Honorable Gerald Rosenberg (Ret.)
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ADR SERVICES, INC.

IN RE THE MATTER OF THE ARBITRATION BETWEEN

DR. ROY LUBIT, MD PH.D., as an individual, and DR. ROY LUBIT, MD PH.D., derivatively on behalf of 7760 Romaine, LLC and derivatively on behalf of 1159 Formosa, LLC., Claimant, vs. FMB DEVELOPMENT, LLC; FMB CONSULTING, LLC; ILAN KENIG; ELIM MANAGEMENT, INC.; JOEL HAGGIN; and DOES 1 through 50, inclusive, Respondents.	ADRS Case No. 23-6474-GSR **FINAL ARBITRATION AWARD** Hon. Gerald Rosenberg, Arbitrator

This matter was heard before Honorable Gerald Rosenberg, Judge Retired, at ADR Services, Inc. on November 8, 2024, November 14, 2024, and December 3, 2024. Claimant Dr. Roy Lubit, MD Ph.D., as an individual, and Dr. Roy Lubit, MD Ph.D., derivatively on behalf of 7760 Romaine, LLC and derivatively on behalf of 1159 Formosa, LLC appeared and was represented by Christopher Mass, Esq from the office of Gibbs Giden Locher Turner Senet & Wittsbrodt LLP, and Dominick Severance, Esq from Severance Law, PC. Respondent Joel Haggin and Elim Management, Inc. appeared and were represented by Jason R. Lonas, Esq. from the Law Offices of Jason Lonas, and Moses S. Bardavid, Esq. from the Law Offices of Moses S. Bardavid.

Respondents FMB Development, LLC, FMB Consulting, LLC, and Ilan Kenig did not appear.

This case arises out of a claim that Respondents breached their obligations under two Joint Venture Agreements, the Corporations Code, converted funds, and breached their fiduciary duties to 1159 Formosa, LLC and 7760 Romaine, LLC and to Claimant as a member of those companies.

In his Demand for Arbitration and Statement of Claim, Claimant asserts the following causes of action:

1. Declaratory Relief
2. Breach of Written Agreement
3. Breach of the Implied Covenant of Good Faith and Fair Dealing
4. Breach of Fiduciary Duties
5. Judicial Dissolution Pursuant to Corporations Code Section 17706.02(e)
6. Accounting
7. Equitable Indemnity
8. Contribution
9. Conversion
10. Trespass to Chattels
11. Specific Performance
12. Construction Trust
13. Imposition and Foreclosure of Equitable Lien
14. Negligence
15. Quasi-Contract
16. Money Had and Received
17. Violation of Business & Professions Code Section 17200
18. Violation of Corporations Code Section 17701.13, 17702.09(A), and 17702.09(D)
19. Violation of Corporations Code Section 17701.13

20. Violation of Corporations Code Section 17704.10 and 17701.13(D)

Respondents did not file an Answering Statement.

ARBITRATION HEARING

On October 18, 2024, Claimant's Motion to Establish Admissions and for Monetary Sanctions was heard. There was no Opposition to the Motion filed by the Respondents, and they did not appear for the hearing.

At the time of the hearing, the Arbitrator ruled: "Claimant seeks an order that the truth of each matter specified in the first set of Requests or Admission served on Respondents FMB Development, LLC, FMB Consulting, LLC, Ilan Kenig, Elim Management, Inc., and Joel Haggin be deemed admitted and conclusively established for all purposes in this action pursuant to Code of Civil Procedure Section 2023.010 and 2033.280(b), et seq.

The Motion was granted.

At the Arbitration, Respondents' Ex Parte Request to Set Aside the Ruling on this Motion was denied.

At the Arbitration, Respondents' Ex Parte Motion for Reconsideration of the Ruling on this Motion was denied.

Claimant's Motion in Limine Regarding Respondents' Failure to Respond to Discovery and to Answer Claimant's Statement of Claim.
Ruling: Defer

The following Exhibits were received into evidence: 1, 2, 3, 4, 5, 34, 39, 56, 107, 109, 110, 118, 119, 122, 123, 124, 125, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, H, I, Q, T, CC, EE, HH, JJ, LL, QQ, UU, AAA, EEE, GGG, and III.

Testimony was received from the following witnesses:

Dr. Roy Lubit
Morgan McMullin
Christopher Croisdale
Joel Haggin
Yossi Zaga
Ezequiel Serebrisky
Yehuda Elmakias
Eli Shaashua

Opening and Closing Briefs were served and reviewed.

After Closing Briefs were filed, Claimant submitted an Amended Closing Brief and Respondents objected. The Respondents filed a Motion to Strike Amended Closing Brief and Claimant filed an Opposition.

Ruling: Granted

FINDINGS OF FACT

Based upon the oral and documentary evidence received during the Arbitration, along with the ruling on Claimant's Motion to Deem Requests for Admission as Admitted, the Arbitrator makes the following findings of fact:

1. Dr. Roy Lubit is a medical doctor and a Ph.D. He lives in New York City and works as a child psychiatrist.

2. Dr. Lubit described his relationship with Respondent Joel Haggin as once being "best friends."
3. Joel Haggin owns Respondent Elim Management, Inc.
4. Ilan Kenig told Mr. Haggin that he was a developer and in the business of obtaining financing.
5. Mr. Haggin had once loaned money to Ilan Kenig.
6. In 2014, Joel Haggin became aware of the 1159 Formosa and 7760 Romaine properties from Ilan Kenig. Mr. Kenig was seeking an investment by Mr. Haggin to purchase and develop these properties into condominiums.
7. Claimant was approached by Mr. Haggin to invest in 1159 Formosa, LLC and 7760 Romaine, LLC (hereinafter referred to as the "LLCs").
8. As part of the investment, Mr. Haggin represented to Claimant that Mr. Haggin would receive a management fee of 20% because he would "oversee the money" and the development of the properties.
9. Dr. Roy Lubit invested approximately $780,000.00 in the LLCs.
10. Respondent Ilan Kenig and his company, FMB Development, LLC were also involved in these investments.
11. On May 20, 2014, FMB Development, LLC, Elim Management, Inc., Roy Lubit, Joel Haggin and Others entered into an agreement entitled Joint Venture Agreement for Real Estate Investment (Exhibit 1) regarding the property located at 1159 N. Formosa, West Hollywood, California. The agreement provided:
    a. All parties shall become members of the LLC.
    b. FMB will be the managing member of the LLC.
    c. The responsibility of both FMB and Elim in the LLC will be:
        (1) Manage the property purchase (FMB only).
        (2) Complete loan process with a lender for 65% Loan to Value (FMB only).
        (3) Manage all of the project development.
        (4) Manage architectural and design tasks.

(5) Manage plans preparation.

(6) Submit for city approval.

(7) Hire contractors and subcontractors.

(8) Manage the day-to-day activity of the LLC.

(9) Oversee the budget until property is completed and sold.

(10) Oversee and supervise the construction in the field until property is completed and sold.

(11) Manage all books and records.

(12) Manage the sale of the property and distribute profit to all partners of the LLC.

d. The purchase price of the property is $1,200,000.

e. The new construction of 4,200 square feet is approximately $1,520,000.

f. The parties shall contribute the following and will own percentage ownership shares in the LLC:

(1) Equity Partner(s)	40%
(2) FMB Development, LLC re Loans	40%
(3) Elim Management, LLC	20%

g. All property of the joint venture shall be held 100% in the name of the LLC.

h. In the event that the parties or other parties will contribute some or all of the equity required to the LLC, the interest of the equity partners will be divided among the equity partners proportionately to their respective equity cash investment.

i. All major decisions affecting the sale of the property will be made by all partners of the LLC.

j. Any dispute arising under this Agreement, or under any instrument made to carry out the terms of this Agreement, shall be submitted to arbitration in accordance with the arbitration laws of the State of California.

12. On May 27, 2014, Roy Lubit sent an email to Ilan Kenig and Joel Haggin wherein he stated, “I appreciate the opportunity to speak with you today. After running the numbers and options, I would like to go for Formosa if that is OK with you. Joel said he would do

whichever property I wished. What is nice about Formosa is that the opportunity to bring in other money for building is that the profit margin for equity investors increases. We could even bring in other money for all of the equity share and exit after six months and therefore have money for other deals." In response, Mr. Kenig wrote to Dr. Lubit, "Please see attached both agreements reflecting the change on the equity side that we discussed today (section 3.3). Please review and if OK, let¹s sign it so we can start focusing on the deal closing and funding as well as the architectural plans." (Exhibit AAA)

13. On September 2, 2014, Ilan Kenig signed a Guaranty in favor of Partners Capital Solutions Fund, LP. (Exhibit III)

14. Joel Haggin testified at the Arbitration that he talked to Roy Lubit about the Guaranty and that it gave them more peace of mind. (Exhibit III)

15. On September 9, 2014, FMB Development, LLC, Joel Haggin or an entity on his behalf, together hereinafter Managing Members, Elim Management, Inc. and Roy Lubit or other Equity Partners entered into a Joint Venture Agreement for Real Estate Investment (Exhibit 2) regarding the property located at 7760 Romaine Street, West Hollywood, California. The agreement provided:

a. All parties shall become members of the LLC.

b. FMB and Elim and/or Joel Haggin will be the managing member of the LLC. The responsibility of both FMB and Elim in the LLC will be:

(1) Manage the property purchase (FMB only).

(2) Complete loan process with a lender for 65% Loan to Value (FMB only).

(3) Manage all of the project development.

(4) Manage architectural and design tasks.

(5) Manage plans preparation.

(6) Submit for city approval.

(7) Hire contractors and subcontractors.

(8) Manage the day-to-day activity of the LLC.

