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**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA**

|                                         |   |                              |
|-----------------------------------------|---|------------------------------|
| <b>HSBC BANK USA,</b>                   | ) | <b>1:09-CV-01239 AWI SKO</b> |
|                                         | ) |                              |
| <b>Plaintiff,</b>                       | ) | ORDER DISMISSING MPUD        |
|                                         | ) | FROM ACTION; ORDER           |
| <b>v.</b>                               | ) | GRANTING HSBC'S MOTION       |
|                                         | ) | FOR PARTIAL SUMMARY          |
| <b>DJR PROPERTIES, INC. dba SUPER 8</b> | ) | JUDGMENT; AND ORDER          |
| <b>MARIPOSA, et al.,</b>                | ) | GRANTING IN PART AND         |
|                                         | ) | DENYING IN PART SBA'S        |
| <b>Defendants.</b>                      | ) | MOTION FOR SUMMARY           |
|                                         | ) | JUDGMENT                     |

[Document # 114 and 120]

**INTRODUCTION**

On June 25, 2009, Ciena Capital Funding LLC ("Ciena") filed an action in Mariposa County Superior Court, alleging various claims related to property located at 5059 Highway 140 Mariposa, CA 95338 ("the property"). HSBC Bank USA ("HSBC") was substituted as Plaintiff in place of Ciena on December 13, 2010. Defendant/Cross-Plaintiff U.S. Small Business Administration ("SBA") removed the case to federal court on July 16, 2009, invoking the Court's jurisdiction under 28 U.S.C. § 1444.

Before the Court are three separate motions for summary judgment. HSBC has moved for partial summary judgment against Defendant/Cross-Defendant DJR Properties, Inc., dba Super-8 Mariposa ("DJR"), SBA, Defendant CIT Small Business Lending Corp. ("CIT"),

1 Defendant Suraj Puri (“Puri”) and Defendant Mariposa Public Utility District (“MPUD”),  
2 asking the court to judicially declare that HSBC holds a first position lien on the property.

3 SBA has moved for summary judgment on its judicial foreclosure and breach of  
4 contract claims against DJR and Cross-Defendants Rajendra K. Ahuja (“Rajendra”), Jagdeep  
5 Singh (“Jagdeep”) and Darshan Singh (“Darshan”). MPUD has moved for summary judgment  
6 against HSBC, arguing that MPUD is entitled to judgment as a matter of law because  
7 MPUD’s lien on the property has been extinguished.

### 8 **LEGAL STANDARD**

9 Summary judgment is appropriate when it is demonstrated that there exists no genuine  
10 issue as to any material fact, and that the moving party is entitled to judgment as a matter of  
11 law. Fed. R. Civ. P. 56(c); Adickes v. S.H. Kress & Co., 398 U.S. 144, 157 (1970); Fortyune  
12 v. Am. Multi-Cinema, Inc., 364 F.3d 1075, 1080 (9th Cir. 2004); Jung v. FMC Corp., 755  
13 F.2d 708, 710 (9th Cir. 1985). Where summary judgment requires the court to apply law to  
14 undisputed facts, it is a mixed question of law and fact. Sousa v. Unilab Corp. Class II  
15 (Non-Exempt) Members Group Benefit Plan, 252 F. Supp. 2d 1046, 1049 (E.D. Cal. 2002).  
16 Where the case turns on a mixed question of law and fact and the only dispute relates to the  
17 legal significance of the undisputed facts, the controversy for trial collapses into a question of  
18 law that is appropriate for disposition on summary judgment. Union Sch. Dist. v. Smith, 15  
19 F.3d 1519, 1523 (9th Cir. 1994); Sousa, 252 F. Supp. 2d at 1049.

