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8 **SUPERIOR COURT OF ARIZONA**

9 **COUNTY OF MARICOPA**

10 GREG HOYT,

11 Plaintiff,

12 v.

13 DAVID FARCA and MAVI FARCA,
14 husband and wife, and TOH DESIGN
15 STUDIO, LLC, an Arizona limited liability
16 company,

16 Defendants.

NO. CV2015-013700

DECLARATION OF GREG HOYT

(Assigned to the Hon. Daniel Kiley)

17
18 Greg Hoyt declares, under the penalty of perjury that the following is true and correct:

19 1. I am of sound mind, am capable of making this declaration, and have personal
20 knowledge of the facts set forth in this Declaration.

21 2. David Farca ("David") and I developed a friendship through our mutual
22 membership in the Thunderbirds.

23 3. In 2014, David became aware that I wanted to renovate my home in San Jose Del
24 Cabo, BCS Mexico (the "Cabo House").

25 4. David approached me and convinced me that David, personally, could provide
26 superior and timely design, purchasing, construction and installation services for my Cabo
27 House.
28

1 5. Based upon David's representations, promises and "sales pitches" of his services,
2 I agreed to have David personally provide design, purchasing and construction services,
3 furnishings and materials including ordering, purchasing, and installing certain furnishings and
4 other construction at the Cabo House (the "Project").

5 6. Because David was a friend, I agreed to have him personally and his company
6 TOH Design Studio, LLC ("TOH"), which David brought into the deal, provide construction
7 services, materials and furnishings and materials at the Cabo House to complete the Project.
8 That agreement was partially oral and partially reflected in the various documents including
9 communication between myself and David and his agents.

10 7. I only agreed to have David provide these services and materials because of his
11 personal oral promises and representations to me about the high-quality services and materials
12 he would provide in a timely manner, and because of my relationship with David through the
13 Thunderbirds.

14 8. Our relationship and the representations that David made, led me to believe that I
15 was entering into an agreement with my friend, David, for the completion of the Project.

16 9. I agreed to pay David \$253,117.35 in exchange for David's promise to fully
17 complete the Project. I paid all invoices that I received for the project in a timely manner.

18 10. To date, I have paid David \$202,493.87. The remainder of the amount was due at
19 the time the Project was fully completed.

20 11. Unfortunately, David failed to complete the Project and, in fact, abandoned the
21 entire Project, despite taking significant payment from me for work not performed and materials
22 and furniture never delivered or even ordered.

23 12. I learned that vendors and suppliers had pulled off of the Project because they had
24 not received payment from David even though I had already paid the amounts due the vendors
25 and suppliers to David.

26 13. I then had a face-to-face meeting with David in his office and I told David that he
27 needed to be totally honest and transparent with me -- if there is a problem, we will work it out.
28 David said all of the contractors and vendors had been paid in full to date. I asked David three

1 times, and each time David said unequivocally that everyone had been paid in full to date. I then
2 called the contractor (Ginax) and was told Ginax had not been paid by David in 90 days, despite
3 repeated promises of payment, and a modified payment agreement with David.

4 14. This resulted in multiple delays of and problems for the Project, as further detailed
5 in the Declaration of Robert Toubman ("Toubman Declaration").

6 15. Certain materials that David had promised to provide and that I had paid David for
7 were never received. This included fabric for furnishings, which was critical to completion of
8 the Project.

9 16. On numerous occasions throughout the life of the Project, David made
10 misrepresentations to me about the status of fabrics and other materials, payments, construction,
11 and completion of the Project.

12 17. For example, David had promised that the linens I had paid for would be of a very
13 high quality. When I received the linens, I realized that they were of a much lower quality than
14 what I had been promised, and I rejected them.

15 18. David had also initially agreed to the October 1, 2015 completion deadline but
16 because of his failure to pay vendors and suppliers, the completion date for the Work was moved
17 back multiple times.

