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6 a California municipal corporation

FILED  
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CENTRAL DIVISION

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SAN DIEGO COUNTY, CA

*Exempt from filing fees pursuant  
to Government Code section 6103*

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

10 CITY OF CORONADO, a public entity and  
11 California municipal corporation,

12 Plaintiff,

13 v.

14 CORONADO FOURSOME, INC., a  
15 California Corporation; DOUGLAS  
ANDERSEN, an individual; and DOES 1  
16 through 25,

17 Defendants.

CASE NO. 37-2018-00059520-CU-BC-CTL

COMPLAINT FOR BREACH  
OF CONTRACT AND AN  
ACCOUNTING

19 Plaintiff, City of Coronado (the "City") alleges as follows:

20 **PARTIES**

21 1. The City is now and, at all of the times stated herein, was a general law city and  
22 municipal corporation organized and existing under the Constitution and the laws of the State of  
23 California.

24 2. Defendant, Coronado Foursome, Inc. ("Coronado Foursome") is now and, at all of the  
25 times stated herein, was a corporation duly organized under the laws of the State of California and  
26 doing business in the County of San Diego, State of California.

27 3. Defendant, Douglas Andersen ("Andersen") is now and, at all relevant times stated  
28 herein, was an individual. City is informed and believes and thereon alleges that at all relevant times

1 before approximately October 2018, Andersen was residing in the County of San Diego, State of  
2 California and that at some point recently may have changed his place of residence.

3 4. City is informed and believes and thereon alleges that there exists, and at all times  
4 mentioned herein there existed, a unity of interest and ownership between Coronado Foursome and  
5 Andersen, such that there was never any individuality or separateness between Coronado Foursome  
6 and Andersen and Coronado Foursome is the alter ego of Andersen in that: (1) Coronado Foursome  
7 is, and at all time herein mentioned was, so inadequately capitalized that, compared with the business  
8 to be done by Coronado Foursome and the risks of loss, its capitalization was trifling; (2) Andersen  
9 completely controlled, dominated, managed, and operated Coronado Foursome, and intermingled or  
10 transferred assets to suit Andersen's convenience and in order to evade the payment of obligations  
11 owed to creditors of Coronado Foursome; (3) the activities and business of Coronado Foursome were  
12 carried out without observing corporate formalities, holding of directors' or shareholders' meetings,  
13 keeping and maintaining records and minutes of corporate proceedings and Andersen entered into  
14 personal transactions with Coronado Foursome without the approval of other directors or  
15 shareholders; or (4) Coronado Foursome is, and at all time herein mentioned was, a mere shell,  
16 instrumentality, and conduit through which Andersen carried on his business under a corporate name  
17 exactly as he had before incorporation, exercising complete control and dominance of such business  
18 to such an extent any individuality or separateness between Coronado Foursome and Andersen and  
19 Coronado Foursome does not, and at all time herein mentioned did not, exist.

20 5. Adherence to the fiction of the separate existence of Coronado Foursome as an entity  
21 distinct from Andersen would permit abuse of the corporate privilege and would promote injustice or  
22 sanction a fraud in that Andersen caused funds to be withdrawn from Coronado Foursome and  
23 distributed to himself without consideration for the purpose of avoiding and preventing attachment  
24 and execution by creditors, thereby rendering Coronado Foursome insolvent and unable to meet its  
25 obligations, including its contractual obligations to the City.

26 6. All further references in this Complaint to Coronado Foursome include reference to  
27 both Coronado Foursome and Andersen.

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7. City is ignorant of the true names and capacities of the defendants sued herein as Does 1 through 25, inclusive, and therefore sue these defendants by such fictitious names. City will amend this complaint to allege their true names and capacities when ascertained. City is informed and believes and thereon alleges that each of the fictitiously named defendants is responsible in some manner for the occurrences herein alleged, the alleged injuries incurred by City were and will be proximately caused by their conduct, and each of them are jointly, severally, and vicariously liable for the acts and/or omissions of each other.

8. City is informed and believes and thereon alleges, that at all times herein mentioned, each of the defendants, including all defendants sued under fictitious names, were the agents, employees, subcontractors, joint venturers, partners, officers, or directors, of each other, and in doing the things herein mentioned were acting within the course and scope of such agency or employment and of their authority as such agents, employees, subcontractors, joint venturers, partners, officers, or directors of each other, and with the consent, knowledge, authorization, permission, and ratification of their co-defendants, and each of them, were responsible in some manner for the occurrences herein alleged, and were and are vicariously and otherwise liable for the acts and/or omissions of each other.

9. Each reference in this Complaint to any named defendant also includes a reference to the other named defendant and to each Doe defendant.

## FACTS

10. On or about July 16, 2013, City and Coronado Foursome entered into an Agreement for Services: Coronado Municipal Golf Course Food and Beverage Concession (the “Contract”), a true and correct copy of which is attached to this Complaint as Exhibit A and is incorporated herein by this reference.

