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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

DONALD OKADA,

Plaintiff and Counter-  
Defendant,

v.

MARK WHITEHEAD,

Defendant and Counter-  
Claimant.

CASE NO. 8:15-cv-01449-JLS-KES

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

1 **I. INTRODUCTION**

2 Following a four-day jury trial in this matter, the Court issues the following findings  
3 of fact and conclusions of law pursuant to Federal Rule of Civil Procedure 52. To the  
4 extent that any findings of fact are included in the Conclusions of Law section, they shall  
5 be deemed findings of fact, and to the extent that any conclusions of law are included in  
6 the Findings of Fact section, they shall be deemed conclusions of law.

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8 **II. FINDINGS OF FACT**

9 **A. Background**

- 10 1. Plaintiff Donald Okada and Defendant Mark Whitehead were business partners  
11 who formed Beverly Hillbillys, LLC to acquire a piece of land located in Beverly  
12 Hills, California. (Stip. ¶ 5.1, Doc. 226.)
- 13 2. Okada and Whitehead also formed an entity called Cheap as Chips LLC for the  
14 purpose of buying and selling real estate and/or investing in real estate  
15 development. (Stip. ¶ 5.5, Doc. 226; 12/5 Tr. Vol. 1 at 92:1-3, Doc. 255.)
- 16 3. Okada and Whitehead also jointly purchased a property located in Newport Beach,  
17 California (“Ocean Ridge”). Both Whitehead and Okada had a 50% share in  
18 Ocean Ridge. (12/5 Tr. Vol. 1 at 92:7-9, 93:2-5, Doc. 255; Stip. ¶ 5.2, Doc. 226.)  
19 Okada and Whitehead agreed that Whitehead and his family could reside in Ocean  
20 Ridge so long as Whitehead was responsible for the monthly mortgage and  
21 homeowners’ association dues payments. (12/7 Tr. Vol. 2 at 21:23-22:4, Doc.  
22 257.)
- 23 4. Around Spring 2014, Okada brought two separate lawsuits against Whitehead.  
24 One lawsuit was over the breach of a promissory note (the “Whitehead Action”)  
25 while the other lawsuit concerned Cheap as Chips, LLC (the “CAC Action”).  
26 (Stip. ¶ 5.6, Doc. 226; Tr. Vol. 1 at 101:4-15, Doc. 255; 12/7 Tr. Vol. 2 at 22:17-  
27 23:21; 23:22-24:21, Doc. 257.)