(9) Oversee the budget until property is completed and sold.

(10) Oversee and supervise the construction in the field until property is completed and sold.

(11) Manage all books and records.

(12) Manage the sale of the property and distribute profit to all partners of the LLC.

c. The equity partners will make a minimum contribution required to complete the purchase and planning phase of the venture in the total amount of $520,000.

d. The purchase price of the property is $1,450,000. The new construction of 9,000 square feet is approximately $2,150,000 including $80,000 estimated cost of the entitlement process.

e. The parties shall contribute the following and will own percentage ownership shares in the LLC:

Equity Partner(s)	50%
Managing Members	50%

f. All property of the joint venture shall be held 100% in the name of the LLC.

g. In the event that the parties or other parties will contribute some or all of the equity required to the LLC the interest of the equity partners will be divided among the equity partners proportionately to their respective equity cash investment.

h. All major decisions affecting the sale of the property will be made by all partners of the LLC.

i. Any disputes Any dispute arising under this Agreement, or under any instrument made to carry out the terms of this Agreement, shall be submitted to arbitration in accordance with the arbitration laws of the State of California.

16. On September 10, 2014, Roy Lubit sent an email to Ilan Kenig and Joel Haggin wherein it states, “I assume Joel has 200,000 to invest and so I will put in 438 on Formosa, since you need it now and I don’t know if Joel can send it right away and 278 on Ogden.” In response, Joel Haggin stated, “Yes, I can do that – it is your decision and option – I will forward the $200K into the Romaine/Ogden property” Thereafter, he wrote, “In case

you'll decide that I put the $200K, then we will credit my account $100K for Formosa and $100K for Romaine/Ogden as opposed to $200K for Romaine." (Exhibit GGG)

17. On September 12, 2014, a Grant Deed was recorded wherein title to the Formosa property was taken in the name of FMB Development, Inc., a California Limited Liability Company. (Exhibit 3)

18. On September 12, 2014, a Deed of Trust in the amount of $4,000,000 was recorded in favor of Partners Capital Solutions Fund, LP against the Formosa property. Said Deed of Trust was executed by Respondent Ilan Kenig on behalf of Respondent FMB Development, LLC. (Exhibit 4)

19. On September 17, 2014, a Grant Deed was recorded wherein title to the Romaine property was taken in the name of FMB Development LLC, a California Limited Liability Company. (Exhibit 5)

20. Ilan Kenig is the CEO of FMB Development, LLC. (Exhibit 39)

21. As to the $4,000,000 Deed of Trust, Dr. Lubit testified at the Arbitration that Mr. Haggin told him that the properties were cross collateralized with a $4,000,000 loan.

22. Claimant testified at the Arbitration that he was never consulted about the following:
    a. Conveying the properties to FMB Development.
    b. Recording a $4,000,000 Trust Deed on the properties for the benefit of FMB Development.

23. Dr. Lubit asked Joel Haggin to co-sign the LLC checks. Mr. Haggin refused and stated it would cause an explosion.

24. Joel Haggin sent an email to Dr. Lubit on October 15, 2014 which stated, "I FINALLY got SOME of the loan docs, from Mary - a nice lady working for Ilan. For some reason she has been working on this for a few days now. In any event, 2 things I immediately notice: a) there is no "2 points" fee, and we WERE charged 2 points on each loan that were paid to Ilan's FMB Company, and b) this is a master note for several properties, which would mean that even if Ilan goes into trouble on another project, the lender would

be able to recover from our properties. This also seems to me very, very, wrong. One more thing - Ilan represented to me that the loan is 8%, I now see it's 9.5%. (Exhibit I)

25. In an email dated December 17, 2014, Mr. Haggin stated to Dr. Lubit, "He (Ilan Kenig) is essentially giving me a very hard time viewing the accounting records. I can either continue mounting pressure. This can lead to an explosion . . ." In response, Dr. Lubit, stated, "don't mount pressure tell him I will demand a complete accounting at the end, make me the bad guy and say you won't use me again, put the onus on me, don't cut him off if there are other opportunities for you to make money with him. I've said this before, but it seems that now there are not likely to be future opportunities but that these houses may sell at a premium. I don't want totally out; I like the idea of doubling my profit for a much lower stake than I have now. Remember, better that he gives us a great return and picks our pocket a bit than a mediocre return and he is honest." (Exhibit Q)

26. On February 23, 2015, Mr. Haggin sent an email (Exhibit T) to Mr. Kenig which stated, "When can we meet ASAP to discuss and try resolving the following outstanding issues:

a. Status of entitlement process.

b. Status of refinancing.

c. Status of new investors.

d. Accounting information"

27. On October 8, 2015, Joel Haggin sent to Dr. Roy Lubit the K-1s for the projects. (Exhibit CC)

28. Claimant testified at the Arbitration that Mr. Haggin promised him that he would be at the project every day. However, a few months into the project, Mr. Haggin went to Israel and when he returned to the United States he went to Florida.

29. Claimant testified at the Arbitration that Mr. Haggin told him that Mr. Kenig was using the jobsite workers and materials to build his own house.

30. Claimant testified at the Arbitration that Ilan Kenig told him they needed more money and he was going to get a loan with a 25% interest rate.

31. Dr. Lubit was looking into Crowd Funding for the projects. On January 14, 2016, Dr. Lubit sent an email to Mr. Haggin which stated, “Please start setting up accounts with each of these, before it is too late and we are forced into a much less desirable way to get money.” (Exhibit EE)

32. On March 10, 2016, Mr. Haggin sent an email to Dr. Lubit wherein he stated, “maybe the right thing to do is to put the properties on the market now for sale and not pursue completing the project.” (Exhibit HH) In response, Dr. Lubit wrote, “I stretched myself unreasonably in order to help you so that you could get hundreds of thousands in profit for managerial fees for the second property. I have now been burned, with my money being tied up several times longer than planned. I do not blame you for this.”

33. On March 17, 2016, Dr. Lubit wrote to Mr. Haggin, “The basic question remains. If you are going to do much less work than expected, you are not doing the things we agreed you needed to do and would do, and I am stressed by being in marked debt much longer than expected, shouldn't we divide up the 20%.” (Exhibit JJ)

34. On April 1, 2016, Dr. Lubit sent an email to Mr. Haggin which stated, “Our friendship has been destroyed by your greed and your intention to take money you do not deserve, much of which I deserve. You have breached the contract and do not have a right to the amount you intend to take. You were supposed to be in this country actively working on the project, not running off to Israel doing other things. Your choosing to do that was wrong. To do that and take the money is extremely serious.” (Exhibit LL)

35. After the relationship between Joel Haggin and Ilan Kenig “tanked,” as Dr. Lubit described it, he reached out to Mr. Kenig about the status of the project.

36. Claimant testified at the Arbitration that every time he asked Ilan Kenig when the project would be completed, Mr. Kenig told him, “3 more months.” Once Mr. Kenig told Claimant that they needed more time to “complete the basement.”

37. In 2019, the projects were not completed.

38. On November 13, 2020, Dr. Lubit sent an email to Mr. Kenig wherein it states, “It’s been five years. You were in the last stages months ago. When will it be finished.” In

response, Mr. Kenig wrote, "There are no delays, we are working on the sites daily!!!" (Exhibit 56)

39. On June 7, 2021, Elim Management, Inc., Joel Haggin, FMB Development, LLC, 7760 Romaine, LLC, 1159 Formosa, LLC, and Ilan Kenig entered into a written agreement. (Exhibit 118) Under the terms of the agreement, Elim Management, Inc. and Joel Haggin sold their interest in 7760 Romaine, LLC and 1159 Formosa, LLC to FMB Development, LLC for the sum of $330,000.
40. Dr. Lubit testified at the Arbitration that he feels that Ilan Kenig stole money because Joel Haggin did not handle the management oversight.
41. On January 24, 2023, Christopher L. Mass sent a letter to Rodney S. Lasher and Ellia M. Thompson of Venable LLP. (Exhibit 34)
42. In March 2024, the Formosa and Romaine properties were sold in foreclosure.
43. Joel Haggin testified at the Arbitration that through Elim Management Inc. he invested $111,500.00 into Formosa and $100,000.00 into Romaine.
44. As part of these investments, Mr. Haggin wanted to get involved in real estate as a new career.
45. Joel Haggin and Roy Lubit signed the Joint Venture Agreement for Formosa.
46. Mr. Haggin and Dr. Lubit may not have signed the Joint Venture Agreement for Romaine because they did not like some of the terms of the proposed agreement. However, they invested money into the LLC.
47. Joel Haggin testified at the Arbitration that several times per week, he went to Ilan Kenig's office. He made requests for documents and Mr. Kenig got angry.
48. Mr. Haggin contends that Mr. Kenig was improperly paying money from the LLC accounts to his employees.
49. Mr. Haggin testified at the Arbitration that he saw the loan documents regarding the $4,000,000 loan and sent them to Dr. Lubit. He testified at the Arbitration, "They did not look good."

50. Joel Haggin had a discussion with Dr. Lubit about not putting too much pressure on Ilan Kenig.

51. Before the homes on the properties were demolished, they were rented. Mr. Kenig's son Tal was handling the rentals. Mr. Haggin had concerns over the rents because the records showed "low amounts of rent collected and that they were not going into the LLC accounts." Mr. Haggin testified at the Arbitration that he shared this information with Dr. Lubit.

52. Mr. Haggin testified at the Arbitration:

    a. He visited Israel in 2015 for 3 weeks for his children's bar mitzvahs.

    b. In 2016, he spent time in Israel. He had family there including his mother and sister.

    c. He lived in Los Angeles until 2017.

    d. In 2018, he moved to Israel for 4 months.

    e. He was always traveling to Israel.

