SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

North Central District, Glendale Courthouse, Department E

EC067515
SKYLIGHT ADVISORS LLC VS ZEPHYR INVESTMENT COMPANY LLC

February 10, 2020
1:30 PM

Judge: Honorable Curtis A. Kin
Judicial Assistant: M. D. Mort
Courtroom Assistant: None

CSR: None
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Non-Appearance Case Review

Pursuant to the Court's 12/23/19 Minute Order, on 1/6/20, Cross-Complainant Zephyr Investment Company LLC filed and served a Proposed Statement of Decision, along with a Proposed Judgment, as is required by California Rules of Court, rule 3.1590(f). On 1/17/20, Cross-Defendants filed objections to the Proposed Statement of Decision and Proposed Judgment. Thereafter, on 1/23/20, Cross-Complainant filed its Response to those objections. Upon review of the Proposed Statement of Decision and Proposed Judgment, as well as Cross-Defendants' objections thereto and Cross-Complainant's accompanying response, the Court will sign the Proposed Statement of Decision and Proposed Judgment without modification. The Court finds that a hearing on the matter as requested by Cross-Defendants is not necessary. (See Cal. Rules of Court, rule 3.1590(k).)

Clerk to provide Notice.

Certificate of Mailing is attached.

GREENBERG TRAURIG, LLP
Eric V. Rowen (SBN 106234)
Alex L. Linhardt (SBN 303669)
Michael S. Neighbors (SBN 319475)
1840 Century Park East, Suite 1900
Los Angeles, CA 90067
Tel: (310) 586-7700
Fax: (310) 586-7800
rowene@gtlaw.com
linhardta@gtlaw.com
neighborsm@gtlaw.com

Attorneys for Defendant and Cross-Complainant
ZEPHYR INVESTMENT COMPANY LLC

FILED
Superior Court of California
County of Los Angeles
02/10/2020
Sherri R. Carter, Executive Officer / Clerk of Court
By: M. D. Mort Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SKYLIGHT ADVISORS LLC, a Delaware limited liability company,

Plaintiff,

v.

ZEPHYR INVESTMENT COMPANY LLC, a California limited liability company; JOSHUA BERENY, an individual; and DOES 1-5, inclusive,

Defendants.

ZEPHYR INVESTMENT COMPANY LLC, a California limited liability company,

Cross-Complainant,

v.

SKYLIGHT ADVISORS LLC, a Delaware limited liability company; URBINO CONSTRUCTION INC., a California corporation; STARS ENERGY CORPORATION ROOFING AND SOLAR SYSTEMS, a California corporation; KAZEM MOGHIM, an individual; and ROES 1-50, inclusive,

Cross-Defendants.

CASE NO. EC067515

Assigned to the Hon. Curtis A. Kin

~~[PROPOSED]~~ JUDGMENT AS TO CROSS-COMPLAINT

~~[PROPOSED]~~ JUDGMENT

Plaintiff and Cross-Defendant Skylight Advisors LLC initiated this lawsuit against Defendant and Cross-Complainant Zephyr Investment Company LLC and Defendant Joshua Bereny on October 25, 2017. On August 3, 2018, Zephyr Investment Company LLC filed a Cross-Complaint against Skylight Advisors LLC as well as Cross-Defendants Urbino Construction Inc. and Kazem Moghim.[1] For the reasons stated below, judgment shall be entered in favor of Zephyr Investment Company LLC and against Skylight Advisors LLC, Urbino Construction Inc., and Kazem Moghim as to each cause of action set forth in Zephyr Investment Company LLC's Cross-Complaint.

On October 25, 2017, Skylight Advisors LLC filed this action against Zephyr Investment Company LLC and Joshua Bereny, Los Angeles County Case No. EC067515. Skylight Advisors LLC alleged that Zephyr Investment Company LLC had not provided eleven (11) legal parking spaces as required by the parties' lease agreement ("Lease") and had concealed the alleged illegality of the parking spaces during lease negotiations. Skylight Advisors LLC asserted claims for breach of contract, fraud in the inducement, negligent misrepresentation, quantum meruit, and promissory estoppel.

