

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address  Leonard M. Shulman – State Bar No. 126349 Lynda T. Bui – Bar No. 201002 Elyza P. Eshaghi – Bar No. 293395 SHULMAN HODGES & BASTIAN LLP 100 Spectrum Center Drive, Suite 600 Irvine, California 92618 Telephone: (949) 340-3400 Facsimile: (949) 340-3000 Email: lshulman@shbllp.com; lbui@shbllp.com eeshaghi@shbllp.com  <input type="checkbox"/> Individual appearing without attorney <input checked="" type="checkbox"/> Attorney for: Sam S. Leslie, Chapter 7 Trustee	FOR COURT USE ONLY
---	--------------------

**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION**

In re:  ENIRIQUE IBARRA AND SILVIA IBARRA,       Debtor(s).	CASE NO.: 2:14-bk-11105-RN CHAPTER: 7       <p style="text-align: center;"><b>NOTICE OF SALE OF ESTATE PROPERTY</b></p>
--	---

**Last Day to Submit Bids: April 11, 2016 at 5:00 pm**

<b>Sale Date:</b> Final Bidding Round/Court Hearing: 4/14/16/16	<b>Time:</b> 10:30 am
<b>Location:</b> United States Bankruptcy Court, 255 E. Temple Street, Ctrm. 1645, Los Angeles, CA 90012	

**Type of Sale:**  Public  Private **Last date to file objections:** 03/31/2016

**Description of property to be sold:** Cross-Complaint Claim - See Attached for Detailed Description

**Terms and conditions of sale:** Sale pursuant to Bankruptcy Code § 363(b)(1)  
Purchase price of \$7,500.00, subject to overbids. See Attached for Bidding Procedures.

**Proposed sale price:** \$ 7,500.00

This form is mandatory. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

**Overbid procedure (if any):** Potential overbidders must bid an initial amount of at least \$500.00 over the consideration offered by the Buyers (total of at least \$8,000.00.) Minium bid increments after that shall be \$500.00

See attached for more information.

**If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:**

April 14, 2016 at 10:30 a.m.

Courtroom 1645

U.S. Bankruptcy Court

255 E. Temple Street

Los Angeles, CA 90012

**Contact person for potential bidders (include name, address, telephone, fax and/or email address):**

Elyza P. Eshaghi, Esq.

SHULMAN HODGES & BASTIAN LLP

100 Spectrum Center Drive, Suite 600

Irvine, CA 92618

Telephone: (949) 340-3400

Facsimile: (949) 340-3000

Email: eeshaghi@shblp.com

Date: 03/24/2016

1 Leonard M. Shulman – State Bar No. 126349  
Lynda T. Bui – Bar No. 201002  
2 Elyza P. Eshaghi – Bar No. 293395  
**SHULMAN HODGES & BASTIAN LLP**  
3 100 Spectrum Center Drive, Suite 600  
Irvine, California 92618  
4 Telephone: (949) 340-3400  
Facsimile: (949) 340-3000  
5 Email: lshulman@shbllp.com; lbui@shbllp.com  
eeshaghi@shbllp.com  
6  
7 Attorneys for Sam S. Leslie,  
Chapter 7 Trustee

8 **UNITED STATES BANKRUPTCY COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION**

10 In re

11 **ENRIQUE IBARRA and**  
12 **SILVIA IBARRA,**

13 Debtor.

Case No.: 2:14-bk-11105-RN

Chapter 7

**CHAPTER 7 TRUSTEE’S MOTION FOR  
ORDER APPROVING THE SALE OF  
CROSS-COMPLAINT CLAIM  
PURSUANT TO 11 U.S.C. § 363(b)(1),  
SUBJECT TO OVERBIDS, COMBINED  
WITH NOTICE OF BID PROCEDURES  
AND REQUEST FOR APPROVAL OF  
THE BID PROCEDURES, AND  
GRANTING RELATED RELIEF;  
MEMORANDUM OF POINTS AND  
AUTHORITIES AND DECLARATION OF  
SAM S. LESLIE IN SUPPORT THEREOF**

**Hearing Date:**

Date: April 14, 2016

Time: 10:30 a.m.

Place: Courtroom 1645

United States Bankruptcy Court  
Roybal Federal Building  
255 E. Temple Street, Suite 1652  
Los Angeles, CA 90012

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF CONTENTS**

I. INTRODUCTION ..... 5

II. RELEVANT FACTS ..... 6

III. ARGUMENT ..... 10

    A. The Cross-Complaint Claim is Property of the Estate that the Trustee May Administer for the Benefit of Unsecured Creditors. .... 10

    B. The Court May Authorize a Sale When There is a Sound Business Purpose. .... 10

        1. Sound Business Purpose. .... 11

        2. The Sale Serves the Best Interests of the Estate and Creditors. .... 12

        3. Accurate and Reasonable Notice. .... 12

        4. The Sale is Made in Good Faith. .... 12

    C. The Court Has the Authority to Approve the Bid Procedures. .... 13

    D. Sale of the Cross-Complaint Claim is Fair and Equitable. .... 13

        1. Probability of Success in Litigation. .... 14

        2. Difficulties to be Encountered in the Matter of Collections. .... 14

        3. The Complexity of the Litigation Involved, Expense, Inconvenience, and Delay. .... 15

        4. The Paramount Interests of Creditors and Proper Deference to Reasonable Views. .... 16

    E. The Court has the Authority to Waive the Fourteen-Day Stay of Sale. .... 16

IV. CONCLUSION ..... 16

DECLARATION OF SAM S. LESLIE ..... 18

**TABLE OF AUTHORITIES**

**CASES**

1

2

3 *A.G. v. Paradise Valley Unified Sch. Dist. No. 69*, 2016 U.S. App. LEXIS 3994  
4 (9th Cir. Mar. 3, 2016) ..... 15

5 *Fitzgerald v. Ninn worx SR, Inc. (In re Fitzgerald)*, 428 B.R. 872 (9th Cir. B.A.P.  
6 2010) ..... 10, 13

7 *In re Energy Cooperative, Inc.*,  
8 886 F.2d 921 (7th Cir. 1989) ..... 14

9 *In re Lionel Corp.*, 722 F.2d 1063, 1069 (2d Cir. 1983) ..... 11

10 *In re Teltronics Services, Inc.*, 762 F.2d 185, 189 (2nd Cir. 1985) ..... 13

11 *In re Wilde Horse Enterprises, Inc.*,  
12 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991) ..... 10, 12

13 *Martin v. Kane (In re A&C Props.)*, 7894 F.2d 1377, 1381 (9th Cir. 1986) ..... 13

14 *McCullough v. Xerox Corp.*, 2015 U.S. Dist. LEXIS 135714 (N.D. Cal. Oct. 2,  
15 2015) ..... 15

16 *Njema v. Wells Fargo Bank, N.A.*, 2015 U.S. Dist. LEXIS 108758 (D. Minn. July  
17 7, 2015) ..... 15

18 *Simantob v. Claims Prosecutor, L.L.C. (In re Lahijani)*, 325 B.R. 282, 287 (9th  
19 Cir. B.A.P. 2005) ..... 10, 13

**STATUTES**

20 11 U.S.C. § 102(1) ..... 12

21 11 U.S.C. § 523 (a)(4) ..... 7

22 11 U.S.C. § 523 (a)(6) ..... 7

23 11 U.S.C. §§ 523(a)(2)(A) ..... 7

24 28 U.S.C. § 1452 ..... 6

25 Bankruptcy Code Section 105(a) ..... 13

26 Bankruptcy Code Section 363(b) ..... 10, 11

27 Bankruptcy Code Section 363(b)(1) ..... 5, 13, 18, 20

28 Bankruptcy Code Section 363(m) ..... 13

Federal Rule of Bankruptcy Procedure 6004(h) ..... 16, 17

**RULES**

1	Federal Rules of Bankruptcy Procedure § 2002(c)(1) .....	12
2	Federal Rules of Bankruptcy Procedure § 7016 .....	14
3	Federal Rules of Civil Procedure § 9027 .....	6
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		



1 **II. RELEVANT FACTS**

2 **A. Case Commencement.**

3 Debtors filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on  
4 January 21, 2014 (“Petition Date”), initiating case no. 2:14-bk-11105-RN (“Bankruptcy Case”).

5 Sam S. Leslie is the duly appointed, qualified, and acting Chapter 7 trustee for the Estate.

6 **B. Claims Against the Estate.**

7 The deadline for filing claims in this case is October 21, 2014 and January 14, 2015 for  
8 governmental proof of claims. As of March 7, 2016, the Court’s claims register indicates that  
9 there have been three (3) claims filed totaling \$110,368.44 consisting of \$105,601.63 in secured  
10 claims, \$0.00 in priority claims, and \$4,766.81 in general unsecured claims.

11 **C. The Property.**

12 On March 26, 2012, the Buyers filed a complaint (“Complaint”) against the Debtors in  
13 the Superior Court of the State of California for the County of Los Angeles, titled Chong v.  
14 Enrique Ibarra, et. al., Case No. BC481527 (“State Court Action”). (*See* the Declaration of Sam  
15 S. Leslie (“Leslie Decl.”), **Ex. 1.**) The Complaint, as amended by the Second Amended  
16 Complaint, alleges causes of action for: (1) breach of fiduciary duty, (2) constructive fraud, (3)  
17 fraud and deceit, (4) a derivative action for conversion and unfair business practices, (4) fraud,  
18 (5) misappropriation of trade secrets and deceit, and (6) intentional interference with prospective  
19 economic advantage. (*Id.*)

20 On May 30, 2012, the Debtors filed a cross-complaint against the Buyers in the State  
21 Court Action for: (1) wrongful termination in violation of public policy, (2) breach of fiduciary  
22 duty, (3) §17200 unfair business practices, (4) conversion, (5) intentional infliction of emotional  
23 distress, (6) negligent infliction of emotional distress, and (7) loss of consortium (“Cross-  
24 Complaint”). (Leslie Dec., **Ex 2.**)

25 On March 11, 2014, Buyers filed a Notice of Removal (“Notice of Removal”) of the  
26 State Court Action with the Bankruptcy Court, initiating adversary proceeding no. 2:14-ap-  
27 01154 (“Adversary Proceeding”). (Leslie Decl., **Ex. 3.**) The Notice of Removal was filed  
28 pursuant to 28 U.S.C. § 1452 and Fed. R. Civ. Pro. 9027. (*Id.*) Pursuant to the Notice of

1 Removal, the entire State Court Action, including the Cross-Complaint, was removed to the  
2 Bankruptcy Court. (*Id.*) Pursuant to the Notice of Removal, the basis for removal of the State  
3 Court Action are the non-dischargeability issues that relate to the Bankruptcy Case and arise  
4 under 11 U.S.C. §§ 523(a)(2)(A), 523 (a)(4) and 523 (a)(6). (*Id.*)

5 On December 10, 2015, a Joint Pre-Trial Order was entered in the Adversary Proceeding  
6 (“Joint Pre-Trial Order”). (Leslie Decl., **Ex. 4.**) The Joint Pre-Trial Order lists the claims for  
7 relief on the Cross Complaint as: (1) wrongful discharge/termination, (2) intentional infliction of  
8 emotional distress, and (3) negligent infliction of emotional distress. (*Id.*) In the Joint Pre-Trial  
9 Order, the damages alleged in relation to wrongful discharge/termination are \$4,867.85 in  
10 medical expenses and \$500,000.00 for physical pain/mental suffering, and \$1,000.000.00 in  
11 damages alleged in relation to the emotional distress causes of action. (*Id.*)

12 On January 20, 2016, the Debtors filed an Amended Schedule A/B to include their  
13 interest in the Cross-Complaint as follows: “Cross-Complaint for intentional Infliction of  
14 Emotional Distress, Negligent Infliction of Emotional Distress, Breach of Fiduciary Duty, and  
15 Conversion, Chong and Lara Ibarra State Court action removed to Bankruptcy Court, Adversary  
16 Case no. 2:14-ap-01154-DS” (collectively with the Cross-Complaint, shall be referred to as the  
17 “Cross-Complaint Claim”). (Leslie Decl., **Ex. 5.**) The Debtors list the value of the Cross-  
18 Complaint Claim as “unknown.”