20 Under summary judgment practice, the moving party always bears the initial  
21 responsibility of informing the district court of the basis for its motion, and identifying those  
22 portions of “the pleadings, depositions, answers to interrogatories, and admissions on file,  
23 together with the affidavits, if any,” which it believes demonstrate the absence of a genuine  
24 issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). “[W]here the  
25 nonmoving party will bear the burden of proof at trial on a dispositive issue, a summary  
26 judgment motion may properly be made in reliance solely on the ‘pleadings, depositions,

1 answers to interrogatories, and admissions on file.” Id. Indeed, summary judgment should be  
2 entered, after adequate time for discovery and upon motion, against a party who fails to make  
3 a showing sufficient to establish the existence of an element essential to that party’s case, and  
4 on which that party will bear the burden of proof at trial. Id. at 322. “[A] complete failure of  
5 proof concerning an essential element of the nonmoving party’s case necessarily renders all  
6 other facts immaterial.” Id. In such a circumstance, summary judgment should be granted “so  
7 long as whatever is before the district court demonstrates that the standard for entry of  
8 summary judgment, as set forth in Rule 56(c), is satisfied.” Id. at 323.

9         If a moving party fails to carry its burden of production, then “the non-moving party  
10 has no obligation to produce anything, even if the nonmoving party would have the ultimate  
11 burden of persuasion.” Nissan Fire & Marine Ins. Co. v. Fritz Companies, 210 F.3d 1099,  
12 1102-03 (9th Cir. 2000). If the moving party meets its initial burden, the burden then shifts to  
13 the opposing party to establish that a genuine issue as to any material fact actually does exist.  
14 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986); Nolan v.  
15 Cleland, 686 F.2d 806, 812 (9th Cir. 1982); Ruffin v. Cnty. of Los Angeles, 607 F.2d 1276,  
16 1280 (9th Cir. 1979). A fact is “material” if it might affect the outcome of the suit under the  
17 governing law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-49 (1986); Thrifty Oil Co.  
18 v. Bank of Am. Nat’l Trust & Sav. Ass’n, 322 F.3d 1039, 1046 (9th Cir. 2002). A “genuine  
19 issue of material fact” arises when the evidence is such that a reasonable jury could return a  
20 verdict for the nonmoving party. Anderson, 477 U.S. at 248-49; Thrifty Oil, 322 F.3d at 1046.

21         In attempting to establish the existence of a factual dispute, the opposing party may not  
22 rely upon the mere allegations or denials of its pleadings, but is required to tender evidence of  
23 specific facts in the form of affidavits, and/or admissible discovery material, in support of its  
24 contention that the dispute exists. Fed. R. Civ. P. 56(e); Matsushita, 475 U.S. at 586 n.11;  
25 First Nat’l Bank, 391 U.S. at 289; Willis v. Pac. Mar. Ass’n, 244 F.3d 675, 682 (9th Cir.  
26 2001). However, the opposing party need not establish a material issue of fact conclusively in  
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1 its favor. It is sufficient that “the claimed factual dispute be shown to require a jury or judge  
2 to resolve the parties’ differing versions of the truth at trial.” First Nat’l Bank, 391 U.S. at  
3 290; Hopper v. City of Pasco, 248 F.3d 1067, 1087 (9th Cir. 2001). Thus, the “purpose of  
4 summary judgment is to ‘pierce the pleadings and to assess the proof in order to see whether  
5 there is a genuine need for trial.’” Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e)  
6 advisory committee’s note on 1963 amendments); Mende v. Dun & Bradstreet, Inc., 650 F.2d  
7 129, 132 (9th Cir. 1982).

8 In resolving the summary judgment motion, the court examines the pleadings,  
9 depositions, answers to interrogatories, and admissions on file, together with the affidavits, if  
10 any. Fed. R. Civ. P. 56(c); Fortyune, 364 F.3d at 1079-80. The evidence of the opposing  
11 party is to be believed, and all reasonable inferences that may be drawn from the facts placed  
12 before the court must be drawn in favor of the opposing party. Anderson, 477 U.S. at 255;  
13 Matsushita, 475 U.S. at 587; Stegall v. Citadel Broad, Inc., 350 F.3d 1061, 1065 (9th Cir.  
14 2003). Nevertheless, inferences are not drawn out of the air, and it is the opposing party’s  
15 obligation to produce a factual predicate from which the inference may be drawn. Sousa, 252  
16 F. Supp.2d at 1049.