On August 3, 2018, Zephyr Investment Company LLC filed a Cross-Complaint against Skylight Advisors LLC, Urbino Construction Inc., and Kazem Moghim. Zephyr Investment Company LLC alleged that Skylight Advisors LLC breached the Lease on three grounds: (i) Skylight Advisors LLC made alterations, utility installations, and other changes to the property without Zephyr Investment Company LLC's approval and/or without securing required permits prior to making the changes; (ii) Skylight Advisors LLC subleased the premises to third parties—including Urbino Construction Inc.—without obtaining their express written assumption of Skylight Advisors LLC's obligations under the Lease; and (iii) Skylight Advisors LLC failed to pay rent in September, October, and November 2017. Zephyr Investment Company LLC further alleged that Kazem Moghim was individually liable for these breaches based on his Guaranty of Lease. Finally, due to these breaches and Zephyr Investment Company LLC's subsequent election to declare a forfeiture of the Lease, Zephyr Investment

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[1] Zephyr Investment Company LLC also named "Stars Energy Corporation Roofing and Solar Systems" as a cross-defendant. However, testimony revealed that "Stars Energy Corporation Roofing and Solar Systems" is not a separate business entity, but is instead a fictitious business name used by Urbino Construction Inc.

Company LLC sought to eject Skylight Advisors LLC, Urbino Construction Inc., and all other occupants from the premises. Zephyr Investment Company LLC also sought declaratory relief.

On October 18, 2019, the Court granted summary adjudication in favor of Zephyr Investment Company LLC and Joshua Bereny as to each cause of action in Skylight Advisors LLC's operative Third Amended Complaint, and on November 1, 2019, the Court entered judgment as to the Third Amended Complaint in favor of Zephyr Investment Company LLC and Joshua Bereny and dismissed the Third Amended Complaint with Prejudice. Zephyr Investment Company LLC's Cross-Complaint then proceeded to a four-day bench trial, commencing on December 2, 2019. The Court found in favor of Zephyr Investment Company LLC as to each cause of action in the Cross-Complaint.

NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

(1) As to Zephyr Investment Company LLC's First Cause of Action for Declaratory Relief, judgment is hereby entered in favor of Zephyr Investment Company LLC and against Skylight Advisors LLC and Kazem Moghim, and the Court hereby declares that (i) Skylight Advisors LLC is in breach of the Lease, and (ii) Kazem Moghim is in breach of the Guaranty of Lease.

(2) As to Zephyr Investment Company LLC's Second Cause of Action for Breach of Contract (Lease), judgment is hereby entered in favor of Zephyr Investment Company LLC and against Skylight Advisors LLC.

(3) As to Zephyr Investment Company LLC's Third Cause of Action for Breach of Contract (Guaranty), judgment is hereby entered in favor of Zephyr Investment Company LLC and against Kazem Moghim.

(4) As to Zephyr Investment Company LLC's Fourth Cause of Action for Ejectment, judgment is hereby entered in favor of Zephyr Investment Company LLC and against Skylight Advisors LLC, Urbino Construction Inc., and Kazem Moghim.

(5) Zephyr Investment Company LLC shall have and recover jointly and severally from Skylight Advisors LLC and Kazem Moghim the sum of $142,234.50, with interest at the legal rate of ten percent (10%) per annum from the date hereof until paid.

(6) Costs of suit shall be awarded per memorandum, and nothing in this Judgment shall preclude Zephyr Investment Company LLC from filing a motion to recover attorneys' fees.

(7) The Court orders a forfeiture of the Lease.

(8) Zephyr Investment Company LLC is entitled to and awarded possession of the Premises located at 13161 Sherman Way, Unit A, North Hollywood, California 91605. This judgment applies to all occupants of the premises, including tenants and subtenants.

(9) A writ of execution and/or writ of possession may issue forthwith.

DATED: February 10, 2020

Curtis A. Kin

Hon. Curtis A. Kin
Judge of the Superior Court

BEST
AVAILABLE
IMAGES

NH

Eric V. Rowen (SBN 106234)
Adam Siegler (SBN 116233)
Michael S. Neighbors (SBN 319475)
GREENBERG TRAURIG, LLP
1840 Century Park East, 19th Floor
Los Angeles, CA 90067-2121
Tel: 310-586-7700
Fax: 310-586-7800
rowene@gtlaw.com
sieglera@gtlaw.com
neighborsm@gtlaw.com

FILED
LOS ANGELES SUPERIOR COURT
AUG 03 2018
SHERRI R. CARTER, EXECUTIVE OFFICER/CLERK
BY Leslie Wong, Deputy

NO SUMMONS ISSUED

Attorneys for Defendant and Cross-Complainant
ZEPHYR INVESTMENT COMPANY LLC and Defendant JOSHUA BERENY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

SKYLIGHT ADVISORS LLC, a Delaware limited liability company,

Plaintiff,

v.