18 19. I notified David that my family planned on spending the 2015 Thanksgiving
19 holiday at the Cabo House and the Work needed to be completed by then. David promised to
20 do so. However, Thanksgiving passed without the Project being completed and my family were
21 forced to abandon their plans to travel to their Cabo House because of David's failure to
22 complete its obligations under the contract by Thanksgiving.

23 20. David never completed the Project and abandoned it leaving me to have to
24 complete it.

25 21. In an attempt to mitigate the damages caused by David's actions, I requested and
26 obtained some of the materials and furnishings that David had ordered but failed to deliver to the
27 Cabo House.

22. However, when I went to pick the items up, some of them were damaged, had gone missing and inexplicably reappeared, or had to be reordered.

23. I also asked David for documentation on the status of payments and materials, however, he has only provided limited information.

24. I also contacted the distributor of the patio furniture for the Project (Sunset West in Vista, California) and offered to pay what was owed by David to get my furniture released (which I had already paid for). Sunset West told me they could not release my furniture until David paid for the other two projects he had also not paid for.

25. In December, 2015, David personally reached out to me in writing (an e-mail) and accepted responsibility for the breach of the Contract and his personal failure to perform, and he promised to compensate me for the damages he had caused in any manner I deemed appropriate. He ended his personal assumption of responsibility by saying: "Please know that I deeply regret putting you in this situation and that I will come through for you."

26. Like all of his other promises, David has failed to fulfill that promise.

27. David has repeatedly told me that he took responsibility for the problems with the Project and that he, personally, would do whatever is necessary to make it right. He has not.

28. As detailed above, I had a contract with David for the work he and his company TOH was to perform on my Cabo House. David breached that contract.

29. I had many transactions directly with David, as well as with David through his representatives and agents, such as Maria Abarca and Bob Toubman, in which David made false representations and promises to me to induce me to pay him, then give him more money, and to cover up his failure to perform or intention to perform as promised.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 19 day of September, 2016.

Greg Hoyt

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SUPERIOR COURT OF ARIZONA
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DAVID FARCA and MAVI FARCA,
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STUDIO, LLC, an Arizona limited
liability company,

Defendants.

NO. CV2015-013700

**DECLARATION OF ROBERT
TOUBMAN**

(Assigned to the Hon. Daniel Kiley)

Robert Toubman, under penalty of perjury, deposes and says that:

1. I am a competent adult and have personal knowledge of the facts set forth in this Declaration and the same are true and correct to the best of my knowledge and belief.
2. I am an independent contractor. As an independent contractor, I worked with David Farca ("David") and TOH Design Studio, LLC, on the project at Greg Hoyt's ("Mr. Hoyt") home in San Jose Del Cabo, BCS Mexico (the "Hoyt Project").
3. I was first introduced to David/TOH around 2005 when I was working for the Loreto Bay Company's corporate office in Phoenix, Arizona and in Mexico. At that time, David was selected as a preferred provider for furniture packages for individuals buying homes at the Loreto Bay project in Mexico (the "Loreto Bay Project").

4. In 2005, Loreto Bay asked me to move to Mexico for the Loreto Bay Project to be the Project Director. At this time, all areas of the Loreto Bay Project in Mexico reported to me.
5. During my time as Project Director, I became aware through one of the Loreto Bay Project managers that homeowners were very discontent because David was not providing complete packages on the schedule that they had agreed on to those homeowners even though they had paid for them. At one point, a project manager provided me with a list of nearly fifty homeowners who were missing furniture that they had paid David for.
6. In 2011, after leaving Loreto Bay, David engaged me as an independent contractor. He agreed to pay me a small amount for three months and then told me that after those three months I would only be paid commission for projects that I sold and only be paid as the client paid him. We never signed a contract, and I was never paid a salary.
7. After beginning to work with David, I realized that David had very few clients in Mexico. There was little to no documentation/photos of completed work. An example was the Resort at Pedregal, one of the leading hotels in Cabo and where David claimed he had furnished a model unit. When I requested photos, all he had were unprofessional snapshots taken by the installer which were totally unsatisfactory for use in sales or marketing of his experience. My role was to build relationships and turn relationships into business.
8. In 2013, I worked on a project with David in Cabo called Pueblo Campestre. We had recurring issues with David failing to provide completed packages on time despite the homeowners having fully paid. I was told that David could not come up with the money to pay the importer, so the importer would keep the materials to be imported and only would release materials as David made payments which resulted in furnishings being delivered partially over a period of time. This delayed completion of the homes. I

