued completion of the offsite improvements including the

1 traffic signal as well as those that had become the responsibility of TCHD. MAC has been
2 completing that work at its own expense, and is nearly finished. MAC has also begun efforts to
3 lease the Medical Office Building. All of those construction and leasing efforts have been
4 substantially delayed from what MAC would have done if TCHD had not breached its
5 commitment to fund construction costs, threatened default, and then agreed to purchase the
6 Medical Office Building and assume responsibility for its construction and leasing.

7 37. One of the impediments to obtaining a certificate of occupancy has been the
8 requirement under the Ground Lease for TCHD to provide 160 lawful parking spaces. The
9 Parking Area under the Ground Lease intended to satisfy this requirement is not approved by the
10 City of Oceanside for parking because the improvements there do not satisfy City permits and
11 requirements.

12 38. Another impediment to obtaining a certificate of occupancy is TCHD's failure to
13 complete and comply with requirements of ADP-3-2005.

14 39. To provide the 160 parking spaces, and comply with the requirements of ADP-3-
15 2005, TCHD intended to build a fully permitted and lawfully compliant parking lot on the
16 Parking Area designated under the Ground Lease. TCHD requested that MAC pay on TCHD's
17 behalf for design and planning work for the parking lot. MAC paid \$164,873.05 on TCHD's
18 behalf. MAC has requested reimbursement but TCHD has failed and refused to pay it. TCHD
19 obtained plans and permits for a parking lot in the Parking Area, using the services of MAC's
20 contractor and at MAC's expense. TCHD put the improvements out to bid and received bids.
21 However, TCHD did not award any contract or proceed with construction.

22 40. TCHD stated that rather than build the parking lot, it would build a parking garage
23 at another location on the Hospital campus. However, TCHD has not built either the parking lot
24 or the parking garage.

25 41. On or about March 13, 2014, TCHD relocated the designated area for the 160
26 parking spaces to another area on the Hospital campus. However, delaying until then interfered
27 with obtaining a certificate of occupancy and leasing, and still leaves unresolved TCHD's failure
28 to satisfy the requirements of ADP-3-2005.

1 42. TCHD never requested that MAC obtain a certificate of occupancy as stated in the
2 Fifth Amendment to the Transition Agreement. Nevertheless MAC has used and continues to use
3 its diligent good faith efforts to obtain a certificate of occupancy for the Medical Office Building.

4 43. Completing the Medical Office Building, completing offsite improvements,
5 leasing the Medical Office Building, completing tenant improvements, obtaining a certificate of
6 occupancy and commencement of generation of rental income, have all been delayed and
7 interfered with by TCHD's conduct. This conduct includes without limitation TCHD's breach of
8 its commitment to fund 50% of construction costs, asserting claims of lease default, using those
9 acts to induce MAC to enter into the Transition Agreement for TCHD to buy the Medical Office
10 Building, directing MAC not to complete the offsite improvements, directing MAC and its
11 general contractor to reduce subcontracts to less than \$25,000 and not enter into any new
12 subcontracts of more than \$25,000, failing to buy the Medical Office Building, delaying in
13 satisfying its parking requirement, and failing to satisfy ADP-3-2005. But for TCHD's conduct,
14 MAC would have rented the Medical Office Building, completed tenant improvements, obtained
15 a final certificate of occupancy and commenced generation of rent, all on or before May 31, 2013.

16 **Second Attempt by TCHD to Confiscate the Medical Office Building**

17 44. On January 30, 2014, TCHD's counsel, David Chasin, Esq. of Gordon & Reese
18 LLP, sent a letter to MAC ("2014 Letter"). The 2014 Letter claimed that the Ground Lease,
19 Medical Office Building Lease, and another lease between TCHD and MAC for MAC's building
20 at 1211 West Vista Way, Oceanside, California, occupied by TCHD's human resources
21 department ("HR Lease") were all void due to purported violations of California Government
22 Code § 1090, and the Political Reform Act, § 81000 *et seq.* In the 2014 Letter, TCHD purported
23 to terminate the IPA under a termination for convenience clause.

24 45. Attached to the 2014 Letter were three notices: a Notice to Cure or Quit
25 demanding payment within 10 days under the Ground Lease of \$23,953.65 in alleged past due
26 rent; a Three Day Notice to Quit demanding that MAC vacate the Ground Leased Premises and
27 all improvements, which would include the completed Medical Office Building, based on the
28 alleged failure to achieve Substantial Completion by June 30, 2013; and a Thirty Day Notice to

1 Cure or Quit, alleging breaches of failure to allow inspection of books and records, failure to pay
2 real estate taxes, and failure to provide insurance required under the Ground Lease.

3 46. TCHD demanded surrender of the Ground Leased Premises and Medical Office
4 Building, plus amounts paid by TCHD to MAC for construction of the Medical Office Building
5 and credited as prepaid rent under the Medical Office Building Lease in excess of \$5,000,000.

6 47. MAC paid the \$23,953.65 in alleged past due rent before the date requested in the
7 Notice to Cure or Quit. TCHD then informed MAC that it was not cashing the check. MAC is
8 informed and believes that TCHD still has not cashed the check.

9 48. TCHD's other allegations and demands in the 2014 Letter, including in the notices
10 attached to it, were all legally and factually baseless. For example and without limitation, TCHD
11 has taken two conflicting and irreconcilable positions: that the Ground Lease is *void* (which is
12 factually and legally erroneous); and that MAC is allegedly in breach of it. TCHD purports not to
13 waive its position that the Ground Lease is void; however, at the same time TCHD is acting on
14 *both* of its conflicting positions and making demands under each from MAC, rendering its
15 purported reservation a nullity. TCHD's other demands and contentions in its 2014 Letter are
16 also contrary to the facts and the law. TCHD's 2014 Letter ignores its many acts, omissions and
17 breaches of duty to MAC.

18 49. TCHD's 2014 Letter was but yet another attempt to bully MAC and seize the
19 valuable Ground Lease leasehold, now improved with a completed, Class A Medical Office
20 Building, for free, plus payment by MAC of \$5,000,000.

21 Defamation

22 50. In or about October 2013, TCHD fired its executive director, Larry Anderson.
23 TCHD stated in a letter dated November 4, 2013, 14 reasons for firing Mr. Anderson. Seven of
24 those implicated MAC, as follows:

25 1. In June, 2010, you [Larry Anderson] caused the District to
26 pay Landreth Development \$75,000 to settle its outstanding bill to
27 Medical Acquisition Company (MAC) for work performed by
28 Landreth for MAC. The District had no legal obligation to make
such payment.

1 5. You repeatedly refused to enforce prompt payment and
2 other obligations MAC incurred under its contract for use of
3 District hospital facilities for patients.

4 6. You caused the District to hire employees and contractors to
5 perform work for MAC without any legal obligation to do so or any
6 public purpose.