17 Finally, to demonstrate a genuine issue, the opposing party “must do more than simply  
18 show that there is some metaphysical doubt as to the material facts.” Matsushita, 475 U.S. at  
19 586 (citation omitted). “Where the record taken as a whole could not lead a rational trier of  
20 fact to find for the nonmoving party, there is no ‘genuine issue for trial.’” Id. at 587 (citation  
21 omitted). If the nonmoving party fails to produce evidence sufficient to create a genuine issue  
22 of material fact, the moving party is entitled to summary judgment. Nissan Fire & Marine,  
23 210 F.3d at 1103.

## 24 **PROCEDURAL HISTORY**

25 Ciena filed the Complaint in the instant action on June 25, 2009 in Mariposa County  
26 Superior Court against, *inter alia*, DJR, SBA, CIT, Puri and MPUD. The Complaint set forth  
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1 five causes of action, all related to Ciena's rights and interests with respect to the property.  
2 The case was removed to this Court on July 16, 2009.

3 SBA filed cross-claims against, *inter alia*, DJR, Rajendra, Jagdeep and Darshan on  
4 November 10, 2009 for judicial foreclosure and breach of contract.

5 Ciena filed a Motion for Partial Summary Judgment, a Statement of Undisputed Facts  
6 and a Request for Judicial Notice on November 16, 2010. Ciena's motion was filed against  
7 DJR, SBA, CIT, Puri and MPUD. MPUD filed an opposition on December 3, 2010. HSBC  
8 was substituted as Plaintiff in place of Ciena on December 13, 2010 and filed a Reply on the  
9 same day.

10 SBA filed a Motion for Summary Judgment on November 17, 2010 against DJR,  
11 Rajendra, Jagdeep and Darshan. DJR, Rajendra and Jagdeep filed Statements of Non-  
12 Opposition on December 6, 2010. SBA filed a Reply on December 13, 2010.

13 MPUD filed a Motion for Summary Judgment on November 17, 2010. Ciena filed a  
14 Response on December 6, 2010 and MPUD filed a Reply on December 15, 2010.

#### 15 **STATEMENT OF UNDISPUTED MATERIAL FACTS**

16 Ciena is a servicer for HSBC. Ciena financed DJR's acquisition of the Super 8 Motel  
17 located on the property by issuing two loans to DJR. Ciena issued to DJR a "Senior Loan" in  
18 the amount of \$1,300,000.00 and a "Junior Loan" in the amount of \$900,000.00.

19 With respect to the Senior Loan, on May 26, 2004, DJR executed and delivered to  
20 Ciena an "Adjustable Rate Promissory Note" ("Senior Note") in which DJR agreed to repay  
21 Ciena the \$1,300,000.00, plus interest thereon, in accordance with the terms of the Senior  
22 Note. To secure DJR's obligations under the Senior Note, on May 26, 2004, DJR executed  
23 and delivered to First American Title Company ("First American"), acting as trustee and for  
24 the benefit of Ciena, a "Deed of Trust, Security Agreement, Fixture Filing and Assignment of  
25 Leases and Rents" ("Senior Deed of Trust"). On June 1, 2004, the Senior Deed of Trust was  
26 recorded in Mariposa County as Document No. 2043246.



1 Guarantee” (“504 Loan Authorization”) where SBA expressly acknowledged that SBA’s 504  
2 Deed of Trust is subject to Ciena’s Senior Deed of Trust. Under the terms of the 504 Loan,  
3 DJR agreed to pay to SBA monthly installments of principal and interest in the amount of  
4 \$6212.15. DJR made payments to SBA through July 17, 2008. DJR did not make the August  
5 2008 payment and is now in default. At the time of DJR’s default, \$815,431.48 in principal  
6 remained on the loan.

7 On February 28, 2005, Ciena mistakenly reconveyed the Senior Deed of Trust to DJR.  
8 The reconveyance was recorded in Mariposa County as Document No. 2051445. Ciena  
9 intended to reconvey the Junior Deed of Trust to DJR in accordance with the Third Party  
10 Lender Agreement. Ciena did not discover the mistaken reconveyance until October 2007  
11 when Ciena completed a routine audit of its portfolio. On October 2, 2007, Ciena recorded a  
12 “Declaration of Cancellation of Full Reconveyance and Reinstatement of Deed of Trust”  
13 (“Declaration of Cancellation”). The Declaration of Cancellation, signed by DJR, stated that  
14 the reconveyance was recorded in error and that the Senior Deed of Trust was reinstated with  
15 full force and effect and priority as of the original date of execution.