even had to pay certain vendors when David could not pay them, and then I was later reimbursed through expense reimbursement.

9. I would ask David what I was supposed to tell homeowners about the project. I was told that David said for me lie to customers by providing excuses which I knew were not true. Everyone I worked with at TOH was aware of this problem, but I was the one in communication with the homeowners and considered my reputation to be at risk. In addition, I knew that these problems would make it more and more difficult to sell and do business and word of mouth referrals were critical to future business. That is when I decided that I had to work to get out of this situation.

10. In late 2014, David contacted me to tell me about the Hoyt Project. David told me that he had a friend and fellow Thunderbird, Mr. Hoyt, in Cabo for whom he would like me to work on a project.

11. Although I was usually only involved in sales for David, I requested to work directly with Mr. Hoyt to ensure that Mr. Hoyt's desire for a Mexican style home was achieved and to do what I could to keep the project on track. I was much more involved with the Hoyt Project than with other projects I had worked with David previously on.

12. In February, 2015, I submitted a proposal on behalf of David to Mr. Hoyt for the Hoyt Project. The proposal was based on quotes from vendors and included costs for taxes, duties, importation, shipping, and other expenses. Mr. Hoyt agreed to the proposal.

13. David knew the project had a very tight schedule and David noted that furniture had to be ordered immediately on payment of the initial deposit in order to achieve the time frame for completion.

14. On July 1, 2015, I was told by Mr. Hoyt that David would be receiving the deposit check in the next few days and shortly after TOH notified me that they had received the initial 50% deposit check of \$112,591.50 for the Hoyt Project from Mr. Hoyt. That included all taxes, import duties and fees, shipping charges, costs of all materials, and a

mark-up for David from all suppliers and vendors both in the U.S. and Mexico. Mr. Hoyt always paid in a timely manner.

15. On projects that I had worked on with David, David never asked for a contract, mentioned a contract, or provided a contract. All David required to complete a project was an order form and payment.

16. The amounts that Mr. Hoyt paid to David included amounts quoted by Ginax, a Mexican contractor, for construction services.

17. I had previously worked with Ginax on construction of over 200 homes in Loreto Bay, Mexico.

18. Ginax was scheduled to begin work July 7, 2015 in order to meet the completion deadlines. Just before Ginax was scheduled to start working on the project, David told me to get a quote from another contractor even though he had already received the payment from Mr. Hoyt for all services quoted by Ginax. This took almost two weeks and upon receipt of the second quote, David wanted to renegotiate the price with the contractor although Mr. Hoyt had already paid David based upon the Ginax quote. This process put us behind schedule and took up almost all of July, 2015.

19. The quote from the other contractor was about the same as Ginax's quote.

20. Although Mr. Hoyt had already paid David the full price quoted by Ginax with the mark-up, David asked me to see if Ginax would reduce its original quote and requested a lower quote from the second contractor also. David never mentioned that this reduction in price would be reflected in a credit to Mr. Hoyt.

21. David also told me that he did not want to pay Ginax "IVA," which is Mexico's value added tax. However, Mr. Hoyt had already paid for the IVA that David was seeking to avoid because it was built into Ginax's quote.

22. I knew that legally IVA had to be paid, so I told David that I would not ask Ginax to avoid IVA. At no point did David ever mention that non-payment of IVA to Ginax or other suppliers would be reflected in a reduction of cost for Mr. Hoyt.