7 7. You caused the District to pay MAC approximately \$47,000
8 in connection with the rental and purchase of a truck to perform
9 advertising services in spite of having been earlier advised of
10 material legal concerns related to this activity.

11 8. You caused the District to pay to improve a building owned
12 by MAC at 1211 West Vista Way without any legal obligation to
13 do so or any public purpose.

14 9. You caused the District to pay for remodeling a building at
15 4010 Vista Way which was leased to MAC. You forgave MAC's
16 obligation to repay the District upon its early termination despite its
17 legal obligation to do so.

18 12. You misrepresented the value, terms and expenditures made
19 by the District in connection with the series of agreements
20 presented to the Board for approval, for the construction, lease and
21 purchase of the medical office building constructed on the District
22 hospital campus by MAC and its contractor, Landreth
23 Development.

24 51. These allegations were published to the North County Times, and at least
25 summarily were republished by the North County Times.

26 52. These allegations, at least with respect to MAC, were false.

27 **Interference with MAC's Business**

28 53. Since 2009, when TCHD and MAC entered into the IPA, MAC has continued to
conduct its regular business of assisting injured patients by funding surgeries they could not
otherwise afford by referring such patients to doctors performing the surgeries at the Hospital. In
accordance with MAC and the industry's standard practice, the providers of the services,
including MAC, do not bill the patient for the services, but rather rely on their lien rights and
collect when the patient's personal injury claim is resolved.

54. Beginning in late 2013, TCHD has begun pressuring anesthesiologists,
radiologists, and others who have provided services to patients where MAC has provided funding
for Hospital expenses. MAC is informed and believes that TCHD has been telling those
providers not to rely on their liens and wait for payment from resolution of the personal injury

1 claim, but to refer their charges out to collection agencies which demanded payment from the
2 patients, and reported the debts with respect to the patients to credit reporting agencies. This
3 practice has substantially interfered with MAC's relationships with personal injury attorneys and
4 others who would otherwise refer patients to MAC, and has chilled MAC's ability to continue its
5 regular business with patients who would otherwise be treated at the Hospital.

6 55. As noted above, the 2014 Letter purported to terminate the IPA, which effectively
7 ended MAC's regular business practices for patients who would otherwise be treated at the
8 Hospital. The purported termination of the IPA was without cause, was arbitrary and capricious.
9 This termination, along with the pressuring of medical providers to exert collection pressure on
10 MAC's clients, are part of TCHD's overall plan and scheme to harm MAC and exert leverage
11 over MAC to attempt to obtain the Ground Lease leasehold and Medical Office Building for free,
12 plus more than \$5,000,000.

13 56. TCHD's termination of the IPA and pressuring medial provides to assert collection
14 not only harms MAC, it directly and severely harms TCHD and the public's interests, by reducing
15 patients and services that would otherwise be served by TCHD at its own Hospital. The fact that
16 TCHD's action is contrary to TCHD's own interest is further evidence of TCHD's malice and bad
17 faith, and attempt to harm and wrongly pressure MAC.

18 ***

19 57. In sum, TCHD, a public entity governed by a publically elected board, has used its
20 resources and position in a way that is unreasonable, arbitrary and capricious, and not calculated
21 to advance any legitimate public interest, but in a manner calculated to and is in fact inflicting
22 grievous harm on a private enterprise, MAC.

23 **First Cause of Action**

24 **Breach of Ground Lease**

25 **(Against All Defendants)**

26 58. MAC hereby incorporates all of the allegations in Paragraphs 1 through 57 as if
27 completely restated herein.

28 59. MAC and TCHD entered into the Ground Lease.

1 60. MAC has performed all of its obligations under the Ground Lease except those
2 that it was excused from performing or prevented by TCHD from performing.

3 61. TCHD breached the Ground Lease in at least the following ways including without
4 limitation:

5 (a) Failing to fund 50% of the construction cost of the Medical Office
6 Building.

7 (b) Interfering with and delaying issuance of certificate of occupancy for the
8 Medical Office Building.

9 (c) Failing to build either the parking lot in the Parking Area, or parking
10 structure, and otherwise delaying providing 160 spaces in conformance with City of Oceanside
11 requirements;

12 (d) Failing to complete and comply with the requirements of ADP-3-2005;

13 (e) Delaying and preventing MAC in completing offsite traffic mitigation
14 improvements;

15 (f) Delaying and interfering with MAC's leasing of the Medical Office
16 Building and generation of rent;

17 (g) Failing to release and relinquish security interests in \$5,000,000 in
18 accounts receivable and real property located at 2772 Gateway Road, Carlsbad, California,
19 belonging to MAC.

20 (h) Purporting to terminate the Ground Lease without justification;

21 (i) Failing to record a Memorandum of Lease with respect to the Ground
22 Lease;

23 (j) Breaching the express and implied covenants of quiet enjoyment; and

24 (k) Breaching the implied covenant of good faith and fair dealing.

25 62. As a direct and proximate result of TCHD's actions and breaches, MAC has
26 incurred damages the total of which is presently unknown and will be proved at trial. Such
27 damages include without limitation lost rents from the Medical Office Building from at least May
28 31, 2013, at a rate of approximately \$3.00 per square foot, estimated to be approximately

1 \$171,000 per month at least until such time as a certificate of occupancy is issued and the
2 Medical Office Building is fully leased and occupied.

3 63. MAC is also entitled to recover from the Defendants, jointly and severally,
4 prejudgment interest at the rate of 10% per annum from May 31, 2013, expert witness fees, and
5 attorneys' fees and costs.

6 **Second Cause of Action**

7 **Intentional Interference with Prospective Economic Advantage**

8 **(Against All Defendants)**

9 64. MAC hereby incorporates all of the allegations in Paragraphs 1 through 63 as if
10 completely restated herein.

11 65. An economic relationship existed between MAC and third parties, including, but
12 not limited to, prospective personal injury lawyers, and health related entities, with the probability
13 of future economic benefit or advantage to MAC.

14 66. TCHD had knowledge of MAC's relationships and potential for future economic
15 advantage.

16 67. By its unjustified conduct, TCHD intended to disrupt MAC's prospective
17 economic advantage. Such wrongful conduct included without limitation misrepresenting to
18 medical providers holding liens against MAC clients that the liens were not valid.

19 68. TCHD's conduct disrupted MAC's prospective economic advantage by, among
20 other things, thwarting its ability to obtain future business.

21 69. As a direct, proximate, and foreseeable result of TCHD's wrongful conduct, MAC
22 has suffered damages in an amount presently unknown but will be proven at trial.

23 70. MAC is entitled to recover prejudgment interest, expert witness fees, attorneys'
24 fees and costs.