19 **D. Basis for Value of the Property.**

20 Initially, the Trustee intended to abandon the Estate’s interest in the Cross-Complaint  
21 Claim back to the Debtors. (Leslie Decl., ¶ 8.) The Trustee concluded that the costs associated  
22 with litigating the Cross-Complaint Claim outweigh the potential benefit to the Estate because:  
23 (1) the creditor base was too small to justify the costs associated with litigation; and (2) the  
24 monetizable claim in the Cross-Complaint Claim is for conversion of Debtor’s 1/3 interest in  
25 ENSI. (*Id.*) The damages for conversion are typically compensation for the loss of the converted  
26 property and the Trustee has already administered the Debtors’ 1/3 interest in ENSI for the  
27 benefit of the Estate. (Leslie Decl., **Ex. 1.**) As is typical when evaluating claims, the Trustee  
28 has determined that the value is the price in which the buyer is willing to purchase the asset. In

1 this case, the Buyers are willing to purchase the Cross-Complaint Claim for \$7,500.00, subject to  
2 overbids.

3 **E. The Purchase Offer and Summary of the Sale Terms.**

4 After being informed that the Trustee intended to abandon the Estate's interest in the  
5 Cross-Complaint Claim back to the Debtors, the Buyers offered to purchase the Cross-Complaint  
6 Claim for \$5,000.00, and later accepted the Trustee's counter offer of \$7,500.00. (Leslie Decl., ¶  
7 9; **Ex. 6.**)

8 A summary of the Agreement's terms are outlined below, but the summary and  
9 discussion are not meant to be a complete review of every provision of the Agreement. The  
10 Agreement itself is the legally binding document the Trustee seeks approval of. In the event of  
11 any inconsistency between the terms of the Agreement and this Motion, the Agreement alone  
12 shall govern. In summary, the principal terms of the sale are as follows (the Trustee is referred  
13 to at times as the "Seller" in the following summary):

14 Buyers:	Luis M. Chong and Francisco Lara
15 Purchase Price:	\$7,500.00, subject to the Bid Procedures set forth below. 16 \$1,000.00 deposit. Balance of purchase price paid not more than seven 17 calendar days after the entry of an order of the Bankruptcy Court authorizing 18 the sale.
17 Disclosure or Warranty	As the Seller is a federal bankruptcy trustee, notwithstanding that the 18 Agreement contains disclosure or warranty provisions, there will be no warranties or disclosures made concerning the Cross-Complaint Claim.
19 "As-Is" Sale	Buyers acknowledge that they are purchasing the Estate's interest in the 20 Cross-Complaint Claim on an "as is, where is" basis, without any warranties, 21 either express or implied. Buyers forever waive, for themselves, their heirs, successors and assigns, all claims against the Trustee, his attorneys, agents and employees, arising or which might otherwise arise in the future concerning the Estate's interest in the Cross-Complaint Claim.
22 Bankruptcy Court Approval	The sale is expressly subject to Bankruptcy Court approval in the Debtor's bankruptcy case.
23 Jurisdiction of the Bankruptcy Court	Any and all disputes in connection with the Agreement are subject to the 24 exclusive jurisdiction and venue of the United States Bankruptcy Court.
25 Sale Subject to Overbidding	The sale of the Cross-Complaint Claim is subject to the Bid Procedures described below.

26 ///

27 ///

28

1 **F. Bid Procedures.**

2 The Trustee has determined that it would benefit the Estate to permit all interested parties  
3 to receive information and bid for the Cross-Complaint Claim, instead of selling the Cross-  
4 Complaint Claim to the Buyers on an exclusive basis. Accordingly, in order to obtain the highest  
5 and best offer for the benefit of the creditors of this Estate, the Trustee is utilizing and also seeks  
6 Court approval of the following bid procedures (“Bid Procedures”):

7 1. Overbids shall be in minimum increments of \$500.00. The overbidder must  
8 tender a Bid Deposit of \$1,000.00 in the form of certified funds to the Trustee’s counsel on or  
9 before the Sale Hearing in order to bid for the Estate’s interest in the Cross-Complaint Claim. If  
10 the overbidder is the successful bidder for the Estate’s interest in the Cross-Complaint Claim at  
the Sale Hearing, the Bid Deposit of said overbidder shall be non-refundable and forfeited, if the  
successful overbidder fails to consummate the sale.

11 2. Bids must be in writing and be received by the Trustee and the Trustee’s counsel,  
12 Shulman Hodges & Bastian LLP to the attention of Elyza P. Eshaghi on or before **5:00 p.m.**  
**(California Time) on April 11, 2016.**

13 3. The bidder must also provide evidence of having sufficient specifically committed  
14 funds to complete the transaction or a lending commitment for the bid amount and such other  
15 documentation relevant to the bidder’s ability to qualify as the purchaser of the Cross-Complaint  
16 Claim and ability to close the sale and immediately and unconditionally pay the winning bid  
17 purchase price at closing.

18 4. The bidder must seek to acquire the Cross-Complaint Claim on terms and  
19 conditions not less favorable to the Estate than the terms and conditions to which the Buyers has  
20 agreed to purchase the Cross-Complaint Claim as set forth in the Agreement with the Buyers  
including no contingencies and closing on the sale in the same time parameters as the Buyers.

21 5. All competing bids must acknowledge that the Cross-Complaint Claim is being  
22 sold on an “AS IS” basis without warranties of any kind, expressed or implied, being given by  
23 the Seller. The competing bid buyer must represent and warrant that he/she is purchasing the  
24 Cross-Complaint Claim as a result of their own investigations.

25 6. If overbids are received, the final bidding round shall be held on **April 14, 2016**  
26 **at 10:30 a.m. (California Time)** at the hearing on the Sale Motion, or if rescheduled, upon  
27 telephonic notice to the Buyers and the parties having submitted overbids, at the **Trustee’s**  
28 **counsel’s office, Shulman Hodges & Bastian LLP, 100 Spectrum Center Drive, Suite 600,**  
**Irvine, California 92618, to the attention of Elyza P. Eshaghi.** At the final bidding round, the  
Trustee or her counsel will, in the exercise of their business judgment and subject to Court  
approval, accept the bidder who has made the highest and best offer to purchase the Cross-  
Complaint Claim, consistent with the Bid Procedures (“Successful Bidder”).

7. In the event the Successful Bidder fails to close on the sale of the Cross-  
Complaint Claim within the time parameters approved by the Court, the Trustee shall retain the  
Successful Bidder’s Deposit and will be released from his obligation to sell the Cross-Complaint  
Claim to the Successful Bidder and the Trustee may then sell the Cross-Complaint Claim to the  
First Back-Up Bidder approved by the Court.

///

8. In the event First Back-Up Bidder fails to close on the sale of the Cross-Complaint Claim within the time parameters approved by the Court, the Trustee shall retain the First Back-Up Bidder's Deposit and will be released from his obligation to sell the Cross-Complaint Claim to the First Back-Up Bidder and the Trustee may then sell the Property to the Second Back-Up Bidder approved by the Court.

**G. Notice Regarding the Bid Procedures.**

The sale of the Cross-Complaint Claim is subject to the Bid Procedures discussed above. The Bid Procedures will be provided to all creditors and any potential bidders or parties who have shown an interest in the Cross-Complaint Claim. A Notice of Sale of Estate Property will be posted on the Court's website under the link "Current Notices of Sales," thereby giving notice to additional potential interested parties.

Based on the foregoing, the Trustee believes that under the circumstances of this case, the Cross-Complaint Claim will have been appropriately marketed for bidding.

**III. ARGUMENT**

**A. The Cross-Complaint Claim is Property of the Estate that the Trustee May Administer for the Benefit of Unsecured Creditors.**

Causes of action owned by the trustee are intangible items of property of the estate that may be sold. 11 U.S.C. § 541(a)(1); *Fitzgerald v. Ninn worx SR, Inc. (In re Fitzgerald)*, 428 B.R. 872 (9th Cir. B.A.P. 2010); *Simantob v. Claims Prosecutor, L.L.C. (In re Lahijani)*, 325 B.R. 282, 287 (9th Cir. B.A.P. 2005). These include causes of action owned by the debtor as of the filing of the case. *Id.*

The Cross-Complaint Claim is a pre-petition cause of action brought by the Debtor's against the Buyers in the State Court Action. Accordingly, the Trustee has the authority to sell the Cross-Complaint Claim to the Buyers.

**B. The Court May Authorize a Sale When There is a Sound Business Purpose.**

The Trustee may sell property of the estate outside of the ordinary course of business. 11 U.S.C. § 363(b). In order to sell property outside of the ordinary course, the Trustee must show that there is a sound business purpose for the sale, that the sale is in the best interests of the estate, that there is accurate and reasonable notice to creditors, and that the sale is made in good faith. *In re Wilde Horse Enterprises, Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991); *In re*

1 *Lionel Corp.*, 722 F.2d 1063, 1069 (2d Cir. 1983). As outlined below, the Trustee's proposed  
2 sale of the Cross-Complaint Claim meets the foregoing criteria.

3 1. Sound Business Purpose.

4 The Ninth Circuit has adopted a flexible, case-by-case test to determine whether the  
5 business purpose for a proposed sale justifies disposition of property of the estate under Section  
6 363(b). *In re Walter*, 83 B.R. 14 (B.A.P. 9th Cir. 1988). In *Walter*, the Ninth Circuit set forth  
7 the following standard to be applied under Bankruptcy Code Section 363(b):

8 Whether the proffered business justification is sufficient depends on the case. As  
9 the Second Circuit held in *Lionel*, the bankruptcy judge should consider all salient  
10 factors pertaining to the proceeding and, accordingly, act to further the diverse  
11 interests of the debtor, creditors and equity holders, alike. He might, for example,  
12 look to such relevant factors as the proportionate value of the assets to the estate  
13 as a whole, the amount of lapsed time since the filing, the likelihood that a plan of  
14 reorganization will be proposed and confirmed in the near future, the effect of the  
15 proposed disposition on future plans of reorganization, the proceeds to be  
16 obtained from the disposition vis-a-vis any appraisals of the property, which of  
17 the alternatives of use, sale or lease the proposal envisions and, most importantly  
18 perhaps, whether the asset is increasingly or decreasing in value. This list is not  
19 intended to be exclusive, but merely to provide guidance to the bankruptcy judge.

20 *Walter*, 83 B.R. at 19-20 (quoting *Continental*, 780 F.2d at 1226).

21 Here, the facts surrounding the sale support the Trustee's business decision that the  
22 proposed sale of the Cross-Complaint Claim is in the best interests of the Estate and its creditors.  
23 Through the sale, the Trustee expects to generate net proceeds in the amount of \$7,500.00. The  
24 estimated net proceeds will benefit the Estate by providing funds for distribution to unsecured  
25 creditors. If the Motion is not approved, then there will be a substantial loss to the Estate in that  
26 the Trustee does not intend to pursue the Cross-Complaint Claim. The costs associated with  
27 litigating the Cross-Complaint Claim outweighing any potential benefit to the Estate, as  
28 discussed further below. In such event, the Estate will not receive any benefit from the Cross-  
Complaint Claim. Furthermore, the Trustee believes that the proposed sale will be at fair market  
value because it is the best offer the Estate has received thus far for the Cross-Complaint Claim,  
and the sale is subject to the Bid Procedures. Accordingly, the Trustee respectfully submits that  
a good business purpose exists for granting the Motion in that it will net the Estate \$7,500.00.