- 1 5. Beginning in late 2013, a group of international investors called Kamprad Venture  
2 Capital, LP and Premium Invest, Limited (collectively, “Kamprad”) offered to  
3 purchase Beverly Hillbillys LLC in exchange for \$1.2 million, a promissory note  
4 in the amount of \$2,319,110 and a 100% equity ownership interest in Rockford  
5 Investment, Inc. (“Rockford”), a Belizean real estate holding company. (Stip. ¶  
6 5.7, Doc. 226; 12/5 Vol. 1, 101:21-102:19.)
- 7 6. Rockford owned five Dominican Republic corporate entities called SHR SOLAR  
8 24, SHR SOLAR 134, SHR SOLAR 135, SHR SOLAR 136 and SHR SOLAR  
9 137 (collectively, the “SHR SOLAR Companies”). (Stip. ¶ 5.8, Doc. 226; 12/5 Tr.  
10 Vol. 1 at 102:20-25, Doc. 255.) The SHR SOLAR Companies, in turn, owned a  
11 series of real property lots in the Dominican Republic that were collectively called  
12 the Lions Gate Mansion (“Lions Gate”). (Stip. ¶ 5.8, Doc. 226; 12/5 Tr. Vol. 1 at  
13 103:1-4, Doc. 255.)
- 14 7. Okada was not initially interested in the terms offered by Kamprad, but Whitehead  
15 repeatedly attempted in January through March 2014 to persuade Okada to accept  
16 that deal. (Stip. ¶ 5.9, Doc. 226; 12/5 Tr. Vol. 1 at 103:12-19, Doc. 255.)
- 17 8. Okada and Whitehead engaged in settlement discussions to resolve all outstanding  
18 issues between the parties, including the sale of Beverly Hillbillys LLC to  
19 Kamprad in exchange for cash, a promissory note and ownership of Rockford.  
20 (Stip. ¶ 5.10, Doc. 226; 12/5 Tr. Vol. 1 at 107:13-19, Doc. 255.)
- 21 9. Kamprad used the services of a Dominican Republic attorney named Guido  
22 Perdomo and his law firm Perdomo Law for Lions Gate and the SHR SOLAR  
23 Companies. (Stip. ¶ 5.11, Doc. 226; Trial Exh. 200 ¶ 13; 12/5 Tr. Vol. 2 at 8:12-  
24 9:7; Perdomo Tr. at 14:18-16:15.)
- 25 10. Whitehead reached out to Perdomo to obtain information about Lions Gate. (Stip.  
26 ¶ 5.13, Doc. 226; Perdomo Tr. 17:08-18:14.)  
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- 1 11. During the parties' negotiations over the Settlement Agreement, the parties agreed  
2 that Rockford would be managed by a third party administrator, mutually agreed  
3 upon to be Perdomo, pursuant to written instructions jointly provided by Okada  
4 and Whitehead until the \$950,000 obligation was paid off. (Stip. ¶¶ 5.28-5.29,  
5 Doc. 226.)
- 6 12. On July 31, 2014, Okada and Whitehead entered into a Settlement Agreement and  
7 General Release ("Settlement Agreement"). (Stip. ¶ 5.28, Doc. 226.) The Court  
8 incorporates by reference the terms of the Settlement Agreement (Trial Exh. 5).
- 9 13. Under the Settlement Agreement, Whitehead was to record Okada's first priority  
10 lien against Lions Gate within 24 hours after the closing of the Beverly Hillbillys  
11 LLC-Kamprad transaction. (Summary Judgment Order at 9-13, Doc. 183.)
- 12 14. On August 13, 2014, Okada and Whitehead executed the First Amendment to  
13 Settlement Agreement ("First Amendment"). The Court incorporates by reference  
14 the terms of the First Amendment (Trial Exh. 12).
- 15 15. The Beverly Hillbillys LLC-Kamprad transaction closed on August 15, 2014.  
16 (Stip. ¶ 5.33, Doc. 226.)
- 17 16. On or around August 15, 2014, Okada and Whitehead each received their  
18 monetary consideration from the Beverly Hillbillys LLC-Kamprad transaction,  
19 and their respective ownership interests in Rockford were conveyed by Kamprad  
20 to Perdomo to be held in trust for Okada and Whitehead. (Stip. ¶ 5.34, Doc. 226.)
- 21 17. Okada fully performed all of his obligations under the Settlement Agreement.  
22 Specifically, (1) Okada filed a Notice of Conditional Settlement of Entire Case in  
23 the CAC Action and that lawsuit was suspended; (2) Okada has never sought to  
24 enforce his Stipulated Judgment in the Whitehead Action; (3) on August 15, 2014,  
25 Okada transferred all legal and ownership interest in Ocean Ridge to Whitehead  
26 and Whitehead's wife through a grant deed; (4) Whitehead has never presented a  
27 claim for indemnification to Okada, nor is Okada aware of any action pending  
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1 against Whitehead for acts committed by Okada; (5) Okada and Whitehead evenly  
2 split the costs regarding various tax liabilities and expenses relating to Beverly  
3 Hillbilys LLC and Cheap As Chips, LLC; and (6) Okada filed all the tax returns  
4 for Cheap as Chips, LLC, despite the Settlement Agreement not obligating Okada  
5 to do so. (Stip. ¶ 5.35, Doc. 226; 12/5 Tr. Vol. 2 at 18:11-21, Doc. 264; 12/7 Tr.  
6 Vol. 2 at 26:20-27:4, Doc. 257.)

7 18. Following the close of the Beverly Hillbilys LLC-Kamprad transaction,  
8 Whitehead moved to the Dominican Republic and took control of the SHR  
9 SOLAR Companies and Lions Gate. (Stip. ¶ 5.37, Doc. 226.)

10 19. About a week after the close of the Beverly Hillbilys LLC-Kamprad transaction,  
11 Okada's counsel repeatedly began asking Whitehead's counsel about the status of  
12 the lien on Lions Gate. (Trial Exhs. 43, 44; 12/6 Tr. Vol. 1 at 39:7-41:14, Doc.  
13 265; 12/6 Tr. Vol. 1 at 41:15-42:15, Doc. 265.) Whitehead's counsel indicated  
14 there were misunderstandings and that he was very busy. (Trial Exhs. 43, 44.)  
15 Eventually, a conference call with Perdomo was proposed and accepted. (Stip. ¶  
16 5.38, Doc. 226.)