16 Prior to the Declaration of Cancellation being recorded, the following other interests  
17 were recorded on the property. On July 22, 2005, CIT recorded an Abstract of Judgment in  
18 the amount of \$247,385.78 in Mariposa County as Document No. 2054920. On November  
19 21, 2006, Puri recorded a “Deed of Trust With Assignment of Rents” (“Puri Deed of Trust”)  
20 on the property in order to secure \$150,000.00. The Puri Deed of Trust was recorded in  
21 Mariposa County as Document No. 2066864. At the time of recording, Puri had knowledge of  
22 Ciena’s Senior Deed of Trust.

23 On August 26, 2008, MPUD recorded Resolution No. 2008-1636 in Mariposa County  
24 as Document No. 2083616. The Resolution stated that utility service charges in the amount of  
25 \$16,699.66 were due and unpaid. DJR made payments against MPUD’s lien and reduced the  
26 amount to \$10,370.10. MPUD recorded Resolution No. 2009-1666, which reflected the  
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1 reduction of MPUD’s lien to \$10,370.10. Resolution No. 2009-1666 was recorded in  
2 Mariposa County as Document No. 2093129. Subsequently, on May 12, 2010 and June 1,  
3 2010, MPUD received “property tax teeter payments” from Mariposa County for the full  
4 \$10,370.10, which extinguished MPUD’s lien.

5 **DISCUSSION**

6 A. Mootness

7 As a preliminary matter, HSBC argues that MPUD’s right to assert a claim against the  
8 property is moot because MPUD has conceded that it has no lien interest on the property.  
9 (Doc. 132 at 2-3.) In its Motion for Summary Judgment, MPUD agrees and states that “[i]t is  
10 not properly a party to the action, and must be dismissed from the action” because MPUD’s  
11 lien on the property has been paid in full by Mariposa County and is therefore extinguished.  
12 (Doc. 128-1 at 2.)

13 The case or controversy requirement of Article III of the Federal Constitution deprives  
14 the Court of jurisdiction to hear moot cases. Iron Arrow Honor Soc’y v. Heckler, 464 U.S. 67,  
15 70 (1983). A case becomes moot if the “the issues presented are no longer ‘live’ or the parties  
16 lack a legally cognizable interest in the outcome.” Murphy v. Hunt, 455 U.S. 478, 481 (1984).  
17 The Court is “without power to decide questions that cannot affect the rights of the litigants  
18 before them.” North Carolina v. Rice, 404 U.S. 244, 246 (1971) (per curiam) (quoting Aetna  
19 Life Ins. Co. v. Hayworth, 300 U.S. 227, 240-241 (1937)). Thus, to satisfy the Article III case  
20 or controversy requirement, a litigant “must have suffered some actual injury that can be  
21 redressed by a favorable judicial decision.” Iron Arrow, 464 U.S. at 70.

22 The Court agrees with the parties that this case is moot with respect to MPUD. MPUD  
23 has no legally cognizable interest in the outcome of the case because MPUD’s lien against the  
24 property has been extinguished. Therefore, MPUD is dismissed from the action. The Court  
25 will disregard any filings previously made by MPUD.





1 the property is subject and subordinate to HSBC's Senior Deed of Trust. There is no genuine  
2 issue of material fact and HSBC is entitled to judgment as a matter of law with respect to its  
3 declaratory relief claim against DJR. Therefore, HSBC's Motion for Partial Summary  
4 Judgment against DJR is GRANTED.

5 2. HSBC's Senior Deed of Trust against SBA's 504 Deed of Trust

6 On June 1, 2004, SBA was assigned all of EDF's interests under the 504 Deed of Trust.  
7 (Doc. 117-3 at 29.) In connection with EDF's assignment to SBA, SBA executed a 504 Loan  
8 Authorization in which SBA expressly acknowledged that the 504 Deed of Trust is subject to  
9 HSBC's Senior Deed of Trust. (Doc. 117-4 at 5.) Since SBA had actual knowledge of  
10 HSBC's prior lien, SBA cannot be a good faith encumbrancer for value. HSBC's Senior Deed  
11 of Trust has priority over SBA's 504 Deed of Trust. There is no genuine issue of material fact  
12 and HSBC is entitled to judgment as a matter of law with respect to its declaratory relief claim  
13 against SBA. HSBC's Motion for Partial Summary Judgment against SBA is GRANTED.

