

1 MERCINTH PEARCE (*Pro Hac Vice*)  
mpearce@bryantrabbino.com  
2 BRYANT RABBINO LLP  
1180 Avenue of the Americas, Suite 620  
3 New York, New York 10036  
Tel: (212) 967-1800  
4 Fax: (212) 967-1811

5 Attorneys for Third Party Defendant  
ROHAN MARLEY  
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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION  
10

11 FIFTY-SIX HOPE ROAD MUSIC  
LIMITED, a Bahamian Corporation, And  
12 HOPE ROAD MERCHANDISING, LLC,  
a Florida limited liability company,

13 Plaintiffs,

14 v.

15 JAMMIN JAVA, CORPORATION, a  
16 Nevada corporation, and DOES 1-10,

17 Defendants.

18 JAMMIN JAVA CORPORATION, a  
19 Nevada Corporation,

20 Counterclaim Plaintiff,

21 vs.

22 FIFTY-SIX-SIX HOPE ROAD MUSIC  
LIMITED, a Bahamian Corporation, And  
23 HOPE ROAD MERCHANDISING, LLC,  
a Florida limited liability company,

24 Counterclaim Defendants.  
25

26 JAMMIN JAVA CORPORATION,

27 Counterclaim Plaintiff,  
28 vs.

CASE NO.: 16-cv-05810-SVW (MRW)

JUDGE: Hon. Stephen V. Wilson

**MOTION TO ALTER OR AMEND  
JUDGMENT**

Date: December 12, 2016  
Time: 1:30 p.m.  
Place: 312 N. Spring Street  
Los Angeles, CA 90012  
Courtroom 6

ALVARADOSMITH  
A PROFESSIONAL CORPORATION  
LOS ANGELES

1 ROHAN MARLEY, an Individual,  
2 Third Party Defendant.  
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5 **COUNTERCLAIM DEFENDANT ROHAN MARLEY’S**  
6 **MOTION TO ALTER OR AMEND JUDGMENT**

7 **NOTICE IS GIVEN** that on December 12, 2016 at 1:30 p.m. in Courtroom “6”  
8 of the above-entitled Court located at 312 North Spring Street, Los Angeles,  
9 California 90012, Counterclaim Defendant Rohan Marley will respectfully move this  
10 Court under Rule 59(e) and 60 of the Federal Rules of Civil Procedure to alter or  
11 amend its judgment entered on November 8, 2016. In support of this Motion the  
12 Counterclaim, Defendant relies on the following Memorandum of Points and  
13 Authorities.

14 As explained in the accompanying Memorandum, the Court’s decision was  
15 based on an error caused by Counterclaim Plaintiff’s negligent pleading. For this  
16 reason Counterclaim Defendant respectfully requests that this Motion be granted that  
17 the Court vacate the denial of Counterclaim Defendant’s Motion to Dismiss and  
18 requests that the Court review said motion to dismiss on its merits.

19  
20 DATED: November 10, 2016

BRYANT RABBINO  
A Limited Liability Partnership

21  
22 By: /s/ Mercinth C. Pearce  
23 MERCINTH C. PEARCE  
(PRO HAC VICE)

24 Attorneys for Third Party Defendant  
25 ROHAN MARLEY  
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1           **MEMORANDUM IN SUPPORT OF COUNTERCLAIM DEFENDANT'S**  
 2           **RULE 59(e) AND 60 MOTION TO ALTER OR AMEND THE JUDGMENT**