///

1           2.       [The Sale Serves the Best Interests of the Estate and Creditors.](#)

2           The Trustee believes that it would be in the best interest of the Estate and its creditors to  
3 sell the Cross-Complaint Claim. The benefits to the Estate, as set forth above, are tremendous  
4 due to the funds to be generated from the sale that will be used to pay a substantial distribution to  
5 unsecured claims and the relief from prosecuting the Cross-Complaint Claim. If the Motion is  
6 not approved, the Estate will not receive the sale proceeds and will likely lose the Buyers. The  
7 Trustee does not want to lose this beneficial business opportunity. Thus, the Trustee has made a  
8 business decision that it is in the best interest of the Estate that this Motion be approved.

9           3.       [Accurate and Reasonable Notice.](#)

10          The notice requirements for sales are set forth in Rules 6004 and 2002 of the Federal  
11 Rules of Bankruptcy Procedure (“FRBP”). The notice must include the time and place of any  
12 public sale and/or the terms and conditions of any private sale, the time fixed for filing on  
13 objections, and a general description of the property. Fed. R. Bankr. P. 2002(c)(1).

14          In compliance with FRBP 2002 and 11 U.S.C. § 102(1), the Trustee shall provide notice  
15 of the proposed sale of the Cross-Complaint Claim to creditors and parties in interest (“Notice”).  
16 The Notice will include a summary of the terms and conditions of the proposed sale, the time  
17 fixed for filing objections, and a general description of the Cross-Complaint Claim. The Trustee  
18 submits that the notice requirements will be satisfied, thereby allowing creditors and parties in  
19 interest an opportunity to object to the sale. Hence, no further notice should be necessary.

20          4.       [The Sale is Made in Good Faith.](#)

21          The proposed sale has been brought in good faith and has been negotiated on an “arm’s  
22 length” basis. The court in *Wilde Horse Enterprises* set forth the factors in considering whether  
23 a transaction is in good faith. The court stated:

24               “Good faith” encompasses fair value, and further speaks to the integrity of the  
25 transaction. Typical ‘bad faith’ or misconduct, would include collusion between  
26 the seller and buyer, or any attempt to take unfair advantage of other potential  
27 purchasers. . . . And, with respect to making such determinations, the court and  
28 creditors must be provided with sufficient information to allow them to take a  
position on the proposed sale.

*Id.* at 842 (citations omitted).

1 In the present case, the negotiation of the proposed sale was an arms-length transaction.  
2 The sale price for the Cross-Complaint Claim is the highest and best offer the Trustee has  
3 received. Additionally, the Buyers have filed a declaration in support of the Motion confirming  
4 their status as good faith buyers pursuant to Section 363(m) of the Bankruptcy Code.  
5 Accordingly, the Trustee requests that the Court find that the Buyers are good faith purchasers  
6 under Bankruptcy Code Section 363(m).

7 **C. The Court Has the Authority to Approve the Bid Procedures.**

8 Bankruptcy Code Section 363(b)(1) provides that a trustee “after notice and hearing, may  
9 use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C.  
10 § 363(b)(1). Furthermore, under Bankruptcy Code Section 105(a), “[t]he court may issue any  
11 order, process, or judgment that is necessary or appropriate to carry out the provisions of this  
12 title.” 11 U.S.C. § 105(a). Thus, pursuant to Bankruptcy Code Sections 363(b)(1) and 105(a),  
13 this Court may approve the Bid Procedures, which assist the Trustee to obtain the best possible  
14 price, on the best possible terms, for the Cross-Complaint Claim.

15 **D. Sale of the Cross-Complaint Claim is Fair and Equitable.**

16 When a sale amounts to an acquisition of causes of action by a defendant, it must also be  
17 analyzed as a compromise for which the court has an independent duty to determine whether it is  
18 “fair and equitable.” *In re Fitzgerald*, 428 B.R. at 884 (9th Cir. B.A.P. 2010); *In re Lahijani*,  
19 325 B.R. at 290 (9th Cir. B.A.P. 2005). In determining whether a sale is fair and equitable,  
20 courts apply the fair and equitable settlement standard under FRBP 9019, which requires  
21 consideration of: (1) the probability of success in litigation, (2) collectability, (3) complexity,  
22 expense, inconvenience, and delay attendant to continue litigation, and (4) the interest of  
23 creditors, which are paramount. *Id.*; *Martin v. Kane (In re A&C Props.)*, 7894 F.2d 1377, 1381  
24 (9th Cir. 1986). The Court is not required to decide disputed questions of fact and law raised by  
25 the litigation, but to canvass the issues to see whether the “settlement falls below the lowest point  
26 in a range of reasonableness.” *In re Teltronics Services, Inc.*, 762 F.2d 185, 189 (2nd Cir. 1985).  
27 The benchmark in determining the propriety of a settlement is whether the settlement is in the  
28 best interests of the estate and its creditors. *In re Energy Cooperative, Inc.*, 886 F.2d 921, 927

1 (7th Cir. 1989). As set forth further below, the Trustee submits that the sale of the Cross-  
2 Complaint Claim is fair and equitable and in the best interest of the Estate and its creditors.

3 1. [Probability of Success in Litigation.](#)

4 The Trustee's probability of prevailing on the Cross-Complaint Claim is highly uncertain  
5 and limited mainly because it appears that discovery in the Adversary Proceeding is closed and  
6 the Trustee would have to step into the shoes of the Debtor. The Joint Pre-Trial Order has been  
7 entered and when signed by the Judge, the Joint Pre-Trial Order supersedes the Cross-Complaint.  
8 *See* Fed. R. Bankr. Pro. 7016. Only a portion of the claims alleged in the Cross-Complaint  
9 Claim are set forth in the Joint Pre-Trial Order as follows: (1) wrongful discharge/termination,  
10 (2) intentional infliction of emotional distress, and (3) negligent infliction of emotional distress.  
11 These remaining claims are factually intensive and will require further discovery. While it is  
12 uncertain if the Court would re-open discovery if the Trustee takes over the Cross-Complaint  
13 Claim, pursuing such claims successfully is uncertain. As it stands, if the Trustee proceeds  
14 through litigation, the Trustee will be required to meet his burden of proof to substantiate the  
15 fact-intensive claims alleged Cross-Complaint Claim without discovery. Accordingly, given the  
16 quality of the pleadings that have been filed in the Adversary Proceeding and the Trustee's  
17 inability to conduct independent discovery to substantiate the fact-intensive claims alleged in the  
18 Cross-Complaint Claim, the likelihood of prevailing in litigation is slim and this factor weighs in  
19 favor of approving the Agreement.

20 2. [Difficulties to be Encountered in the Matter of Collections.](#)

21 Collections in this case would be against the Buyers who are also the cross-defendants in  
22 the Adversary Proceeding. The Trustee has not fully evaluated the financial stability of the  
23 Buyers, however, if any damages are awarded in favor of the Trustee, the Trustee will be  
24 required to extend the costs and efforts to pursue collection against the Buyers. Such time and  
25 costs are unnecessary as the Agreement provides for direct payment to the Trustee. Accordingly,  
26 this weighs in favor of settling.

27 ///

28 ///

1           3.       [The Complexity of the Litigation Involved, Expense, Inconvenience, and Delay.](#)

2           The Cross-Complaint Claim is both legally and factually complex. The Cross-Complaint  
3 Claim is legally complex in that it is unclear what statutory authority the Debtor brings the  
4 Cross-Complaint Claim under. In addition, as mentioned above, the Cross-Complaint Claim is  
5 factually complex given the fact-intensive nature of the causes of action alleged in the Cross-  
6 Complaint Claim. Pursuant to the Joint Pre-Trial Order, the causes of action in the Cross-  
7 Complaint Claim that remain to be litigated are as follows: (1) wrongful discharge/termination,  
8 (2) intentional infliction of emotional distress, and (3) negligent infliction of emotional distress.  
9 While it is unclear which statutory provisions the remaining claims are being brought under,  
10 generally, wrongful termination and emotional distress causes of action are fact-intensive claims.  
11 *McCullough v. Xerox Corp.*, 2015 U.S. Dist. LEXIS 135714 (N.D. Cal. Oct. 2, 2015); *A.G. v.*  
12 *Paradise Valley Unified Sch. Dist. No. 69*, 2016 U.S. App. LEXIS 3994 (9th Cir. Mar. 3, 2016) ;  
13 *Njema v. Wells Fargo Bank, N.A.*, 2015 U.S. Dist. LEXIS 108758 (D. Minn. July 7, 2015). In  
14 support of the claims, the Debtors state in their Joint Pretrial Order that, “the [Debtors’] exhibits  
15 are listed in and attached to Appendix 2 of this order.” However, there is no Appendix 2 attached  
16 to the Joint Pre-Trial Order. If the Trustee proceeds through litigation, it will be extremely  
17 difficult to satisfy his burden of proof to substantiate the fact-intensive claims alleged in the  
18 Cross-Complaint Claim without additional discovery.

19           Moreover, if the Motion is approved, the Estate will not bear the cost and expense  
20 associate with preparing for trial, trying the case, and perhaps respond to any appeals. The  
21 Agreement allows the Estate to receive funds now and avoid the risks inherent in any litigation.  
22 Rather than delay the matter and incur expenses or resources preparing for trial, the Trustee has  
23 determined that the Agreement reached is fair and equitable. Based thereon, the Trustee believes  
24 the proposed Agreement is the most expedient and cost effective method for administering the  
25 Cross-Complaint Claim. Accordingly, this factor weighs in favor of settling.

26 ///

27 ///

28 ///



1 4. A determination by the Court that the Buyers is a good faith purchaser pursuant to  
2 Bankruptcy Code Section 363(m).

3 5. Waiving the fourteen day stay of the order approving the sale of the Cross-  
4 Complaint Claim under Federal Rules of Bankruptcy Procedure 6004(h).

5 6. For such other and further relief as the Court deems just and proper under the  
6 circumstances of this case.

7 Respectfully submitted,

8 Dated: March 24, 2016

**SHULMAN HODGES & BASTIAN LLP**

9 /s/ Elyza P. Eshaghi

10 Leonard M. Shulman

11 Lynda T. Bui

Elyza P. Eshaghi

12 General Counsel for Sam S. Leslie, Chapter 7 Trustee

for the bankruptcy estate of Enrique Ibarra and

13 Silvia Ibarra  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **DECLARATION**

**DECLARATION OF SAM S. LESLIE**

I, Sam S. Leslie, declare:

1. I am the duly appointed, qualified and acting Chapter 7 trustee for the bankruptcy estate (“Estate”) of Enrique Ibarra and Sylvia Ibarra (“Debtors”). I have personal knowledge of the facts set forth herein, and if called and sworn as a witness, I could and would competently testify thereto, except where matters are stated on information and belief, in which case I am informed and believe that the facts so stated are true and correct.

2. I make this Declaration in support of my Motion for Order Approving the Sale of the Cross-Complaint Claim Pursuant to 11U.S.C. § 363(b)(1), Subject to Overbids, Combined With Notice of Bid Procedures and Request for Approval of the Bid Procedures and Granting Related Relief (“Motion”). All capitalized terms not otherwise defined herein shall have the meaning set forth in the Sale Motion.

3. Attached hereto as **Exhibit 1**, is a true and correct copy of the Second Amended Complaint, which amends the Complaint filed on March 26, 2012, which was attached as an exhibit to the Notice of Removal, Docket No. 1 in the Adversary Proceeding.

4. Attached hereto as **Exhibit 2**, is a true and correct copy of the Cross-Complaint filed on May 30, 2012, which was attached as an exhibit to the Notice of Removal, Docket No. 1 in the Adversary Proceeding.

5. Attached hereto as **Exhibit 3**, is a true and correct copy of the Notice of Removal filed on March 11, 2014, that was obtained from the Court’s docket in the Adversary Proceeding.