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Third Cause of Action
Negligent Interference with Prospective Economic Advantage
(Against All Defendants)

71. MAC hereby incorporates all of the allegations in Paragraphs 1 through 70 as if completely restated herein.

72. An economic relationship existed between MAC and third parties, including, but not limited to, prospective personal injury lawyers, and health related entities, with the probability of future economic benefit or advantage to MAC.

73. TCHD had knowledge of MAC's relationships and potential for future economic advantage.

74. TCHD engaged in wrongful conduct as set forth above. Such wrongful conduct included without limitation misrepresenting to medical providers holding liens against MAC clients that the liens were not valid.

75. It was reasonably foreseeable that such conduct would interfere with or disrupt MAC's prospective economic advantage if TCHD failed to exercise due care.

76. TCHD failed to exercise due care.

77. TCHD's conduct disrupted MAC's prospective economic advantage, by, among other things, thwarting its ability to obtain future business.

78. As a direct, proximate, and foreseeable result of TCHD's wrongful conduct, MAC has suffered damages in an amount presently unknown but will be proven at trial.

79. MAC is entitled to recover prejudgment interest, expert witness fees, attorneys' fees and costs.

Fourth Cause of Action
Breach of the Covenant of Good Faith and Fair Dealing
(Against All Defendants)

80. MAC hereby incorporates all of the allegations in Paragraphs 1 through 79 as if completely restated herein.

81. There exists in every contract an implied covenant of good faith and fair dealing, in which each party is obligated not to do anything that will deprive the other party from the benefits of the contract. There was such an implied covenant in the Ground Lease, the Medical Office Building Lease, and the IPA.

82. By its conduct and omissions alleged herein, TCHD has breached the implied covenant of good faith and fair dealing.

83. As a direct, proximate, and foreseeable result of TCHD's breach, MAC has suffered damages in an amount presently unknown but will be proven at trial.

84. MAC is entitled to recover prejudgment interest, expert witness fees, attorneys' fees and costs.

Fifth Cause of Action

Inverse condemnation

(Against All Defendants)

85. MAC hereby incorporates all of the allegations in Paragraphs 1 through 84 as if completely restated herein.

86. MAC denies that TCHD has any right to possession or occupancy of the Ground Lease leasehold, the Ground Leased Premises, or the Medical Office Building, except as granted to TCHD in the Medical Office Building Lease. However to the extent that TCHD claims, obtains, or interferes with any of MAC's interests in the foregoing, such claims and interference constitute a taking under the United States and California constitutions, for which MAC is entitled to recover just compensation.

87. In addition, TCHD still holds security interests in \$5,000,000 in accounts receivable and real property located at 2772 Gateway Road, Carlsbad, California, without justification, and has failed and refused to release and relinquish such interests. This conduct constitutes a taking under the United States and California constitutions, for which MAC is entitled to recover just compensation.

88. MAC is entitled to damages in the form of just compensation in an amount presently unknown and will be proven at trial, prejudgment interest, attorneys' fees and costs

Sixth Cause of Action
Defamation
(Against All Defendants)

89. MAC hereby incorporates all of the allegations in Paragraphs 1 through 88 as if completely restated herein.

90. TCHD stated in a letter dated November 4, 2013, 14 reasons for firing Mr. Anderson. Seven of those implicated MAC.

91. These allegations were published to the North County Times, and at least summarily were republished by the North County Times.

92. These allegations, at least with respect to MAC, were false.

93. The letter and the article referred to MAC by name throughout, was made of and concerning MAC, and was reasonably understood by those who read the article that the statements were about MAC.

94. Those who read the letter and the article reasonably understood the statements to mean that MAC had acted improperly, unethically, illegally, or several or all of these, with respect to its dealings with TCHD.

95. TCHD failed to use reasonable care to determine the truth or falsity of the statements.

96. MAC suffered harm to its business, including harm to its reputation, shame and loss of income as a result of the defamatory statements, in an amount presently unknown but will be proven at trial.

97. The statements were a substantial factor in causing MAC's harm.

98. MAC is entitled to recover prejudgment interest, attorneys' fees and costs from Defendants.

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Seventh Cause of Action

Common Count

(Against All Defendants)

99. MAC hereby incorporates all of the allegations in Paragraphs 1 through 98 as if completely restated herein.

100. Within the past two years, TCHD became indebted to MAC in the agreed sum of \$164,873.05 for services and other expenses provided or paid by MAC at the special request of TCHD and for the benefit of TCHD and for the reasonable value of unbilled services and other expenditures to obtain plans and permits to construct a parking lot in the Parking Area. TCHD knew that these services and expenditures were being provided, and accepted, used and enjoyed the services provided by MAC.

101. MAC has requested reimbursement but TCHD has failed and refused to pay MAC for the services.

102. MAC has been damaged in the amount of \$164,873.05. MAC is entitled to recover this sum plus prejudgment interest at the rate of 10% per annum from the dates of expenditures, attorneys' fees and costs.

Eighth Cause of Action

Declaratory Relief

(Against All Defendants)

103. MAC hereby incorporates all of the allegations in Paragraphs 1 through 102 as if completely restated herein.

104. An actual controversy has arisen and now exists between MAC and TCHD concerning the respective rights and duties under the Ground Lease, Medical Office Building Lease, and HR Lease. TCHD contends the leases are void, and that MAC is in default under the Ground Lease. MAC denies these contentions.

105. MAC desires a judicial determination of that the Ground Lease, Medical Office Building Lease, and HR Lease are not void, and that MAC is not in default under the Ground Lease.

1 106. A judicial declaration is necessary and appropriate at this time to resolve these
2 matters.

3 **WHEREFORE**, MAC prays for judgment to be entered in its favor and against each of
4 the Defendants, jointly and severally, as follows:

5 **As to the First Cause of Action for Breach of Ground Lease**

6 1. Compensatory damages to be proven at trial.

7 2. A judicial determination that TCHD's security interest in MAC's \$5,000,000 in
8 accounts receivable is released, the Security Agreement dated August 24, 2011, by and between
9 MAC and TCHD is terminated of no further force or effect, the Power of Attorney dated August
10 24, 2011, executed pursuant to the Security Agreement is terminated and no further force or
11 effect, any and all financing statements whether or not pursuant to the Security Agreement listing
12 MAC as debtor and TCHD or its assigns as creditor filed in any jurisdiction are deemed
13 terminated and of no force or effect, and TCHD has no right, title or interest in any of MAC's
14 accounts receivable or any other property covered by the Security Agreement.

15 3. A judicial determination that the Deed of Trust recorded August 20, 2012,
16 recorded in the official records of the San Diego County Recorder as Document No. 2012-
17 0494524, is deemed reconveyed and released, and TCHD has no right, title or interest in the real
18 property located at 2772 Gateway Road in the City of Carlsbad, County of San Diego, State of
19 California, described as follows:

20 LOT 5 OF CARLSBAD TRACT CT 05-07 BRESSI RANCH, IN
21 THE CITY OF CARLSBAD, COUNTY OF SAN DIEGO, STATE
22 OF CALIFORNIA, ACCORDING THE MAP THEREOF
23 NO. 15492, FILED IN THE OFFICE OF THE COUNTY
24 RECORDER OF SAN DIEGO, DECEMBER 14, 2006

25 4. Prejudgment interest at the rate of 10% per annum from May 31, 2013.

