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10 UNITED STATES DISTRICT COURT
 11 CENTRAL DISTRICT OF CALIFORNIA

12 FALLEN STAR, LLC,

13 Plaintiff,

14 v.

15 STAR NEWS BUILDING, LP, a
 California limited partnership; STAR
 16 NEWS BUILDING LLC, a California
 limited liability Company; MICHAEL
 17 KAMEN, an individual; GERSON I.
 FOX, an individual; and ALL OTHERS,
 18 KNOWN OR UNKNOWN CLAIMING
 ANY LEGAL OR EQUITABLE RIGHT,
 19 TITLE, ESTATE, LIEN OR INTEREST
 IN OR TO THE PROPERTY
 20 DESCRIBED IN THE COMPLAINT
 ADVERSE TO PLAINTIFF'S TITLE,
 21 OR ANY CLOUD ON PLAINTIFF'S
 TITLE THERETO; and DOES 1 through
 22 100, Inclusive,

23 Defendants.
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Case No. CV 12-05738-R (PJWx)

[HONORABLE MANUEL L. REAL
 COURTROOM 8]

**ORDER GRANTING PLAINTIFF'S
 MOTION FOR SUMMARY
 JUDGMENT AGAINST DEFENDANT
 GERSON I. FOX AND FINDINGS OF
 UNCONTROVERTED FACTS AND
 CONCLUSIONS OF LAW**

1 On April 1, 2013, Plaintiff/Assignee/Real Party in Interest FALLEN STAR,
2 LLC's ("Plaintiff" or "Fallen Star") Motion for Summary Judgment against Defendant
3 GERSON I. FOX ("Defendant") for Breach of Guaranty came on regularly for hearing
4 before the Honorable Judge Manual L. Real, Courtroom 8, of the United States
5 District Court, Central District of California. Ronald N. Richards and Geoffrey S.
6 Long appeared as counsel of record for Plaintiff. Gabriele M. Lashly and Jeffrey G.
7 Coyner appeared as counsel of record for Defendant.

8 The Court, having considered all papers and evidence filed in support of and in
9 opposition to the Motion for Summary Judgment and having received argument from
10 counsel for Defendant, finds that there are no disputes of material fact, and Plaintiff is
11 entitled to judgment as a matter of law. The Court grants Plaintiff's Motion for
12 Summary Judgment against Defendant Gerson I. Fox, and judgment shall be entered
13 forthwith.

14 The Court's ruling granting Plaintiff's Motion for Summary Judgment is based
15 on the findings of uncontroverted facts and conclusions of law, set forth herein and
16 below, and as stated on the record at the April 1, 2013 hearing on the Motion for
17 Summary Judgment.

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19 **UNCONTROVERTED FACTS**

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| Uncontroverted Material Fact | Supporting Evidence |
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| <p>1 For value received and in exchange 2 for a loan in the original principal sum of 3 \$11,950,000 (“Loan”) from Telesis 4 Community Credit Union (“Original 5 Lender”) to Star News Building, L.P. 6 (“Borrower”), Borrower made, executed, 7 and delivered to Original Lender a 8 Promissory Note, dated August 8, 2008, 9 in the original principal amount of 10 \$11,950,000 (“Note”).</p> | <p>Exh. “A” to Plaintiff’s Appendix of Evidence and Declarations in Support of Motion for Summary Judgment (“Appendix of Evidence”)¹; Declaration of Craig Page (“Page Decl.”), at ¶¶ 10 and 13.</p> |
| <p>11 2. The Note provides for monthly 12 payments of principal and accrued 13 interest in the amount of \$74,747.96 on 14 the first of each month beginning on 15 October 1, 2008, until the entire principal 16 balance evidenced by the Note is paid.</p> | <p>Exh. “A” at p. 1, ¶ 3(c).</p> |
| <p>17 3. The Note provides that an “Event 18 of Default” under the Note includes an 19 “Event of Default” under the Deed of 20 Trust, Assignment of Rents, Security 21 Agreement and Fixture Filing (“Deed of 22 Trust,” and defined in the Note as the 23 Security Agreement).</p> | <p>Exh. “A” at p. 1, ¶¶ 1 and 5.</p> |

