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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

11 FIFTY-SIX HOPE ROAD MUSIC
12 LIMITED, a Bahamian corporation, and
13 HOPE ROAD MERCHANDISING, LLC,
14 a Florida limited liability company,

15 Plaintiffs,

16 vs.

17 JAMMIN JAVA CORPORATION, a
18 Nevada corporation, and DOES 1-10,

19 Defendants.

Case No.: **2:16-cv-05810**

**DECLARATION OF ANH TRAN IN
SUPPORT OF EX PARTE
APPLICATION FOR
TEMPORARY RESTRAINING
ORDER**

20 I, Anh Tran, declare:

21 1. I am the current President, Chief Operating Officer, Secretary, and
22 Treasurer of Jammin Java Corp. (“**JJC**”), and I have served in that capacity since
23 August 2011. I make this declaration in support of JJC’s *Ex Parte* Application for a
24 Temporary Restraining Order.

25 2. I have been in the coffee business in various capacities since 2010.
26 During that time, I have worked only for JJC. Prior to that, I was a Strategy
27 Consultant for Arthur Anderson Consulting.

28 3. JJC is a publically held coffee company with a principal office located in

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1 Denver, Colorado. JJC has 16,000 shareholders and currently has 10 employees.
2 The current officers and directors of JJC are myself and Brent Toeves, our CEO
3 (“**Current JJC Management**”).

4 4. Since 2010, JJC has had the exclusive right to utilize the brand name
5 “Marley Coffee” and other licensed products through a long term licensing agreement
6 (defined below as the “**Long Term License Agreement**”) with Defendant Fifty-Six
7 Hope Road Music Limited (“**56HR**”). 56HR is an entity controlled by Rohan Marley
8 and the other children of the late reggae artist Bob Marley.

9 5. Rohan Marley founded the “Marley Coffee” brand in 2007, and served
10 as a Director and Chairman of the board of JJC from March 2008 until his recent
11 resignation June 27, 2016. Rohan Marley is shareholder of JJC. Rohan Marley is
12 also is a part owner and Director of 56HR

13 6. The initial CEO of JJC was a gentleman named Shane Whittle
14 (“**Whittle**”) and he was in charge from 2007 to 2010, and was involved until 2011.
15 Current JJC Management was not responsible and had no role in bringing Whittle
16 into the company. He was brought in by Rohan Marley. And, when I was appointed
17 President in August 2011, I assisted our CEO in getting Whittle removed from the
18 Company so it could move past several issues that he created, which I discuss below.

19 7. JJC sells coffee products under the trade name “Marley Coffee” and
20 related marks and logos depicting the likeness of Bob Marley. JJC first acquired the
21 right to utilize the Marley Coffee name in March 2010, pursuant to a trademark
22 license agreement with Marley Coffee LLC (“**MCL**”).

23 8. In August 2012, JJC and MCL mutually terminated the trademark
24 license and, effective August 7, 2012, JJC entered into a new exclusive long term
25 licensing agreement with 56HR that included an initial fifteen (15) year term, with
26 the option to renew for two fifteen (15) year renewal terms (the “**Long Term License**
27 **Agreement**”). A true and correct copy of the Long Term License Agreement is

1 attached as Exhibit A.

2 **56HR’s Breaches of the Long Term License Agreement.**

3 9. After the Long Term License was executed, I discovered that 56HR had
4 granted licenses to, or otherwise authorized, third parties to utilize the Licensed
5 Products within the Territory, including but not limited to Marley Coffee Jamaica and
6 Marley Beverages. Upon information and belief, both Marley Coffee Jamaica and
7 Marley Beverages are owned and controlled by Rohan Marley and were using the
8 Licensed Products with Rohan Marley’s and 56HR’s express authorization in
9 violation of the Long Term License Agreements.

10 10. Specifically, on January 2012 we learned about the existence of Marley
11 “One Drop” from the Marley Beverages, and on 2010 we found out about the
12 existence of Marley Coffee Ltd. or “Marley Coffee Jamaica”. Through various
13 conversations with 56HR and Rohan Marley, we protested the existence of Marley
14 Coffee Jamaica, as it violated our worldwide licensing agreement.