3           The Court has considerable discretion in ruling on a Rule 59(e) motion that  
 4 seeks reconsideration and amendment of a previous order. *Firestone v. Firestone*, 76  
 5 F. 3d 1205, 1208 (D.C. Cir. 1990) (per curiam); *McDowell v. Calderon*, 197 F 3d  
 6 1253, 1255 (9<sup>th</sup> Cir. 1999). Rule 59(e) motions “need not be granted unless the  
 7 district court finds that there is...the need to correct a clear legal error or prevent  
 8 manifest injustice.” *Ciralsky v. Cent. Intelligence Agency*, 355 F.3d 661,671 (D.C.  
 9 Cir. 2004) (quoting *Firestone*, 76 F.3d at 1208). Similarly, motions under Rule 60(b)  
 10 are within the sound discretion of the district court. *Price v. Seydel*, 961 F.2d 1470,  
 11 1473 (9<sup>th</sup> Cir. 1992). Under Rule 60(b), reconsideration is appropriate where the  
 12 Court has committed clear error or the decision was manifestly unjust. *Sch. Dist. No.*  
 13 *IJ, Multnomah Cnty. v. ACandS, Inc.* 5 F.3d 1255, 1263 (9<sup>th</sup> Cir. 1993). The basis for  
 14 relief may “include mistake and inadvertence by the judge.” *Kingvision Pay-Per-*  
 15 *View Ltd. v. Lake Alice Bar*, 168 F. 3d 347, 350 (9<sup>th</sup> Cir 1999)

16           Here, Counterclaim Plaintiff Jammin Java Corporation (“JJC”) has titled its  
 17 pleading in a manner that misled this Court. The so-called Amended Counterclaims  
 18 (Document #58) is actually JJC’s **third attempt at pleading a claim against** third  
 19 party defendant Mr. Rohan Marley. As such, JJC required leave of this Court to file  
 20 this amended pleading. JJC filed such a motion requesting leave to further amend, but  
 21 this Court has not ruled on that motion. Mr. Marley’s motion to dismiss was therefore  
 22 properly addressed to the Amended Third Party Complaint (Document #49), which  
 23 was the only pleading that was properly filed before this Court at that time. It should  
 24 be noted that JJC filed the improperly named “Amended Counterclaims” despite the  
 25 fact that this Court explicitly advised that no action was necessary (Document #56).”

26           The Court denied Mr. Marley’s motion to dismiss because it was under the  
 27 impression that the operative pleading was the Amended Counterclaim (Document  
 28 #58) which JJC never received permission to file. In fact, as previously stated, the

1 operative pleading is the Amended Third Party Complaint (Document #49), which  
2 was JJC's first amendment to its pleading (JJC's original pleading was Document #3).  
3 Mr. Marley therefore respectfully requests that this Court reconsider its denial of the  
4 motion to dismiss and request that this Court review his motion to dismiss on its  
5 merits. In an abundance of caution, Mr. Marley has also moved separately to dismiss  
6 the Amended Counterclaim against Mr. Marley (Document #58), even though JJC  
7 never received permission to file this THIRD amended pleading.

8  
9 DATED: November 10, 2016

BRYANT RABBINO  
A Limited Liability Partnership

11  
12 By: /s/ Mercinth C. Pearce  
MERCINTH C. PEARCE  
(PRO HAC VICE)

13  
14 Attorneys for Third Party Defendant  
ROHAN MARLEY

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was electronically served via email to the parties listed on the service list below, and to the parties authorized to receive via this Court’s CM/ECF system on this 10<sup>th</sup> day of November 2016.

Giovanni M. Ruscitti  
Berg, Hill, Greenleaf & Ruscitti  
1712 Pearl Street  
Boulder, Colorado 80302

Padraic I. McCoy  
Tilden, McCoy & Dilweg, LLP  
13310 Maxella Avenue, Suite D  
Marina Del Rey, California 90292

Joshua Geller  
Jonathon B. Sokol  
Greenberg, Glusker, Fields, Claman & Machtinger  
1900 Avenue of the Stars, 21<sup>st</sup> Floor  
Los Angeles, California 90067

Taylor C. Foss  
Michelman & Robinson, LLP  
17901 Von Karman Avenue, Suite 1000  
Irvine, California 92614

Michael L. Francisco  
MRD Law  
3301 W. Clyde Place  
Denver, Colorado 80211

By:   
\_\_\_\_\_  
JODIE L. ALAMILLO

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