6. Attached hereto as **Exhibit 4**, is a true and correct copy of the Joint Pre-Trial Order entered on December 10, 2015 that was obtained from the Court’s docket in the Adversary Proceeding.

7. Attached hereto as **Exhibit 5**, is a true and correct copy of the Debtors’ Amended Schedule A/B filed on January 20, 2016, that was obtained from the Court’s docket in the Bankruptcy Case.

///

///

1 8. After reviewing the Cross-Complaint Claim, given the amount of unsecured  
2 claims filed, I determined that the costs associated with litigating the Cross-Complaint Claim  
3 outweigh the potential benefit to the Estate for the following reasons: (1) the creditor base was  
4 too small to justify the costs associated with litigation; and (2) the monetizable claim in the  
5 Cross-Complaint Claim is for conversion of Debtor's 1/3 interest in ENSI, which I sold  
6 previously.

7 9. After I informed the Buyers that I intended to abandon the Estate's interest in the  
8 Cross-Complaint Claim, the Buyers offered to purchase the Cross-Complaint Claim and we  
9 negotiated the terms. I submitted a counter offer for \$7,500.00 and the Buyers agreed.

10 10. Attached hereto as **Exhibit 6**, is a true and correct copy of the Agreement for the  
11 sale of the Estate's interest in the Cross-Complaint Claim.

12 I declare under penalty of perjury under the laws of the United States of America that the  
13 foregoing is true and correct.

14 Executed on March <sup>23<sup>rd</sup></sup>, 2016 at Los Angeles, California.

  
\_\_\_\_\_  
15  
16 Sam S. Leslie

# **EXHIBIT 1**

1 Robert Pacheco #062336  
2 Gayle E. Pacheco #164231  
3 Law Offices of Pacheco & Pacheco  
4 161 Commerce Way  
5 Walnut, Ca 91789  
6 Tel: 909-595-5823  
7 Fax: 909-595-6207

**REC'D**  
**OCT 04 2013**  
**FLING WINDOW**

8 Attorneys for Plaintiffs/Cross-Defendants

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

11 Francisco Lara, Luis M. Chong )  
12 )  
13 Plaintiffs, )

14 vs. )

15 Enrique Ibarra, Silvia Ibarra, Eugenia Acosta, )  
16 Octavio Barba, N & D Meats, Inc., Linda's )  
17 Seafood, Juan Alfaro, Juan Manuel Lugo, and )  
18 ENSI Group, LLC, a California Limited Liability )  
19 Company, Does 1 to 20, inclusive, )  
20 Defendants )

Case No.: BC 481527  
Assigned:  
Honorable Mel Red Recana

**PLAINTIFFS' SECOND AMENDED  
COMPLAINT FOR DAMAGES; BREACH  
OF FIDUCIARY DUTY; CONSTRUCTIVE  
FRAUD; FRAUD AND DECEIT;  
DERIVATIVE ACTION FOR  
CONVERSION AND UNFAIR BUSINESS  
PRACTICES; FRAUD,  
MISAPPROPRIATION OF TRADE  
SECRETS AND DECEIT; INTENTIONAL  
INTERFERENCE WITH PROSPECTIVE  
ECONOMIC ADVANTAGE**

21 Enrique Ibarra, an individual and )  
22 Silvia Ibarra, an individual, )  
23 Cross Complainants, )

24 vs. )

25 Francisco Lara, an individual, and Luis M. Chong, )  
26 an individual and Does 1 through 50 inclusive, )  
27 Cross Defendants )

Date: November 25, 2013  
Time: 8:30 a.m.  
Dept: 45  
  
Complaint filed: March 26, 2012

1 **PLAINTIFFS ALLEGE:**

2 **FIRST CAUSE OF ACTION**

3 **BREACH OF FIDUCIARY DUTY AGAINST**

4 **ENRIQUE IBARRA AND SILVIA IBARRA AND EUGENIA ACOSTA**

5 1. Plaintiff Francisco Lara is a resident of the county of Los Angeles. Plaintiff Luis M.  
6 Chong is a resident of Mexico City, Mexico. Both Plaintiffs invested \$100,000.00, each, to become  
7 Members (Investors) of a 33 1/3% interest each in ENSI Group, LLC, a California Limited Liability  
8 Company, by which they collectively hold a 66 2/3% interest in ENSI Group, LLC. Their ownership  
9 interest was officially recognized on July 1, 2006. ENSI Group, LLC has a business address located in  
10 the County of Los Angeles within the jurisdiction of this court.

11 2. For background information only, to establish the long-term relationship of the parties  
12 and basis for reliance on representations of Defendants Enrique Ibarra and Silvia Ibarra, Plaintiff Luis  
13 M. Chong, initially loaned \$100,000.00 to Silvia Ibarra and Enrique Ibarra to invest in ENSI Sales, LLC,  
14 the original name of ENSI Group, LLC. It was understood that the ownership interest in ENSI Sales,  
15 LLC, would be placed in the name of Silvia Ibarra because Enrique Ibarra at the time was involved in  
16 his personal bankruptcy. Defendant Enrique Ibarra named Octavio Barba as his alter ego and to hold  
17 Enrique Ibarra's ownership interest for him in ENSI Sales, LLC. Plaintiff Luis M. Chong had, in 2004,  
18 made personal loans to Enrique Ibarra in the amount of \$20,000.00 for Enrique Ibarra's personal use.  
19 Plaintiff Francisco Lara loaned \$26,000 to ENSI Group, LLC to provide start-up working capital for that  
20 company. That amount was later repaid with interest. The foregoing information is for historical  
21 purposes to establish the existence and extent of their personal relationship.

22 3. ENSI Group, LLC is a California Limited Liability Company created by the filing of  
23 Articles of Organization on June 22, 2005 originally under the name of ENSI Sales, LLC. The name was  
24 changed to ENSI Group, LLC (hereinafter ENSI) on June 2, 2006 by the filing of a Certificate of  
25 Amendment with the California Secretary of State. An Operating Agreement for ENSI Sales, LLC,  
26 whose name later was later changed to ENSI Group, LLC, was created on August 18, 2005, and  
27 subsequently amended three times (hereinafter collectively called AGREEMENT).

1 4. Defendants Enrique Ibarra, Silvia Ibarra and Octavio Barba are individuals and residents  
2 of the County of Los Angeles. Defendant N & D Meats, Inc. is a California Corporation located in Los  
3 Angeles County. Linda's Seafood is a business of unknown status located in the County of Los Angeles  
4 and Defendants Juan Alfaro and Juan Manuel Lugo are principals of Linda's Seafood and residents of  
5 Los Angeles County. Defendant Eugenia Acosta is a resident of the County of Orange but has conducted  
6 business at all times alleged herein within the County of Los Angeles.

7 5. Defendant Does 1 to 20, inclusive, are sued herein under fictitious names. Their true  
8 names and capacities are unknown to Plaintiffs at this time. When their true names and capacities are  
9 ascertained, Plaintiffs will amend this complaint by inserting their true names and capacities herein.  
10 Plaintiffs are informed and believe, and thereon allege, that each of the fictitiously named defendants  
11 conspired with and is responsible in some manner for the occurrences and damages alleged herein.

12 6. Defendant Enrique Ibarra is, and at all times herein mentioned, was the Manager of  
13 ENSI, appointed pursuant to the AGREEMENT for the Company under the Beverly-Killea Limited  
14 Liability Company Act (the "ACT"). The AGREEMENT and amendments are attached hereto, as  
15 EXHIBIT 1 and incorporated herein by this reference. In accordance with the provisions of the  
16 AGREEMENT, Defendant Enrique Ibarra is vested with the exclusive authority to make decisions on  
17 behalf of ENSI and to control and supervise its daily business operations. In accordance with California  
18 Corporations Code §17153, the fiduciary duties owed by Defendant Enrique Ibarra, as Manager, to the  
19 Limited Liability Company and to its Members are the same as those of a partner to a partnership and to  
20 the partners of a partnership.

21 7. Article IV, Section 4.8, subsections C, E, and G of the AGREEMENT provide limitations  
22 on the managerial powers of the Manager, Enrique Ibarra. The Manager does not have authority, to  
23 engage in certain transactions without obtaining the affirmative vote or written consent of Members who  
24 hold a Majority Interest, specifically: Section 4.8, subsection C, provides that the Manager shall not  
25 establish different classes of Members; Section 4.8, subsection E, provides that the Manager shall not  
26 commit any act that would make it impossible to carry on the ordinary business of ENSI; and, Section  
27 4.8, subsection G, provides that the Manager cannot "...borrow money from the company".  
28

1           8.       In the performance of the duties of Defendant Enrique Ibarra as Manager under the  
2 AGREEMENT, Article IV, Section 4.9, provides that the Manager shall perform his managerial duties  
3 in "good faith". As Manager, Enrique Ibarra was entitled to an annual fee. Pursuant to the  
4 AGREEMENT, Enrique Ibarra is entitled to "reasonable" out-of-pocket expenses incurred in conducting  
5 the business of the company. He is not, however, entitled to excessive or unreasonable reimbursement of  
6 expenses nor is he authorized by the AGREEMENT to use the assets of ENSI for his personal benefit.

7           9.       Defendant Silvia Ibarra, the wife of Defendant Enrique Ibarra, is a Member (Investor) in  
8 ENSI Group, LLC holding a 33 1/3% interest in ENSI. The interest in ENSI acquired by Silvia Ibarra  
9 was to have been paid by her with cash of \$24,000.00 and conversion of loans of \$76,000.00. In reality,  
10 the \$24,000.00 came from a loan to Defendant Silvia Ibarra by Plaintiff Francisco Lara which Silvia  
11 Ibarra repaid by withdrawing the \$24,000.00 from her capital account at ENSI. The \$24,000.00  
12 withdrawal was never recorded as such in the books and records as required by Article V, Section 5.5.  
13 The \$76,000.00 loan referenced was in actuality part of the loan from Luis M. Chong in the amount of  
14 \$76,000.00 that Defendant Silvia Ibarra had received. That amount was never repaid to Luis M. Chong.  
15 Plaintiff Francisco Lara holds a 33 1/3% interest, and Plaintiff Luis M. Chong, holds a 33 1/3% interest  
16 to compose the full ownership interest in the Company. As a Member (owner) Defendant Silvia Ibarra  
17 had a fiduciary duty of loyalty and fidelity to other Members of ENSI requiring her to disclose all  
18 relevant facts relating to matters within the scope of her fiduciary relationship and duties with ENSI and  
19 its Members that affected the interests of Plaintiffs.

20           10.       Defendant Eugenia Acosta is a Certified Public Accountant licensed as such by the State  
21 of California and, at all times mentioned herein, held herself out to be, and served ENSI as, a Certified  
22 Public Accountant and Financial Advisor for ENSI. In said capacity, as a Certified Public Accountant  
23 for ENSI, Defendant Eugenia Acosta had a fiduciary duty of loyalty and fidelity to Members of ENSI  
24 requiring her to disclose all relevant facts relating to matters within the scope of her fiduciary  
25 relationship and duties with ENSI and its Members.

26           11.       Defendant Octavio Barba, a prior Member (Investor) in ENSI, sold his Member interest  
27 to Plaintiff Luis M. Chong in 2005. Defendant Octavio Barba has knowingly participated in the  
28 conspiracy to commit fraud and deceit upon Plaintiffs by allowing substantial usage of personal credit

1 cards, held in his name, but used by Defendants Enrique Ibarra and Silvia Ibarra for extravagant and  
2 unreasonable uses that were paid by ENSI unrelated to and without benefit to ENSI. Defendant Octavio  
3 Barba has since been dismissed as a party to this action.