26 5. Expert witness fees.

27 6. Attorneys' fees and costs.

28 7. Such other relief as the Court determines to be just and proper.

1 **As to the Second Cause of Action for Intentional Interference with**
2 **Prospective Economic Advantage**

- 3 1. Compensatory damages to be proven at trial.
4 2. Prejudgment interest.
5 3. Expert witness fees.
6 4. Attorneys' fees and costs.
7 5. Such other relief as the Court determines to be just and proper.

8 **As to the Third Cause of Action for Negligent Interference with Prospective**
9 **Economic Advantage**

- 10 1. Compensatory damages to be proven at trial.
11 2. Prejudgment interest.
12 3. Expert witness fees.
13 4. Attorneys' fees and costs.
14 5. Such other relief as the Court determines to be just and proper.

15 **As to the Fourth Cause of Action for Breach of the Covenant of Good Faith**
16 **and Fair Dealing**

- 17 1. Compensatory damages to be proven at trial.
18 2. Prejudgment interest.
19 3. Expert witness fees.
20 4. Attorneys' fees and costs.
21 5. Such other relief as the Court determines to be just and proper.

22 **As to the Fifth Cause of Action for Inverse Condemnation**

- 23 6. Compensatory damages to be proven at trial.
24 7. Prejudgment interest.
25 8. Expert witness fees.
26 9. Attorneys' fees and costs.
27 10. Such other relief as the Court determines to be just and proper.

As to the Sixth Cause of Action for Defamation

1. Compensatory damages to be proven at trial.
2. Prejudgment interest.
3. Expert witness fees.
4. Attorneys' fees and costs.
5. Such other relief as the Court determines to be just and proper.

As to the Seventh Cause of Action for Common Count


1. Compensatory damages in the amount of \$164,873.05.
2. Prejudgment interest.
3. Expert witness fees.
4. Attorneys' fees and costs.
5. Such other relief as the Court determines to be just and proper.

As to the Eighth Cause of Action for Declaratory Relief

1. A judicial declaration of that the Ground Lease, Medical Office Building Lease, and HR Lease are not void, and that MAC is not in default under the Ground Lease.
2. Expert witness fees.
3. Attorneys' fees and costs.
4. Such other relief as the Court determines to be just and proper.

DATED: March 28, 2014

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7 Attorneys for Plaintiff
TRI-CITY HEALTHCARE DISTRICT

9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SAN DIEGO - NORTH COUNTY

11 TRI-CITY HEALTHCARE DISTRICT, a
California local healthcare district,

12 Plaintiff,

13 vs.

14 MEDICAL ACQUISITION COMPANY,
15 INC., a California corporation, and DOES 1
16 through 100, inclusive,

17 Defendants.

CASE: 37-2014-00022523-CU-MC-NC

COMPLAINT FOR:

1. VIOLATION OF GOV'T CODE § 1090
2. VIOLATION OF POLITICAL REFORM ACT
3. VIOLATION OF COMMON LAW PROHIBITION AGAINST CONFLICTS OF INTEREST
4. BREACH OF LEASE
5. MONEY HAD AND RECEIVED
6. DECLARATORY RELIEF

21 Plaintiff, Tri-City Healthcare District, for its causes of action against Defendants, and
22 each of them, alleges as follows:

23 **THE PARTIES AND VENUE RELATED ALLEGATIONS**

24 1. Plaintiff, Tri-City Healthcare District (herein "District"), was organized
25 December 10, 1957 under the terms and provisions of the Local Health Care District Law of the
26 State of California set forth in Health & Safety Code section 32000 *et seq.* The District is
27 located in the Cities of Carlsbad, Oceanside and Vista and owns and operates the Tri-City
28 Medical Center which serves the Cities' residents and the surrounding region with a full-service,

FILED
EXEMPT FROM FILING FEE
UNDER CAL. GOV'T CODE § 1090

FILED
Clerk of the Superior Court

JUL 3 2014

FILED
Clerk of the Superior Court
JUL 3 2014
CANCELLED
CANCELLED

1 acute-care hospital with two advanced clinical institutes for cardiovascular and orthopedic care.
2 The center has almost 400 beds with more than 500 physicians servicing the center in 60
3 specialties.

4 2. Defendant, Medical Acquisition Company, Inc. (herein "MAC"), is a California
5 corporation with its principal place of business located in Carlsbad, California. MAC is in the
6 business of primarily factoring medical bills which MAC purchases at a discount and thereupon
7 undertakes collection on its own account.

8 3. District is unaware of the true names and capacities of Defendants sued herein as
9 DOES 1 through 100. District will amend this complaint when those names and capacities
10 become known to it. Each of the fictitiously named DOE defendants is in some manner
11 responsible for the events and allegations set forth in this complaint; and was the agent,
12 employee or otherwise related to the remaining defendants such that the DOE defendants are
13 responsible in part for the acts and omissions alleged herein.

14 4. The contracts upon which this action is based, identified below, were entered into
15 and were to be performed, or are to be performed, within the venue of the North County Division
16 of the San Diego Superior Court; the property which is the subject of this action is located in the
17 North County Division; and the actions of the parties and third parties described herein all took
18 place within the North County Division. Accordingly, venue is appropriate in the North County
19 Division of the San Diego Superior Court.

20 OVERVIEW OF ABUSES

21 5. A thread which weaves its way through the events which gave rise to this lawsuit
22 involves the close relationship between the District's prior Chief Executive Officer, Larry
23 Anderson, and the principal of MAC, Charles Perez, with the close cooperation of the District's
24 governing board's prior chairperson, Ms. RoseMarie V. Reno.

25 6. Anderson and Perez had a close relationship resulting in Anderson improperly
26 conveying District assets and entering into major transactions with MAC to the detriment of the
27 District. Anderson, as CEO of the District, had exercised the trappings of his power and
28 provided to the District's governing board incomplete, faulty and misleading information

1 regarding the benefits and costs attendant to the transactions at the heart of this complaint – the
2 Ground Lease, the Office Lease and the HR Lease.

3 7. Ms. Reno, as chairperson of the board, exercised her power to advance the
4 interests of MAC regardless of the consequences to the District. Anderson and Ms. Reno, in
5 doing the acts alleged herein, had abiding and subsisting conflicts of interest whereby they
6 sustained substantial financial benefits resulting in the leases as further described below.