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| <p>4. Upon an Event of Default of the Note, the total Indebtedness, defined as the unpaid principal, interest, late charges, default interest, advances, and any other amounts due at the time under the Note and Deed of Trust, shall be accelerated by Original Lender and immediately become due and payable, at the option of Original Lender, without any prior notice to Borrower.</p> | <p>Exh. "A" at pp. 1-2, ¶ 6.</p> |
| <p>5. The Note provides for a default interest rate of 10.4% / annum after Borrower's Event of Default.</p> | <p>Page Decl., ¶ 30; Exh. "A" at ¶ 8.</p> |
| <p>6. The Note provides, "[i]f the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date [which includes maturity by acceleration upon default], the unpaid principal balance and all accrued interest shall bear interest from the Maturity Date at the Default Rate," <i>i.e.</i>, accrued interest is compounded at the Default Rate upon default.</p> | <p>Page Decl., ¶ 30; Exh. "A" at ¶ 8.</p> |

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| <p>1 7. The Note provides that a late 2 charge shall be imposed if the payment of 3 any installment of interest or principal 4 and interest or other amount payable 5 under the Note is not received within 10 6 day after it is due. The late charge is 5% 7 of the unpaid amount after acceleration.</p> | <p>Page Decl., ¶ 30; Declaration of Ronald Richards (“Richards Decl.”), ¶ 18; Exh. “A” at ¶ 7.</p> |
| <p>8 8. The Note provides, “Borrower 9 shall pay all expenses and costs, 10 including fees and out-of-pocket expenses 11 of attorneys (including Lender’s in-house 12 attorneys) and expert witnesses and costs 13 of investigation, incurred by Lender as a 14 result of any default under this Note or in 15 connection with efforts to collect any 16 amount due under this Note, or to enforce 17 the provisions of any of the other Loan 18 Documents, including those incurred in 19 post-judgment collection efforts and in 20 any bankruptcy proceeding (including 21 any action for relief from the automatic 22 stay of any bankruptcy proceeding) or 23 judicial or non-judicial foreclosure 24 proceedings.”</p> | <p>Page Decl., ¶ 13; Exh. “A” at ¶ 11.</p> |

1 9. As security for the Loan and Note,
2 but not for Defendant's written Guaranty,
3 the Borrower executed and delivered to
4 Original Lender, for the benefit of
5 Original Lender and its assigns, a Deed of
6 Trust, Assignment of Rents, Security
7 Agreement and Fixture Filing which was
8 recorded in the Official Records,
9 Recorder's Office, Los Angeles County,
10 California, on August 15, 2008, as
11 instrument number 20081472972 ("Deed
12 of Trust").

Exh. "C;" Page Decl., at ¶¶ 10 and 15.

13 10. An Event of Default under the
14 Deed of Trust includes, but is not limited
15 to, "any failure by Borrower to pay or
16 deposit when due any amount required by
17 the Note, this Instrument or any other
18 Loan Document;" "any failure by
19 Borrower to perform any of its
20 obligations under this Instrument ... as
21 and when required, which continues for a
22 period of 30 days after notice of such
23 failure by Lender to Borrower;" or
24 "Borrower ... voluntarily files for
25 bankruptcy protection under the United
26 States Bankruptcy Code."

Exh. "C" at p. 15, ¶ 22(a), (g), and (k).

1 11. The Deed of Trust requires,
2 “Borrower shall pay, or cause to be paid,
3 all Taxes when due and before the
4 addition of any interest, fine, penalty or
5 cost for nonpayment.” “Taxes” are
6 defined to include “all taxes, assessment,
7 vault rentals and other charges ... which
8 are levied, assessed or imposed by any
9 public authority or quasi-public authority,
10 and which, if not paid, will become a lien,
11 on the Land or the Improvements.”

Exh. “C” at p. 10, ¶ 15(a), and at p. 4, ¶ 1(ee).

12 12. In further consideration of the
13 Loan, Defendant Gerson I. Fox
14 (“Defendant” or “Guarantor”) and
15 Michael J. Kamen made, executed, and
16 delivered a written Guaranty, dated
17 August 8, 2008 (“Guaranty”), for the
18 benefit of Original Lender, and/or its
19 assigns.

Exh. “I;” Page Decl., at ¶¶ 10 and 21.