ZEPHYR INVESTMENT COMPANY LLC, a California limited liability company; JOSHUA BERENY, an individual; and DOES 1-5, inclusive,

Defendants.

ZEPHYR INVESTMENT COMPANY LLC, a California limited liability company,

Cross-Complainant,

v.

SKYLIGHT ADVISORS LLC, a Delaware limited liability company; URBINO CONSTRUCTION INC., a California corporation; STARS ENERGY CORPORATION ROOFING AND SOLAR SYSTEMS, a California corporation; KAZEM MOGHIM, an individual; and ROES 1-50, inclusive,

Cross-Defendants.

CASE NO. EC067515
Assigned to the Hon. Laura A. Matz

CROSS-COMPLAINT FOR:
1. DECLARATORY RELIEF
2. BREACH OF CONTRACT (LEASE)
3. BREACH OF CONTRACT (GUARANTY)
4. EJECTMENT

DEMAND FOR JURY TRIAL

FAC Filed: December 28, 2017
Trial Date: Not Set

Defendant and Cross-Complainant Zephyr Investment Company LLC, for its Cross-Complaint, alleges as follows.

PARTIES

1. Defendant and Cross-Complainant Zephyr Investment Company LLC ("Zephyr") is a limited liability company organized and existing under the laws of the State of California with its principal place of business in California.

2. Zephyr is informed and believes, and on that basis alleges, that Plaintiff and Cross-Defendant Skylight Advisors LLC ("Skylight") is a limited liability company organized and existing under the laws of the State of Delaware with its principal place of business in California.

3. Zephyr is informed and believes, and on that basis alleges, that Cross-Defendant Urbino Construction Inc. ("Urbino") is a corporation organized and existing under the laws of the State of California with its principal place of business in California.

4. Zephyr is informed and believes, and on that basis alleges, that Cross-Defendant Stars Energy Corporation Roofing and Solar Systems ("Stars Energy") is a corporation organized and existing under the laws of the State of California with its principal place of business in California.

5. Zephyr is informed and believes, and on that basis alleges, that Cross-Defendant Kazem Moghim ("Moghim") is an individual and resident of Los Angeles County in the State of California and the owner and manager of Skylight. Moghim is both a signatory to the lease agreement between Skylight and Zephyr and a guarantor of the lease.

6. On information and belief, cross-defendants Skylight, Urbino, and Stars Energy are each owned directly or indirectly by Moghim and are each controlled by Moghim.

7. The true names and capacities of fictitious Roes 1 through 50, inclusive, are unknown to Zephyr at this time, and Zephyr therefore sues said Cross-Defendants by such fictitious names. When the true names and capacities of such fictitious Cross-Defendants are ascertained, Zephyr will seek leave of court to amend this Cross-Complaint to insert the same. Zephyr is informed and believes, and on that basis alleges, that each such fictitious Cross-Defendant is in some manner responsible for each and every act hereinafter set forth.

8. Zephyr is informed and believes, and on that basis alleges, that all Cross-Defendants were and have been agents, servants, employers, employees, and/or alter-egos of each of the other Cross-Defendants, and each of them, as such, were acting in the course and scope of their employment and/or agency at all times relevant to this action. The exact relationship among them is subject to further discovery.

ARBITRATION CLAUSE

9. Paragraph 52 of the lease agreement between Zephyr and Skylight contains an arbitration clause. As to any claims which are subject to arbitration, Zephyr reserves its rights to seek and enforce its rights to conduct an arbitration once the procedural status of the other proceedings between the parties, including unlawful detainer and this action, is further clarified. In order to preserve its rights in the interim, and pursuant to Section 426.30(a) of the Code of Civil Procedure, Zephyr asserts such claims in this compulsory Cross-Complaint. The allegations in this Cross-Complaint are made without prejudice to or waiver of all such rights, claims and defenses.

GENERAL ALLEGATIONS

The Lease

10. On or about December 7, 2015, Zephyr (lessor) and Skylight (lessee) entered into a commercial lease agreement for property located at 13161 Sherman Way, Unit A, North Hollywood, California 91605 (the "Lease"). A true and correct copy of the Lease is attached hereto as **Exhibit A**.

11. Paragraph 7.3 of the Lease prohibits Skylight from making any Utility Installations or Alterations to the leased premises without Zephyr's prior written consent. "Utility Installations" include all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the premises. "Alterations" include any modifications other than Utility Installations, whether by addition or deletion.