4 12. Defendant N & D Meats, Inc. is a California Corporation, and a vendor to ENSI, with a  
5 business located in the City of Rosemead, County of Los Angeles, California. Said company, together  
6 with its principals, knowingly participated in the commission of fraud and deceit upon Plaintiffs by  
7 permitting transfers of ENSI funds, through N & D Meats, Inc., to be paid to and used by and for the  
8 personal benefit of Defendants Enrique Ibarra and Silvia Ibarra.

9 13. Linda's Seafood, a company of unknown status, is owned by Defendants Juan Alfaro and  
10 Juan Manuel Lugo. The business is a vendor of ENSI and has its principal business located in the City of  
11 Pico Rivera, County of Los Angeles, California. Said company, together with its principals, has  
12 knowingly participated in the commission of fraud and deceit upon Plaintiffs by permitting transfers of  
13 ENSI funds, through Linda's Seafood, to be paid to and used by and for the personal benefit of  
14 Defendants Enrique Ibarra and Silvia Ibarra. Linda's Seafood and Juan Alfaro and Juan Manuel Lugo  
15 have since been dismissed as parties to this action.

16 14. Plaintiffs are informed and believe, and upon said information and belief, allege that at all  
17 times mentioned, each of the above named Defendants was an agent of the other and they knowingly  
18 and willingly conspired and agreed among themselves to commit fraud and deceit upon Plaintiffs by  
19 various means as stated hereinafter. Each Defendant did the acts and things herein alleged pursuant to,  
20 and in furtherance of, the conspiracy and above alleged agreement among them.

21 15. Article IV, Section 4.9 of the AGREEMENT provides that the Manager may not be held  
22 liable to any Member or ENSI unless the loss or damage is the result of fraud, deceit, gross negligence,  
23 reckless or intentional misconduct, or a knowing violation of law. Plaintiffs allege herein that Defendant  
24 Enrique Ibarra violated his position of trust and his fiduciary duty and duty to act in good faith in  
25 performing services as Manager of ENSI, and, in fact, violated the AGREEMENT by intentionally  
26 committing fraud, deceit, gross negligence, reckless or intentional misconduct all of which caused  
27 damages to the interests of ENSI and its Members.

1           16. Defendant Silvia Ibarra, the wife of Defendant Enrique Ibarra, worked in concert with  
2 and conspired with Enrique Ibarra, and others named herein, to receive personal benefit and to enrich  
3 themselves at the expense of Plaintiffs, committed fraud and deceit against Plaintiffs by the acts  
4 hereinafter alleged. As a member of ENSI holding a 33 1/3% interest, Silvia Ibarra owed a fiduciary  
5 duty to act in good faith and to deal fairly with Plaintiffs so that the interests of Plaintiffs or ENSI would  
6 not be damaged. In particular, Defendant Silvia Ibarra is designated by the AGREEMENT as the "Tax  
7 Matters Partner" to represent ENSI in connection with all examination of ENSI's affairs with tax  
8 authorities. As such she has a high fiduciary duty of disclosure and fair dealings with Members of ENSI  
9 so that their interests and the interests of ENSI should not be harmed.

10           17. Plaintiffs were unaware of the acts of fraud and deceit committed by Defendants against  
11 them because they were not allowed access to the books and records of ENSI until approximately  
12 December of 2011, after Defendant Enrique Ibarra verbally resigned and stopped working at ENSI.  
13 Plaintiff Francisco Lara was authorized to write checks for ENSI in September 2011 but he was not  
14 allowed access to the books and records. In December 2011, Plaintiffs finally gained access to internal  
15 records, banking history and other financial information, pursuant to Article VIII, Section 8.4 of the  
16 AGREEMENT after Enrique Ibarra resigned. Prior to that date, although given annual partnership  
17 statements of Partner share of income or losses, no access to ENSI books or records, financial  
18 statements, complete tax returns or other internal documents were provided to Plaintiffs although  
19 requested on more than one occasion.

20           18. Plaintiffs requested, but were not provided, financial statements and federal and state  
21 income tax returns as required pursuant to Article VIII, Section 8.2 of the AGREEMENT and pursuant  
22 to state law. Prior to September 2011, Plaintiffs had no means of obtaining or accessing the books and  
23 records and were denied access to ENSI internal documents. When appointments or meetings were  
24 arranged to access said books and records, Defendants purposely failed to keep the appointments or  
25 meetings or falsely stated they could not keep the appointments or meetings to avoid providing  
26 information to Plaintiffs.

27           19. In furtherance of the conspiracy to defraud Plaintiffs, Defendants cooperated and aided  
28 each other in attempting to dispose of business records. Those actions occurred on, about, or after

1 September 2011, when Defendant Silvia Ibarra verbally resigned from ENSI. Enrique Ibarra verbally  
2 resigned in October 2011 but remained working until the end of December 2011. Prior to their last days  
3 at ENSI, Defendants Enrique and Silvia Ibarra together with Defendant Eugenia Acosta, or with her  
4 assistance, removed records and documents and caused portions of computer business records of ENSI,  
5 emails and other communications by and between Defendants named herein to be erased in an attempt to  
6 prevent Plaintiffs from accessing internal documents evidencing the fraudulent transactions stated  
7 herein.

8 20. Over the period from 2006 until 2011, Defendants Enrique Ibarra, Silvia Ibarra and  
9 Eugenia Acosta conspired to create a series of false transactions whereby billing statements and false  
10 entries in the books and records, transfer of funds or payment of personal expenses, not authorized by  
11 ENSI, were used so that Defendants Silvia Ibarra, Enrique Ibarra and Eugenia Acosta were wrongfully  
12 enriched by the transactions using income and ENSI generated funds. To cover up their acts,  
13 Defendants failed to maintain written minutes of meetings and alleged approval of transactions.

14 21. As an example, discovered after December 2011, was that from January 2007 to February  
15 2007, Defendant Silva Ibarra, with the approval and participation of Defendant Enrique Ibarra, her  
16 husband, and the assistance of Defendant Eugenia Acosta, the CPA, used false invoices from Defendant  
17 Linda's Seafood, allegedly for purchases of shrimp, to repay a \$47,000.00 personal loan made to  
18 Defendant Silvia Ibarra by Plaintiff Francisco Lara. False invoices and false shipping documents were  
19 paid by ENSI to Linda's Seafood, but the funds, with the conspired assistance of the principals of  
20 Linda's Seafood, named herein as Defendants, were actually diverted and paid to Defendant Silva  
21 Ibarra, to repay the loan to Plaintiff Francisco Lara but the payment was never delivered.

22 22. The receipt of over \$47,000.00 of ENSI funds by Defendant Silvia Ibarra constituted a  
23 distribution of ENSI assets to Defendant Silva Ibarra, prohibited by Article V, Section 5.5 of the  
24 AGREEMENT that requires distributions be made to all members in proportion to their interests.  
25 Payment of said \$47,000.00 and the previously distributed amount of \$24,000.00 (stated above),  
26 established Silva Ibarra as a different class of Member since no other member received such distribution.  
27 The hiding of that transaction by Defendants Enrique Ibarra and Silvia Ibarra, together with the  
28

1 assistance of Defendant Eugenia Acosta, is also a fraudulent and deceitful act, carried out to take  
2 advantage of Plaintiffs.

3 23. Article IV, Section 4.8, subsection G, of the AGREEMENT strictly prohibits Defendant  
4 Enrique Ibarra from borrowing money from the company. The fact that he conspired and authorized use  
5 of ENSI funds to repay a \$47,000.00 personal loan for his wife, incurred by his wife, constitutes a loan  
6 of funds to him as well, in this, a community property state. A copy of an email, is attached hereto as  
7 EXHIBIT 2 between Defendants Silva Ibarra and Eugenia Acosta, describes and details the foregoing  
8 transaction.

9 24. On a second occasion, in November 2006, Defendant Silvia Ibarra transferred to her and  
10 Enrique Ibarra the sum of \$15,984.00 by conspiring with Defendant N & D Meats, Inc, with the  
11 approval, consent and affirmation of the principal owners and officers of that corporation in creating  
12 false invoices from N & D Meats, allegedly for sale of meat products from N & D Meats to an entity  
13 named Marquez Brothers, showing ENSI as the broker for the sale. No such transaction occurred but the  
14 funds were paid to Defendants Silvia Ibarra and Enrique Ibarra with the knowledge and cooperation of  
15 N & D Meats as a co-conspirator.

16 25. In August 2007, Defendant Enrique Ibarra without informing Plaintiffs of his intentions,  
17 created a new entity called E-Produce, LLC. The new entity was not owned entirely by ENSI. Rather,  
18 using ENSI assets, Enrique Ibarra and Juan Pablo Ramirez, principal of RDP Floral, Inc., created a  
19 limited liability company, E-Produce, LLC, with each entity owning 50% of E-Produce, LLC. In  
20 entering into the transaction, Enrique Ibarra violated the provisions of Article IV, Section 4.8 B of the  
21 Agreement that prohibits the merger of ENSI with another entity or a partnership. In November 2007,  
22 Plaintiffs discovered that E-Produce, LLC had been created. Undisclosed until discovered by Plaintiffs  
23 in February 2012, was the fact that Defendant Enrique Ibarra had transferred \$50,000.00 to the newly  
24 formed entity from ENSI without Plaintiffs being informed of, or having approved the use of ENSI  
25 Funds. The Articles of Organization filed with the California Secretary of State on August 15, 2007 for  
26 E-Produce, LLC named Defendant Silvia Ibarra as Agent for Service of Process so it appears she was  
27 aware of, and participated in, the deceitful transaction.

1           26. In January 2008, Defendant Enrique Ibarra entered into an agreement to acquire the other  
2 50% interest of E-Produce, LLC held by R.D.P. Floral Inc. for \$500.00. The fact of the entry into an  
3 agreement to acquire the 50% of E-Produce, LLC from RDP Floral, Inc., was not disclosed to Plaintiffs,  
4 by Defendant Enrique Ibarra. Further, not disclosed to Plaintiffs was the fact that E-Produce LLC had  
5 substantial debts, which were assumed by ENSI by the purchase. Litigation was commenced by  
6 Defendant Enrique Ibarra in July 2008, on behalf of ENSI against RDP Floral to attempt to recover  
7 \$100,000.00 in losses incurred by E-Produce, LLC, and in reality ENSI, because the losses were  
8 assumed by ENSI. Nothing was recovered and but rather ENSI incurred legal fees of over \$80,000.00.  
9 Such conduct by Defendant Enrique Ibarra was a reckless and gross negligence act resulting in damage  
10 to ENSI and Plaintiffs.

11           27. In May 2008, at the request of Defendant Enrique Ibarra, a \$100,000.00 line of credit was  
12 opened for ENSI with First Bank. In order to obtain the line of credit Plaintiffs were required to sign as  
13 personal guarantors of the line of credit. The line of credit was allegedly requested by Defendant  
14 Enrique Ibarra, after the fact, to permit ENSI to pursue a joint venture with a company from Mexico to  
15 purchase and distribute meat products in Mexico that was initiated by Defendant Enrique Ibarra, without  
16 approval from all ENSI Members, in July 2006. Defendant Enrique Ibarra did not receive board  
17 approval for this venture until January 2007. From the newly discovered books and records it now  
18 appears that funds from the line of credit were actually used to cover up the blatant and fraudulent taking  
19 of ENSI funds for personal use by Defendants Enrique Ibarra and Silvia Ibarra.

20           28. In June 2008, Defendant Enrique Ibarra misrepresented to Plaintiffs that an additional  
21 working capital loan was needed by ENSI. A \$100,000.00 loan for ENSI was obtained from Maria  
22 Marquez, a relative of Plaintiff Francisco Lara. At first, when the loan was arranged, Defendant Enrique  
23 Ibarra requested the funds be wired to ENSI's bank account. At the last minute, without notice to or  
24 approval of the Members of ENSI, Defendant Enrique Ibarra requested the lender to wire transfer the  
25 \$100,000.00 funds from the loan to a bank account in the name of E-Produce, LLC.