20 13. The obligations of Defendant and
21 Michael J. Kamen under the Guaranty are
22 joint and several, and Original Lender or
23 its assigns may bring suit against one or
24 more of said guarantors.

Exh. “I” at p. 3, ¶ 11.

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| <p>1 14. Pursuant to the Guaranty, 2 Defendant guaranteed, <i>inter alia</i>, all of 3 Borrower’s repayment of the Loan and 4 “full and prompt payment when due, 5 whether at maturity or earlier, by reason 6 of acceleration or otherwise, and at all 7 times thereafter, and the full and prompt 8 performance when due, of ... the entire 9 Indebtedness ... and all costs and 10 expenses, including reasonable fees and 11 out of pocket expenses of attorneys and 12 expert witnesses, incurred by Lender in 13 enforcing its rights under this Guaranty.”</p> | <p>Exh. “I” at p. 1, ¶ 2.</p> |
| <p>14 15. Defendant’s obligations under the 15 Guaranty constitute an unconditional 16 guaranty of payment and not merely a 17 guaranty of collection, and shall be 18 performed by Defendant without demand 19 by Original Lender or its assigns.</p> | <p>Exh. “I” at p. 1, ¶¶ 4 and 5.</p> |
| <p>20 16. The Guaranty is unsecured.</p> | <p>Exh. “I.”</p> |
| <p>21 17. The Guaranty provides that 22 Original Lender, or its assign, may bring 23 a separate action against Defendant 24 without proceeding against the Borrower 25 or any security held by Original Lender, 26 and without pursuing any other remedy.</p> | <p>Exh. “I” at p. 2, ¶¶ 6, 8, and 9.</p> |

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| <p>1 18. The Guaranty could be assigned, in 2 whole or in part.</p> | <p>Exh. "I" at p. 3, ¶ 16.</p> |
| <p>3 19. The Guaranty contains explicit, 4 unconditional, comprehensive, and valid 5 waivers of defenses, including but not 6 limited to a full and complete California 7 <i>Civil Code</i>, section 2856, waiver as 8 follows: 9 10 The Guarantor waives all rights and 11 defenses that the Guarantor may 12 have because the debtor's debt is 13 secured by real property. This 14 means, among other things: (1) 15 creditor may collect from the 16 Guarantor without first foreclosing 17 on any real or personal property 18 collateral pledged by the debtor. 19 (2) If the creditor forecloses on any 20 real property collateral pledged by 21 the debtor (A) The amount of the 22 debt may be reduced only by the 23 price for which that collateral is 24 sold at the foreclosure sale, even if 25 the collateral is worth more than the sale price; and (B) The creditor may collect from Guarantor even if the creditor, by foreclosing on the real property collateral, has destroyed any right Guarantor may have to collect from the debtor. This is an unconditional and irrevocable waiver of any rights and defenses Guarantor may have because the debtor's debt is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon Section 580a, 580b, 580d, or 726 of the Code of Civil Procedure.</p> | <p>Exh. "I" at p. 2, ¶ 9; <i>see also</i>, Exh. "I" at p. 2, ¶¶ 6 and 8.</p> |

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| <p>20. Business Partners, LLC (“Servicer”) was the servicer on the Loan and Note initially for Original Lender and then for National Credit Union Administration Board (“Liquidating Agent”), as the liquidating agent for Original Lender.</p> | <p>Page Decl., ¶ 2.</p> |
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1 21. Borrower defaulted on its
2 obligations under the Loan, Note, and
3 Deed of Trust by, among other things, (a)
4 failing to pay property taxes for tax year
5 2008 for APN # 5723-028-023 and APN
6 # 5723-016-036 (“Real Property
7 Collateral”), which are the real property
8 collateral for the Loan, Note, and Deed of
9 Trust; (b) failing to pay default interest
10 since its default in September 2009 and
11 Original Lender’s imposition of the
12 default interest rate at that time; (c)
13 failing to make a payment on the Loan
14 and Note the months of February through
15 May 2011; (d) Borrower’s filing a
16 Voluntary Petition for bankruptcy under
17 Chapter 11 of the United States
18 Bankruptcy Code on April 29, 2011, in
19 the Central District of California, Case
20 No. 2:11-bk-28697-BB (the “Bankruptcy
21 Action”); and (e) failing to pay the full
22 indebtedness owed on the Loan and Note
23 after its foregoing defaults and
24 acceleration of all amounts due and
25 owing on the Loan and Note on October
26 1, 2009.