53. In 2016, Ilan Kenig told Mr. Haggin that he needed more money for construction. The information was conveyed to Dr. Lubit who suggested looking into Crowd Funding. In that same year, Mr. Kenig told him that "things were progressing."

54. At the Arbitration, Mr. Haggin testified that he became concerned about trusting Mr. Kening and he told Dr. Lubit that he wanted to get out before the construction began. He felt that property values had increased, and they could make a profit. In response, Dr. Lubit said that he didn't deserve his 20% interest.

55. In 2017, the homes on the two properties were demolished.

56. The only documents for the LLCs that Joel Haggin received from Ilan Kenig were some bank statements and some Quick Books.

57. At the Arbitration, Mr. Haggin testified that in 2017, 2018, and 2019, he was trying to get information from Ilan Kenig.

58. Mr. Kenig told Mr. Haggin there were problems incurred during construction which caused additional costs and delays:

    a. Setbacks.

b. Garage depth.

c. Street.

59. Mr. Haggin suspected that the ventures would not bring any profit.
60. Dr. Lubit did not want to sell his interests in the LLCs.
61. In June 2021, Joel Haggin sold his shares to FMB for the principal amount of his investment plus a 50% return. He was paid $330,000.00. (Exhibit 118) He communicated to Dr. Lubit that he was no longer a member of the LLCs.
62. Mr. Haggin never investigated the various loans that were recorded against the properties.
63. Mr. Haggin never investigated public records concerning the properties.
64. Mr. Haggin never hired any of the contractors or subcontractors who worked on the properties.
65. Elim Management Inc. is an Oregon corporation that shows its principal place of business in Portland, Oregon. The corporation was administratively dissolved on March 21, 2014 and reinstated on November 7, 2024. (Exhibit 141)
66. Yossi Zaga was a member with Ilan Kenig in FMB Development, LLC.
67. In 2020, Mr. Zaga brought in cash and partners to develop around 60 properties with Mr. Kenig. They had around $128,000,000. There was a written agreement between FMB Development, LLC, Ilan Kenig, Moshe Gilinski and Yossi Zaga. (Exhibit A to Exhibit 107)
68. Mr. Zaga testified at the Arbitration that Mr. Kenig controlled everything and was operating a "Ponzi Scheme."
69. Ezequiel Serebrisky entered into an agreement with Ilan Kenig and FMB Development to do construction on some of the projects. He was not involved in the construction of the Formosa or Romaine projects.
70. Mr. Serebrisky invested in 3 of Mr. Kenig's projects.
71. Mr. Serebrisky testified at the Arbitration that he never received any reports from Mr. Kenig as to the status of those 3 projects. One of the properties (Genesee) was lost in

foreclosure. Further, he stated that he found out that Mr. Kenig took many unauthorized loans on that property.

72. Yehuda Elmakias is a licensed general contractor.

73. Mr. Elmakias testified at the Arbitration that he worked for FMB Development from January 6, 2020 to September 23, 2020 as the director of construction. As part of his work, he oversaw the work on the Formosa and Romaine projects.

74. Mr. Elmakias also testified that "Mr. Kenig was forging my name on documents. He would create fake checks issued to Mr. Elmakias, forge his signature on the checks, and signed Lien Waivers."

75. Mr. Elmakias claims he is owed $650,000 and he filed a civil lawsuit against Mr. Kenig.

76. Eli Shaashua is a friend of Mr. Haggin.

77. In December 2017, he stayed with Ilan Kenig while attending a real estate conference.

78. Mr. Shaashua testified at the Arbitration that Mr. Kenig told him that he didn't like how Mr. Haggin operated. Further, Mr. Kenig told him he didn't have time for Mr. Haggin's "probe into the expenses for the projects."

79. On Cross-Examination, Mr. Shaashua stated that he told Mr. Haggin that investors are not adequately protected in Mr. Kenig's deals. He advised Mr. Haggin to have Mr. Kenig buy him and Mr. Lubit out of the projects.

80. Mr. Shaashua's understanding of the deal made between Mr. Kenig, Mr. Lubit and Mr. Haggin was that Mr. Haggin would be an active investor. As part of that he thought that Mr. Haggin would oversee the projects "as an auditor."

81. On redirect-examination, Mr. Shaashua stated that in 2014, he told Mr. Haggin and Mr. Lubit that the investors were not protected. Part of his opinion was based upon his girlfriend's review of the joint venture agreement. She was an attorney.

82. It is Mr. Shaashua's opinion that Mr. Haggin did not have enough experience in real estate to manage the projects.

83. Claimant has not received any distribution from his investment in the LLCs.

Experts for Claimant

Morgan McMullin

1. Mr. McMullin has been a licensed real estate agent since 2005 who handles multi-family residential property.
2. He works at Keller Williams.
3. His assignment was to determine the 2018 value of the properties.
4. Mr. McMullin looked at comparable sales in 2018.
5. He only viewed the outside of the properties. He was informed that the finish work on the interior was not completed.
6. Exhibit 119 was received into evidence representing the comparable sales referred to and relied upon by Mr. McMullin.
7. Morgan McMullin opined as follows:
   a. The value of the properties was between $850 and $1,050 per square foot if each unit was sold separately. If the entire building was sold, the value would be about 10% less.
   b. The properties had some amenities: Roof decks and subterranean parking.
   c. The Formosa property was worth between $5,836,950 and $7,210,350.
   d. The Romaine property was worth between $6,154,000 and $7,602,000.
8. On cross-examination, Mr. McMullin testified that he completed his assignment 6 months ago.
9. Mr. McMullin was recalled on November 14, 2024 and presented Exhibit 124 which was a report of closed transactions in 2018.

Christopher Croisdale

1. Mr. Croisdale has been a licensed General Contractor in California since 1988.
2. Mr. Croisdale only constructed 1 new multi-family structure. He has remodeled many.
3. Mr. Croisdale’s assignment was to do a cost analysis for the 2 properties.

4. Christopher Croisdale reviewed: Plans, Tentative Tract Map, and the Plans for a Parking Garage.
5. Mr. Croisdale prepared a Cost Analysis and Estimate of Profits. (Exhibit 122)
6. Mr. Croisdale opined as to the Formosa property:
   a. Range of Sales: $5,836,950 to $7,210,350.
   b. Range of Costs: $4,405,000 to $4,905,150.
   c. Range of Profits: $1,431,950 to $2,305,200.
7. Mr. Croisdale opined as to the Romaine property:
   a. Range of Sales: $6,154,000 to $7,602,000.
   b. Range of Costs: $4,880,000 to $5,443,000.
   c. Range of Profits: $1,274,000 to $2,159,000.
8. Mr. Croisdale opined that the projects should have been completed within 18 and 24 months.
9. On cross-examination, Mr. Croisdale testified that his analysis is based on 2024 costs.
10. On re-direct, he testified that in 2018 the costs would have been 20-30% less. When Mr. Croisdale testified on November 14, 2024, he presented Exhibit 123 showing 2018 construction costs. He stated that he used the Xactimate program to calculate the 2018 prices.

Order Deeming the Requests for Admission propounded to FMB Development, LLC, FMB Consulting, LLC, Ilan Kenig, Elim Management, and Joel Haggin as admitted included the following:

REQUEST FOR ADMISSION NO. 5:
Admit that YOU represented to DR. LUBIT prior to DR. LUBIT entering into the FORMOSA JOINT VENTURE AGREEMENT that, once the FORMOSA PROPERTY was sold, DR. LUBIT would quickly be paid his roughly 100% return on the money DR. LUBIT contributed as part of the FORMOSA JOINT VENTURE AGREEMENT.

REQUEST FOR ADMISSION NO. 7:

Admit that, on or about May 20, 2014, DR. LUBIT, FMB DEVELOPMENT, ELIM, and HAGGIN entered into the FORMOSA JOINT VENTURE AGREEMENT for the "purchase, new construction and sale of the" FORMOSA PROPERTY and the formation of the FORMOSA LLC.

REQUEST FOR ADMISSION NO. 23:

Admit that, in violation of the FORMOSA JOINT VENTURE AGREEMENT, on or about September 12, 2014, YOU had a grant deed recorded on the FORMOSA PROPERTY granting the FORMOSA PROPERTY to FMB DEVELOPMENT instead of to the FORMOSA LLC.

REQUEST FOR ADMISSION NO. 29:

Admit that $14,168,000 in loans are presently secured on the FORMOSA PROPERTY.

REQUEST FOR ADMISSION NO. 30:

Admit that the fair market value of the FORMOSA PROPERTY is less than the total of the loans secured on the FORMOSA PROPERTY.

REQUEST FOR ADMISSION NO. 33:

Admit that YOU violated the FORMOSA JOINT VENTURE AGREEMENT by not first getting the agreement of the members of the FORMOSA LLC prior to entering into any loan to be secured on the FORMOSA PROPERTY.

REQUEST FOR ADMISSION NO. 41:

Admit that HAGGIN abandoned his obligations under the FORMOSA JOINT VENTURE AGREEMENT.

REQUEST FOR ADMISSION NO. 42:

Admit that ELIM abandoned its obligations under the FORMOSA JOINT VENTURE AGREEMENT.

REQUEST FOR ADMISSION NO. 48:

Admit that YOU failed to provide to DR. LUBIT in compliance with Corporations Code § 17704.10 the documents and information required to be maintained pursuant to Corporations Code § 17701.13(d) for the FORMOSA LLC after DR. LUBIT requested the provision of such documents and information.

REQUEST FOR ADMISSION NO. 49:

Admit that YOU wrongfully took money due to FORMOSA LLC for YOURself without the permission of the members of the FORMOSA LLC.