15 11. In addition, Rohan Marley and 56HR authorized a Korean entity (C&V
16 Korea) to serve coffee (that was not procured from JJC) at a coffee house called
17 “Marley Coffee” in violation of the Long Term License Agreement. The house
18 coffee is an inferior product sold under the guise of the “Marley Coffee” brand,
19 which has caused confusion in the market and harm to JJC’s brand. 56HR’s direct
20 response has been, “we will not terminate the license with C&V over this issue.” I
21 remember arguing with Rohan about this issue as it affects shareholder value,
22 Rohan’s position as stated to both myself and Mr. Toevs was that we needed to “put
23 the family first.”

24 **The Expansion of JJC**

25 12. When I took over as President of JJC, we put a strong emphasis and
26 focus on marketing efforts to promote and grow the “Marley Coffee” brand.
27 Specifically, since 2011, JJC has spent millions of dollars on trade shows, on shelf

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1 marketing, sponsorships, social media campaigns, and general branding and
2 marketing initiatives aimed at growing and advancing the Marley Coffee brand name
3 throughout the world.

4 13. During the past five years, we have rapidly grown the business by
5 expanding JJC’s distribution and supply networks across the world, introducing new
6 products, securing long term supply and distribution agreements, identifying new
7 investors, and investing in marketing initiatives to expand brand recognition, all of
8 which positioned JJC for long-term success.

9 14. For example, we entered into an Amended and Restated License
10 Agreement with Mother Parkers Tea & Coffee Inc. (“**Mother Parkers**” and the “**MP**
11 **Agreement**”) on May 20, 2014. A significant portion of JJC’s current revenue
12 comes from sales to and through Mother Parkers. JJC also entered into an exclusive
13 long term Supply and Distribution Agreement with C&V International Co., Ltd., for
14 distribution of Marley Coffee in South Korea (the “**C&V Agreement**”); an
15 Exclusive Sales and Marketing Agreement (the “**NCSV Agreement**”) with National
16 Coffee Service & Vending (“**NCSV**”); and a Supply and Toll Agreement with
17 National Coffee Roasters, a division of European Roasterie (the “**NCR Agreement**”).

18 15. In the past five years, we have has also: (a) launched Marley Coffee
19 RealCups into the retail grocery channel; (b) launched an innovative Coffee of the
20 Month subscription service as well an online retail platform at
21 <https://shop.marleycoffee.com/>, which the company anticipates to be a key revenue
22 driver in 2016; and (c) positioned JJC in the global marketplace, with distribution
23 channels set up in several countries, which include Canada, the United Kingdom,
24 South Korea, Mexico and Chile.

25 16. As a result of these efforts, JJC expanded Marley Coffee brand
26 recognition and significantly increased sales revenue from \$403,000 (for FYE
27 1/31/12) to over \$12.3 Million (for FYE 1/31/16), and Marley Coffee is now sold in

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1 12,500 stores, including major chains such as Kroger, Safeway, Albertson’s, Whole
2 Foods, Target, and many more.

3 17. I would note that shelf space for coffee products in these chains is highly
4 competitive and takes a long time to establish. Over the past 5 years, JJC has spent
5 close to \$1.5 Million on hard shelf fee costs, plus another \$1.2 Million on marketing
6 trial entry discounts to launch Marley Coffee products on shelf. Marley Coffee was
7 the 6th fastest growing company in the single serve coffee category, which is the
8 fastest growing sector of the coffee industry and the fastest growing part of JJC’s
9 business, in 2015 with 73% year over year growth.

10 18. As a result of JJC’s growth and branding efforts, the viability of JJC’s
11 entire business is wholly dependent on its right to utilize the “Marley Coffee” brand
12 name and other intellectual property owned by 56HR and licensed to JJC. But, the
13 “Marley Coffee” brand would have little value but for our efforts, especially given
14 issues with prior management, which I discuss below.

15 **The SEC Complaint and Whittle Lawsuits.**

16 19. I am extremely proud of what we have accomplished at JJC since 2012.
17 I believe we have established Marley Coffee as a premier high quality brand in the
18 highly competitive coffee industry. And, with the supply and distribution networks
19 we have established, I believe we are well positioned for the long term despite our
20 current cash flow issues, which I discuss below.