7 8. The board is now undertaking to undo the conflict-induced leases Anderson and
8 Ms. Reno caused the District to enter into. With Anderson no longer employed by the District
9 and Ms. Reno now recused from any involvement with the events giving rise to this complaint,
10 the board of directors of the District, having been made fully aware of the conflicts alleged
11 herein and the resulting Ground Lease and other leases, and in furtherance of the Board's
12 fiduciary duty to the District, now acts in accordance with the law to bring this action to void the
13 leases and to recoup District monies advanced under the Ground Lease and Office Lease
14 identified below.

15 **OVERVIEW OF LARRY ANDERSON AS THE DISTRICT CEO AND HIS**
16 **RELATIONSHIP TO PEREZ**

17 9. At all times relevant to this complaint, and up until his termination on October 18,
18 2013, Anderson was CEO of the District. By letter to Anderson dated November 4, 2013, the
19 District provided him with the grounds for his termination. The grounds include use of District
20 funds for his personal benefit; spending District funds to investigate his political enemies;
21 spending District funds to enhance his online reputation; hiring personal friends with
22 unnecessary skills; manipulating District accounting records of the District to show falsely
23 enhanced net revenues to in turn increase Mr. Anderson's bonus; and being untruthful when
24 interviewed about the issues described in the November 4 letter.

25 10. The foregoing was unknown to members of the board (except for possibly Ms.
26 Reno) until just before Anderson's termination. Also unknown by the board was Anderson's
27 apparent close personal and financial relationship with Perez. Exemplifying this relationship is
28 the fact that the District, at Anderson's behest, entered into the Institutional Provider Agreement

1 with MAC on or about December 15, 2009 by which the District was to provide patient
2 information to MAC. MAC would select billings for its factoring business which would be
3 conveyed by the District at discounted rates together with lien rights with MAC then having the
4 right to seek collection of bills at the District's posted rates for such services, which were
5 substantially more than MAC's discounted rate. As of July 17, 2013, almost \$3 million worth of
6 accounts receivable were provided by District to MAC with the District receiving back from
7 MAC 12.5 cents per dollar. MAC also would select potential injured patients with third party
8 claims; pay for their care; be assigned their right to recover; and seek recovery from third parties.
9 Further benefiting MAC at the instance of Anderson was the hiring by the District of several
10 employees who were to perform so-called "data mining" of hospital records to identify patients
11 for MAC's factoring business. In addition, Anderson entered into a mobile billboard contract
12 with MAC with the District ultimately bearing all costs notwithstanding MAC's commitment to
13 fund portions of the expense. In addition, Perez was allowed by Anderson to interfere with
14 District operations, including giving orders to District employees and utilizing Anderson's name
15 as his authority.

16 **OVERVIEW OF ROSEMARIE RENO AS THE DISTRICT BOARD CHAIRPERSON**
17 **AND HER RELATIONSHIP TO PEREZ**

18 11. At all times relevant herein, Ms. Reno was the chairperson of the District's
19 governing board. Ms. Reno has a grandson whom she raised and who at all relevant times was a
20 dependent of hers. Their relationship is extremely close and Ms. Reno financially supported the
21 grandson and paid for his college education in Arizona. In 2010, at age 22, the grandson was in
22 an automobile accident. Ms. Reno paid to move the grandson to California for treatment,
23 although he had no insurance or any way to pay for necessary back surgery. In early- to mid-
24 2010, when the Ground Lease and Building Lease were being considered by the District's board,
25 Ms. Reno arranged with Perez to have MAC pay for the almost \$200,000 in medical expense
26 necessary to operate on the grandson's back and to otherwise provide him with needed medical
27 care. Ms. Reno would have mortgaged her home to pay for such care had MAC not paid such
28 expenses. Following his treatment, Perez through MAC then hired the grandson as a driver.

1 12. Ms. Reno was a strong supporter of the Ground Lease and Office Lease, and in
2 her capacity as the District's board chairperson she exercised her power and vote to approve both
3 on October 28, 2010. She further approved the HR Lease in or about early 2011.

4 **THE GROUND LEASE, THE MEDICAL OFFICE LEASE AND THE HUMAN**
5 **RESOURCES BUILDING LEASE**

6 13. On December 29, 2010, the District as landlord and MAC as tenant entered into
7 the Ground Lease dated December 29, 2010 which was amended twice thereafter, the first
8 amendment being dated May 5, 2011 and the second amendment dated August 23, 2011. (True
9 and correct copies of the Ground Lease, the first amendment and the second amendment are
10 attached hereto as "Exhibit 1," "Exhibit 2," and "Exhibit 3," respectively, and are incorporated
11 herein by this reference as though set forth in full. The foregoing are, and have been,
12 collectively referred to herein as the "Ground Lease.") By the Ground Lease, MAC was to
13 construct a 60,000 square foot medical office building ("Building") on 100,000 square feet of
14 leased land. That leased land is a portion of the 31 acre hospital campus owned and operated by
15 the District. (Attached and marked "Exhibit 4" is an overview of the campus, the leased land
16 and the Building.)

17 14. About 25,000 square feet of the 60,000 square foot Building was to be leased by
18 the District and the remaining space "shall be used solely for the purpose of the operation of a
19 medical office building and the provision of other health care items and services approved by
20 Lessor." (Ground Lease, section 4.2.) The District's rental of 25,000 square feet is provided for
21 by the Medical Office Building Lease Agreement by and between MAC as landlord and District
22 as tenant dated December 29, 2010. (A true and correct copy of the Medical Office Building
23 Lease Agreement is attached hereto as "Exhibit 5." It is, and has been, referred to herein as the
24 "Office Lease.") The execution of the Ground Lease and the Office Lease was preceded by
25 many months of presentations by Anderson, and District staff at his direction, to the District
26 board by which the board was provided laudatory but untrue reports on the competence and
27 capability of MAC, its expertise in constructing medical office buildings, its financial strength,
28 the benefits of the Ground Lease and Office Lease to the District and all of the other factors

1 relevant to whether or not the Ground Lease and Office Lease were appropriate transactions for
2 the District board to approve.

3 15. As discussed below, the District board was misled and in reliance on being misled
4 approved the leases.

5 16. Relevant to an understanding of the background which gave rise to this complaint
6 are some of the basic terms of the Ground Lease and related facts. They include the following:

7 a. MAC was to obtain government approvals for the construction of the
8 Building. MAC, through its contractor Landreth Development and Consulting (herein,
9 "Landreth"), applied to the City of Oceanside for approval of the Building on January 11, 2011,
10 culminating in the issuance of a mitigated negative declaration as well as a conditional use
11 permit on August 8, 2011. The permit requires various off-site traffic mitigation measures.

12 Although the Building shell has been completed, the off-site improvements have not.

13 Approximately \$600,000 worth of off-site improvements remain to be completed.

14 b. MAC was to provide insurance for the Building. MAC failed to do so,
15 and Anderson did not protect the District's interest by serving a notice of default.