Page Decl., ¶¶ 32 - 34; Richards Decl.,
¶¶ 10-12; Exhs. “Q,” “R,” “S,” “U,” and
“V.”

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| <p>22. On and about September 15, 2009, Servicer, on behalf of Original Lender, gave notice to Borrower and Defendant of the default on the Loan and Note for failure to pay property taxes on the Real Property Collateral, and of the imposition of default interest under paragraph 8 of the Note. Because those defaults were not cured after such notice, a Notice of Default was recorded in the Official Records, Recorder’s Office, Los Angeles County, California on March 17, 2011, as instrument number 11 0409586.</p> | <p>Page Decl., ¶¶ 33; Exh. “R.”</p> |
| <p>23. Borrower has failed to cure its defaults, and remains in default.</p> | <p>Page Decl., ¶¶ 33 and 34; Richards Decl., ¶¶ 11 and 12; Exhs. “S,” “U,” and “V.”</p> |
| <p>24. Following Borrower’s defaults on the Loan and Note, Defendant defaulted on his obligations to Original Lender, then Liquidating Agent, and now to Plaintiff as its assignee, pursuant to the Guaranty, by failing to pay all of the Borrower’s indebtedness.</p> | <p>Page Decl., ¶¶ 30, 32, 33, and 34; Richards Decl., ¶¶ 13-15; Exhs. “Q and “S.”</p> |

1 25. On or about May 31, 2012,
2 pursuant to 12 USC §1787(a)(1), Original
3 Lender was placed into involuntary
4 liquidation by the Liquidating Agent, who
5 was appointed as the liquidating agent of
6 Original Lender.

Page Decl., at ¶¶ 2, 6, and 7.

7 26. In exchange for valuable
8 consideration and in furtherance of a
9 Loan Purchase and Sale Agreement,
10 dated December 3, 2012, by and between
11 Plaintiff Fallen Star, LLC (“Plaintiff”)
12 and Liquidating Agent, and as evidenced
13 by an Assignment of Seller’s Interest in
14 Loans and Loan Documents and
15 Assumption effective as of December 20,
16 2012 (“Assignment Agreement”),
17 Liquidating Agent, on behalf of Original
18 Lender, assigned and transferred all of its
19 rights, title, interest, and remedies in and
20 to, *inter alia*, the Loan, Note, Deed of
21 Trust, Guaranty, and all other loan
22 documents to Plaintiff.

Page Decl., at ¶ 27; Richards Decl., at ¶¶
5 and 6; Exh. “O.”

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| <p>27. In furtherance of the Loan Purchase and Sale Agreement and Assignment Agreement, Liquidating Agent made, executed, and delivered to Plaintiff an Allonge to the Note, dated December 17, 2012 (“Allonge”), assigning to Plaintiff all of Liquidating Agent’s right, title, interest, and remedies in and to the Note.</p> | <p>Page Decl., at ¶ 28; Richards Decl. at ¶ 7; Exh. “P.”</p> |
| <p>28. In furtherance of the Loan Purchase and Sale Agreement and Assignment Agreement, Liquidating Agent executed and recorded an Assignment of Deed of Trust and Amendment to Deed of Trust, to Plaintiff as assignee and beneficiary, recorded in the Official Records, Recorder’s Office, Los Angeles County, California, on December 21, 2012, as instrument number 20121988890 (“Assignment of Deed of Trust”).</p> | <p>Richards Decl., at ¶ 8; Exh. “T.”</p> |

1 29. Pursuant to said Assignment
2 Agreement, Allonge, and Assignment of
3 Deed of Trust, Plaintiff is the owner of all
4 right, title, interest, and remedies in and
5 to, *inter alia*, the Loan, Note, Deed of
6 Trust, Guaranty, and related loan
7 documents.