11. Section 5.01 of the Contract required that by September 20, 2018, "Concessionaire shall provide documentation to the satisfaction of the City's Director of Administrative Services showing the total gross income and the actual amount owed for the Concessionaire's contract year ending the previous August 31. In addition, Concessionaire shall include a payment for the full amount of any underpayment by September 20th of each year."

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12. Under section 5.01 of the Contract, the payment due on September 20, 2018 was “ten percent (10%) of all gross income above one million four hundred eighty thousand dollars (\$1,480,000).”

13. Section 5.04 of the Agreement provides: "Payments received after the due date will be charged a late fee of ten percent (10 %) per month or portion thereof of the payment owed to the City."

14. Coronado Foursome failed to provide any documentation to the City's Director of Administrative Services showing the total gross income for the 2017-2018 contract year by September 20, 2018 and has failed to provide such documentation to date.

15. Based on prior contract years, City estimates that the amount of the underpayment currently owing from Coronado Foursome to City is the sum of approximately \$80,000, plus interest and late fees.

16. Coronado Foursome failed to provide any documentation to the City's Director of Administrative Services showing the actual amount of the underpayment for the 2017-2018 contract year by September 20, 2018 and has failed to provide such documentation to date.

17. Coronado Foursome failed to include a payment for the full amount of any underpayment by September 20, 2018 and has failed to date to make any payment to City under sections 5.01 and 5.04 of the Contract for the 2017-2018 contract year.

18. On October 12, 2018, the City's Director of Recreation and Golf Services sent Coronado Foursome a letter notifying Coronado Foursome of its breach of contract and demanding payment of amounts due under the Contract.

19. Despite repeated demands, Coronado Foursome has failed to make payment to City of the amounts due and owing under the Contract and has failed to submit the required documentation.

**FIRST CAUSE OF ACTION**

**Breach of Contract**  
(Against all defendants)

20. The City refers to and incorporates by references, as though fully set forth herein, paragraphs 1 through 20, inclusive, of this complaint.

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21. Pursuant to the terms of the Contract, City has fulfilled all of its obligations under the Contract except those that have been excused or waived by the acts or omissions of Coronado Foursome.

22. Coronado Foursome breached the Contract by, among other things, (1) not timely providing documentation to the satisfaction of the City's Director of Administrative Services showing the total gross income and the actual amount owed for the Coronado Foursome's contract year ending in August 2018; and (2) not paying City the full amount of the underpayment for the 2017-2018 contract year by September 20, 2018.

23. Accordingly, there is now due and owing from Coronado Foursome to City an amount equal to ten percent (10%) of all gross income above one million four hundred eighty thousand dollars (\$1,480,000) for the 2017-2018 contract year, plus late fees equal to ten percent (10 %) per month or portion thereof of such payment times the number of months or portion of months through the payment date, plus interest at the maximum legal rate from September 20, 2018 through the payment date.

## SECOND CAUSE OF ACTION

**Accounting**  
**(Against all defendants)**

24. The City refers to and incorporates by references, as though fully set forth herein, paragraphs 1 through 23, inclusive, of this complaint.

25. Under the terms of the Contract, Coronado Foursome agreed to pay City an amount equal to ten percent (10%) of all gross income above one million four hundred eighty thousand dollars (\$1,480,000) from operation of the concession under the Contract for each contract year.

26. During the 2017-2018 contract year, Coronado Foursome operated the concession at the Coronado Municipal Golf Course, undertaking numerous sales transactions and receiving gross income, a portion of which is due to City pursuant to the terms of the Contract.

27. The amount of money due from Coronado Foursome to City is unknown to City and cannot be ascertained without an accounting of Coronado Foursome's gross income and receipts from operating the concession.

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1           28.     Based on prior contract years, City estimates that the amount due and currently owing  
2 from Coronado Foursome to City is the approximate sum of \$80,000, plus interest and late fees.

3           29.     On or about October 12, 2018 and again on or about October 25, 2018, City demanded  
4 that Coronado Foursome account for its gross income for the 2017-2018 contract year and pay the  
5 amount found due to City, but Coronado Foursome has failed and refused, and continues to fail and  
6 refuse, to render the accounting and pay City.

7           **WHEREFORE**, the City prays for judgment against each defendant, jointly and severally,  
8 as follows:

- 9           1.     For money damages and late fees according to proof;  
10          2.     For prejudgment interest at the legal rate;  
11          3.     For an accounting;  
12          4.     For costs of suit incurred herein;  
13          5.     For reasonable attorneys' fees; and  
14          6.     For such other and further relief as the court may deem just and proper.

15         City demands a jury trial on all issues triable to a jury.

16  
17         Dated: November 27, 2018

MCDUGAL, LOVE, BOEHMER,  
FOLEY, LYON & CANLAS

18  
19  
20         By: 

21         Steven E. Boehmer  
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23         Attorneys for Plaintiff, City of Coronado  
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