17 20. On October 3, 2014, Perdomo sent another reminder to Whitehead that Perdomo  
18 was waiting for the \$10,000 in funds needed to update the SHR SOLAR  
19 Companies. (Stip. ¶ 5.40, Doc. 226; Trial Exh. 73; 12/6 Tr. Vol. 1 at 32:18-33:12,  
20 Doc. 265.)

21 21. By mid-day on October 8, 2014, Whitehead still had not sent the \$10,000 needed  
22 to start updating the SHR SOLAR Companies, let alone record a lien in favor of  
23 Okada on Lions Gate. (Trial Exhs. 77, 78; Perdomo Tr. 87:4-7; 12/7 Tr. Vol. 1 at  
24 68:11-24, Doc. 266.)

25 22. As of the trial, Whitehead had not paid off the \$950,000 promissory note to  
26 Okada. (12/6 Tr. Vol. 1 at 44:14-16, Doc. 265.)  
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- 1 23. On October 8, 2014, Okada issued to Perdomo and Whitehead a formal notice of  
2 Whitehead's default under the Settlement Agreement and requested a transfer of  
3 all of Rockford's shares to him pursuant to the Settlement Agreement. (Stip. ¶  
4 5.45, Doc. 226; Trial Exh. 76; 2/8 Tr. Vol. 2 at 41:2-7, Doc. 267.)
- 5 24. Under Dominican law, Okada had no secured interest in Lions Gate due to  
6 Whitehead's failure to record the lien. If Whitehead were to sell the property,  
7 Okada would have none of the remedies reserved for secured creditors. (Order at  
8 2, Doc. 222.)
- 9 25. Okada had no other non-judicial remedies available to him other than requesting a  
10 transfer of Rockford's shares, because Whitehead had failed to record a lien on  
11 Lions Gate. (12/8 Tr. Vol. 1 at 17:2-9, Doc. 258; 12/8 Tr. Vol. 2 at 82:17-19, Doc.  
12 267.)
- 13 26. In October 2014, Whitehead was attempting to install himself as President of the  
14 SHR SOLAR Companies following his termination of Jose Lantigua's  
15 employment. (Trial Exh. 73.)
- 16 27. Only after Okada issued the notice of default did Whitehead issue the \$10,000 to  
17 Perdomo to begin the process of transforming the SHR SOLAR Companies. (Stip.  
18 ¶ 5.47, Doc. 226; Trial Exhs. 77, 78; 12/7 Tr. Vol. 1 at 63:6-16, 68:11-24, Doc.  
19 266.)
- 20 28. On October 9, 2014, Perdomo sent an e-mail to Whitehead to notify him that there  
21 was an additional \$19,000 that needed to be paid in fees in order to record a lien  
22 on Lions Gate for Okada. Perdomo also confirmed that this registration process  
23 could not take place until the SHR SOLAR Companies had been transformed,  
24 which could take around 30 days. (Stip. ¶ 5.49, Doc. 226; Trial Exh. 80; Perdomo  
25 Tr. at 99:9-101:16.)
- 26 29. On October 13, 2014, Perdomo transferred all shares of Rockford to Okada. (Trial  
27 Exh. 82; Perdomo Tr. at 104:3-105:23.)
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- 1 30. To prevent Lantigua from having any claims upon Lions Gate, Okada paid  
2 Lantigua his requested \$8,500 severance on or around November 14, 2014.  
3 Lantigua signed a full release at that time. (Trial Exh. 87; Perdomo Tr. at 118:6-  
4 119:20; 12/7 Tr. Vol. 2 at 52:18-53:1.)
- 5 31. On or around December 2, 2014, Okada was named as a defendant in the *Rogers*  
6 *v. Whitehead* Action. This lawsuit alleged that Whitehead and Okada had breached  
7 an oral agreement with Rogers regarding the disposition of Beverly Hillbillys  
8 LLC. (Stip. ¶ 5.54, Doc. 226; 12/7 Tr. Vol. 2 at 57:2-22, Doc. 257.)
- 9 32. In December 2014, Whitehead filed a lawsuit against Okada in the Dominican  
10 Republic. (12/8 Tr. Vol. 1 at 10:17-12:10, Doc. 258.) Whitehead filed a second  