Page Decl., at ¶ 29; Richards Decl., at ¶
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8 30. Subsequent to Liquidating Agent's
9 assignment to Plaintiff of all of Original
10 Lender/Liquidating Agent's right, title,
11 interest, and remedies in and to, *inter*
12 *alia*, the Loan, Note, Deed of Trust,
13 Guaranty, and related loan documents,
14 Borrower has remained in default of its
15 obligations pursuant to the Loan, Note,
16 and Deed of Trust by, among other
17 things, (a) failing to pay all outstanding
18 principal, accrued interest, late fees, and
19 other fees and costs on the Loan and
20 Note; (b) failing to pay default interest;
21 and (c) Borrower's continuing forward
22 with the Bankruptcy Action.

Richards Decl., at ¶ 12.

1 31. Subsequent to Liquidating Agent's
2 assignment to Plaintiff of all of Original
3 Lender/Liquidating Agent's right, title,
4 interest, and remedies in and to the Loan,
5 Note, Deed of Trust, Guaranty, and
6 related loan documents, Defendant has
7 remained in default of his obligations
8 pursuant to the Guaranty by, among other
9 things, failing to pay all of the
10 indebtedness and obligations of Borrower
11 upon Borrower's foregoing defaults.

Richards Decl., at ¶ 14.

12 32. As a result of Defendant's failure
13 to make payment under the Guaranty,
14 Plaintiff has been damaged in the amount
15 of at least \$15,009,516.15 as of April 1,
16 2013, which is composed of
17 \$11,813,827.03 in unpaid principal,
18 \$2,034,067.01 in accrued interest,
19 \$840,956.67 in late fees, and \$320,665.44
20 in other recoverable fees and costs
21 incurred by Original Lender and
22 Liquidating Agent in enforcing the rights
23 and remedies under the Note, Deed of
24 Trust, and Guaranty, including but not
25 limited to attorneys' fees.

Page Decl., ¶¶ 11 and 30; Richards
Decl., ¶¶ 16-18; Exhs. "Q" and "S."

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| <p>33. As of the effective date of Liquidating Agent’s assignment to Plaintiff, December 20, 2012, other enforcement fees and costs incurred by Original Lender and Liquidating Agent and recoverable under the Note, Deed of Trust, and Guaranty, including credit reports, legal fees, field visits, prior unpaid late charges, reconveyance fee, statement fee, mailing and recording fees, and UCC 3 termination fees, totaled \$320,665.44.</p> | <p>Page Decl., ¶ 30; Exhs. “A” at ¶ 11, “C” at ¶ 44, “I” at ¶ 2, and “Q.”</p> |
| <p>34. Additional prejudgment interest after the April 1, 2013 Motion for Summary judgment hearing date accrues at the daily rate of \$3,412.88.</p> | <p>Richards Decl., ¶¶ 16, 17; Exh. “S.”</p> |
| <p>35. Plaintiff has a right to its attorneys’ fees and costs incurred in enforcing its rights under the Guaranty.</p> | <p>Exhs. “A” at ¶ 11, “C” at ¶ 44, “I” at ¶ 2, and “Q.”</p> |

CONCLUSIONS OF LAW

| <u>Conclusions of Law</u> | <u>Authority</u> |
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| <p>1 1. Summary judgment is appropriate 2 where, like here, there are no genuine 3 disputes of material fact, and the moving 4 party is entitled to a judgment as a matter 5 of law.</p> | <p>Federal Rule of Civil Procedure 56(a).</p> |
| <p>6 2. Jurisdiction continues to be 7 appropriate in this case, notwithstanding 8 the substitution of Plaintiff for the 9 National Credit Union Administration 10 Board (“Liquidating Agent”). There 11 continues to be a basis for original 12 jurisdiction in the United States District 13 Court through federal question 14 jurisdiction. Explicit federal policy 15 interest mandates continuing original 16 jurisdiction over this case because 17 Plaintiff is merely a successor-in-interest 18 to the Liquidating Agent.</p> | <p><i>Adair v. Lease Partners, Inc.</i>, 587 F.3d 238 (5th Cir. 2009); <i>Burka v. Aetna Life Ins. Co.</i>, 87 F3d 478 (D.C. Cir. 1996); <i>Freeport-McMoRan, Inc. v. KN Energy, Inc.</i>, 498 US 426 (1991).</p> |
| <p>20 3. There is continuing federal 21 jurisdiction because Plaintiff is entitled to 22 rely upon the same protection as its 23 predecessor-in-interest, the Liquidating 24 Agent, including protections under the 25 D'Oench Duhme Doctrine.</p> | <p><i>D'Oench, Duhme & Company v. FDIC</i>, 315 U.S. 447 (1942).</p> |