14 3. HSBC's Senior Deed of Trust against CIT's Abstract of Judgment

15 HSBC's Senior Deed of Trust was recorded on June 1, 2004. (Doc. 117-1 at 11.)  
16 HSBC mistakenly reconveyed the Senior Deed of Trust to DJR on February 28, 2005, which  
17 gave HSBC an equitable claim to reinstatement of a previously extinguished lien. (Doc. 117-4  
18 at 18.) CIT recorded an Abstract of Judgment against DJR in Mariposa County on July 22,  
19 2005. (Doc. 116-3 at 2.)

20 Under California law, a judgment creditor cannot be a good faith encumbrancer for  
21 value. U.S. v. Padilla, No. CIS S 02 2301 DFLGGH, 2005 WL 1378949, at \*3 (E.D. Cal. Jun.  
22 6, 2005); City of Torrance v. Castner, 46 Cal. App. 3d 76, 80 (1975). CIT is a judgment  
23 creditor and cannot be a good faith encumbrancer for value. Therefore, since CIT's Abstract of  
24 Judgment was recorded after HSBC's Senior Deed of Trust was recorded and after HSBC's  
25 equitable claim was created, CIT's interest is subordinate to HSBC's interest with respect to  
26 the property. There is no genuine issue of material fact and HSBC is entitled to judgment as a  
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1 matter of law against CIT for its declaratory relief claim. HSBC's Motion for Partial Summary  
2 Judgment against CIT is GRANTED.

3 4. HSBC's Senior Deed of Trust against Puri's Deed of Trust

4 Puri has not answered the Complaint and the Court has entered default against him.  
5 (Doc. 44.) On November 21, 2006, Puri recorded a Deed of Trust against the property. (Doc.  
6 116-4 at 2.) During his deposition, Puri testified that he reviewed a title report prior to entering  
7 into the loan with DJR. (Doc. 118 at 7-10.) The title report revealed that Puri's lien  
8 would have third priority against the property. Id. In addition, Puri stated that DJR represented  
9 to him that he would be the "third place lienholder" on the property and it was his belief that  
10 his loan would be subordinate to HSBC's loan. Id. Therefore, Puri had actual knowledge of  
11 HSBC's Senior Deed of Trust and therefore is not a good faith encumbrancer for value.  
12 HSBC's Senior Deed of Trust has priority over the Puri Deed of Trust. There is no genuine  
13 issue of material fact and HSBC is entitled to judgment as a matter of law with respect to its  
14 declaratory relief claim against Puri. HSBC's Motion for Partial Summary Judgment against  
15 Puri is GRANTED.

16 C. SBA's Motion for Summary Judgment

17 SBA has moved for summary judgment on its judicial foreclosure and breach of  
18 contract claims against DJR, Rajendra, Jagdeep and Darshan. No opposition has been filed.

19 1. Judicial Foreclosure

20 In its Reply, SBA concedes that a finding that HSBC's Senior Deed of Trust is superior  
21 to SBA's interest "will moot the [SBA's] first crossclaim for relief for judicial foreclosure."  
22 (Doc. 140 at 2.) SBA states that if the Court grants HSBC's motion then the SBA "will  
23 withdraw its motion[.]" Id. Since the Court has concluded above that HSBC's Senior Deed of  
24 Trust is superior to SBA's 504 Deed of Trust, SBA's Motion for Summary Judgment on its  
25 judicial foreclosure claim is DENIED.

26 2. Breach of contract against DJR

1 In California, “[a] cause of action for breach of contract requires proof of the following  
2 elements: (1) existence of the contract; (2) plaintiff’s performance or excuse for  
3 nonperformance; (3) defendant’s breach; and (4) damages to plaintiff as a result of the breach.”  
4 Williams v. Bank of Am., No. 2:09-CV-3060-JAM-KJM, 2010 WL 3034197, at \*4 (E.D. Cal.  
5 Jul. 30, 2010) (quoting CDF Firefighters v. Maldonado, 158 Cal. App. 4th 1226, 1239 (2008)).