11 related lawsuit in the Dominican Republic against Okada. (12/8 Tr. Vol. 1 at  
12 10:17-12:10, Doc. 258.)
- 13 33. On January 6, 2015, Okada made a demand for indemnification to Whitehead in  
14 connection with the *Rogers v. Whitehead* lawsuit. (Stip. ¶ 5.55, Doc. 226; 12/5 Tr.  
15 Vol. 2 at 31:23-32:7, Doc. 264; 12/7 Tr. Vol. 2 at 58:17-59:13, Doc. 257.)
- 16 34. Whitehead has not indemnified Okada for the *Rogers v. Whitehead* lawsuit. (Stip.  
17 ¶ 5.55, Doc. 226.)
- 18 35. Okada completed the process of transforming the SHR SOLAR Companies so that  
19 a lien could be placed upon them or so that Lions Gate could be sold. He  
20 succeeded at considerable difficulty, because Whitehead raised legal challenges to  
21 the transformations in the Dominican Republic. (12/6 Tr. Vol. 1 at 86:16-89:21,  
22 Doc. 265; Trial Exh. 396.)
- 23 36. Okada has been paying all the taxes for Rockford, the SHR SOLAR Companies  
24 and Lions Gate since October 13, 2014. (Trial Exh. 135; 12/8 Tr. Vol. 1 at 15:10-  
25 21, Doc. 258.)
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- 1 37. Okada has not attempted to sell Rockford, the SHR SOLAR Companies, or Lions  
2 Gate nor has he attempted to live in Lions Gate. (12/8 Tr. Vol. 1 at 10:13-16, 19:7-  
3 21, Doc. 258.)
- 4 38. Okada requested the appointment of a receiver over Lions Gate so that an  
5 impartial third party could take over the property, sell it, and appropriately handle  
6 distribution of the proceeds of that sale. (12/8 Tr. Vol. 2 at 42:14-44:11, Doc.  
7 267.)
- 8 39. Whitehead has continued to live at Lions Gate, with Okada having paid for its  
9 various taxes and registration fees, and has rented out the property to tourists,  
10 collecting \$399,691 to date. (12/6 Tr. Vol. 1 at 89:25-92:8; 12/7 Tr. Vol. 1 at 34:3-  
11 21.)
- 12 40. Based on Whitehead's testimony in court, the Court finds him to lack credibility.  
13 To provide a few examples of Whitehead's testimony and conduct that raised  
14 questions about his truthfulness:
- 15 a. In attempting to dismiss this suit for lack of subject matter jurisdiction,  
16 Whitehead falsely stated under penalty of perjury: "Both my wife and I have  
17 driver's licenses that are issued by the State of California, and we do not  
18 have nor do we intend to obtain a driver's license with the State of Florida."  
19 (Trial Exh. 145.) In fact, Whitehead had already obtained a Florida license.  
20 (12/5 Tr. Vol. 1 at 87:23-90:2, Doc. 255; *see also* Order at 4, Doc. 24.)  
21 Whitehead's explanation on the stand about how he "made a mistake" was  
22 totally unbelievable. (*See* 12/5 Tr. Vol. 1 at 87:23-90:2, Doc. 255.)
- 23 b. Whitehead falsely testified that he was not negotiating a lease agreement for  
24 Ocean Ridge in April 2014 before being impeached with a copy of the lease  
25 agreement signed by "Mark Whitehead, Broker" on April 29, 2014 and Mr.  
26 Ralfa and Ms. Farid on April 30, 2014. (12/5 Vol. 2 Tr. at 21:3-23:19, Doc.  
27 264; Exh. 201.)
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1 c. In a cross-complaint where he represented himself, Whitehead falsely stated  
2 that Okada was at all times a 50 percent owner of Ocean Ridge. (Trial Exh.  
3 202 ¶ 5.) Whitehead’s explanation for why he failed to omit that Okada’s  
4 ownership interest was transferred as part of the Settlement Agreement was  
5 farfetched. (12/5 Vol. 2 Tr. at 25:13-28:7, Doc. 264.)