21 20. I am particularly proud of our accomplishments because when I took
22 over as President, Mr. Toevs and I inherited an extremely difficult situation and had
23 to overcome two (2) significant hurdles the were caused by the prior management of
24 JJC, including those of Whittle and Rohan Marley. Again, I had nothing to do with
25 brining Whittle into JJC and I believe it was Rohan Marley and/or other
26 representatives of 56HR that appointed Whittle, without any input or approval from
27 myself or Mr. Toevs. This was confirmed by Thomas Kim, who we hired as a Chief

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1 Restructuring/Operating Officer at the request and demand of 56HR. I explain more
2 about this matter below.

3 21. First, JJC was named as a defendant and was forced to defend two
4 lawsuits filed against JJC by Whittle (the “**Whittle Lawsuits**”). The claims in the
5 Whittle Lawsuits were primarily directed at Rohan Marley, 56HR, and other affiliates
6 and Marley family members, and included allegations of breach of fiduciary duty,
7 conspiracy, and civil theft, and racketeering. However, JJC was named party and was
8 forced to defend the Whittle Lawsuits and spent approximately \$175,000 and
9 dedicate countless resources doing so.

10 22. The second major hurdle we encountered at the onset of my tenure as
11 President related to investigations by the Securities and Exchange Commission
12 (“**SEC**”) into an alleged “pump and dump” trading scheme that Whittle engaged in
13 during his time as CEO of JJC. The SEC investigations commenced in 2011, and, on
14 November 17, 2015, JJC was named as a defendant in a civil complaint (the “**SEC**
15 **Complaint**”). On or around May 31, 2016, JJC entered into a consent to the entry of
16 a final judgment with the SEC which, among other things, ordered JJC to pay an
17 aggregate of \$700,000 (the “**Final SEC Judgment**”). 56HR was well aware of the
18 SEC Complaint and was fully advised of JJC’s response to the allegations. I had
19 numerous conversations and communications with Rohan Marley and other
20 representatives of 56HR during ever step of the SEC investigation. Ultimately, both
21 Rohan and other 56HR members encouraged JJC to enter into the Final SEC
22 Judgment.

23 23. When the Whittle Lawsuits surfaced, I expected and demanded Rohan
24 Marley and 56HR to indemnify and defend JJC because those issues arose from
25 alleged wrongful acts committed by Rohan Marley, Whittle, and 56HR, and the
26 Current JJC Management had not role in, or knowledge of, those acts. Despite my
27 demands for indemnity, 56HR did not indemnify and defend JJC from and against the

1 claims alleged in the Whittle Lawsuits. In addition, 56HR has not reimbursed JJC for
2 the attorneys’ fees, settlements, and other costs and expenses JJC incurred as a result
3 of such claims.

4 **The Potential Investment**

5 24. While JJC has grown rapidly, it has not experienced a net profit from
6 operations, which is not unusual with a start-up/emerging growth company in the
7 consumer packaged goods industry. This is due to a number of reasons, including the
8 significant capital we invested into our marketing initiatives during our initial years
9 and the significant money we had to spend to deal with the Whittle Lawsuits and SEC
10 Complaint.

11 25. Therefore, beginning in 2016, we started looking for equity partners that
12 could provide much needed capital to alleviate our short term cash flow issues and
13 long term financing objectives. Most notably, In May 2016, we entered into a letter
14 of intent with a very attractive institutional investor (the “**Potential Investor**”) that
15 contemplated an investment into JJC between \$8,000,000 and \$10,000,000 (the
16 “**Potential Investment**”). In addition to the capital, the Potential Investment would
17 have included seats on our board of directors and the candidates proposed by the
18 Potential Investor included individuals with significant business acumen and would
19 have been instrumental in helping guide the company through its growth. For these
20 reasons, I was very excited about the Potential Investment and the future outlook of
21 the company.

22 26. The key deal point and condition of the Potential Investment was that
23 prior to or connection with closing, JJC would enter into an extension to the Long
24 Term License Agreement with terms satisfactory to the Potential Investor. In
25 response, JJC and representatives of 56HR (including specifically Rohan Marley and
26 his business manager) began discussing the framework for an extension of the Long
27 Term Agreement.