26           29. At the time of the making of the above stated \$100,000.00 loan, Plaintiffs were unaware  
27 that Defendants Enrique Ibarra and Silvia Ibarra intended to fraudulently transfer the loan funds to E-  
28 Produce, LLC. to cover up excessive personal draws and excessive personal expenditures from that

1 entity by Defendants Enrique Ibarra and Silvia Ibarra. Information relating to E-Produce, LLC, or that  
2 ENSI funds would be used to finance that operation was not provided to Plaintiffs. The \$100,000.00  
3 loan remains outstanding at this time and constitutes damages to Plaintiffs.

4 30. The transfer of funds to E-Produce's bank account, to be used by an entity that was  
5 incurring losses was fraudulent or grossly negligent as to Plaintiffs due to the failure to disclose and the  
6 misrepresentation as to the intended use of the funds and how the funds were to be repaid by an entity  
7 that was losing money.

8 31. The transfer of \$100,000.00 of ENSI funds to E-Produce, LLC constituted a loan of ENSI  
9 funds to E-Produce, LLC strictly prohibited by Section 4.9, of the AGREEMENT in that assumption of  
10 losses constituted gross negligence, and/or a fraud and deceit on Plaintiffs.

11 32. After December 2011, when Plaintiffs finally had access to business records, Plaintiffs  
12 discovered that during the period from September 2007 until January 2009, without notice to or approval  
13 from Plaintiffs, Defendants Enrique Ibarra and Silvia Ibarra, with the assistance of Defendant Eugenia  
14 Acosta, transferred \$159,000.00 from the ENSI bank account to E-Produce, LLC. Records that  
15 substantiating the transfers were not provided to Plaintiffs as to the purposes of the transfers, nor was  
16 approval obtained from Plaintiffs for the transfer of the funds. Plaintiffs are informed and believe, and  
17 upon such information and belief, allege that Defendants Enrique Ibarra and Silvia Ibarra fraudulently  
18 used the transferred funds to cover their wrongful personal use of ENSI and E-Produce assets without  
19 benefit to either entity.

20 33. In March 2009, Defendants Enrique Ibarra and Silvia Ibarra reported ENSI had incurred  
21 an operating loss of \$382,000.00 for the year 2008. However, after December of 2011, Plaintiffs  
22 recovered tax returns that actually show a loss of \$456,866.00. When Plaintiffs requested that  
23 Defendants provide copies of financial statements and tax returns substantiating the operating losses,  
24 Defendants Enrique Ibarra, Silvia Ibarra and Eugenia Acosta refused to deliver copies of the tax returns  
25 or internal documents identifying the reasons for the loss.

26 34. In March 2010, Defendants Enrique Ibarra and Silvia Ibarra reported another operating  
27 loss for ENSI for the tax year 2009. When again requested to provide copies of financial statements and  
28 tax returns, Defendants refused to provide them to Plaintiffs to confirm the loss. When Defendant

1 Eugenia Acosta was also requested to provide the requested financial statements, she stated she did not  
2 have them although she was the financial consultant and CPA for ENSI.

3 35. After finally gaining access to the business books and records of ENSI in December  
4 2011, Plaintiffs discovered that Defendants through subterfuge, falsification of documents,  
5 embezzlement and through the conspiracy with each of the Defendants identified herein, received ENSI  
6 funds, by various means, totaling in excess of \$1,200,000.00.

7 36. Defendants, and each of them, through the conspiracy as stated herein received:  
8 unauthorized bonuses; payments for usage of a credit card owned by Defendant Octavio Barba;  
9 unauthorized personal expenses paid by ENSI for Defendants Enrique and Silvia Ibarra; unauthorized  
10 airline tickets on credit cards in the name of Silvia Ibarra; cash draws for payment of personal family  
11 expenses of Enrique Ibarra and Silvia Ibarra; automobile payments for personal automobiles owned by  
12 Enrique Ibarra and Silvia Ibarra; unauthorized loans to E-Produce, LLC and cash withdrawals.

13 37. Plaintiffs are in the process of conducting a complete audit and reconstruction of the  
14 books and records of ENSI to determine the exact amount of fraudulent and deceitful taking of cash and  
15 other assets of ENSI for the personal use and benefit of Defendants. As a result, to date, Plaintiffs have  
16 sustained damages in excess of \$1,200,000.00, or such sum as may be shown after a full investigation to  
17 determine the actual losses, lost profits and loss of use of the funds fraudulently and deceitfully taken by  
18 Defendants. Article XII, Section 12.10 of the AGREEMENT provides that in the event of a dispute  
19 between the Company and the Members, or among the Members, should result in litigation or  
20 arbitration, the prevailing party shall be entitled to recover from the other party reasonable attorney fees,  
21 costs and expenses in enforcing their rights. Plaintiffs have incurred attorney fees and costs to enforce  
22 their rights under the AGREEMENT according to proof at time of trial.

23 38. As a result of the recent actions, after December 2011, by Defendants Enrique Ibarra and  
24 Silvia Ibarra, Plaintiffs are now unable to continue operation of ENSI under the terms of the  
25 AGREEMENT. The AGREEMENT, drafted by an attorney that represents Defendants Enrique Ibarra  
26 and Silvia Ibarra, contains an unreasonable provision, that defines that a "Majority Interest" is required  
27 for certain acts, including removal of the Manager of ENSI. However, Majority Interest is defined in the  
28 AGREEMENT as 80% of the ownership votes. By virtue of Defendant Enrique Ibarra having verbally

1 resigned, not in writing, as required by the AGREEMENT, no Manager may be named to replace him  
2 except by 80% of the votes of the Members. Since Plaintiffs own 66 2/3% of the votes, they cannot  
3 remove or replace the Manager without the votes of Defendant Silvia Ibarra. She, together with  
4 Defendant Enrique Ibarra, have conspired and refused to cooperate or participate and are therefore  
5 obstructing the operation of ENSI.

6 39. Article IV, Section 4.8, subsection E, provides a limitation on the powers of the Manager  
7 that is, "Any act that would make it impossible to carry on the ordinary business of the Company". By  
8 their conduct, Defendants Enrique Ibarra and Silvia Ibarra are causing continuing damage and  
9 irreparable injury to the interests of Plaintiffs and ENSI because it and Plaintiffs cannot properly carry  
10 on the ordinary business of the company. This court shall be subsequently requested to intervene in  
11 preventing such conduct and to permit amendment to the AGREEMENT to prevent future recurring and  
12 irreparable losses.

13 **SECOND CAUSE OF ACTION**

14 **CONSTRUCTIVE FRAUD, FRAUD AND DECEIT**

15 **AGAINST ENRIQUE IBARRA, SILVIA IBARRA AND EUGENIA ACOSTA**

16 40. Plaintiffs incorporate by reference herein paragraphs 1 to 39 of the First Cause of Action  
17 as if fully stated herein.

18 41. By virtue of the relationship between the parties hereto, Defendants Enrique Ibarra, Silvia  
19 Ibarra and Eugenia Acosta owed Plaintiffs a fiduciary duty. Plaintiffs placed confidence in the fidelity  
20 and integrity of Defendants, they entrusted them to make a full disclosure of transactions and financial  
21 dealings that would impact Plaintiffs and their investment in ENSI. A confidential relationship existed at  
22 all times herein mentioned between Plaintiffs and Defendants named herein.

23 42. Defendants committed the acts herein alleged despite voluntarily, and contractually  
24 accepting the trust and confidence given to them by Plaintiffs with regard to Plaintiffs' investment of  
25 large sums of money and their credit standing by personally investing and guaranteeing loans to sustain  
26 ENSI. In violation of that relationship of trust, Defendants abused the trust and confidence of Plaintiffs  
27 by fraudulently using and abusing the funds entrusted to them, failing to disclose necessary and relevant  
28 information regarding the usage of funds for personal use by Defendants, rather than for the benefit of

1 ENSI, and failing to disclose personal gains and profits they received by using ENSI assets. As a result,  
2 Plaintiffs have sustained damages in excess of \$1,200,000.00, or such sum as shall be established at time  
3 of trial, in damages in lost investments, lost profits and loss of use of the funds taken by Defendants.

4 43. Defendants did the acts herein alleged with the intent to deceive and defraud Plaintiffs,  
5 and Defendants concealed the true facts from Plaintiffs by misrepresentations as to the financial  
6 condition of ENSI, withholding financial information including tax reports, financial statements and  
7 internal documents that would have disclosed the true facts. Defendants withheld the information to  
8 induce reliance by Plaintiffs in the continuing fidelity of Defendants as fiduciaries, associates and their  
9 binding contractual commitments.

10 44. Plaintiffs did not discover the true facts until December 2011 when they gained access  
11 to the internal books and records, bank documents and internal memos and other papers that revealed the  
12 true facts. Plaintiffs reasonably relied upon Defendants' representations in view of Defendants'  
13 relationships of trust as fiduciaries and business associates bound contractually by the AGREEMENT  
14 with Plaintiffs.

15 45. As a result of the fraud and deceit of Defendants as herein alleged, Plaintiffs have  
16 sustained damages in the sum of \$1,200,000.00 or such sum as may be established after completion of  
17 all inquiry into the books and records of ENSI.

18 46. In doing the things herein alleged, Defendants acted with deceit, malice and fraud by  
19 willfully and with the intent to cause injury and/or with conscious disregard of Plaintiffs' rights, thereby  
20 warranting an assessment of punitive damages in an amount appropriate to punish Defendants and deter  
21 others from engaging in similar misconduct.

22 **THIRD CAUSE OF ACTION**

23 **BY PLAINTIFFS FRANCISCO LARA AND LUIS M. CHONG A**

24 **DERIVATIVE ACTION ON BEHALF OF ENSI GROUP, LLC, FOR CONVERSION OF**

25 **BUSINESS ASSETS AND UNFAIR BUSINESS PRACTICES**

26 **AGAINST ENRIQUE IBARRA AND SILVIA IBARRA**

27 **ENSI GROUP, LLC, IS NAMED AS A NOMINAL DEFENDANT**

1           47. Plaintiffs incorporate herein paragraphs 1 to 46 of the First and Second Causes of Action  
2 as if fully set forth herein. ENSI Group, LLC, a California Limited Liability Company, is named herein  
3 only as a nominal Defendant

4           48. Plaintiffs, as owners of a combined 66 2/3% interest of record in ENSI, bring this  
5 derivative cause of action on behalf of ENSI to recover by restitution: converted assets consisting of  
6 cash, trade lists of customers, equipment and business records. Plaintiffs shall further seek damages for  
7 opportunities denied to ENSI by Unfair Business Practices and anti-competition actions, fraud and  
8 deceit committed by Defendants named herein intended to harm the business interests of ENSI.

9           49. Plaintiffs have sought to obtain the cooperation of Defendants Enrique Ibarra, Silvia  
10 Ibarra and Eugenia Acosta to recover financial records, evidence of diversion of business interests,  
11 unfair business practices and internal data of ENSI to determine the extent of diverted assets and loss of  
12 ENSI profits received by Defendants. The request for cooperation was made by letter within the past 60  
13 days but no response has been received. Silvia Ibarra holds a 1/3 ownership interest in ENSI has a  
14 fiduciary obligation to ENSI. Enrique Ibarra is contractually committed as Manager of ENSI but he  
15 refuses to assist or cooperate in reducing the losses to ENSI.

16           50. Plaintiffs are informed and believe, and upon such information and belief allege, that  
17 Defendants Enrique Ibarra and Silvia Ibarra have taken, converted or dissipated assets of ENSI by  
18 funneling business contracts, contacts and business opportunities and profits of ENSI, cash or other  
19 assets of ENSI to other entities including Montebello Farms, LLC; E-Produce, LLC; Equa-Mex LLC;  
20 and SVL Holdings, LLC from which they drew and/or are drawing large sums for their personal use.  
21 The profits and other assets of said businesses are or were drawn or taken by Defendants Enrique Ibarra  
22 and Silvia Ibarra for their own enrichment to the detriment of ENSI, to pay personal attorney fees for  
23 bankruptcy proceedings, for other personal legal representation unrelated to ENSI and for their personal  
24 use. As a result of Defendants' actions Plaintiffs have expended investigative costs, court costs, and  
25 other costs to pursue such lost assets of ENSI and to bring this action and to recover the converted  
26 assets; all damages to be established at time of trial.