REQUEST FOR ADMISSION NO. 51:

Admit that YOU breached YOUR fiduciary duties to the FORMOSA LLC.

REQUEST FOR ADMISSION NO. 59:

Admit that, on or about September 9, 2014, DR. LUBIT, FMB DEVELOPMENT, ELIM, and HAGGIN entered into the ROMAINE JOINT VENTURE AGREEMENT for the "purchase, new construction and sale of the" ROMAINE PROPERTY and the formation of the ROMAINE LLC.

REQUEST FOR ADMISSION NO. 70:

Admit that, in violation of the ROMAINE JOINT VENTURE AGREEMENT, on or about September 15, 2014, YOU had a grant deed recorded on the ROMAINE PROPERTY granting the ROMAINE PROPERTY to FMB DEVELOPMENT instead of to the ROMAINE LLC.

REQUEST FOR ADMISSION NO. 77:

Admit that $17,994,000 in loans are presently secured on the ROMAINE PROPERTY.

REQUEST FOR ADMISSION NO. 78:

Admit that the fair market value of the ROMAINE PROPERTY is less than the total of the loans secured on the ROMAINE PROPERTY.

REQUEST FOR ADMISSION NO. 87:

Admit that HAGGIN abandoned his obligations under the ROMAINE JOINT VENTURE AGREEMENT.

REQUEST FOR ADMISSION NO. 94:

Admit that YOU failed to provide to DR. LUBIT in compliance with Corporations Code § 17704.10 the documents and information required to be maintained pursuant to Corporations Code § 17701.13(d) for the ROMAINE LLC after DR. LUBIT requested the provision of such documents and information.

REQUEST FOR ADMISSION NO. 95:

Admit that YOU wrongfully took money due to ROMAINE LLC for YOURself without the permission of the members of the ROMAINE LLC.

REQUEST FOR ADMISSION NO. 99:

Admit that KENIG is YOUR alter ego.

After Claimant rested, Respondents made a Motion for Judgment.

Ruling: Denied.

APPLICABLE LAW

California Code of Civil Procedure Section 2023.010 reads, “Misuses of the discovery process include . . . (d) Failing to respond or to submit to an authorized method of discovery.”

California Code of Civil Procedure Section 2033.280 reads, “If a party to whom requests for admission are directed fails to serve a timely response . . . (b) (b) The requesting party may move for an order that the genuineness of any documents and the truth of any matters specified in the requests be deemed admitted, as well as for a monetary sanction.”

California Code of Civil Procedure Section 1282.2 provides, “Unless the arbitration agreement otherwise provides, or unless the parties to the arbitration otherwise provide by an agreement which is not contrary to the arbitration agreement as made or as modified by all the parties thereto:”

“(c) The neutral arbitrator shall preside at the hearing, shall rule on the admission and exclusion of evidence and on questions of hearing procedure and shall exercise all powers relating to the conduct of the hearing.”

“(d) The parties to the arbitration are entitled to be heard, to present evidence and to cross-examine witnesses appearing at the hearing, but rules of evidence and rules of judicial procedure need not be observed. On request of any party to the arbitration, the testimony of witnesses shall be given under oath.”

The essential elements to be pleaded in an action for breach of contract are (i) “the existence of a contract;” (ii) “plaintiff’s performance of the contract or excuse for non-performance;” (iii) “defendant’s breach of the contract;” and (iv) “the resulting damage to the plaintiff.” Lortz v. Connell (1969) 273 Cal. App. 2d 286, 290. See also CACI 300, 303. The Claimant must prove that he/she has fulfilled his/her obligations and complied with all conditions and agreements of the contract that he/she is required to perform. Pry Crop. Of America v. Leach (1960) 177 Cal. App. 2d 632, 639-640.

A breach is defined as defendant's unjustified or unexcused failure to perform. CACI 300, 303. The plaintiff must plead the facts constituting the breach in unequivocal language. Poirier v. Gravel (1891) 88 Cal. 79, 82. Breach can be the result of (i) the defendant's specific acts or conduct (Wise v. Southern Pac. Co., (1963) 223 Cal. App. 2d 50, 60, disapproved on other grounds, Applied Equip. Corp. v. Litton Saudi Arabia, Ltd. (1994) 7 Cal. 4th 503, 510); (ii) the defendant's negligent performance (L.B. Lab. Inc. V. Mitchell (1952) 39 Cal. 2d 56, 60); or (iii) the defendant's failure to act or perform (CACI 300, 303).

Any breach, total or partial, which causes a measurable injury, gives the injured party a right to compensatory damages. Borgonovo v. Henderson (1960) 182 Cal. App. 2d 220, 231.

To prevail on any contract claim, plaintiff must first prove that it "did all, or substantially all, of the significant things that the contract required it to do." CACI – Breach of Contract – Essential Factual Elements and see Richman v. Hartley (2014) 224 Cal.App.4th 1182, 1186.

An essential element in the creation of a contract is the presence of consideration. (Lee v. Joseph (1968) 267 Cal.App.2d 30, 34 ["a purported obligation unsupported by consideration is no obligation at all and constitutes but a sham obligation"].)

Civil Code § 1550 (4) requires "sufficient cause or consideration" as one of the four elements of a contract. The absence of consideration is always a defense to an action brought by one of the original contracting parties. Consideration for a promise is an act or a return promise that is bargained for and given in exchange for the promise. (Simmons v. California Institute of Technology (1949) 34 Cal.2d 264, 272.)

Consideration can be found either in benefit to the promisor or in detriment to the promisee; both benefit and detriment are not required. (Civil Code § 1605; Steiner v. Thexton (2010) 48 Cal.4th 411, 421.) The fact that the promisee obtained an incidental benefit does not invalidate consideration received by the promisor. If the promisor is already entitled to the benefit or already obligated to suffer the prejudice, neither will suffice as consideration. (House v. Lala (1963) 214 Cal.App.2d 238, 243.) A promise that may, by its terms, be performed without detriment to the promisee or benefit to the promisor is insufficient as consideration. (Cooperative Dairymen's League v. Hansen (1937) 23 Cal.App.2d 493, 496.)

The problem of consideration applies only to executory contracts. After a contract is fully executed on both sides, it becomes a closed incident and the question of consideration becomes immaterial. Any arrangement that is mutually agreeable to both parties to a valid contract and that has been wholly executed to their original satisfaction leaves no question of consideration for adjudication. (Schiffman v. Atlas Mill Supply Inc. (1961) 193 Cal.App.2d 847, 853.) On the other hand, while consideration is a required element for the formation of a contract, it is also generally necessary for the enforcement of a contract discharging a contract. (Coe v. Farmers New World Life Ins. Co. (1989) 209 Cal.App.3d 600.

Additionally, the consideration of a contract must be lawful, which is intended to prevent a guilty party from reaping the benefit of wrongful conduct or to protect the public from the future consequences of an illegal contract. (Civ. Code § 1607; Kyablue v. Watkins (2012) 210 Cal.App.4th 1288, 1292-1293.)

Civil Code Section 1439 provides: "Before any party to an obligation can require another party to perform any act under it, he must fulfill all conditions precedent thereto imposed upon himself; and must be able and offer to fulfill all conditions concurrent so imposed upon him on the like fulfillment by the other party, except as provided by the next section."

Implied Covenant of Good Faith and Fair Dealing: Every contract imposes upon each party a duty of good faith and fair dealing in the performance of the contract such that neither party shall do anything which will have the effect of destroying or injuring the right of the other party to receive the fruits of the contract. (Waller v. Truck Ins. Exchange, Inc. (1995) 11 Cal.4th 1, 36.) The implied covenant "is designed to effectuate the intentions and reasonable expectations of parties reflected by mutual promises within the contract." (Nein v. HostPro, Inc. (2009) 174 Cal.App.4th 833, 852.) The covenant of good faith and fair dealing mandates that neither party do anything which will deprive the other of the benefits of the agreement. (Wolf v. Walt Disney Pictures and Television (2008) 162 Cal.App.4th 1107, 1120.) In addition, the covenant implies a promise to give any necessary cooperation to accomplish the purpose of the contract. (Pasadena Live, LLC v. City of Pasadena (2004) 114 Cal.App.4th 1089, 1093.) In order to establish a breach of the covenant of good faith and fair dealing, a plaintiff must show: (1) the parties entered into a contract; (2) the plaintiff fulfilled his obligations under the contract; (3) any conditions precedent to the defendant's performance occurred; (4) the defendant unfairly interfered with the plaintiff's rights to receive the benefits of the contract; and (5) the plaintiff was harmed by the defendant's conduct.

First, the prerequisite for any action for breach of the implied covenant of good faith and fair dealing is the existence of a contractual relationship between the parties, since the covenant is an implied term in the contract. (Smith v. City and County of San Francisco (1990) 225 Cal.App.3d 38, 49.) The precise duties imposed by the covenant depend on the nature and purposes of the contract and its provisions (Foothill Properties v. Lyon/Copley Corona Associates (1996) 46 Cal.App.4th 1542, 1550-1552), and on the nature of the act to be performed. (Locke v. Warner Bros., Inc. (1997) 57 Cal.App.4th 354, 363-364). Absent a contractual relationship between appellant and respondent here, no further discussion of the implied covenant of good faith and fair dealing is required.