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1 27. During these conversations, 56HR also requested a meeting with the
2 Potential Investors and requested information about the Potential Investment as well
3 as a business plan, a copy of the Letter of Intent and the use of proceeds. I provided
4 56HR with all of this information. We also allowed representative of 56HR to
5 discuss the Potential Investment directly with the Potential Investor. During these
6 discussions, 56HR repeatedly assured JJC that they were willing to extend the Long
7 Term License Agreement on similar terms if they were comfortable with the terms of
8 the Potential Investment; however, at no point during these negotiations, did 56HR
9 indicate that if it were to extend the license agreement, it would require higher
10 licensing fees.

11 **The Termination of the Long Term Agreement**

12 28. Negotiations with the Potential Investor progressed during May 2016
13 and, and from my perspective based on my discussions with the Potential Investor,
14 the only issue keeping us from entering a definitive agreement was getting an
15 extension of the Long Term License Agreement.

16 29. Then, out of nowhere, on June 2, 2016, 56HR issued a Notice of
17 Material Breach of the Long Term License Agreement (the “**June 2016 Notice of**
18 **Breach**”). In the June 2016 Notice of Breach, 56HR, for the first time formally took
19 the position that JJC was in breach of the Long Term License Agreement by failing to
20 pay quarterly licensing fees to 56HR. A true and correct copy of the June 2016
21 Notice of Breach is attached as Exhibit B.

22 30. I was shocked when I received the June 2016 Notice of Breach. We had
23 just put the Whittle Lawsuits and SEC Complaint behind us, we had established key
24 supply and distribution networks that had us well positioned, and we were on the
25 verge of entering into a definitive agreement to lock in the Potential Investment, and
26 them all of a sudden, we get notice of breach. The timing was devastating. I was
27 also surprised because 56HR and JJC had several conversations about the payment

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1 issues in the months leading up to the termination. During these discussions, we
2 agreed that JJC would continue to explore capital investments that would make 56HR
3 whole, but in the meantime JJC would continue making meaningful licensing
4 payments. Consistent with the agreements reached during these discussions, JJC
5 made weekly and bi-monthly licensing payments to 56HR from November 2015
6 through March 2016, at which time JJC and 56HR began negotiating the terms of the
7 Potential Investment.

8 31. In response to the June 2016 Notice of Breach, I immediately reached
9 out to Rohan Marley, who at that time was still the Chairman of the Board of JJC, for
10 an explanation. Even though Rohan had previously been very active in the daily
11 operations of JJC, he was completely missing in action after the letter of intent was
12 signed with the Potential Investor. In fact, I have had less than 5 communications
13 with Rohan since May 2016. I found Rohan’s absence to be very troubling since we
14 were previously in daily communications, and because Rohan was our Chairman and
15 the face of the company, not to mention our liaison to 56HR given his role in that
16 company.

17 32. I also found it very troubling that during the weeks and months leading
18 up to the termination and Rohan’s resignation from JJC, he sold 877,087 shares of
19 JJC stock, none of which he has reported to the public as of yet.

20 33. On June 27, 2016, 56HR provided notice of the termination of the Long
21 Term License Agreement (the “**June 2016 Notice of Termination**”). A true and
22 correct copy of the June 2016 Notice of Termination is attached as Exhibit C.

23 **The Short Term License Agreement**

24 34. Right after 56HR issued the June 2016 Notice of Termination, it
25 presented a six-month short term license agreement (the “**Short Term License**
26 **Agreement**”), attached as Exhibit D. The Short Term License Agreement had the
27 same terms as the Long Term License Agreement, except it included a short six-

1 month term.

2 35. When 56HR presented the Short Term License Agreement, their
3 representatives stated that it was a “take it or leave it” deal and that it represented the
4 only agreement 56HR was willing to extend that would allow JJC to continue
5 utilizing the Licensed Products. Representatives of 56HR, however, expressly
6 represented that: (a) they would continue to negotiate a long term agreement in good
7 faith; (b) that the intent of the Short Term License Agreement was to provide the
8 parties sufficient time to negotiate a long term agreement; (c) that they would
9 cooperate with JJC in connection with JJC’s efforts to bring in a long-term investor to
10 the company; and (d) that the terms and conditions of a long term agreement would
11 be substantially similar to the terms and conditions of the Long Term and Short Term
12 License Agreements.