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| 4. Even if remand were discretionary, the only purpose it would serve is delay and, therefore, it would not be appropriate. | <i>Destfino v. Reiswig</i> , 630 F.3d 952 (9th Cir. 2011). |
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1 5. By operation of law, upon Telesis
2 Community Credit Union (“Original
3 Lender”) being placed into involuntary
4 liquidation by the Liquidating Agent, the
5 Liquidating Agent succeeded to all rights,
6 titles, powers, and privileges of Original
7 Lender, and Liquidating Agent has the
8 following power and authority over
9 Original Lender, *inter alia*:

10 a) to operate Telesis, including
11 but not limited to taking over the assets of
12 and operate Telesis with all the powers of
13 the members or shareholders, the
14 directors, and the officers of Telesis, to
15 conduct all business of Telesis, to collect
16 all obligations and money due Telesis,
17 and to perform all functions of Telesis in
18 the name of Telesis (12 U.S.C.
19 §1787(b)(2)(B));

20 b) to function as Telesis’s
21 officers, directors, and shareholders (12
22 U.S.C. §1787(b)(2)(C)); and

23 c) to place Telesis in
24 liquidation and proceed to realize upon its
25 assets (12 U.S.C. §1787(b)(2)(E)).
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12 U.S.C. § 1787(b)(2).

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| <p>1 6. A written guaranty is an 2 enforceable and binding contract, and 3 constitutes a separate and independent 4 obligation from that of the principal debt.</p> | <p><i>California Civil Code</i>, §§ 1550, 2787, and 2792; <i>United Central Bank v.</i> <i>Superior Court</i> (2009) 179 Cal.App.4th 212, 215.</p> |
| <p>5 7. Where a guaranty is entered into at 6 the same time with the original 7 obligation, or with the acceptance of the 8 latter by the creditor, and forms with that 9 obligation a part of the consideration to 10 him, no other consideration need exist.</p> | <p><i>California Civil Code</i>, § 2792.</p> |
| <p>11 8. A plaintiff's burden of proof on a 12 cause of action for breach of written 13 guaranty is to establish the following 14 essential elements: (1) a valid guaranty, 15 (2) the borrower has defaulted, and (3) the 16 guarantor failed to perform under the 17 guaranty.</p> | <p><i>Torrey Pines Bank v. Superior Court</i> (1989) 216 Cal.App.3d 813, 819; <i>Reichert v. General Ins. Co.</i> (1968) 68 Cal.2d 822, 830.</p> |
| <p>18 9. A guarantor may waive his rights 19 and defenses provided for under 20 <i>California Code of Civil Procedure</i>, 21 sections 580a, 580b, 580d, and 726, and 22 such waivers are valid and binding.</p> | <p><i>California Code of Civil Procedure</i>, § 2856; <i>Gray1 CPB, LLC v. Kolokotronis</i> (2011) 202 Cal.App.4th 480.</p> |
| <p>23 10. <i>California Code of Civil</i> 24 <i>Procedure</i>, section 2856, waivers are 25 valid and binding on guarantors.</p> | <p><i>Gray1 CPB, LLC v. Kolokotronis</i> (2011) 202 Cal.App.4th 480</p> |

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IT IS SO ORDERED.

Dated: April 18, 2013



The Honorable Manuel L. Real
United States District Court Judge

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DATED: April 8, 2013

Respectfully Submitted:

LAW OFFICES OF RONALD RICHARDS
& ASSOCIATES, A.P.C.

By: / s / Ronald N. Richards
Ronald N. Richards
Attorneys for Plaintiff/Assignee/Real Party
In Interest FALLEN STAR, LLC

DATED: April 8, 2013

Respectfully Submitted:

SEYFARTH SHAW LLP

By: / s / Geoffrey S. Long
Geoffrey S. Long
Attorneys for Plaintiff/Assignee/Real Party
In Interest FALLEN STAR, LLC