12. In some instances, Paragraph 7.3 of the Lease allows for non-structural Utility Installations or Alterations without Zephyr's consent. However, this provision only applies where such Utility Installations or Alterations are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life

safety systems, will not trigger the requirement for additional modifications and/or improvements to the Premises, and will cost less than either (i) three months' rent over the aggregate term of the Lease, or (ii) one month's rent in any one year.

13. Furthermore, all Utility Installations and Alterations require notice to Zephyr under Paragraph 7.3 of the Lease regardless of whether Zephyr's consent is required.

14. Paragraph 31 of the Lease provides that in an action involving the premises or for a declaration of rights under the Lease, the prevailing party is entitled to attorneys' fees. Such fees are not to be computed in accordance with any court fee schedule, but instead should be computed so as to fully reimburse all fees reasonably incurred. Additionally, Paragraph 31 entitles Zephyr to attorneys' fees, costs, and expenses incurred in preparing and serving notices of default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such default or resulting breach.

The Guaranty

15. Paragraph 1.11 of the Lease specifies that Skylight's obligations under the Lease are guaranteed by Moghim, the manager of Skylight. Moghim executed a guaranty on or about December 9, 2015 (the "Guaranty"). A true and correct copy of the Guaranty is attached hereto as **Exhibit B**.

16. Under the terms of the Guaranty, Moghim unconditionally and irrevocably guarantees Skylight's faithful and prompt performance of each and every term, condition, and covenant of the Lease. The Guaranty also provides that Zephyr may proceed immediately against Skylight and/or Moghim following any breach or default by Skylight or for the enforcement of any rights which Zephyr may have as against Skylight under the terms of the Lease or at law or in equity.

17. The Guaranty further provides that in an action by Zephyr to enforce Moghim's guarantee obligations, the prevailing party is entitled to attorneys' fees. Such fees are not to be computed in accordance with any court fee schedule, but instead should be computed so as to fully reimburse all fees reasonably incurred.

Skylight's Unauthorized Utility Installations and Alterations

18. On October 25, 2017, Skylight filed this present lawsuit alleging an inability to park at the property as a result of alleged misrepresentations by Zephyr.

19. Zephyr scheduled an inspection of the property to assess whether Skylight or any other party was the cause of Skylight's own claimed inability to park at the property.

20. A property inspection was conducted by a licensed building and engineering contractor on April 19, 2018. The inspection confirmed not only that Skylight's employees could (and did) park at the property, but also that Skylight had made several Alterations which are preventing the use of particular parking spots. Specifically, Skylight has (i) installed glass windows, a glass door, and a steel door into the east-facing wall of the building directly in front of several parking spaces, (ii) installed a concrete landing adjacent to the east-facing wall, eliminating the use of at least two parking spaces, and (iii) installed a concrete ramp adjacent to the east-facing wall, eliminating the use of at least four parking spaces. Skylight made these Alterations without obtaining Zephyr's consent, without providing any notice to Zephyr, and, on information and belief, without obtaining the proper permits from the Los Angeles Department of Building and Safety.

21. The inspection also revealed other Alterations and Utility Installations made by Skylight to the premises, including but not limited to the following:

a. Installation of solar panels on storefront (including parts not rented to Skylight under the Lease) without permits;
b. Installation of glass windows on storefront without permits;
c. Installation of signage without permits;
d. Removal of stone veneer walls and replacement with stucco without permits;
e. Installation of glass windows and doors in east-facing wall without permits;
f. Installation of a power inverter in Stars Energy suite to power solar panels without electrical permit;
g. Installation of a duct and conduit along wall in Stars Energy suite without electrical or HVAC permits;
h. Installation of light fixtures in Stars Energy suite without electrical permit;
i. Installation of free-standing glass partitions in Stars Energy suite without seismic restraints and without a building permit;

j. Exposure of outlets, switches, and conduit on wall in Stars Energy suite without electrical permit;

k. Unfinished door opening cut into demising wall between Stars Energy suite and Nancy's Design & Tailoring suite without building permit;

l. Installation of light fixtures and ceiling finishes in Nancy's Design & Tailoring suite without electrical or building permits;

m. Entry door to Nancy's Design & Tailoring suite cut into east-facing wall without seismic reinforcing and without building permit;

n. Hazardous exposure of communications panels in Nancy's Design & Tailoring suite;

o. Door opening cut into demising wall between Nancy's Design & Tailoring suite and back room without building permit;

p. Installation of air conditioner air handler in demising wall between Nancy's Design & Tailoring suite and back room without permit;