13 36. Because JJC’s ability to continue as a going concern is dependent on the
14 use of the Marley Coffee trade name and use of the other Licensed Products, and
15 because 56HR made it clear that the Short Term License Agreement was the only
16 available arrangement that would allow JJC to continue shipping product and
17 generating revenue, I felt that we had no choice but to execute the Short Term
18 License Agreement in order to save the company. In doing so, however, I relied on
19 56HR’s representations that it would continue to negotiate a long term agreement in
20 good faith and cooperate with JJC’s efforts to secure an equity partner.

21 37. Shortly after we executed the Short Term Agreement, our CEO, Brent
22 Toevs had a conversation with Cedella Marley on July 7, 2016. During that
23 conversation and for the first time that she states that “we want higher fees.” The
24 termination of the long-term license wasn’t necessarily due to any prior breaches;
25 rather it was a way to generate higher fees. Additionally, she stated that, “we like
26 Marley Coffee. We don’t like Jammin Java.” To me, this was the first clear sign that
27 56HR wanted to have the good will generated to build Marley Coffee without

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1 compensating JJC’s management, shareholders or creditors. Regardless, we felt there
2 was a long term deal to be created.

3 38. After we executed the Short Term Agreement, again based the
4 representations from the various Marley family member and their representatives, I
5 felt like it was only a matter of time before we had a long term extension secured on
6 with licensing fees and terms similar to those in the Long Term and Short Term
7 License Agreements. I was wrong. On July 21, 2016, fifteen days after JJC executed
8 the Short Term Agreement, 56HR sent JJC a notice purporting to terminate the Short
9 Term License Agreement “effective immediately” and demanding that JJC
10 immediately cease use of the Marley Coffee trademark. Again, I was shocked and
11 disappointed. Upon discussing the significant ramifications with Rohan Marley on
12 July 23, 2016, about the impact to shareholder value with the termination of the Short
13 Term License Agreement, he stated to both Brent Toevs and myself again that, “my
14 family comes first.”

15 39. However, in the days following the termination of the Short Tem
16 License Agreement, 56HR represented that it was still willing to discuss a long term
17 agreement if JJC hired a Chief Restructuring Officer (“CRO”) and provided certain
18 information to 56HR. In response, as mentioned above, JJC promptly provided all
19 requested information and retained Thomas A. Kim to serve as CRO/COO.

20 40. Mr. Kim and his associates conducted an intensive independent
21 assessment of JJC’s business viability. I have not had business or personal
22 relationship with Mr. Kim nor did JJC have any prior dealings with him or his firm
23 prior to performing his assessment. Mr. Kim issued a Preliminary Assessment on
24 August 1, 2016 (the “CRO Assessment”), which included the following several
25 findings and recommendations regarding the viability of JJC:

- 26 • “If 56 HR wants to continue in the coffee business, the safest way is to
27 continue business operations with Jammin Java, while continuing to look

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- 1 at viable alternatives to ensure the brand’s future success”;
- 2 • “Current business and brand relationships are established upon many years
- 3 of development by [Current JJC Management]”;
- 4 • “Current management has established credibility within the industry”;
- 5 • “License appears to be within industry norms”
- 6 • “If license agreement is terminated in a less than idea manner, the fall out
- 7 would adversely affect the brand and future licensing opportunities”
- 8 • “The business shows promise both now and in the future”
- 9 • “The company has established itself as a premium brand in highly
- 10 competitive market place”

11 41. I was pleased that Mr. Kim had a positive outlook regarding JJC’s

12 viability, and he confirmed many of the things I had been telling 56HR for the past

13 several weeks and months; namely, that if the framework for a long term license were

14 put in place, the company had the makeup to obtain financing and succeed. The CRO

15 Assessment was sent to counsel for 56HR on August 1; however, she responded on

16 August 2, 2016, questioning the legitimacy of the CRO Assessment and

17 characterizing it as nothing more than a “transparent piece of propaganda.” The same

18 day, 56HR filed a lawsuit against JJC. A copy of the Preliminary Assessment is

19 attached as Exhibit E, and the August 2, 2016 email is attached as Exhibit F.