6 d. Whitehead has failed to file tax returns for the past three years despite  
7 earning substantial income. (12/5 Vol. 2 Tr. at 29:2-31:4, Doc. 264.)  
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9 **III. CONCLUSIONS OF LAW**

10 41. The elements of a claim for breach of contract are: “(1) the contract, (2) plaintiff’s  
11 performance or excuse for nonperformance, (3) defendant’s breach, and (4)  
12 damages to the plaintiff.” *Wall St. Network, Ltd. v. New York Times Co.*, 164 Cal.  
13 App. 4th 1171, 1178 (Ct. App. 2008) (citing *Regan Roofing Co. v. Superior Court*,  
14 24 Cal. App. 4th 425, 434-35 (Ct. App. 1994)).

15 42. Whitehead dedicates much of his proposed findings of fact and conclusions of law  
16 to relitigating issues that the jury has already conclusively resolved. The jury  
17 determined that Whitehead breached the Settlement Agreement by (1) failing to  
18 record the lien within twenty-four hours, (2) failing to pay Lantigua’s severance  
19 payment, (3) making false and/or misleading statements to Okada, and (4) failing  
20 to indemnify Okada. (Jury Verdict Form, Docs. 247, 249.) In addition, the jury  
21 concluded that Whitehead did not prove his affirmative defense of waiver. (*Id.*)

22 43. Whitehead explicitly abandoned his mutual mistake defense on the record at trial;  
23 thus, this defense has been waived. (12/8 Tr. Vol. 2 at 3:6-19, Doc. 259.)

24 44. Any argument that any of Whitehead’s breaches of the Settlement Agreement  
25 were not material was waived in Whitehead’s proposed jury verdict form. (Jury  
26 Verdict Form (“Defendant’s Proposed Version”) at 13, Doc. 237; Jury Verdict  
27 Form (“Defendant’s Proposed Version”) at 15, Doc. 240.) Further, as a matter of  
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1 law, the failure to record the lien within nine weeks of closing of the Beverly  
2 Hillbillys-Kamprad transaction was a material breach of the agreement because  
3 Okada was left without any of the protections that a secured creditor held under  
4 Dominican law. Without a lien, Whitehead could have sold the property and  
5 Okada would have no way to prevent the sale. As the last two-and-half-years of  
6 litigation across two countries demonstrates, an unsecured interest is much harder  
7 to enforce in the Dominican Republic than a secured interest.

8  
9 **A. Whitehead's Equitable Defenses Fail**

- 10 45. **Excuse of Performance:** Under the doctrine of excuse of performance, “Where a  
11 party’s breach by non-performance contributes materially to the non-occurrence of  
12 a condition of one of his duties, the non-occurrence is excused.” *Jacobs v.*  
13 *Tenneco W., Inc.*, 231 Cal. Rptr. 351, 353 (Ct. App. 1986). Whitehead’s defense  
14 rests on the premise that Okada waived his right to have Whitehead record the lien  
15 within twenty-four hours. But the jury has already determined that Whitehead  
16 failed to prove his affirmative defense of waiver (Jury Verdict Form, Docs. 247,  
17 249), and Okada did not breach the Settlement Agreement. Thus, Whitehead’s  
18 excuse of performance defense fails.
- 19 46. **Unjust Enrichment:** Whitehead raises the affirmative defense of “unjust  
20 enrichment,” but he provides no authorities holding that unjust enrichment is an  
21 affirmative defense under California law. Even if it were, it would fail for the  
22 reasons provided in subsection B below.
- 23 47. **Offset:** “[A] court of equity will compel a set-off when mutual demands are held  
24 under such circumstances that one of them should be applied against the other and  
25 only the balance recovered.” *Margott v. Gem Properties, Inc.*, 111 Cal. Rptr. 1, 4  
26 (Ct. App. 1973). In his proposed findings of fact and conclusion of law,  
27 Whitehead did not mention his affirmative defense of offset, and the Court can see  
28 no possible way this defense would apply to this case. Thus, Whitehead’s defense

1 of offset fails.