q. Installation of new panel and conduit wiring adjacent to main electrical panel in back room without electrical permit;

r. Installation of electrical equipment and light fixtures in back room without electrical permit;

s. Plumbing trench cut into floor in back room without plumbing permit;

t. Installation of sink and plumbing in back room without plumbing permits;

u. Call center developed without permits, including installation of light fixtures and drop ceilings;

v. Removal of window and block wall for installation of non-code-compliant exit for call center;

w. Unauthorized removal of demising wall for non-engineered construction of drop ceiling wall supports in warehouse area;

x. Removal of drywall and studs in warehouse area;

y. Opening cut into block wall in warehouse area;

z. Installation of pipes and toilet in warehouse area without permits;

aa. Installation of three electrical panels and outlet in warehouse area without electrical permits;

bb. Opening cut into drywall in warehouse area for installation of unfinished door without building permit;

cc. Installation of drywall in place of window in warehouse area; and

dd. Unauthorized removal of ductwork, insulation, and HVAC ducting in attic.

22. These Alterations and Utility Installations were made without first obtaining the proper permits from the Los Angeles Department of Building and Safety and obtaining Zephyr's prior, informed, written consent to the work as permitted. Zephyr is informed and believes that Skylight was aware that these Alterations and Utility Installations were not authorized, and that Stars Energy (a company which is not a party to the Lease) applied to LADBS for a permit to "replace four windows, three glass doors, one wood door and install drywall" on April 18, 2018, one day before Zephyr's scheduled inspection. A true and correct copy of Stars Energy's after-the-fact application is attached hereto as **Exhibit C.**

Skylight's Unauthorized Use of the Premises as a Call Center

23. Paragraphs 1.8 and 6.1 of the Lease further provide that Skylight is prohibited from using the premises for any purpose other than as a showroom, warehouse, retail, and general office space for building supply materials (the "Agreed Use").

24. The April 19 property inspection revealed a room on the premises wherein people sat at computers making a series of phone calls. On information and belief, Skylight is not using the premises for the Agreed Use. Instead, on information and belief, Skylight is using the premises for telemarketing and/or related purposes in violation of the Lease, and further that these unauthorized uses may be affecting the utilization of parking.

Skylight's Failure to Pay Rent

25. Under Paragraph 50 of the Lease, the Base Rent owed from Skylight to Zephyr from March 1, 2017 to March 1, 2018 was $5,299.35 per month. In addition, under Paragraph 13.4, if Skylight fails to pay rent to Zephyr within 5 days after it becomes due, then Skylight must pay Zephyr 10% of the overdue amount.

26. Because there was another action pending between the parties in September, October, and November 2017, Zephyr did not cash any rent checks from Skylight for those three months, but instead returned the rent checks to Skylight. Zephyr returned these checks in order to avoid any potential waiver of claims in the other pending action which might result from Zephyr's acceptance of rent. True and correct copies of receipts showing that Zephyr returned the checks to Skylight are attached hereto as **Exhibit D**. Additionally, a true and correct copy of a bank letter confirming that Skylight's rent checks were not cashed is attached hereto as **Exhibit E**.

27. After the voluntary dismissal of the other pending action, Zephyr requested that Skylight pay the rent owing for September, October, and November 2017. Skylight has refused to make these rent payments, insisting that the checks were deposited by Zephyr even though Zephyr returned the checks to Skylight. Accordingly, the rent for September, October, and November 2017 is still owing.

Skylight's Unauthorized Subtenants

28. Paragraph 12.1 of the Lease prohibits Skylight from leasing any part of its interest in the Lease or the premises to a sublessee without Zephyr's prior written consent.

29. On information and belief, Skylight is subleasing the premises to cross-defendants Urbino and Stars Energy. Both parties have listed their address as 13161 Sherman Way, Unit A, North Hollywood, California 91605. Zephyr is informed and believes that Skylight did not disclose the effect on parking utilization and did not obtain Zephyr's prior written consent to sublease to Urbino and Stars Energy, Zephyr is informed and believes that these unauthorized uses may be affecting the utilization of parking.

FIRST CAUSE OF ACTION

(Declaratory Relief, Against Cross-Defendants)

30. Zephyr incorporates herein by reference the allegations of the preceding paragraphs as though fully set forth herein.

31. There exists an actual controversy between Zephyr and Skylight regarding their respective rights and duties under the Lease, as well as any rights claimed by the other Cross-Defendants.