20 **JJC will suffer irreparable harm without a TRO.**

21 42. Without a TRO precluding from enforcing the termination of the subject

22 license agreement, JJC will be unable to generate any revenue and fund its operations

23 pending a final decision on its legal claims against 56HR. JJC is currently in a dire

24 financial state given the termination of the licensing agreements, and the resulting

25 termination of negotiations for a definitive agreement for the Potential Investment.

26 Specifically, without the ability to utilize the Licensed Products, JJC has been unable

27 to fill existing purchase orders (totaling approximately \$745,000) or issue new

1 purchase orders. Moreover, several large customers have cancelled their orders with
2 JJC (including Target) and several others, including Kroger and Kehe, have
3 threatened to cancel unless their order they are filled immediately.

4 43. In addition, JJC is desperately in need of cash flow to meet short term
5 payroll, working capital, and debt service obligations. I am getting daily phone calls
6 from JJC debtors regarding our past due accounts. But, JJC does not have cash on
7 hand to satisfy these obligations and has no current ability to generate sales revenue
8 since it is prohibited from using the Licensed Products. Therefore, JJC needs to fill
9 the current outstanding purchase orders immediately in order to generate cash flow to
10 satisfy these obligations. As a result, at this time, JJC is within days of complete
11 financial collapse.

12 44. JJC is desperately in need of cash flow to meet short term working
13 capital and debt service obligations. But, JJC does not have cash on hand to satisfy
14 these obligations and has no current ability to generate sales revenue. As a result, at
15 this time, I believe that JJC is within days of complete financial collapse.

16 45. In addition to the inability to generate revenue and continue as a going
17 concern, without a temporary restraining order enjoining 56HR from enforcing the
18 termination of the license agreements, JJC's goodwill and business reputation will
19 suffer irreparable harm. More specifically, without the ability to ship product, JJC
20 will default on its obligations under various supply, distribution, and shelving
21 agreements, including major accounts agreements with NCR, NCSV, Mother Parkers,
22 and C&V, Kroger, Safeway, Albertsons, Target, UNFI, Kehe, DPI, and C&S.

23 46. Mr. Toevs and I have dedicated the past 5 years to establishing
24 relationships with these major industry leaders, and securing long term agreements
25 with many of them. These accounts and agreements are the bloodline of the
26 company. If JJC defaults and is unable to live up to its end of these agreements, it
27 will severally damage JJC business reputation and ability to reestablish similar future
28

1 agreements.

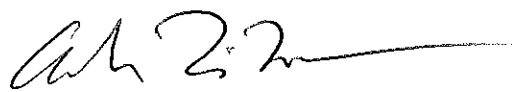
2 47. Furthermore, without a TRO, JJC will: (a) will default on its obligations
3 under various supply and distribution agreements, (b) will default on various credit
4 agreements and debt service requirements; (c) will be unable to service existing
5 accounts, (c) will be unable to obtain new accounts, (d) will be unable to continue
6 marketing initiatives; (d) will be unable to continue negotiations with potential equity
7 partners; (e) will lose all investor and shareholder value; (f) will inevitably lose all of
8 its current customers; and (g) will be forced to terminate all of its employees
9 Combined, these things all result in great and irreparable harm to JJC.

10 48. Simply put, the company will die.

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1 I am over the age of 18 and have personal knowledge of the facts stated in this
2 declaration, and if called as a witness, could and would testify competently to the
3 truth of the facts stated herein. I declare under penalty of perjury that the foregoing is
4 true and correct.

5
6
7 Dated this 4th day of August, 2016.

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10
11 ANH TRAN

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16 STATE OF CALIFORNIA)
17)
18 COUNTY OF _____)

20 The foregoing Verification was executed this 4th day of August, 2016 by Anh Tran.

21 Witness my hand and official seal.

22 See Attached Document OK

23 _____
Notary Public

24
25 My commission expires: 05-04-2019

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Orange

On Aug 4, 2016 before me, Octavio Romero Jr Notary public
(insert name and title of the officer)

personally appeared Anh Tuan,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) (s/he) subscribed to the within instrument and acknowledged to me that (he/she/they) executed the same in (his/her/their) authorized capacity(ies), and that by (his/her/their) signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature ORJr (Seal)