16 c. MAC was to obtain a letter of credit to guaranty completion of the
17 Building. Due to MAC's financial distress, it was unable to obtain such a letter of credit.
18 However, Anderson accepted by the first amendment to the Ground Lease a waiver of such
19 requirement and ultimately the acceptance of inadequate security.

20 d. The Ground Lease required a budget for the cost of ongoing construction
21 as well as periodic reports on the status and cost of construction. Again, MAC failed to comply
22 with the Ground Lease and Anderson failed to enforce the terms of the Ground Lease.

23 e. The lease term is 50 years from the commencement date as defined by the
24 Ground Lease plus two options of 10 years each.

25 f. The base monthly rent is approximately \$120,000 per year – which is less
26 than market rate – and by the Ground Lease there is a rate increase based on the consumer price
27 index to be exercised every five years.

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1 17. By the Office Lease, the District leases 25,000 square feet of the Building. The
2 leasehold premises available to the District are limited to medical office purposes. The lease
3 term is 15 years plus two options to extend for five years. The commencement date for the right
4 of the District to occupy the premises is within six months after "substantial completion" (as
5 defined in the Office Lease) of the Building. The base monthly rental is \$3.25 a square foot. A
6 tenant improvement allowance of \$50 per square foot is allowed.

7 18. The Office Lease provides that the District may prepay rent up to a total of \$7.5
8 million to be applied to the construction cost of the Building. As a result of that provision,
9 Anderson caused the District to spend more than \$5 million towards the cost of construction of
10 the Building.

11 19. Anderson was intimately involved in the negotiation of the terms and provisions
12 of the Ground Lease as well as the Office Lease and HR Lease. The District governing board
13 relied upon Anderson in approving the three leases.

14 20. Included in the Ground Lease is a provision which effectively guarantees
15 Anderson employment for eight years. Specifically, section 2.6 of the Ground Lease provides
16 that "lessee may, at its option and subject to the conditions herein stated, terminate this lease
17 anytime during the period between A) a rent commencement date and B) last day of the eighth
18 (8th) year after the Commencement Date, upon the occurrence of any of the following events
19 (each a "Termination Event") during the Termination Period: ...(ii) change in the Chief
20 Executive Officer of Lessor...." Should the lessee give a termination notice then "Lessor shall
21 pay the Lessee in cash or other immediately available funds in an amount equal to the difference
22 between (A) Eighteen Million and 00/100 dollars (\$18,000,000) and (B) the unamortized portion
23 of any base rent prepaid by Lessor...." The Commencement Date under the Lease was
24 December 11, 2011, so under section 2.6 the Termination Period extends from June 30, 2013 to
25 December 31, 2019.

26 21. By the operation of section 2.6, regardless of the state of construction of the
27 Building, its value, or state of being rented and income generating, should Anderson no longer be
28 the Chief Executive Officer of the District, the District would owe MAC \$18 million. The

1 Building as of today is a so-called warm shell without tenant improvements, about \$600,000
2 worth of off-site improvements remain to be completed to obtain a certificate of occupancy, and
3 no leases have been signed. As of today, the Building has a value substantially less than \$18
4 million and, specifically, the leasehold rights of MAC are worth \$4.7 million. On May 5, 2011,
5 the Ground Lease was amended to delete Anderson's employment guaranty. However, this fact
6 is irrelevant to the overriding fact that Anderson, at a time that the Ground Lease was being
7 considered and was approved by the District governing board at Anderson's behest, had a
8 substantial personal financial interest in approval of the Ground Lease.

9 22. Further, the District is informed and believes and based thereon alleges that MAC,
10 through its agent Perez, provided multiple gifts to Anderson including but not limited to, a home
11 security system, guns and other gifts worth more than \$250 which further had the potential to
12 divide Anderson's loyalties and to compromise the undivided representation of the public
13 interest Anderson was charged with protecting.

14 23. Relevant to the Ground Lease and further evidencing Anderson's placement of
15 the financial and other interests of Perez and his company, MAC, above the interest of the
16 District, are the following:

17 a. In June 2010, Anderson caused the District to pay MAC's contractor
18 \$75,000 to settle MAC's outstanding bill for work performed by the contractor for MAC. The
19 District had no legal obligation to make such payment.

20 b. Anderson repeatedly refused to enforce prompt and adequate payment and
21 other obligations MAC incurred under the Institutional Provider Agreement.

22 c. Anderson caused the District to hire employees and contractors to perform
23 work for MAC without any legal obligation or right to do so nor for any public purpose.

24 d. Anderson caused the District to pay approximately \$47,000 in connection
25 with the rental and purchase of a truck to perform advertising services.

26 e. Anderson caused the District to pay to improve a building owned by MAC
27 at 1211 West Vista Way without any legal obligation to do so or any public purpose.

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1 f. Anderson caused the District to pay for remodeling a building at 4010
2 Vista Way which was leased by the District to MAC and forgave MAC's obligation to repay the
3 District upon its early termination of such lease despite its legal obligation to do so.

4 g. Anderson misrepresented the value, terms and expenditures made by and
5 to be made by the District in connection with the Ground Lease and related agreements presented
6 by Anderson and those under his direction to the board for approval, for the construction, lease
7 and purchase of the Building.

8 24. On or about May 1, 2011 MAC, as lessor, and TCHD, as lessee, entered into a
9 lease for the land and building located at 1211 West Vista Way, which is now occupied by the
10 District's Human Resources Department. (A true and correct copy of such lease is attached
11 hereto as "Exhibit 6." It is and has been referred to herein as the "HR Lease.") The rental charge
12 is based on incomplete information provided to the District; MAC failed to provide a certificate
13 of occupancy prior to the move in date; MAC failed to pay for repairs to the air conditioning
14 system; and the District necessarily paid for such repairs. Significantly, Anderson failed to
15 enforce the HR Lease's provisions. The conflicts alleged herein also induced the District to enter
16 into the HR Lease.

17 **FIRST CAUSE OF ACTION**

18 **(Violation of Government Code Section 1090 et seq.)**

19 25. District hereby incorporates by reference all the allegations of paragraphs 1
20 through 24 as if they were set forth herein at length.

21 26. Government Code section 1090 provides that "[D]istrict...officers or employees
22 shall not be financially interested in any contract made by them in their official capacity, or by
23 any body or board of which they are members." Government Code section 1092 then provides
24 that "[e]very contract made in violation of any of the provisions of section 1090 may be voided
25 at the instance of any party...." (*Finnegan v. Schrader* (2001) 91 Cal.App.4th 572, 583.) A
26 complaint to determine a contract is void need not allege "actual improprieties" nor need it allege
27 that the contract is unfair, unjust, or not beneficial to the public agency. (*Thomson v. Call* (1985)
28 38 Cal.3d 633,648.) It is not the character of the contract itself, but the manner in which it is

1 created, that renders it violative of sound public policy. (*Schaeffer v. Berinstein* (1956) 140
2 Cal.App.2d 278, 290.) When section 1090 is transgressed,

3 the public entity involved is entitled to recover any compensation
4 that it has paid under the contract without restoring any of the
5 benefits it has received. [Citations.] The contract is against the
6 express prohibition of the law, and “. . . courts will not entertain
7 any rights growing out of such a contract, or permit a recovery
8 upon quantum meruit or quantum valebat.” [Citations.] This
9 principle applies without regard to the willfulness of a violation.
10 “A person who violates section 1090, regardless of whether the
11 violation is intentional, forfeits any rights or interests flowing from
12 the illegal contract.” [Citation.]