Second, a breach of the implied covenant of good faith and fair dealing involves something beyond breach of the contractual duty itself and it has been held that bad faith implies unfair dealing rather than mistaken judgment. Thus, allegations which assert such a claim must show that the conduct of the defendant, whether or not it also constitutes a breach of a consensual contract term, demonstrates a failure or refusal to discharge contractual responsibilities, prompted not by an honest mistake, bad judgment or negligence but rather by a conscious and deliberate act, which unfairly frustrates the agreed common purposes and disappoints the reasonable expectations of the other party thereby depriving that party of the benefits of the agreement. Just what conduct will meet these criteria must be determined on a case-by-case basis and will depend on the contractual purposes and reasonably justified expectations of the parties. (Tilbury Constructors, Inc. v. State Compensation Ins. Fund (2006) 137 Cal.App.4th 466, 474, citing Chateau Chamberay Homeowners Assn. v. Associated Internat. Ins. Co. (2001) 90 Cal.App.4th 335, 345-346.)

"If the allegations do not go beyond the statement of a mere contract breach and, relying on the same alleged acts, simply seek the same damages or other relief already claimed in a companion contract cause of action, they may be disregarded as superfluous as no additional claim is actually stated. Thus, absent those limited cases where a breach of a consensual contract term is not claimed or alleged, the only justification for asserting a separate cause of action for breach of the implied covenant is to obtain a tort recovery." (Careau & Co. v. Security Pacific Credit, Inc. (1990) 222 Cal.App.3d 1371, 1394-1395.)

The elements of a cause of action for breach of fiduciary duty are: (1) existence of a fiduciary duty; (2) breach of the fiduciary duty; and (3) damages proximately caused by the breach. (Gutierrez v. Girardi (2011) 194 Cal.App.4th 925, 932; citing Stanley v. Richmond (1995) 35 Cal.App.4th 1070, 1086.)

To prevail on a cause of action for breach of fiduciary duty, a plaintiff must establish the existence of a fiduciary duty owed to that plaintiff, a breach of that duty and resulting damage. (Pellegrini v. Weiss (2008) 165 Cal.App.4th 515, 524.) A fiduciary duty is founded upon a special relationship imposed by law or under circumstances in which “confidence is reposed by persons in the integrity of others” who voluntarily accept the confidence. (Tri-Growth Centre City, Ltd. v. Silldorf, Burdman, Duignan & Eisenberg (1989) 216 Cal.App.3d 1139, 1150.)

California Corporation’s Code Section 17706.02 provides, “A person is dissociated as a member from a limited liability company when any of the following occur: . . . (e) (e) On application by the limited liability company, the person is expelled as a member by judicial order because the person has done any of the following:”

“(1) Engaged, or is engaging, in wrongful conduct that has adversely and materially affected, or will adversely and materially affect, the limited liability company’s activities.”

“(2) Willfully or persistently committed, or is willfully and persistently committing, a material breach of the operating agreement or the person’s duties or obligations under Section 17704.09.”

“(3) Engaged, or is engaging, in conduct relating to the limited liability company’s activities that makes it not reasonably practicable to carry on the activities with the person as a member.”

Accounting is an independent cause of action in equity. (Teselle v. McLoughlin (2009) 173 Cal.App.4th 156, 180.) A cause of action seeking an accounting may be maintained when (1) a relationship exists between a plaintiff and defendant that requires an accounting, and (2) some balance is due to the plaintiff that can only be ascertained by an accounting. (Id., at p. 179, citing Brea v. McGlashan (1934) 3 Cal.App.2d 454, 460.) No fiduciary relationship is required. (Teselle, supra, 173 Cal.App.4th at p. 179.)

An “accounting” is an equitable proceeding which is proper where there is an unliquidated and unascertained amount owing that cannot be determined without an examination of the debits and credits on the books to determine what is due and owing. (Green Valley Landowners Association v. City of Vallejo (2015) 241 Cal.App.4th 425, 442-443.) Equitable principles govern, and the plaintiff must show the legal remedy is inadequate. Generally, an underlying fiduciary relationship, such as a partnership, will support an accounting, but the action does not lie merely because the books and records are complex. Some underlying misconduct on the part of the defendant must be shown to invoke the right to this equitable remedy. (Prakashpalan v. Engstrom, Lipscomb & Lack (2014) 223 Cal.App.4th 1105, 1136–1137 [quotations/citations omitted].)

Indemnity refers to “the obligation resting on one party to make good a loss or damage another party has incurred.” (Rossmoor Sanitation, Inc. v. Pylon, Inc. (1975) 13 Cal.3d 622, 628.) Historically, the obligation of indemnity took three forms: (1) indemnity expressly provided for by contract (express indemnity); (2) indemnity implied from a contract not specifically mentioning indemnity (implied contractual indemnity); and (3) indemnity arising from the equities of particular circumstances (traditional equitable indemnity). These categories of indemnity were once regarded as distinct, but now there are only two basic types of indemnity: express indemnity and equitable indemnity. Implied contractual indemnity is viewed as a form of equitable indemnity. Prince v. Pacific Gas & Electric Co. (2009) 45 Cal.4th 1151, 1157.

The essential elements of a cause of action for implied contractual indemnity (i.e., equitable indemnity) are: (1) the indemnitor’s breach of contractual duty owed to the indemnitee; (2) the absence of any participation by the indemnitee in the wrong; and (3) foreseeable damages as a result. (West v. Superior Court (1994) 27 Cal.App.4th 1625, 1633.)

Although traditional equitable indemnity once operated to shift the entire loss upon the one bound to indemnify, the doctrine is now subject to allocation of fault principles and comparative equitable apportionment of loss.

Traditional equitable indemnity requires no contractual relationship between an indemnitor and an indemnitee. Such indemnity "is premised on a joint legal obligation to another for damages." (Western Steamship Lines, Inc. v. San Pedro Peninsula Hospital (1994) 8 Cal.4th 100, 114.) Although traditional equitable indemnity once operated to shift the entire loss upon the one bound to indemnify, the doctrine is now subject to allocation of fault principles and comparative equitable apportionment of loss. (Bay Development, supra, 50 Cal.3d at pp. 1029–1030, fn. 10; American Motorcycle Assn. v. Superior Court (1978) 20 Cal.3d 578, 591–598.) A key restrictive feature of traditional equitable indemnity is that, on matters of substantive law, the doctrine is "wholly derivative and subject to whatever immunities or other limitations on liability would otherwise be available" against the injured party. (Western Steamship, supra, 8 Cal.4th at p. 115; Children's Hospital v. Sedgwick (1996) 45 Cal.App.4th 1780, 1787 ["As against the indemnitee, the indemnitor may invoke any substantive defense to liability that is available against the injured party."].) This rule "is often expressed in the shorthand phrase '... there can be no indemnity without liability.' " (Children's Hospital, supra, 45 Cal.App.4th at p. 1787.)

Implied contractual indemnity is a type of equitable indemnity in which equitable considerations are brought into effect by contractual language not specifically dealing with indemnification. (E.L. White v. Huntington Beach (1978) 21 Cal.3d 497, 507.) This type of indemnity is based on the premise that a contractual obligation to perform carries with it an implied agreement to indemnify against liability to a third party arising from failure to perform. (Bay Development, Ltd. v. Superior Court (1990) 50 Cal.3d 1012, 1032.)

"Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion are: (1) the plaintiff's ownership or right to possession of the property at the time of the conversion; (2) the defendant's conversion by a wrongful act or disposition of property rights; and (3) damages. It is not necessary that there be a manual taking of the property; it is only necessary to show an assumption of control or ownership over the property, or that the alleged converter has applied the property to his own use." (Farmers Ins. Exchange v. Zerin (1997) 53 Cal.App.4th 445, 451-452; see also Prakashpalan v. Engstrom, Lipscomb and Lack (2014) 223 Cal.App.4th 1105, 1135.)

Money can be the subject of an action for conversion if a specific sum capable of identification is involved. (Weiss v. Marcus (1975) 51 Cal.App.3d 590, 599.)

To succeed on a negligence claim, a plaintiff must prove the following elements: (1) “a legal duty to use due care”; (2) “the breach of such legal duty”; and (3) “the breach was the proximate or legal cause of injury.” Orey v. Superior Court, (2013) 213 Cal.App.4th 1241, 1255; citing, Ladd v. County of San Mate, (1996) 12 Cal.4th 913, 917. The general standard of care is “that of a reasonably prudent person under like circumstances.” Id.; citing Ramirez v. Plough, Inc., (1993) 6 Cal.4th 539, 546.

“A cause of action for money had and received is stated if it is alleged [that]the defendant is indebted to the plaintiff in a certain sum for money had and received by the defendant for the use of the plaintiff.” . . . The claim is viable “wherever one person has received money which belongs to another, and which in equity and good conscience should be paid over to the latter.” As juries are instructed in CACI No. 370, the plaintiff must prove that the defendant received money ‘intended to be used for the benefit of [the plaintiff],’ that the money was not used for the plaintiff’s benefit, and that the defendant has not given the money to the plaintiff.” (Avidor v. Sutter’s Place, Inc. (2013) 212 Cal.App.4th1439, 1454.

"Business and Professions Code 17200" refers to the California Unfair Competition Law (UCL), which prohibits any unlawful, unfair, or fraudulent business act or practice.

California Civil Code, Section 3294 reads as follows: “In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant. As used in this section, the following definitions shall apply:

(1) “Malice” means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others.

(2) “Oppression” means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights.

(3) “Fraud” means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury.”

There are five elements of negligent misrepresentation: (1) “misrepresentation of a past or existing material fact;” (2) “without reasonable grounds for believing it to be true;” (3) “with intent to induce another’s reliance on the fact misrepresented;” (4) “ignorance of the truth and justifiable reliance thereon by the party to whom the misrepresentation was directed;” and (5) “resulting damages.” Fox v. Pollack, (1986) 181 Cal.App.3d 954, 962. (See, 4 Witkin, Summary of Cal. Law (8th ed. 1974) Torts, §§ 480-482.)