27           51. In order to obtain approval of any significant action by the Owners (Members) of record  
28 of ENSI, as defined in the AGREEMENT, approval of 80% (a super majority) of the ownership is

1 required to approve such action. The AGREEMENT was drafted by Defendant Enrique Ibarra's  
2 personal representative. It is impossible to obtain any action by the Ownership (Members) of ENSI  
3 because Plaintiffs together only own 66 2/3% and Defendant Silvia Ibarra, who owns the other 33 1/3%  
4 refuses to cooperate in any manner. Defendant Silvia Ibarra is antagonistic to the interests of ENSI as an  
5 owner (member) and in violation of her fiduciary obligation to the other owners (members). Such  
6 conduct is purposely done to further her actions and interests, to affect the competitive interests of ENSI  
7 and to preclude ENSI from taking any actions by and through its owners (members).

8 52. Plaintiffs have made no other effort to secure action by Defendant Silvia Ibarra, who  
9 together with Plaintiffs, are 100% owners of record of ENSI, because it is futile to attempt to do so due  
10 to the 80% super majority requirement and refusal of Defendants Silvia Ibarra and Enrique Ibarra to  
11 participate. Although attempted, Plaintiffs have not been successful in obtaining Defendant Silvia  
12 Ibarra's cooperation to pursue an action on behalf of ENSI to recover assets and other business  
13 equivalent values lost as a result of the conversion and Unfair and Anti-Competition Business Practices  
14 of Defendants Enrique Ibarra and Silvia Ibarra.

15 53. If Plaintiffs are successful in this action, a substantial benefit will result to ENSI on  
16 whose behalf the Third, Fourth and Fifth Causes of Action are pursued. Accordingly, Plaintiffs are  
17 entitled to their attorney fees incurred herein in a sum to be established at time of trial. As a proximate  
18 result of Defendants' actions and violation of the Unfair Business Practices Act ENSI request restitution  
19 in the sum of \$1,200,000.00 or such sum as established at time of trial.

#### 20 **FOURTH CAUSE OF ACTION**

#### 21 **A DERIVATIVE ACTION BY FRANCISCO LARA AND LUIS M. CHONG** 22 **ON BEHALF OF ENSI GROUP, LLC FOR FRAUD, DECEIT, MISAPPROPRIATION OF** 23 **TRADE SECRETS, AGAINST SVL HOLDINGS I, LLC AND SILVIA IBARRA** 24 **ENSI GROUP, LLC IS NAMED AS A NOMINAL DEFENDANT**

25 54. Plaintiffs incorporate by reference paragraphs 1 to 39 of the First Cause of Action and 47  
26 to 53 of the Third Cause of Action stated herein.

27 55. SVL HOLDINGS I, LLC, earlier designated as a Doe 1, Defendant, is a California  
28 Limited Liability Company that filed its Articles of Organization on March 19, 2007. Said entity is also

1 known as SVL Holdings, LLC and hereinafter both entities shall be referred to as SVL. Defendant Silvia  
2 Ibarra held a 100% interest in said entity at the time of its formation and is believed to still hold 100%  
3 ownership interest SVL. Said entity, previously identified in paragraph 50 above, is conducting business  
4 in the county of Los Angeles, California. The business conducted by SVL was then and is to this date in  
5 direct competition with ENSI in that it sells the same or similar commissioned products as are sold by  
6 ENSI to ENSI customers. Defendant Silvia Ibarra, as 100% owner of SVL, receives financial benefits  
7 from SVL to the present date from the diversion of business assets and income of ENSI.

8 56. At the time of the creation of SVL on March 19, 2007, Defendant Silvia Ibarra was a  
9 Member of ENSI Group, LLC (ENSI) holding a 1/3% member interest. Defendant Silvia Ibarra agreed  
10 to and was contractually bound with Plaintiffs by the terms of the AGREEMENT filed herein as Exhibit  
11 1. Silvia Ibarra as a member of ENSI, agreed to the provisions of the AGREEMENT to which she is a  
12 signor. Specifically, Silvia Ibarra agreed to the provisions of Article IV, 4.6, that state that if the  
13 manager engaged or invested in any business activity, including a business similar or in direct or indirect  
14 competition with ENSI, neither ENSI, nor any member, shall have any right in or to such other activity  
15 or to the income or proceeds from such activities. Defendant Enrique Ibarra was also aware of and  
16 understood the terms of the AGREEMENT under which he operated as Manager of ENSI.

17 57. On March 19, 2007, and at all times thereafter Defendant Silvia Ibarra deliberately  
18 withheld information she was obligated to disclose to ENSI and to Plaintiffs as owners of ENSI and in  
19 so doing she violated the terms of the AGREEMENT by withholding information and intentionally  
20 failing to disclosure to Plaintiffs that she intended to divert ENSI business contacts and commissions to  
21 SVL. Under the terms of the AGREEMENT, Silvia Ibarra had a fiduciary duty to disclose to ENSI and  
22 to Plaintiffs her ownership interest in SVL and not to do anything that abused her fiduciary  
23 responsibilities. Defendant Silvia Ibarra, using SVL as the means to do so, fraudulently and deceitfully  
24 conspired with Defendant Enrique Ibarra to violate the AGREEMENT by secretly taking brokerage  
25 commissions on transactions conducted with ENSI customers.

26 58. At the same time, by her conduct, Defendant Silvia Ibarra converted protected trade  
27 secret information derived from ENSI'S files and records and transferred said information to SVL for its  
28 use and benefit. Defendant Silvia Ibarra, together with Defendant Enrique Ibarra, acting on behalf of

1 SVL, fraudulently and surreptitiously removed and received substantial assets, and economic benefit  
2 from the hundreds of thousands of dollars paid to SVL as commissions on sales to ENSI customers or  
3 clients that were cultivated with the assets of ENSI. In direct competition with ENSI, knowing that to do  
4 so was harmful to ENSI, Silvia Ibarra deliberately violated the terms of the AGREEMENT and withheld  
5 information from ENSI and Plaintiffs. Defendant Silvia Ibarra's, deliberate acts and failure and refusal  
6 to make full disclosure of her actions has caused substantial losses and damage to ENSI.

7 59. Plaintiffs did not discover the extent or degree of Defendant Silvia Ibarra's involvement,  
8 or the amount of losses sustained by ENSI, until months later due to the cover-up and the fraud and  
9 deceit of Silvia Ibarra. Plaintiffs, originally had limited information as to SVL'S involvement, but  
10 believed some transactions were diverted to SVL as alleged in the Third Cause of Action of the First  
11 Amended Complaint. Initially, Plaintiffs only suspected Defendants had dissipated a few assets of ENSI  
12 by funneling some business contracts, contacts and business opportunities and profits of ENSI to several  
13 other entities, including SVL Holding, LLC. What Plaintiffs did not realize at the time was the extensive  
14 fraud and deceit perpetrated by Silvia Ibarra and SVL, as subsequently discovered.

15 60. From the California Secretary of State web site, Plaintiffs discovered the true name of the  
16 entity to be SVL Holdings I, LLC and that Defendant Silvia Ibarra formed the entity. After filing of the  
17 First Amended Complaint, upon further research into computer records of ENSI and by subpoena of  
18 records from others, Plaintiffs discovered the extensive losses. As was later discovered, Defendant Silvia  
19 Ibarra apparently maintained SVL data on the ENSI Computers, but she believed she had erased the data  
20 before her last days of work at ENSI. Upon recovery of the data in the computer records, Plaintiffs were  
21 able to discover the extensive loss of income and diversion of ENSI customers that were paying  
22 commissions to SVL instead of ENSI. From a review of the discovered ENSI computer records that  
23 Silvia Ibarra thought she had erased, Plaintiffs have re-constructed financial records that show the extent  
24 of the fraud, deceit and diversion of ENSI assets and income to SVL, Silvia Ibarra's company.

25 61. As a result of the fraud, deceit and deliberate withholding of information by Defendant  
26 Silvia Ibarra at a time she was contractually bound to act in good faith toward Plaintiffs and ESNI,  
27 substantial losses have been sustained. The degree and amount of losses will be established at time of  
28 trial. In doing the things herein alleged, Defendants Silvia Ibarra and SVL acted with deceit, malice and

1 fraud by willfully and with the intent to cause injury and/or with conscious disregard of ENSI's rights,  
2 thereby warranting an assessment of punitive damages in an amount appropriate to punish Defendants  
3 and deter others from engaging in similar misconduct.

4 **FIFTH CAUSE OF ACTION**

5 **BY FRANCISCO LARA AND LUIS M. CHONG A DERIVATIVE ACTION FILED ON**  
6 **BEHALF OF ENSI GROUP, LLC FOR INTENTIONAL INTERFERENCE WITH**  
7 **PROSPECTIVE ECONOMIC ADVANTAGE AGAINST SVL HOLDINGS I, LLC AND**  
8 **SILVIA IBARRA ON BEHALF OF ENSI GROUP, LLC**

9 **ENSI GROUP IS A NOMINAL DEFENDANT**

10 62. Plaintiffs incorporate paragraphs 1 to 39 of the First Cause of action and 47 to 61 of the  
11 Third and Fourth Causes of Action stated herein.

12 63. In 2007 ENSI cultivated a business relationship with companies known as Divine Flavor,  
13 LLC and Royal Flavor, LLC. This was accomplished by ENSI spending considerable sums for  
14 entertainment, air travel, gifts and meetings to encourage Divine Flavor, LLC and Royal Flavor, LLC to  
15 do business with ENSI. Defendant Silvia Ibarra participated in the discussions and was aware that those  
16 business relationships would provide substantial economic benefit to ENSI. In fact, ENSI developed  
17 lucrative agreements for a number of companies, from which ENSI received commissions. As stated  
18 previously, the owners of Royal Flavor, LLC, had at a later time split the company off and created  
19 another entity called Divine Flavor, LLC.

20 64. Defendant Silvia Ibarra and SVL deceived ENSI into expending substantial ENSI funds  
21 to entertain, transport and cultivate business contracts to develop ENSI's business relationships with the  
22 companies named Divine Flavor, Royal Flavor, Northgate Markets, ASA Produce, Numero Uno  
23 Markets, Big Saver Markets and several others. Thereafter, Silvia Ibarra, utilizing ENSI trade secrets  
24 and ENSI assets including cash, equipment, client lists, lists of customers and expenditures incurred by  
25 ENSI to acquire those clients, converted them to the use and benefit of SVL. Defendant Silvia Ibarra  
26 diverted and converted commissions and business assets from ENSI, then transferred them into SVL and  
27 ultimately to herself as 100% owner of SVL. Defendant Silvia Ibarra's cross-complaint, filed against  
28 ENSI in this action acknowledges the existence of another lucrative contract entered into with Divine

1 Flavor by ENSI in the year 2011 for sale of products to Wal-Mart, Sam's Club and Publix  
2 Supermarkets. In fact, Defendant Silvia Ibarra signed the agreement with Divine Flavor as the  
3 "Managing Member" of ENSI.

4 65. Upon Defendant Silvia Ibarra and her co-conspirators seeing the potential economic  
5 benefit that was being received by ENSI from the contacts, business relationships and future contracts  
6 generated as the result of the expenditure of substantial amounts by ENSI, Silvia Ibarra made  
7 arrangements with personnel of Divine Flavor, LLC and Royal Flavor, LLC to divert sales commissions  
8 from ENSI to SVL. Silvia Ibarra offered economic benefits, special favors and gifts to personnel  
9 involved with Divine Flavor, LLC and Royal Flavor, LLC to divert the economic business interests and  
10 benefits from commissions that were to be paid to ENSI, to SVL and to herself.