6 It is undisputed that DJR and SBA entered into the 504 Loan transaction in which DJR  
7 received a loan in the amount of \$927,000.00 in exchange for DJR agreeing to make timely,  
8 monthly payments to SBA. (Doc. 121 at 1 and 18.) Under the terms of the 504 Note, DJR  
9 agreed to pay SBA monthly installments of principal and interest in the amount of  
10 \$6242.15. (Doc. 121-2 at 23.) DJR made payments on the 504 Note through July 2008. (Doc.  
11 121-1 at 4.) However, DJR did not make the August 2008 payment and has not made any  
12 further payments under the 504 Note. Id. As of October 1, 2010, DJR owes SBA \$935,311.24,  
13 which includes \$815,431.48 in principal and \$119,879.76 in interest. Interest continues to  
14 accrue at the rate of \$117.60 per day. Id. SBA has demonstrated that there exists no genuine  
15 issue as to any material fact with respect to their breach of contract claim against DJR and is  
16 entitled to judgment as a matter of law. SBA’s Motion for Summary Judgment on its breach of  
17 contract claim against DJR is GRANTED.

18 2. Breach of contract against Rajendra, Jagdeep and Darshan

19 “An action for breach of guaranty is a species of claim for breach of contract” and  
20 therefore has the same requirements as a breach of contract claim. MRW, Inc. v. Big-O Tires,  
21 LLC, No. CIV. S-08-1732 LKK/DAD, 2009 WL 3368438, at \*9 (E.D. Cal. Oct. 16, 2009)  
22 (citing Torrey Pines Bank v. Superior Court, 216 Cal. App. 3d 813 (1989)).

23 In this case, as security for payment of the 504 Note, Rajendra, Jagdeep and Darshan  
24 separately executed an Unconditional Guarantee. (Doc. 121-3 at 6, 11 and 16.) The  
25 Unconditional Guarantee states:

26 Guarantor unconditionally guarantees payment to Lender of all amounts owing under  
27 the Note. This Guarantee remains in effect until the Note is paid in full. Guarantor

1 must pay all amounts due under the Note when Lender makes written demand upon  
2 Guarantor. Lender is not required to seek payment from any other source before  
demanding payment from Guarantor.

3 Id. In addition, the Unconditional Guarantee provides that “[a]ll individuals and entities  
4 signing as Guarantor are jointly and severally liable.” (Doc. 121-3 at 8, 13 and 18.)

5 On August 13 and August 14, 2009, EDF sent to Rajendra, Jagdeep and Darshan, a  
6 notification of acceleration of the amount due under the 504 Note and demand for immediate  
7 payment of the entire remaining balance under the 504 Note. (Doc. 121-3 at 42-44.) Rajendra,  
8 Jagdeep and Darshan have failed to provide payment of the remaining balance due to SBA  
9 under the 504 Note. (Doc. 121-1 at 4.) Thus, SBA has demonstrated that there exists no  
10 genuine issue as to any material fact with respect to their breach of contract claim against  
11 Rajendra, Jagdeep and Darshan and is entitled to judgment as a matter of law. SBA’s Motion  
12 for Summary Judgment on its breach of contract claim against Rajendra, Jagdeep and Darshan  
13 is GRANTED.

14 Accordingly, the Court ORDERS that:

- 15 1. MPUD is dismissed from this action;
- 16 2. HSBC’s Motion for Partial Summary Judgment against DJR, SBA, CIT and  
17 Puri is GRANTED;
- 18 3. SBA’s Motion for Summary Judgment on its judicial foreclosure claim is  
19 DENIED;
- 20 4. SBA’s Motion for Summary Judgment on its breach of contract claim against  
21 DJR is GRANTED;
- 22 5. SBA’s Motion for Summary Judgment on its breach of contract claim against  
23 Rajendra, Jagdeep and Darshan is GRANTED.

24 IT IS SO ORDERED.

25 Dated: January 18, 2011

26   
27 CHIEF UNITED STATES DISTRICT JUDGE