In California, two conditions must be met before the alter ego doctrine will be invoked. First, there must be a unity of interest and ownership between the entity and the owner that the separate personalities of the entity and the owner do not really exist. Second, there must be an inequitable result if the acts in question are treated as those of the entity alone. Among the factors to be considered in applying the doctrine are commingling of funds, inadequate capitalization, disregard of corporate formalities, use of the same offices and employees and identical directors and officers. No one characteristic governs, but the courts must look at all the circumstances to determine whether the doctrine should apply. See, Sonora Diamond, supra. p. 538. See also, Greenspan v. LADT, LLC (2018) 191 Cal.App.4th 486, 513.

The purpose of the Alter Ego doctrine is to bypass the corporate entity for the sole purpose of avoiding injustice. Its “essence... is that justice be done [,] ... [and t]hus the corporate form will be disregarded only in narrowly defined circumstances and only when the ends of justice so require.” Mesler v. Bragg Management Co. (1985) 39 Cal.3d 290, 300-301.

Equitable doctrines cannot be used to deny a legal right to a judgment where a legal entitlement exists. Equitable powers must be exercised pursuant to the principle that “equity follows the law.” (Johnson v. Tago, Inc. (1986) 188 Cal.App.3d 507, 518.) A party cannot gain new substantive rights “under the guise of doing equity” (Wal-Noon Corp. v. Hill (1975) 45 Cal.App.3d 605, 613), because by definition it would be inequitable to imply an obligation different from the parties’ agreement. (Hedging Concepts, Inc. v. First Alliance Mortgage Co. (1996) 41 Cal.App.4th 1410, 1419.) “One who violates his contract cannot have recourse to equity to support that very violation.” (Gavina v. Smith (1944) 25 Cal.2d 501, 506.) “The reason for the rule is simply that where the parties have freely, fairly, and voluntarily bargained for certain benefits in exchange for undertaking certain obligations, it would be inequitable to imply a different liability....” (Wal-Noon Corp. v. Hill, supra, 45 Cal.App.3d at p. 613.)

“Declaratory relief is available ‘in cases of actual controversy relating to the legal rights and duties of the respective parties.’” Coronado Cays Homeowners Assn. v. City of Coronado, 193 Cal. App. 4th 602, 607 (2011) (Code Civ. Proc., § 1060).

A party seeking to compel arbitration bears the burden of proving the existence of a valid arbitration agreement. Engalla v. Permanente Medical Group, Inc. (1997) 15 Cal.4th 951, 972; Young v. Horizon West, Inc. (2013) 220 Cal.App.4th 1122, 1128. Courts recognize that the right to pursue claims in a judicial forum before a jury is a substantial right and one not lightly deemed waived, and this is true despite a general policy favoring arbitration; that policy falls when there is no agreement to do so. Lawrence v. Walzer & Gabrielson (1989) 207 Cal.App.3d 1501, 1507.

“It has been the policy of the courts to promote the mitigation of damages. The doctrine applies in tort, willful as well as negligent. A plaintiff cannot be compensated for damages which he could have avoided by reasonable effort or expenditures.” (Green v. Smith (1968) 261 Cal.App.2d 392, 396. It is perhaps more accurate to say that the wrongdoer is not required to compensate the injured party for damages which are avoidable by reasonable effort on the latter’s part.” (Green, supra, 261Cal.App.2d at p. 396, internal citations omitted.) “The correct rule is that an injured person must use reasonable diligence in caring for his injuries. What is reasonable diligence depends upon all the facts and circumstances of each case. There is no hard and fast rule that the injured person must seek medical care of a particular type. Self-care may be reasonable under the circumstances, and the jury should be so instructed where that factor is relevant.” (Christiansen v. Hollings (1941) 44 Cal.App.2d 332, 346.

Corporations Code Section 17701.13 reads, “(a) A limited liability company shall designate and continuously maintain in this state both of the following: (1) An office, which need not be a place of its activity in this state and (2) An agent for service of process.”

Corporations Code Section 17702.09(A) reads, “Every limited liability company and every foreign limited liability company registered to transact intrastate business in this state shall deliver to the Secretary of State for filing within 90 days after the filing of its original articles of organization or registering to transact intrastate business and biennially thereafter during the applicable filing period, on a form prescribed by the Secretary of State, a statement of information . . .”

Corporations Code Section 17704.10 provides for the relations of members to each other and to the limited liability company.

“[W]hile the burden of proving the extent of injury . . . actually incurred as a result of a defendant’s tortious conduct lies with the plaintiff, the burden of proving the plaintiff failed to act reasonably in limiting his or her consequential damages - that is, failed to mitigate damages - is on the defendant . . . .” (Jackson v. Yarbray (2009) 179 Cal.App.4th 75, 97.

“After a party has completed his/her presentation of evidence in a trial by the court, the other party, without waiving his/her right to offer evidence in support of his defense or in rebuttal in the event the motion is not granted, may move for a judgment.” (California Code of Civil Procedure, Section 631.8a)

In cases involving private arbitration, "[t]he scope of arbitration is ... a matter of agreement between the parties" (Ericksen, Arbuthnot, McCarthy, Kearney & Walsh, Inc. v. 100 Oak Street (1983) 35 Cal. 3d 312, 323.

"The arbitrators are not bound to award on principles of dry law but may decide on principles of equity and good conscience, and make their award ex aequo et bono [according to what is just and good]." (Muldrow v. Norris (1852) 2 Cal. 74, 77.

Civil Code section 3287 provides for the recovery of prejudgment interest on damages. “The purpose of prejudgment interest is to compensate plaintiff for loss of use of his or her property. [Citation.]” (Segura v. McBride (1992) 5 Cal.App.4th 1028, 1041.) Section 3287, subdivision (a), addresses the award of interest on liquidated claims. One who is “entitled to recover damages certain, or capable of being made certain by calculation ... is entitled also to recover interest thereon” from the time the right to recover arises.

In People v. Sanchez (2016) 63 Cal.4th 665, 685, the Court held, “Once we recognize that the jury must consider expert basis testimony for its truth in order to evaluate the expert's opinion, hearsay and confrontation problems cannot be avoided by giving a limiting instruction that such testimony should not be considered for its truth. If an expert testifies to case-specific out-of-court statements to explain the bases for his opinion, those statements are necessarily considered by the jury for their truth, thus rendering them hearsay. Like any other hearsay evidence, it must be properly admitted through an applicable hearsay exception. Alternatively, the evidence can be admitted through an appropriate witness and the expert may assume its truth in a properly worded hypothetical question in the traditional manner. In the present case, when the gang expert testified to case-specific facts based upon out-of-court statements and asserted those facts were true because he relied upon their truth in forming his opinion, he was reciting hearsay. Ordinarily, an improper admission of hearsay would constitute statutory error under the Evidence Code. Under Crawford, however, if that hearsay was testimonial and Crawford 's exceptions did not apply, defendant should have been given the opportunity to cross-examine the declarant or the evidence should have been excluded. Improper admission of such prosecution evidence would also be an error of federal constitutional magnitude."

In the case of Electronic Funds Solutions v. Murphy (2005) 134 Cal.App.4th 1161, 1181, the court held, "Lost profits for an unestablished business are recoverable if based on reasonably reliable evidence. "`[W]here the operation of an established business is prevented or interrupted, as by a tort or breach of contract or warranty, damages for the loss of prospective profits that otherwise might have been made from its operation are generally recoverable for the reason that their occurrence and extent may be ascertained with reasonable certainty from the past volume of business and other provable data relevant to the probable future sales. [Citations.] On the other hand, where the operation of an unestablished business is prevented or interrupted, damages for prospective profits that might otherwise have been made from its operation are not recoverable for the reason that their occurrence is uncertain, contingent and speculative. [Citations.] . . . But although generally objectionable for the reason that their estimation is conjectural and speculative, anticipated profits dependent upon future events are allowed where their nature and occurrence can be shown by evidence of reasonable reliability."

Civil Code Section 3301 reads, “No damages can be recovered for a breach of contract which are not clearly ascertainable in both their nature and origin.”

ANALYSIS

Joel Haggin became aware of the projects to purchase and develop the real properties located at 1159 Formosa Avenue, West Hollywood, California and 7760 Romaine Street, West Hollywood, California, from Ilan Kenig. In the past, Mr. Haggin had loaned money to Mr. Kenig.

Claimant was approached by his friend Joel Haggin to invest in those projects which became 1159 N. Formosa, LLC and 7760 Romaine, LLC.

As part of the investment, Joel Haggin represented to Claimant that he would receive a management fee of 20% because he would “oversee the money” and the development of the properties.

Claimant invested “approximately” $780,000.00 into the 2 projects.

Joel Haggin is the owner and President of Elim Management Inc., an Oregon corporation that shows its principal place of business in Portland, Oregon. The corporation was administratively dissolved on March 21, 2014 and reinstated on November 7, 2024, one day prior to the first day of Arbitration. (Exhibit 141)

On May 20, 2014, FMB Development, LLC, Elim Management, Inc., Roy Lubit, and Joel Haggin entered into an agreement entitled Joint Venture Agreement for Real Estate Investment regarding the property located at 1159 N. Formosa. (Exhibit 1) The agreement provided:

1. All parties shall become members of the LLC.
2. FMB will be the managing member of the LLC.

3. The responsibility of both FMB and Elim in the LLC will be:

   a. Manage the property purchase (FMB only).
   b. Complete loan process with a lender for 65% Loan to Value (FMB only).
   c. Manage all of the project development.
   d. Manage architectural and design tasks.
   e. Manage plans preparation.
   f. Submit for city approval.
   g. Hire contractors and subcontractors.
   h. Manage the day-to-day activity of the LLC.
   i. Oversee the budget until property is completed and sold.
   j. Oversee and supervise the construction in the field until property is completed and sold.
   k. Manage all books and records.
   l. Manage the sale of the property and distribute profit to all partners of the LLC.