13 (*Id.*) Thus,

14 [t]he rule of forfeiture is not an outmoded remedy blind to equity.
15 It is, rather, a remedy that is utilitarian in its design; it recognizes
16 what is equitable for the community and necessarily subordinates
17 the individual in a given case. Ultimately, this policy serves all
18 individuals because they comprise our communities and need
19 every guarantee the law can provide that they will be free from the
20 tyranny of corrupt politicians and the burden of contracts tainted
21 by conflicts of interest.

22 (*Carson Redevelopment Agency v. Padilla* (2006) 140 Cal.App.4th 1323, 1331.) Also, “the city
23 or agency is entitled to recover any consideration which it has paid, without restoring the benefits
24 received under the contract.” (*Thomson v. Call* (1985) 38 Cal.3d 633, 647.)

25 27. The California Supreme Court in *Lexin v. Superior Court* (2010) 47 Cal.4th 1050,
26 1075, described the purpose of section 1090. It confirmed that

27 “the term ‘financially interested’ in section 1090 cannot be
28 interpreted in a restricted and technical manner.” [Citation.] The

1 defining characteristic of a prohibited financial interest is whether
2 it has the potential to divide an official's loyalties and compromise
3 the undivided representation of the public interests the official is
4 charged with protecting. [Citation.] Thus, that the interest "might
5 be small or indirect is immaterial so long as it is such as deprives
6 the [people] of his overriding fidelity to [them] and places him in
7 the compromising situation where, in the exercise of his official
8 judgment or discretion, he may be influenced by personal
9 considerations rather than the public good." [Citations.]

10 (*Id.*) The California Supreme Court continues in *Lexin* that it is where there is "substantial
11 evidence such that a reasonable person could believe" that there is a conflict of interest that a
12 violation of section 1090 occurs. (*Id.* at p. 1076.) Finally, it is not "necessary to show actual
13 fraud, dishonesty or loss to invalidate the transaction." (*Thomson v. Call* (1985) 38 Cal.3d 633,
14 649, fn. 22.)

15 28. That Ms. Reno and Anderson had a "financial interest" in serving the interests of
16 MAC and procuring the execution of the Ground Lease is beyond quibble. At the time that the
17 Ground Lease was being proposed, negotiated and executed Anderson had a direct and
18 substantial interest in having the Ground Lease approved. So, too, the gifts which the District is
19 informed and believe Anderson received also put Anderson in a conflict situation. Finally, the
20 ongoing and continuing benefits and funds conferred by the District at the instance of Anderson
21 on MAC, are highly suggestive of a relationship where Anderson's loyalties were not to the
22 District but were to Perez and Perez's company, MAC.

23 29. Anderson "made" the Ground Lease within the meaning of section 1090 by
24 reason of his involvement in the promulgating, negotiating, advocating, and endorsing the
25 Ground Lease.

26 30. Ms. Reno also had a "financial interest" within the meaning of section 1090. The
27 substantial financial benefits conferred upon her through her grandson to a reasonable observer
28 necessarily would impair her impartial judgment and affect her absolute unqualified duty of

1 fealty to the District. So, too, the employment by MAC of her grandson further invested her with
2 advancing the interest of MAC.

3 31. Ms. Reno also "made" the Ground Lease within the meaning of section 1090.
4 She was an advocate of the merits of the District entering into the Ground Lease and exercised
5 her Board leadership and vote to have the District enter into the Ground Lease.

6 32. Whether or not MAC was a good candidate to enter into the Ground Lease with
7 the District and whether or not the Ground Lease was advantageous from the District's vantage
8 point are irrelevant. As a matter of fact, however, MAC had no experience whatsoever in
9 constructing medical office buildings; had no financial ability to pay for the cost of the Building;
10 breached the Ground Lease as alleged herein and otherwise with Anderson taking no
11 enforcement action; and the terms for the purchase of the Building as included in the Ground
12 Lease either by forced purchase or otherwise were substantially disadvantageous to the District.

13 33. The relief provided for by section 1090 applied here should result in a judgment
14 voiding the Ground Lease and requiring MAC to refund the District \$5,004,692 for the prepaid
15 rent plus interest.

16 34. For the same reasons set forth herein, the Office Lease and the HR Lease are
17 likewise void under Section 1090 and MAC should be ordered to refund the prepaid rent under
18 the Office Lease plus interest.

19 **SECOND CAUSE OF ACTION**

20 **(Violation of The Political Reform Act, Government Code Section 81000 et seq.)**

21 35. The District hereby incorporates by reference all the allegations of paragraphs 1
22 through 34 as if they were set forth herein at length.

23 36. Government Code section 87100 provides that "no public official at any level of
24 state or local government shall make, participate in making or in any way attempt to use his
25 official position to influence a governmental decision in which he knows or has reason to know
26 he has a financial interest." The Act goes on to define "financial interest" by Government Code
27 section 87103:

28 ///

1 A public official has a financial interest in a decision within the
2 meaning of section 87100 if it is reasonably foreseeable that the
3 decision will have a material financial effect, as distinguished from
4 its effect on the public generally, on the official, a member of his
5 or her immediate family, or on any of the following: . . .

6 (e) Any donor of, or any intermediary or agent for a donor of, a
7 gift or gifts aggregating Two Hundred Fifty Dollars (\$250) or more
8 in value provided to, received by, or promised to the public official
9 within 12 months prior to the time when the decision is made....

10 37. By Government Code section 91003(b) this court has the authority to set aside the
11 Ground Lease. But for the advocacy of Anderson and Ms. Reno the District board would not
12 have approved the Ground Lease.

13 38. For the same reasons set forth herein, the Office Lease and the HR Lease are
14 likewise void under Section 1090.

15 **THIRD CAUSE OF ACTION**

16 **(Common Law Conflict of Interest)**

17 39. The District hereby incorporates by reference all the allegations of paragraphs 1
18 through 38 as if they were set forth herein at length.

19 40. As a result of Anderson and Ms. Reno placing themselves in a position where
20 their private, personal interests may conflict with their official duties, Anderson and Ms. Reno
21 have violated the common law doctrine against conflicts of interest. (*Clark v. City of Hermosa*
22 *Beach* (1996) 48 Cal.App.4th 1152, 1170-1171 & fn. 18 [common law extends to noneconomic
23 conflicts of interest].)