32. By reason of the foregoing, Zephyr desires a judicial determination of the parties' rights and duties under the Lease and a declaration that:

(a) Skylight made Alterations and Utility Installations at the property without obtaining Zephyr's consent and/or without notifying Zephyr of such changes, and such changes have damaged the Premises;

(b) Skylight owes Zephyr $15,898.05 in Base Rent and $1,589.79 in Late Charges for the months of September, October, and November 2017, collectively;

(c) Skylight's use of the premises as a call center for a telemarketing operation is not a permitted use under the Lease;

(d) Skylight is in breach of the Lease, the Lease should be terminated, and Skylight is subject to removal from the Premises.

(e) Cross-Defendants Urbino, Stars Energy, Moghim, and Roes 1 through 10 are not approved by Zephyr as tenants or sub-tenants and are illegally occupying and/or damaging the Premises, and to the extent they have or claim any rights deriving from Skylight's rights under the Lease, those rights are likewise terminated.

33. Zephyr is informed and believes that Cross-Defendants contend to the contrary.

SECOND CAUSE OF ACTION

(Breach of Contract, Against Cross-Defendants)

34. Zephyr incorporates herein by reference the allegations of the preceding paragraphs as though fully set forth herein.

35. The Lease is a valid and binding contract between Zephyr and Skylight. To the extent that it is determined that any other Cross-Defendant is a party to the Lease, whether as sub-tenant, alter ego or otherwise, then such party is likewise bound.

36. The Lease generally prohibits Skylight from making Alterations or Utility Installations without Zephyr's express consent. For those Alterations or Utility Installations which do not require Zephyr's consent, the Lease still requires Skylight to notify Zephyr of any such Alterations or Utility Installations.

37. The Lease also prohibits Skylight from using the premises for any purpose other than as a showroom, warehouse, retail, and general office space for building supply materials.

38. Skylight breached the Lease by failing to obtain Zephyr's consent or otherwise notify Zephyr before making Alterations and Utility Installations. Such changes include, but are not limited to, constructing a concrete ramp and landing in the parking area, cutting open demising and block walls in the premises, installing new electrical panels and light fixtures, and changing the plumbing systems, all without obtaining permits from the Los Angeles Department of Building and Safety. On information and belief, such Alterations and Utility Installations were made by Skylight in its own capacity as well as Urbino and Stars Energy acting as the agents and/or alter-egos of Skylight.

39. Additionally, Skylight breached the Lease by, on information and belief, using the premises for operating a telemarketing enterprise and not for the Agreed Use.

40. Skylight breached the Lease by failing to obtain Zephyr's consent for the other Cross-Defendants who are occupying or damaging the Premises.

41. Skylight further breached the Lease by failing to pay rent for the months of September, October, and November 2017 after Zephyr demanded the rent from Skylight following the termination of the action pending between the parties.

42. As a result of Skylight's breach of the Lease, Zephyr is entitled to terminate the Lease, reenter the property, and recover from Skylight all damages caused by Skylight's breach in an amount to be determined at trial.

THIRD CAUSE OF ACTION

(Breach of Contract – Guaranty, Against Moghim)

43. Zephyr incorporates herein by reference the allegations of the preceding paragraphs as though fully set forth herein.

44. The Guaranty is a valid and binding contract between Zephyr and Moghim.

45. Zephyr would not agree to enter the Lease with Skylight unless Moghim would agree to guarantee the Lease.

46. Under the terms of the Guaranty, Moghim unconditionally and irrevocably guarantees Skylight's faithful and prompt performance of each and every term, condition, and covenant of the

Lease. The Guaranty also provides that Zephyr may proceed immediately against Skylight and/or Moghim following any breach or default by Skylight or for the enforcement of any rights which Zephyr may have as against Skylight under the terms of the Lease or at law or in equity.

47. As previously mentioned, Skylight failed to comply with the terms of the Lease by (i) making Alterations and Utility Installations without Zephyr's consent and/or without providing proper notice to Zephyr, (ii) using the premises for telemarketing and/or related purposes rather than the Agreed Use, and (iii) failing to pay rent for the months of September, October, and November 2017.

48. Because Skylight failed to perform the terms of the Lease, Moghim is personally liable to Zephyr for all damages proximately caused by Skylight's wrongful conduct, in an amount to be determined at trial.

FOURTH CAUSE OF ACTION

(Ejectment, Against Skylight and All Cross-Defendants in Possession)

49. Zephyr incorporates herein by reference the allegations of the preceding paragraphs as though fully set forth herein.