4. The purchase price of the property is $1,200,000.

5. The new construction of 4,200 square feet is approximately $1,520,000.

6. The parties shall contribute the following and will own percentage ownership shares in the LLC:

Equity Partner(s)	40%
FMB Development, LLC re Loans	40%
Elim Management, LLC	20%

7. All property of the joint venture shall be held 100% in the name of the LLC.

8. In the event that the parties or other parties will contribute some or all of the equity required to the LLC, the interest of the equity partners will be divided among the equity partners proportionately to their respective equity cash investment.

9. All major decisions affecting the sale of the property will be made by all partners of the LLC.

The agreement regarding the Formosa property was signed by all parties. Ilan Kenig executed the agreement on behalf of Respondent FMB Development, LLC.

On September 9, 2014, FMB Development, LLC, Joel Haggin or an entity on his behalf, together hereinafter Managing Members, Elim Management, Inc. and Roy Lubit as the Equity Partners entered into a Joint Venture Agreement for Real Estate Investment regarding the property located at 7760 Romaine. (Exhibit 2) The agreement provided:

1. All parties shall become members of the LLC.
2. FMB and Elim and/or Joel Haggin will be the managing member of the LLC.
3. The responsibility of both FMB and Elim in the LLC will be:
    a. Manage the property purchase (FMB only).
    b. Complete loan process with a lender for 65% Loan to Value (FMB only).
    c. Manage all of the project development.
    d. Manage architectural and design tasks.
    e. Manage plans preparation.
    f. Submit for city approval.
    g. Hire contractors and subcontractors.
    h. Manage the day-to-day activity of the LLC.
    i. Oversee the budget until property is completed and sold.
    j. Oversee and supervise the construction in the field until property is completed and sold.
    k. Manage all books and records.
    l. Manage the sale of the property and distribute profit to all partners of the LLC.

4. The equity partners will make a minimum contribution required to complete the purchase and planning phase of the venture in the total amount of $520,000.

5. The purchase price of the property is $1,450,000. The new construction of 9,000 square feet is approximately $2,150,000 including $80,000 estimated cost of the entitlement process.

6. The parties shall contribute the following and will own percentage ownership shares in the LLC:

Equity Partner(s)	50%
Managing Members	50%

7. All property of the joint venture shall be held 100% in the name of the LLC.

8. In the event that the parties or other parties will contribute some or all of the equity required to the LLC the interest of the equity partners will be divided among the equity partners proportionately to their respective equity cash investment.

9. All major decisions affecting the sale of the property will be made by all partners of the LLC.

There is an issue whether all parties signed this agreement. However, the Order on the Motion to deem the Requests for Admissions as Admitted provides that the following Requests are admitted by all Respondents:

REQUEST FOR ADMISSION NO. 59:

Admit that, on or about May 20, 2014, DR. LUBIT, FMB DEVELOPMENT, ELIM, and HAGGIN entered into the ROMAINE JOINT VENTURE AGREEMENT for the "purchase, new construction and sale of the" ROMAINE PROPERTY and the formation of the ROMAINE LLC.

In contravention to the terms of both agreements, wherein it states, "All property of the joint venture shall be held 100% in the name of the LLC" and the responsibility to manage the LLC was given to FMB Development, LLC and Elim Management, Inc., which included to “Manage the day-to-day activity of the LLC.” the following occurred:

1. On September 12, 2014, a Grant Deed was recorded wherein title to the Formosa property was taken in the name of FMB Development, Inc., a California Limited Liability Company. (Exhibit 3)

2. On September 12, 2014, a Deed of Trust in the amount of $4,000,000 was recorded in favor of Partners Capital Solutions Fund, LP against the Formosa property. Said Deed of Trust was executed by Respondent Ilan Kenig on behalf of Respondent FMB Development, LLC. (Exhibit 4)

3. On September 17, 2014, a Grant Deed was recorded wherein title to the Romaine property was taken in the name of FMB Development LLC, a California Limited Liability Company. (Exhibit 5)

This constituted a breach of the written agreements and a breach of the fiduciary duties owed by the managers of the projects to Claimant.

Further, commencing as of October 15, 2014, Mr. Haggin knew there were problems with Mr. Kenig. This is shown by the following email he sent to Dr. Lubit which stated, “I FINALLY got SOME of the loan docs, from Mary - a nice lady working for Ilan. For some reason she has been working on this for a few days now. In any event, 2 things I immediately notice: a) there is no ‘2 points’ fee, and we WERE charged 2 points on each loan that were paid to Ilan's FMB Company, and b) this is a master note for several properties, which would mean that even if Ilan goes into trouble on another project, the lender would be able to recover from our properties. This also seems to me very, very, wrong. One more thing - Ilan represented to me that the loan is 8%, I now see it's 9.5%.” (Exhibit I)

Yet, he took no action. Mr. Haggin never checked the public records to determine that title was in the name of the LLC. Mr. Haggin never checked the public records to determine if liens and encumbrances were being put on the properties. Mr. Haggin never filed an action against Ilan Kenig or his company FMB Development, LLC to protect the interest of Claimant. Mr. Haggin never shared responsibility with Mr. Kenig over the checking account for the LLCs.

The evidence presented during the Arbitration is supported by the failure of the Respondents to respond to discovery. Specifically, the Arbitrator granted the Claimant's Motion to Deem the Requests for Admission as Admitted which included the following:

REQUEST FOR ADMISSION NO. 29:

Admit that $14,168,000 in loans are presently secured on the FORMOSA PROPERTY.

REQUEST FOR ADMISSION NO. 77:

Admit that $17,994,000 in loans are presently secured on the ROMAINE PROPERTY.

With these loans secured by the subject properties, there was no equity in the LLCs.

Claimant testified at the Arbitration that Mr. Haggin promised him that he would be at the project every day. This was not true because Mr. Haggin left Los Angeles.

Mr. Haggin testified at the Arbitration that he wanted to get involved in real estate as a new career; at the time of these projects, he was not experienced in handling the management of the LLCs.

Respondent Joel Haggin called Eli Shaashua as a witness during the Arbitration. He stated that he told Mr. Haggin that the investors are not adequately protected. This conclusion was supported by the opinions of his girlfriend, an attorney who reviewed the joint venture agreements.

Further, Mr. Shaashua's testified that his understanding of the deal made between Mr. Kenig, Mr. Lubit and Mr. Haggin was that Mr. Haggin would be an active investor. As part of that he thought that Mr. Haggin would oversee the project as an auditor.

On cross-examination, Mr. Shaashua's expressed an opinion that Mr. Haggin did not have enough experience in real estate to manage the projects.

Respondent FMB Development, LLC was designated as the managing member of the LLC with responsibilities to file and serve all documents required by the Corporations Code.

As part of the Arbitrator's ruling on the Claimant's Motion to Deem Requests for Admission as Admitted, the following Requests were deemed admitted:

REQUEST FOR ADMISSION NO. 99:
Admit that KENIG is YOUR alter ego.

REQUEST FOR ADMISSION NO. 100:
Admit that FMB CONSULTING is YOUR alter ego.

REQUEST FOR ADMISSION NO. 82:
Admit that ELIM is YOUR alter ego.

Therefore, Respondents FMB Development, LLC and FMB Consulting, LLC are the alter egos of Respondent Ilan Kenig, and Respondent Elim Management, Inc. is the alter ego of Respondent Joel Haggin.

Respondents Ilan Kenig and FMB Development, LLC are liable for the damages sustained by Claimant on the following theories:

1. Breach of Written Agreement

2. Breach of the Implied Covenant of Good Faith and Fair Dealing
3. Breach of Fiduciary Duties
4. Conversion
5. Money Had and Received
6. Violation of Business & Professions Code Section 17200
7. Violation of Corporations Code Section 17701.13, 17702.09(a), and 17702.09(d)
8. Violation of Corporations Code Section 17701.13
9. Violation of Corporations Code Section 17704.10 and 17701.13(d)

Respondents Joel Haggin and Elim Management, Inc. are liable for the damages sustained by Claimant on the following theories:

1. Breach of Written Agreement
2. Breach of the Implied Covenant of Good Faith and Fair Dealing
3. Breach of Fiduciary Duties

Instead of performing his duties and responsibilities as a manager of each of the LLCs, on June 7, 2021, Elim Management, Inc., Joel Haggin, FMB Development, LLC, 7760 Romaine, LLC, 1159 Formosa, LLC, and Ilan Kenig entered into a written agreement. (Exhibit 118) Under the terms of the agreement, Elim Management, Inc. and Joel Haggin sold their interest in 7760 Romaine, LLC and 1159 Formosa, LLC to FMB Development, LLC for the sum of $330,000.

Claimant was relying upon Mr. Haggin to serve as a manager of the LLCs, but instead he abandoned those responsibilities.

As to the expert testimony on Claimant's damages, the Arbitrator rejects the claim as being too speculative.

As a result of the breaches committed by Respondents Joel Haggin, Elim Management, Inc., Ilan Kenig, FMB Development, LLC, and FMB Consulting, LLC Claimant was damaged in the sum of $780,000.00 plus interest on said sum from September 12, 2014 (the initial breach of the written agreements resulting from the recording of title in the name of Respondent FMB Development, LLC) to the date of this award computed at the daily rate of $213.69 per day for 3,763 days. The interest equals $804,115.47. The total amount of damage is $1,584,115.47 and these Respondents are jointly and severally liable for such damages.