23. David went directly to Ginax and Ginax and David agreed that David would pay Ginax 80% of its quote with IVA, and 20% with cash and no IVA. Because we were familiar with Ginax, we chose to use Ginax for construction services on the Hoyt Project.

24. The cash payments were on the same schedule of payments, but at no time during the course of the project did David make any cash payments to Ginax.

25. David came to agreements with other Mexican vendors to pay cash without IVA even though Mr. Hoyt had already paid for the IVA. However, Maria Abarca ("Ms. Abarca"), a TOH employee, told me that because David did not have cash to pay them, he used a credit card to pay them through Western Union.

26. On July 28, 2015, I asked David when he wanted Mr. Hoyt to make the second payment of 30% (\$67,554.90). David told me that Mr. Hoyt needed to make the 30% deposit by August 15, 2015. I questioned David because the work on the project had not even begun yet and considered a payment that soon to be inappropriate because the work had not progressed sufficiently to warrant payment of the additional 30% and this was untypical of how all the other projects I had worked on handled the timing of the second payment.

27. On every other project I had worked on with David, the second payment was not due until all the items were shipped, but on the Hoyt Project the items had not even been ordered. Thus, when David told me that, I told Mr. Hoyt to hold off paying the 30% deposit because to me it was not right for Mr. Hoyt to pay the 30% deposit that early in the project and I was concerned that the funds would not be used for the appropriate purposes.

28. David had agreed to an October 1, 2015 completion date for the Hoyt Project. However, because David did not timely pay vendors and delayed the start of the project by one month, the completion date had to be moved on multiple occasions. The completion date was next set for November 1, 2015.

29. When the November 1, 2015 completion became impossible because of David's failure to pay vendors and contractors, even though Mr. Hoyt had paid David, the completion date was set at the latest for November 20, 2015, because Mr. Hoyt and his family had informed us that they planned to spend the Thanksgiving holiday at Mr. Hoyt's home in Cabo. I communicated that completion date and the reason for it to David. However, the project was still not completed by that date because David was still not paying vendors and contractors and the project was delayed because they would not work without getting paid.

30. Mr. Hoyt had paid David for high quality linens. The vendor name and specifications for these specific linens were detailed in the project spreadsheet. The linens that David proposed using were of a much poorer quality, much less expensive, and from a completely different vendor than what Mr. Hoyt had been promised, what had been included in the proposal, and for which Mr. Hoyt had paid.

31. The fabric to be utilized for the furnishings for the Hoyt Project was a major component in the Hoyt Project and became a huge problem because of David's actions and lies. It is important to note that Mr. Hoyt had paid for the fabric including all shipping, importation, taxes, and duties.

32. I began receiving emails from TOH employees that they believed the duties for importing the fabrics were going to be very expensive and David wanted to find a less expensive way of providing them. Ms. Abarca told me that they were removing tags from products and repackaging them in order to avoid the duties and taxes. It was clear to me that they had done this before.

33. Then, Ms. Abarca told me that fabric for the Hoyt Project crossed the border at Nogales and was confiscated by Mexican federal police. I believe David was attempting to avoid paying duties and import fees. On every other project that I had worked with David on, imported items had been legally imported into Mexico through an importer in San Diego, California.

34. After hearing that the fabric had been confiscated, I called Eduardo Aleman who had worked for David for 10 years, whom I knew from his work on the Loreto Bay Project, and who had moved to Cabo to assist me. I asked Eduardo how and why the fabric would have been seized. He told me that when David wanted to avoid paying duties, David would put materials on a truck to get them across the border without paying duties or properly importing them.

35. Ms. Abarca told me that the fabric is still with Mexican authorities, and David was trying to use his contacts to get the fabric back.

36. I found on the TOH server a document which was a fake invoice to Mr. Hoyt which had prices much lower than what was actually paid. I contacted the TOH accountant who told me that David had asked for the fake invoice to be prepared. I believe it was created as part of the attempt to illegally avoid paying taxes and duties that Mr. Hoyt had already paid for.