24 41. Any contracts made in violation of the common law prohibition against conflicts
25 of interest are void. Because the Ground Lease, Office Lease and HR lease were made in
26 violation of the common law prohibition against conflicts of interest, they are void.

27 42. For the same reasons set forth herein, the Office Lease and the HR Lease are
28 likewise void under Section 1090.

FOURTH CAUSE OF ACTION

(Breach of Ground Lease)

43. The District hereby incorporates by reference all the allegations of paragraphs 1 through 42 as if they were set forth herein at length.

44. In the event that the Ground Lease is not void due to the conflicts described above, the District seeks to terminate the Ground Lease based on MAC's breach.

45. MAC failed to comply with the terms of the Ground Lease by failing to "Substantially Complete" the Medical Office Building and all improvements required by the Ground Lease, and to obtain a certificate of occupancy by the Substantial Completion Outside Date (as such terms are defined in the Ground Lease).

46. Paragraph 12.3 of the Ground Lease provides remedies for such breaches, including termination of the Ground Lease. Based on the foregoing numerous breaches by MAC, if not void due to the above conflicts District seeks termination of the Ground Lease and damages in an amount according to proof at the time of trial.

47. Paragraph 14.10 of the Ground Lease provides that in any dispute between the parties arising out of the interpretation or enforcement of the Ground Lease that the prevailing party is entitled to recover its attorneys' fees and costs. District has been compelled to institute these proceedings to terminate the Ground Lease and for damages based on MAC's breach of the Ground Lease and, if successful, District is entitled to its attorneys' fees and costs.

FIFTH CAUSE OF ACTION

(Common Count – Money Had and Received)

48. The District hereby incorporates by reference all the allegations of paragraphs 1 through 47 as if they were set forth herein at length.

49. Under the Office Lease, the District prepaid rent to MAC in the amount of \$5,004,692. Such amount was thereafter to be credited towards the District's occupancy of the Building.

50. As a result of the Ground Lease and Office Lease being void due to the conflicts of interest and breach alleged herein, MAC became indebted to the District in the amount of

1 \$5,004,692 for money had and received by MAC for the use and benefit of the District as rent
2 under the Office Lease.

3 51. The District demanded repayment of this amount from Defendant on January 30,
4 2014.

5 52. No payment has been made by MAC to the District, and there is now owing the
6 sum of \$5,004,692 with annual interest at the Applicable Rate, as that term is defined in the
7 Office Lease, or at the maximum rate allowed by law, from the date such amounts were paid to
8 MAC.

9 53. Paragraph 18 of the Office Lease provides that in any dispute between the parties
10 arising out of the Office Lease, the prevailing party is entitled to recover its attorneys' fees and
11 costs. The District has been compelled to bring this action for recover of money had and
12 received and, if successful, the District is entitled to its attorneys' fees and costs.

13 **SIXTH CAUSE OF ACTION**

14 **(Declaratory Relief)**

15 54. The District hereby incorporates by reference all the allegations of paragraphs 1
16 through 53 as if they were set forth herein at length.

17 55. An actual controversy has arisen and now exists between the parties concerning
18 the respective rights and duties in that the District contends that conflicts of interest exist
19 between Anderson and Ms. Reno, acting on behalf of the District, and Perez, acting on behalf of
20 MAC; and that the Ground Lease and other leases described herein are void as a matter of law
21 and public policy. The District is informed and believes that MAC contends that there is no
22 conflict; and that the leases are not void.

23 56. The District desires a judicial determination of its rights and duties, and a
24 declaration as to whether a conflict of interest exists between the District and MAC and whether
25 the Ground Lease and other leases are void as a matter of law and public policy. Such
26 determination is needed in order to avoid continued controversy, to prevent any future illegal
27 conduct between the parties and to protect the public interest.

28 ///

1 WHEREFORE, the District prays for the following relief against MAC:

2 1. For a declaration that the Ground Lease, Office Lease and HR Lease are void
3 under Government Code Section 1090;

4 2. For a declaration that the Ground Lease, Office Lease and HR Lease are void
5 under the Political Reform Act, including Government Code section 91003(b);

6 3. For a declaration that the Ground Lease, Office Lease and HR Lease are void
7 under the common law prohibition against conflicts of interest;

8 4. For a declaration that the Ground Lease and Office Lease are terminated due to
9 MAC's breach of the Ground Lease;

10 5. For damages in an amount according to proof arising from MAC's breach of the
11 Ground Lease;

12 6. For restitution of \$5,004,692 representing monies previously paid to MAC for
13 District's benefit and use;

14 7. For prejudgment interest at the maximum rate allowed by law;

15 8. For attorneys' fees and non-statutory costs;

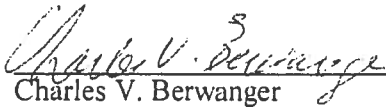
16 9. For costs of suit; and

17 10. For such other and further relief as the Court may deem just and appropriate.

18 Dated: July 2, 2014

GORDON & REES LLP

19
20 By:


Charles V. Berwanger
David A. Chasin
Kerri L. Perazone
Attorneys for Plaintiff TRI-CITY
HEALTHCARE DISTRICT

Charles Berwanger

From: Charles Berwanger
Sent: Monday, July 07, 2014 11:13 AM
To: Duane Horning (DHorning@cblg.biz)
Cc: tschimelfenig@cblg.biz
Subject: FW: MAC Request to Be Heard
Attachments: 7-1-14 ltr to TCHD re resolution of necessity.pdf

Mr. Horning:

I write regarding the letter dated July 1, 2014 in which the District is advised that Medical Acquisition Company plans to appear through its representatives on July 15, 2014 at the hearing regarding the adoption of a resolution of necessity.

The district typically limits public comments to 3 minutes per party but has the flexibility to allow up to 15 minutes. Please advise how much time your client desires keeping in mind the foregoing limits. Should you feel you need more time you should submit your additional comment in writing. For such comments to be distributed in advance of the hearing the district should receive the comments before noon on Friday July 11, 2014.

I will give you a call to coordinate the foregoing. The board would like an estimate of the amount of time you desire within the foregoing parameters on July 15.

Charley Berwanger

From: Tracy Schimelfenig [<mailto:TSchimelfenig@cblg.biz>]
Sent: Tuesday, July 01, 2014 6:08 PM
To: donnelliantl@tcmc.com; Charles Berwanger
Cc: Duane Horning; Tara Lusher (lusher.law@gmail.com)
Subject: MAC Request to Be Heard

Ms. Donnellian and Mr. Berwanger,

Please see the attached correspondence from Mr. Horning.

Thank you,

Tracy L. Schimelfenig, Of Counsel
California Business Law Group, PC
Symphony Towers
750 B Street, Suite 2330
San Diego, California 92101-3370

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