50. As a result of Skylight's breaches of the Lease, Zephyr is entitled to terminate Skylight's possession under Paragraph 13.2(a) of the Lease. Accordingly, possession of the premises at 13161 Sherman Way, Unit A, North Hollywood, California 91605 rightfully belongs to Zephyr.

51. As of the date of this cross-complaint, Skylight remains in possession of the premises.

52. Because Skylight remains in possession of the premises despite Zephyr's right of possession, Zephyr is entitled to eject Skylight from the premises and recover all unpaid rent earned at the time of termination, unpaid rent which would have been earned after termination, and all amounts necessary to compensate Zephyr for the costs of recovering possession, including the costs of necessary renovation and alteration and all reasonable attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Zephyr prays for entry of judgment in its favor and against Cross-Defendants as follows:

A. With respect to the First Cause of Action, that Zephyr be awarded a declaratory judgment as set forth in that claim.

B. With respect to the Second and Third Causes of Action, for possession of the property and for compensatory damages in an amount to be proven at trial, and interest on all sums to the fullest extent allowed by law.

C. With respect to the Fourth Cause of Action, for possession of the property and for compensatory damages in an amount to be proven at trial, and interest on all sums to the fullest extent allowed by law.

C. With respect to all causes of action: (a) for the costs of suit incurred herein, including attorneys' fees, to the fullest extent allowed by law; and (b) for such other and further relief as the Court deems just and proper.

DATED: August 3, 2018

GREENBERG TRAURIG, LLP

By: Mike Neighbors

Eric V. Rowen
Adam Siegler
Michael S. Neighbors
Attorneys for Defendant and Cross-Complainant
ZEPHYR INVESTMENT COMPANY LLC
and Defendant JOSHUA BERENY

DEMAND FOR JURY TRIAL

Cross-Complainant requests a trial by jury as to all causes of action which can be so tried.

DATED: August 3, 2018

GREENBERG TRAURIG, LLP

By: ______________________

Eric V. Rowen
Adam Siegler
Michael S. Neighbors
Attorneys for Defendant and Cross-Complainant
ZEPHYR INVESTMENT COMPANY LLC
and Defendant JOSHUA BERENY

EXHIBIT

A

EXHIBIT A

AIR

AIR COMMERCIAL REAL ESTATE ASSOCIATION
STANDARD INDUSTRIAL/COMMERCIAL
MULTI-TENANT LEASE - GROSS

1. **Basic Provisions ("Basic Provisions").**

1.1 **Parties:** This Lease ("Lease"), dated for reference purposes only December 7, 2015, is made by and between Zephyr Investment Company LLC., a California limited liability company ("Lessor") and Skylight Advisors LLC., a Delaware limited liability company ("Lessee"), (collectively the "**Parties**", or individually a "**Party**").

1.2(a) **Premises:** That certain portion of the Project (as defined below), including all improvements therein or to be provided by Lessor under the terms of this Lease, commonly known by the street address of 13161 Sherman Way, Unit A located in the City of Los Angeles (North Hollywood), County of Los Angeles, State of California, with zip code 91605, as outlined on Exhibit ______ attached hereto ("**Premises**") and generally described as (describe briefly the nature of the Premises): an approximately 5,250 square foot portion of industrial space which is part of a larger industrial building

In addition to Lessee's rights to use and occupy the Premises as hereinafter specified, Lessee shall have non-exclusive rights to any utility raceways of the building containing the Premises ("**Building**")and to the Common Areas (as defined in Paragraph 2.7 below), but shall not have any rights to the roof, or exterior walls of the Building or to any other buildings in the Project. The Premises, the Building, the Common Areas, the land upon which they are located, along with all other buildings and improvements thereon, are herein collectively referred to as the "**Project**." (See also Paragraph 2)

1.2(b) **Parking:** eleven (11) unreserved vehicle parking spaces. (See also Paragraph 2.6)

1.3 **Term:** five (5) years and three (3) months ("**Original Term**") commencing March 1, 2016 ("**Commencement Date**") and ending May 31, 2021 ("**Expiration Date**"). (See also Paragraph 3)

1.4 **Early Possession.** If the Premises are available Lessee may have non-exclusive possession of the Premises commencing Upon Lease Execution, Lessee providing Lessor with all monies due upon execution, and a certificate of liability insurance naming Lessor as additionally insured ("**Early Possession Date**"). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** $ 5,145.00 per month ("**Base Rent**"), payable on the first (1st) day of each month commencing March 1, 2016. (See also Paragraph 4)