As to Respondents Ilan Kenig, FMB Development, LLC, and FMB Consulting, LLC, they are further liable to Claimant for punitive damages in the amount of $1,500,000.00 based upon their conversion of Claimant's investment.

As to the defenses raised by Respondents Joel Haggin and Elim Management, Inc., the Arbitrator did not consider them because no Answering Statement was filed, and no pre-discovery notice of defenses was given to Claimant.

MOTION FOR ATTORNEYS' FEES AND COSTS

Claimant prevailed only as to Respondents Ilan Kenig and FMB Development, LLC for violation of Corporation Code Sections 17713.06(d) and 17704.10(g) which entitled Claimant to an award of attorneys' fees in the sum of $353,925.00 and costs in the sum of $46,259.79 against Respondents Ilan Kenig and FMB Development, LLC.

The request for an adjustment in the award of fees was denied.

AWARD

This Arbitrator finds in favor of Claimant DR. ROY LUBIT, MD PH.D., as an individual, and DR. ROY LUBIT, MD PH.D., derivatively on behalf of 1159 Formosa, LLC and derivatively on behalf of 7760 Romaine, LLC against Respondents FMB DEVELOPMENT, LLC; FMB CONSULTING, LLC; ILAN KENIG; ELIM MANAGEMENT, INC.; and JOEL HAGGIN in the sum of $1,584,115.47.

In addition, Respondents FMB DEVELOPMENT, LLC; FMB CONSULTING, LLC; ILAN KENIG; ELIM MANAGEMENT, INC.; and JOEL HAGGIN are jointly and severally responsible for the sanctions previously ordered by the Arbitrator in favor of Claimant DR. ROY LUBIT, MD PH.D., as an individual, and DR. ROY LUBIT, MD PH.D., derivatively on behalf of 1159 Formosa, LLC and derivatively on behalf of 7760 Romaine, LLC, in the sum of $4,500.00.

Further, this Arbitrator finds in favor of Claimant DR. ROY LUBIT, MD PH.D., as an individual, and DR. ROY LUBIT, MD PH.D., derivatively on behalf of 1159 Formosa, LLC and 7760 Romaine, LLC against Respondents FMB DEVELOPMENT, LLC; FMB CONSULTING, LLC: and ILAN KENIG for punitive damages in the sum of $1,500,000.00 for converting the assets of the 1159 Formosa LLC and the 7760 Romaine LLC.

In addition, Claimant DR. ROY LUBIT, MD PH.D. as an individual, and DR. ROY LUBIT, MD PH.D., derivatively on behalf of 1159 Formosa, LLC and 7760 Romaine, LLC is awarded attorneys' fees in the sum of $353,925.00 and costs in the sum of $46,259.79 against Respondents ILAN KENIG and FMB DEVELOPMENT, LLC.

Lastly, pursuant to Corporations Code Section 17706.02 (e), Respondent FMB DEVELOPMENT, LLC is removed as a member of 1159 Formosa, LLC and 7760 Romaine, LLC.

The Arbitrator has considered all evidence presented and all theories and arguments of counsel.

This Award is binding and is intended to address all issues in dispute even if not expressly discussed herein.

IT IS SO ORDERED,

Dated: February 25, 2025

Hon. Gerald Rosenberg, Arbitrator
Judge of the Superior Court (Ret.)

PROOF OF SERVICE

State of California
County of Los Angeles

I certify that I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1900 Avenue of the Stars, Suite 200, Los Angeles, California, 90067.

On February 25, 2025, I served the foregoing document described as the **FINAL ARBITRATION AWARD** on the interested parties in this action as follows:

SEE SERVICE LIST

☐ **BY ELECTRONIC SERVICE:** I caused the document(s) to be sent to the offices of the addresses via File & ServeXpress Electronic Service pursuant to the terms of the Case Management Order/Pre-Trial Order(s). The transmission was reported as complete and without error.

☒ **BY EMAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent from morgan@adrservices.com to the persons at the email addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐ **BY U.S. MAIL:** I caused such envelope with postage thereon to be placed in the United States mail in Los Angeles, California.

☐ **BY FACSIMILE:** I caused such to be faxed to the attorneys on February 25, 2025.

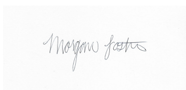
☐ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the attorneys on February 25, 2025.

☒ **STATE:** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ **FEDERAL:** I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

☐ **BY CERTIFIED MAIL:** I caused such envelope with postage thereon to be placed in the United States mail in Los Angeles, California.

Executed on February 25, 2025 in Los Angeles, California by



Morgan Foster

PROOF OF SERVICE

State of California
County of Los Angeles

I certify that I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1900 Avenue of the Stars, Suite 200, Los Angeles, California, 90067.

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☐ **BY EMAIL OR ELECTRONIC TRANSMISSION:** I caused a copy of the document(s) to be sent from krista@adrservices.com to the persons at the email addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☒ **BY U.S. MAIL:** I caused such envelope with postage thereon to be placed in the United States mail in Los Angeles, California.

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☒ **BY CERTIFIED MAIL:** I caused such envelope with postage thereon to be placed in the United States mail in Los Angeles, California.

Executed on February 25, 2025 in Los Angeles, California by

Krista Butenschoen

Krista Butenschoen

Date: Feb. 24, 2025

Service List

RE: ***LUBIT, et al. v. FMB DEVELOPMENT, LLC, et al.***

ADRS Case No. 23-6474-GSR

COUNSEL	REPRESENTING
Christopher Mass, Esq. GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP 12100 Wilshire Boulevard, Suite 300 Los Angeles, California 90025 cmass@gibbsgiden.com (310) 552-3400 **VIA EMAIL AND CERTIFIED MAIL**	Representing Claimant, Dr. Roy Lubit, MD PH.D., derivatively on behalf of 7760 Romaine, LLC, Dr. Roy Lubit, MD PH.D., derivatively on behalf of 1159 Formosa, LLC
Dominick Severance, Esq. SEVERANCE LAW, PC 2173 Salk Avenue, Suite 250 Carlsbad, California 92008 dominick@severancelaw.com (442) 287-0780 **VIA EMAIL AND CERTIFIED MAIL**	Representing Claimant, Dr. Roy Lubit, MD PH.D., derivatively on behalf of 7760 Romaine, LLC, Dr. Roy Lubit, MD PH.D., derivatively on behalf of 1159 Formosa, LLC
Ilan Kenig, In Propria Persona 5900 Wilshire Boulevard, Suite 2125 Los Angeles, California 90036 ilan@fmbdevelopment.com (310) 981-3659 **VIA EMAIL, REGULAR & CERTIFIED MAIL**	Representing Respondent, FMB Development, LLC., FMB Consulting, LLC., Ilan Kenig
Alexander Ayzenberg, In Propria Persona 5900 Wilshire Boulevard, Suite 2125 Los Angeles, California 90036 alexander@fmbdevelopment.com (310) 981-3659 **VIA EMAIL, REGULAR & CERTIFIED MAIL**	Representing Respondent, FMB Development, LLC., FMB Consulting, LLC., Ilan Kenig

COUNSEL	REPRESENTING
Jon Atabek, Esq., Nyja Prior, Esq., Shirin Ehyaei, Esq. ATABEK & CO. 250 Newport Center Drive, Suite 306 Newport Beach, California 92660 jatabek@atabekandco.com, nprior@atabekandco.com, sehyaei@atabekandco.com (949) 229-0857, (213) 394-5943, (949) 229-0857 **VIA EMAIL AND CERTIFIED MAIL**	Representing Respondent, Joel Haggin, Elim Management, Inc.

REQUEST FOR CERTIFIED MAIL

Case Name:	Lubit, et al. v. FMB Development, LLC, et al.
Addressee:	Christopher Mass, Esq. GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP 12100 Wilshire Boulevard, Suite 300 Los Angeles, California 90025
AFFIX LABEL HERE:	9589 0710 5270 2388 9511 55
Case Manager:	Chelsea Mangel
Date:	February 25, 2025

REQUEST FOR CERTIFIED MAIL

Case Name:	Lubit, et al. v. FMB Development, LLC, et al.
Addressee:	Dominick Severance, Esq. SEVERANCE LAW, PC 2173 Salk Avenue, Suite 250 Carlsbad, California 92008
AFFIX LABEL HERE:	9589 0710 5270 2388 9524 66
Case Manager:	Chelsea Mangel
Date:	February 25, 2025

REQUEST FOR CERTIFIED MAIL

Case Name:	Lubit, et al. v. FMB Development, LLC, et al.
Addressee:	Ilan Kenig, In Propria Persona 5900 Wilshire Boulevard, Suite 2125 Los Angeles, California 90036
AFFIX LABEL HERE:	9589 0710 5270 2388 9524 73
Case Manager:	Chelsea Mangel
Date:	February 25, 2025

REQUEST FOR CERTIFIED MAIL

Case Name:	Lubit, et al. v. FMB Development, LLC, et al.
Addressee:	Alexander Ayzenberg, In Propria Persona 5900 Wilshire Boulevard, Suite 2125 Los Angeles, California 90036
AFFIX LABEL HERE:	9589 0710 5270 2388 9524 80
Case Manager:	Chelsea Mangel
Date:	February 25, 2025

REQUEST FOR CERTIFIED MAIL

Case Name:	Lubit, et al. v. FMB Development, LLC, et al.
Addressee:	Jon Atabek, Esq., Nyja Prior, Esq., Shirin Ehyaei, Esq. ATABEK & CO. 250 Newport Center Drive, Suite 306 Newport Beach, California 92660
AFFIX LABEL HERE:	9589 0710 5270 2388 9524 97
Case Manager:	Chelsea Mangel
Date:	February 25, 2025