37. When I would express my concerns to TOH employees that materials and furnishings were not being delivered timely or were of a poorer quality than what Mr. Hoyt had paid David for, they would tell me that David controls everything including what gets purchased, paid for, and when. All of the TOH employees I worked with on the Hoyt project knew of the problems and blamed David but also considered it to not be an unusual business practice for David. In addition, there were times when I was told they did not even have the money to ship items that were completed and paid for to the project even though Greg had already paid for this.

38. Three employees of David's working in Mexico for TOH repeatedly told me that David never paid them in a timely manner and would not pay until they would contact TOH and ask for their pay.

39. Ginax stopped working on the Hoyt Project because David was not paying as had been agreed upon. Ginax contacted David directly and he would promise payment but it would not be paid when it was agreed to.

40. After Mr. Hoyt's attorney requested information regarding the status of fabrics, David and TOH created a spreadsheet purporting to show the status of certain fabrics and materials. However, the spreadsheet included many false statements about where certain materials originated or were being held.

41. David never completed the Hoyt Project and never fully paid the vendors and contractors, even though Mr. Hoyt had paid David.

42. I believe that David was taking money that Mr. Hoyt had paid for the Hoyt Project and using it for other projects. I believe that is why David could not pay vendors on the Hoyt Project, and that is why the Hoyt Project was not completed.

43. Ms. Abarca told me that there was another project in Phoenix going through the same problems as the Hoyt Project. She also told me that they were having trouble making payroll.

44. I assisted Mr. Hoyt in completing the Hoyt Project after David abandoned it.

45. I worked on another project with David which had been scheduled to be completed before the start of the Hoyt Project, and which experienced delays because of David's actions.

46. In late 2014, I began working on a project for Snell Real Estate in Cabo. Snell is the largest luxury realtor with offices throughout Cabo. The owner of the unit was the owner of a highly respected accounting firm in Cabo that provided services to many companies and individuals in Cabo. I negotiated an agreement between David and Snell to provide furnishings for a model unit in exchange for David receiving preferred status on future units. The first step was for David to furnish a single condominium that Snell Real Estate intended to feature at sales events. David and TOH prepared model packages for the unit. David personally committed to meeting the completion deadline set for the first week of June, 2015.

47. David did not complete the condominium by the agreed date. In fact, he did not complete the unit until two months after the completion date. In fact, the unit was never

furnished with the model packages. It was furnished partially with damaged and used furniture from TOH's show room in Scottsdale.

48. This was just another example of David not meeting completion deadlines. That is when I decided that I would finish Greg's project, but I would not work on any more projects with David. David's actions and lies had damaged my reputation in Cabo and the relationships that I had built in Mexico.

49. I have reviewed the documents that TOH and David have produced in this litigation, documents bates labeled TOH000001-TOH000240.

50. Those documents include some emails between myself, TOH, and David related to the Hoyt Project.

51. However, there are hundreds of additional emails that were exchanged between myself, TOH, and David in regards to the Hoyt Project that existed on the TOH system that have not been produced.

52. I now do not have access to those emails because they are on TOH's server, and I accessed the email system over the internet and my access has been cut off.

53. Emails that have not been produced deal with issues including payment of vendors, delays in completion of the project, the status of certain materials and furnishings, and other issues and problems with the Hoyt Project.

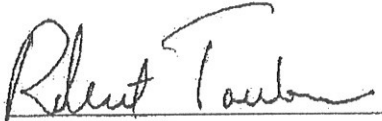
54. The documents that have been produced by TOH and David represent a small percentage of the emails and documents that were created and sent regarding the Hoyt Project.

55. The documents that have been produced by TOH and David paint an incomplete, inaccurate, and untruthful picture of the Hoyt Project.

56. A lot of the documents which David and TOH have failed to produce would provide additional support for the matters raised in this declaration.

I declare and state under penalty of perjury that the foregoing is true and correct.

Executed on this 18 day of August, 2016.


Robert Toubman

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