2 48. **Equitable Estoppel:** “A valid claim of equitable estoppel consists of the  
3 following elements: [1] a representation or concealment of material facts [2] made  
4 with knowledge, actual or virtual, of the facts [3] to a party ignorant, actually and  
5 permissibly, of the truth [4] with the intention, actual or virtual, that the ignorant  
6 party act on it, and [5] that party was induced to act on it.” *Transp. Ins. Co. v. TIG*  
7 *Ins. Co.*, 136 Cal. Rptr. 3d 315, 338 (Ct. App. 2012). Whitehead has adduced no  
8 credible evidence that Whitehead relied on any statement that Okada made or that  
9 Okada acted with the intent—actual or virtual—that Whitehead would act upon a  
10 statement Okada made or failed to make. In any event, because Okada waited nine  
11 weeks before declaring a default, Whitehead would have suffered no loss as a  
12 result of any statement Okada made.

13 **B. Whitehead’s Quasi-Contract Claim Fails**

14 49. Considering Whitehead’s failure to engage in any meaningful progress to record  
15 the lien within nine weeks of closing of the Beverly Hillbillies-Kamprad  
16 transaction and Okada’s lack of any security interest in Lions Gate protecting him  
17 from a potential sale of the property, Okada properly declared a default.  
18 50. Although Okada currently holds the Rockford shares, he has been unable to obtain  
19 any of the value of the property because Whitehead filed two lawsuits in the  
20 Dominican Republic in December 2014 and resisted Okada’s efforts to update the  
21 SHR Solar Companies. Okada has been paying all the taxes on the property and  
22 has not sold Rockford. Whitehead has spent the last two years residing on the  
23 property and leasing it out (collecting at least \$399,691) but still shows no  
24 inclination of ever repaying Okada the \$950,000 (plus interest) Whitehead owes  
25 Okada. Thus, Okada has not been unjustly enriched by the transfer of the shares of  
26 Rockford to him and Whitehead’s counterclaim for unjust enrichment fails.  
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1       **C. Whitehead’s Has No Right to Seek Specific Performance**

2       51. The jury has determined the Whitehead breached the Settlement Agreement by (1)  
3       failing to record the lien within twenty-four hours, (2) failing to pay Lantigua’s  
4       severance payment, (3) failing to indemnify Okada, and (4) making false and/or  
5       misleading statements to Okada. (Jury Verdict Form, Docs. 247, 249.)

6       52. Because Whitehead materially breached the Settlement Agreement, he is not  
7       entitled to specific performance of the agreement.

8       **D. Whitehead’s Request for Declaratory Relief is Denied**

9       53. The jury has determined the Whitehead breached the Settlement Agreement by (1)  
10       failing to record the lien within twenty-four hours, (2) failing to pay Lantigua’s  
11       severance payment, (3) failing to indemnify Okada, and (4) making false and/or  
12       misleading statements to Okada.

13       54. Due to his numerous breaches of the parties’ Settlement Agreement, Whitehead is  
14       not the rightful owner of Rockford or any of its assets. To the contrary, Okada is  
15       the owner of a \$950,000 interest in Rockford (and its assets), and Whitehead is the  
16       owner of the remaining interest.

17       55. For these reasons, Whitehead is not entitled to declaratory relief.

18       **E. Appointment of a Receiver**

19       56. “[A] federal court sitting in diversity may exercise equitable powers independent  
20       of state law.” *Canada Life Assur. Co. v. LaPeter*, 563 F.3d 837, 843 (9th Cir.  
21       2009). Thus, “federal law governs the issue of whether to appoint a receiver in a  
22       diversity action.” *Id.*

23       57. In determining whether to grant a receivership the Ninth Circuit has identified  
24       seven non-exhaustive factors: “(1) whether [the party] seeking the appointment  
25       has a valid claim; (2) whether there is fraudulent conduct or the probability of  
26       fraudulent conduct[] by the defendant; (3) whether the property is in imminent  
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1 danger of being lost, concealed, injured, diminished in value, or squandered; (4)  
2 whether legal remedies are inadequate; (5) whether the harm to plaintiff by denial  
3 of the appointment would outweigh injury to the party opposing appointment; (6)  
4 the plaintiff's probable success in the action and the possibility of irreparable  
5 injury to plaintiff's interest in the property; and, (7) whether [the] plaintiff's  
6 interests sought to be protected will in fact be well-served by receivership."

7 *Canada Life Assur. Co.*, 563 F.3d at 844 (citation omitted).