☑ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 50

~~1.6 Lessee's Share of Common Area Operating Expenses: ______ percent (______%) ("Lessee's Share"). In the event that the size of the Premises and/or the Project are modified during the term of this Lease, Lessor shall recalculate Lessee's Share to reflect such modification.~~

1.7 **Base Rent and Other Monies Paid Upon Execution:**

(a) **Base Rent:** $ 5,145.00 for the period MARCH 1 K.M. ~~February 1, 2016 - February 29, 2016~~ - MARCH 31, 2016 K.M. JB

~~(b) Common Area Operating Expenses: $ ______ for the period ______~~

(c) **Security Deposit:** $ 11,928.93 ("**Security Deposit**"). (See also Paragraph 5)

~~(d) Other: $ ______ for ______~~

(e) **Total Due Upon Execution of this Lease:** $ 17,073.93

1.8 **Agreed Use:** Showroom and warehousing, retail and general office for building supply materials (See also Paragraph 6)

1.9 **Insuring Party.** Lessor is the "**Insuring Party**". (See also Paragraph 8)

1.10 **Real Estate Brokers:** (See also Paragraph 15 and 25)

(a) **Representation:** The following real estate brokers (the "**Brokers**") and brokerage relationships exist in this transaction (check applicable boxes):

☐ ______ ~~represents Lessor exclusively ("Lessor's Broker");~~

☐ ______ ~~represents Lessee exclusively ("Lessee's Broker"); or~~

☑ CBRE, Inc. (Bennett Robinson) represents both Lessor and Lessee ("**Dual Agency**").

(b) **Payment to Brokers:** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Brokers the brokerage fee agreed to in a separate written agreement ~~(or if there is no such agreement, the sum of ______ or ______% of the total Base Rent)~~ for the brokerage services rendered by the Brokers.

1.11 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by Kazem Moghim ("**Guarantor**"). (See also Paragraph 37)

1.12 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:

☑ an Addendum consisting of Paragraphs 50 through 63;

☐ a site plan depicting the Premises;

JB
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K.M.
INITIALS

☐ a site plan depicting the Project;
☐ a current set of the Rules and Regulations for the Project;
☐ a current set of the Rules and Regulations adopted by the owners' association;
☐ a Work Letter;
☑ other (specify): Rent Adjustments, Option to Extend, Arbitration Agreement, Guaranty of Lease, Broker Representation Disclosure.

2. **Premises.**

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises may have been used in the marketing of the Premises for purposes of comparison, the Base Rent stated herein is NOT tied to square footage and is not subject to adjustment should the actual size be determined to be different. **NOTE: Lessee is advised to verify the actual size prior to executing this Lease.**

2.2 **Condition.** Lessor shall deliver that portion of the Premises contained within the Building ("**Unit**") to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ("**Start Date**"), and, so long as the required service contracts described in Paragraph 7.1(b) below are obtained by Lessee and in effect within thirty days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("**HVAC**"), loading doors, sump pumps, if any, and all other such elements in the Unit, other than those constructed by Lessee, shall be in good operating condition on said date, that the structural elements of the roof, bearing walls and foundation of the Unit shall be free of material defects, and that the Unit does not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a non-compliance with such warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) 30 days as to the remaining systems and other elements of the Unit. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense (except for the repairs to the fire sprinkler systems, roof, foundations, and/or bearing walls - see Paragraph 7). Lessor also warrants, that unless otherwise specified in writing, Lessor is unaware of (i) any recorded Notices of Default affecting the Premise; (ii) any delinquent amounts due under any loan secured by the Premises, and (iii) any bankruptcy proceeding affecting the Premises.

2.3 **Compliance.** Lessor warrants that to the best of its knowledge the improvements on the Premises and the Common Areas comply with the building codes applicable laws, covenants or restrictions of record, regulations, and ordinances ("**Applicable Requirements**") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 49), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements are hereafter changed so as to require during the term of this Lease the construction of an addition to or an alteration of the Unit, Premises and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building ("**Capital Expenditure**"), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however, that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and the amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease or any extension thereof, on the date that on which the Base Rent is due, an amount equal to 1/144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay Interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with Interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not have any right to terminate this Lease.

2.4 **Acknowledgements.** Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises, (b) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, (d) it is not relying on any representation as to the size of the Premises made by Brokers or Lessor, (e) the square footage of the Premises was not material to Lessee's decision to lease the Premises and pay the Rent stated herein, and (f) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease. In addition, Lessor acknowledges that: (i) Brokers have made no representations,