8 58. These factors strongly favor the appointment of a receiver: First, Okada has  
9 already proven his claims at a four-day jury trial. (Jury Verdict Form, Docs. 247,  
10 249.) Second, Okada has proven at trial that Whitehead engaged in fraudulent  
11 conduct directly related to the Settlement Agreement. Specifically, the jury agreed  
12 with Okada that Whitehead concealed his rental property income from Ocean  
13 Ridge and made false statements about the ability to place a lien on Lions Gate  
14 before the SHR Solar Companies were updated. (*See id.*) Third, Whitehead's  
15 actions in the Dominican Republic continue to threaten Okada's ownership  
16 interest in Lions Gate. Before Okada declared a default, Whitehead sought to  
17 appoint himself as president of the SHR Solar Companies, he continues to raise  
18 obstacles against Okada in Dominican courts (despite the forum selection clause  
19 requiring the parties to resolve any disputes here (Trial Exh. 5 ¶ 15)), and he  
20 refuses to vacate Lions Gate. (*See* Trial Exh. 73; 12/6 Tr. Vol. 1 at 86:16-89:21,  
21 Doc. 265; 12/6 Tr. Vol. 1 at 44:14-16, Doc. 265; Trial Exh. 396.) Fourth, Okada's  
22 legal remedies are entirely inadequate. Whitehead has shown no interest in ever  
23 repaying Okada the \$950,000 plus interest that Whitehead owes Okada, and it is  
24 highly unlikely that Okada will ever be compensated for his stake in Lions Gate  
25 unless a receiver is appointed and the property is sold. (*See* 12/6 Tr. Vol. 1 at  
26 44:14-16, Doc. 265.) Fifth, the harm Okada would suffer if this court were to deny  
27 his request for a receivership would greatly outweigh any legitimate loss  
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1 Whitehead may face by the appointment of a receiver. As a result of his multiple  
2 breaches of the Settlement Agreement, Whitehead is no longer a rightful owner of  
3 Lions Gate, so the appointment of a receiver would not substantially impair a  
4 legitimate property interest Whitehead holds. The only property interest  
5 Whitehead has in Lions Gate is any potential equity, which he cannot access  
6 unless the property is sold. Sixth, as noted already under the earlier factors, Okada  
7 has by this point succeeded in proving his claims at trial and will suffer irreparable  
8 harm unless a receiver is appointed. Seventh, both Okada and Whitehead will be  
9 well served by the appointment of a receiver because a receiver would be best able  
10 to fairly and transparently sell the property and apportion the proceeds. Okada and  
11 Whitehead had a decade-long relationship that devolved into multiple lawsuits in  
12 this country and in the Dominican Republic, and the parties do not trust each  
13 other. As such, it is highly unlikely they will be able to sell Lions Gate and unwind  
14 their business relationship unless a receiver is appointed.

15 59. Besides the factors articulated by the Ninth Circuit, Whitehead’s consent to the  
16 appointment of a receiver in case of default in the Settlement Agreement, which  
17 was a mutually bargained-for agreement, deserves “great weight.” *LPP Mortg.*  
18 *Ltd. v. Ondyn Herschelle*, No. 13-CV-04330-JSC, 2014 WL 3568577, at \*3 (N.D.  
19 Cal. July 17, 2014); *N.Y. Life Ins. Co. v. Watt W. Inv. Corp.*, 755 F. Supp. 287, 292  
20 (E.D. Cal. 1991).

21 60. In sum, after considering the balance of interests, Plaintiff’s success on the merits,  
22 and the high likelihood of irreparable harm, the Court GRANTS Okada’s request  
23 for the appointment of a receiver. The receiver will have the ability to seek an  
24 ancillary appointment or employ other legal processes in the Dominican Republic  
25 as necessary and appropriate to carry out his or her duties.

26 **IV. CONCLUSION**

27 For the foregoing reasons, the Court GRANTS Okada’s request for judgment  
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1 against Whitehead on Whitehead's equitable defenses, claims, and request for declaratory  
2 relief. The Court further GRANTS Okada's request for the appointment of a receiver.  
3 Okada shall submit a proposed order appointing a receiver as well as any motion for  
4 attorneys' fees and costs forthwith.

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DATED: April 04, 2017



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JOSEPHINE L. STATON  
UNITED STATES DISTRICT JUDGE