11 66. Defendant Silvia Ibarra and SVL, knew of the business relationships ENSI had  
12 developed, and intended to, and did, disrupt business relationships ENSI had developed with Divine  
13 Flavor, LLC and Royal Flavor, LLC, that were in turn selling products to Northgate Markets, ASA  
14 Produce, Numero Uno Markets, Big Saver Markets and several other companies on which commissions  
15 were to have been paid to ENSI as a commission agent. SVL and Silvia Ibarra were in fact the direct  
16 and substantial factors causing the damage to ENSI by their wrongful conduct. Silvia Ibarra and SVL'S  
17 relationship with Royal Flavor, LLC stopped sometime in early 2010 but the damages to ENSI had been  
18 done as to that company. The business relationship between Defendant Silvia Ibarra, SVL and Divine  
19 Flavor, LLC continues to the current date and damages to ENSI continue.

20 67. SVL and Silvia Ibarra, intentionally by their deceit, fraud, misappropriation of trade  
21 secrets, and conversion and failure to disclose, wrongfully and intentionally, misappropriated  
22 prospective economic relationships to which ENSI was entitled. As a result of the wrongful conduct of  
23 Defendants Silvia Ibarra and SVL, ENSI has been damaged by disruption of the economic relationships  
24 that would have been of great benefit to ENSI. ENSI has in fact been damaged in sums to be established  
25 at time of trial but believed to exceed \$1,200,000.00.

26 68. In doing the things herein alleged, Defendants Silvia Ibarra and SVL acted with deceit,  
27 malice and fraud by willfully and with the intent to cause injury and/or with conscious disregard of  
28

1 ENSI's rights, thereby warranting an assessment of punitive damages in an amount appropriate to  
2 punish Defendants and deter others from engaging in similar misconduct.

3 WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as follows:

4 FIRST AND SECOND CAUSES OF ACTION

5 1. For general damages in the sum of \$1,200,000.00 or such sum as Plaintiffs establish at  
6 time of trial;

7 2. For Exemplary and Punitive Damages against Defendants Enrique Ibarra, Silvia Ibarra  
8 and Eugenia Acosta;

9 3. For reasonable attorney fees;

10 4. For such other and further relief as the court deems proper.

11 FOR THE THIRD CAUSE OF ACTION:

12 5. For restitution in the sum of \$1,200,000.00 or such sum as shall be established at time of  
13 trial for the conversion and/or unfair competition committed by defendants.

14 6. For reasonable attorney fees

15 FOR THE FOURTH CAUSE OF ACTION:

16 7. For restitution of losses and damages sustained in a sum to be established at time of trial;

17 8. For reasonable attorney fees.

18 FOR THE FIFTH CAUSE OF ACTION:

19 9. For damages in the sum of \$1,200,000.00 or such sum as shall be established at time of  
20 trial;

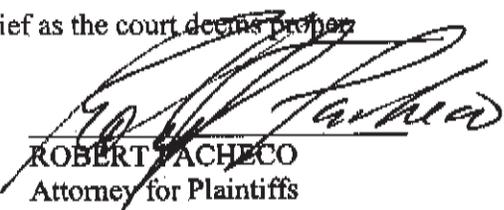
21 10. For Exemplary and Punitive Damages;

22 11. For reasonable attorney fees.

23 ON ALL CAUSES OF ACTION:

24 12. For Costs of suit and such other relief as the court deems proper

25 Dated: September 5, 2013

26   
27 ROBERT PACHECO  
28 Attorney for Plaintiffs

# **EXHIBIT 2**

SUM-110

**SUMMONS**  
**Cross-Complaint**  
**(CITACION JUDICIAL-CONTRADEMANDA)**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**NOTICE TO CROSS-DEFENDANT:**  
**(AVISO AL CONTRA-DEMANDADO):**

FRANCISCO LARA, an individual, and LUIS M. CHONG, an individual, and DOES 1 through 50, inclusive

**YOU ARE BEING SUED BY CROSS-COMPLAINANT:**  
**(LO ESTÁ DEMANDANDO EL CONTRADEMANDANTE):**

ENRIQUE IBARRA, an individual and SILVIA IBARRA, an individual

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the cross-complainant. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

*Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al contrademandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.*

*Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), o contactándose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desear el caso.*

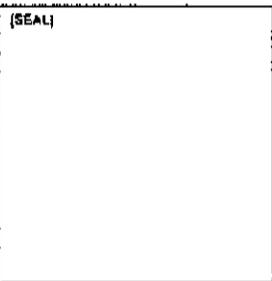
The name and address of the court is:  
*(El nombre y dirección de la corte es):* Los Angeles Superior Court  
CENTRAL DISTRICT  
111 No. Hill Street, Los Angeles, CA 90012

SHORT NAME OF CASE (from Complainant): (Nombre de Caso)  
Lara, et al vs. Ibarra, et al  
CASE NUMBER: (Número del Caso)  
BC481527

The name, address, and telephone number of cross-complainant's attorney, or cross-complainant without an attorney, is:  
*(El nombre, la dirección y el número de teléfono del abogado del contrademandante, o del contrademandante que no tiene abogado, es):*  
Laurence C. Hall/The Hall Law Corporation, 400 Continental Blvd., 6th Flr., El Segundo, CA 90245 310-426-2206

DATE: \_\_\_\_\_ Clerk, by \_\_\_\_\_ Deputy  
*(Fecha)* *(Secretario)* *(Adjunto)*

*(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)*  
*(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons (POS-010).)*



- NOTICE TO THE PERSON SERVED:** You are served
- as an individual cross-defendant.
  - as the person sued under the fictitious name of (specify):
  - on behalf of (specify):  
under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.80 (authorized person)  
 other (specify):
  - by personal delivery on (date):

*Rec'd June 1, 2012*

1 Laurence C. Hall (State Bar No. 053681)  
2 **THE HALL LAW CORPORATION**  
3 A Professional Law Corporation  
4 400 Continental Blvd., Sixth Floor  
5 El Segundo, California 90245  
6 Telephone: (310) 426-2206  
7 Facsimile: (760) 398-4455

8 Attorneys for Defendant EUGENIA ACOSTA and  
9 Defendants and Cross-Complainants,  
10 ENRIQUE IBARRA, SILVIA IBARRA

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 FOR THE COUNTY OF LOS ANGELES-CENTRAL DISTRICT

13 FRANCISCO LARA, LUIS M. CHONG,  
14 Plaintiffs,

15 vs.

16 ENRIQUE IBARRA, SILVIA IBARRA,  
17 EUGENIA ACOSTA, OCTAVIO BARBA,  
18 N & D MEATS, INC., LINDA'S SEAFOOD,  
19 JUAN ALFARO, LUGO ALFARO, and  
20 DOES 1 to 20, inclusive.

21 Defendants.

22 ENRIQUE IBARRA, an individual and  
23 SILVIA IBARRA, an individual,

24 Cross Complainants,

25 vs.

26 FRANCISCO LARA, an individual, and  
27 LUIS M. CHONG, an individual, and DOES  
28 1 through 50, inclusive,

Cross Defendants.

: Case No.: BC481527  
: [Assigned : Honorable Mel Red Recana, Dept. 45)

: Complaint filed: March 26, 2012

**CROSS COMPLAINT FOR:**

1. **Wrongful Termination In Violation of Public Policy**
2. **Breach of Fiduciary Duty**
3. **§17200 Unfair Business Practices**
4. **Conversion**
5. **Intentional Infliction of Emotional Distress**
6. **Negligent Infliction of Emotional Distress**
7. **Loss of Consortium**

**GENERAL ALLEGATIONS: THE PARTIES**

1. At all times herein relevant, Plaintiff and Cross-Defendant Francisco Lara ("Lara") was and is an individual residing in and/or doing business in the City of Los Angeles, State of California

1 and was a Board member and 33-1/3 % owner of ENSI GROUP LLC. Collectively, Lara and Plaintiff  
2 and Cross-Defendant Luis M. Chong own the majority interest in ENSI GROUP LLC ("ENSI").

3 2. At all times herein relevant, Plaintiff and Cross-Defendant Luis M. Chong ("Chong")  
4 was a resident of Mexico but was and is at all times doing business in the City of Los Angeles, State of  
5 California, and is a 33-1/3% owner of ENSI and together with Lara are the majority owners in ENSI.

6 3. At all times herein relevant, Cross-Complainants Silvia Ibarra and Enrique Ibarra bring  
7 this action individually and Silvia Ibarra brings the action derivatively on behalf of nominal defendant  
8 ENSI. Cross-Complainant Silvia Ibarra is a 33-1/3 % minority member of ENSI a California Limited  
9 Liability Company operating in Los Angeles California.

10 4. Cross-Complainants are unaware of the true names and capacities of the Cross-  
11 Defendants sued herein as DOES 1 through 50, inclusive and therefore sue said Cross-Defendants by  
12 such fictitious names. Cross-Complainants will amend this Complaint to allege said Cross-  
13 Defendants' true names and capacities when they have been ascertained. Cross-Complainants are  
14 informed and believe and thereupon alleges that each of the Cross-Defendants sued herein as DOES 1  
15 through 50, inclusive, is legally responsible in some manner for Cross-Complainants' damages as  
16 hereinafter alleged.

17 5. Cross-Complainants are informed and believe and thereupon allege that, at all times  
18 herein mentioned, each of the Cross-Defendants was the agent, servant and employee of each of the  
19 remaining Cross-Defendants and/or was the successor in interest or recipient of stolen monies and  
20 assets of ENSI, in doing the acts and things hereinafter alleged, unless specifically otherwise alleged,  
21 was at all times acting within the course and scope of said agency, servitude and employment and with  
22 the permission, consent and approval or subsequent ratification of each of the remaining Cross-  
23 Defendants.

24 6. On or before 2005, Cross-Defendant Lara told Silvia Ibarra and Enrique Ibarra that he  
25 wanted to enter into a joint venture with them to run a wholesale produce venture. Cross-  
26 Complainants Enrique Ibarra and Silvia Ibarra would run day to day operations and Lara would  
27 oversee operations as a board member of the Company. Lara was at ENSI often and was involved in  
28 every major decision made. However, Lara wanted his involvement to remain secret from his

1 employer Gustavo Marquez as he was pursuing business potentially adverse to Gustavo Marquez and  
2 using Gustavo Marquez's connections in order to do so.

3 7. During 2005, the Ibarras deferred their salaries in order to give the company, ENSI, a  
4 chance to be successful. Thereafter, the board of directors of ENSI, including Lara, approved a bonus  
5 to Silvia Ibarra in the amount of over \$47,000. Lara loaned ENSI the money to pay Silvia Ibarra her  
6 bonus and had ENSI pay him back in cashed checks paid to Lara's personal friends Juan and Lugo  
7 Alfaro.

8 8. In or about 2011, ENSI finally secured a very lucrative deal with a supplier to Walmart.  
9 Enrique Ibarra negotiated the lucrative commission contract with Divine Flavor LLC. Yet the years of  
10 working with Lara and Chong were taking their toll. Cross-Defendant Chong constantly tried to get  
11 Enrique Ibarra to act as a cover/front man for various "business" ventures. Enrique Ibarra refused but  
12 was always pressured. Specifically, Chong requested that Enrique Ibarra open-up an off shore shell  
13 company, under Enrique Ibarra's name, to collect commissions from purchases of military aircraft and  
14 other related equipment in Europe and in Canada. Chong said the Company was to be under Enrique  
15 Ibarra's name, in the books, but in reality controlled by Chong. Lara wanted to cash out ENSI.

16 9. After this deal was negotiated with Divine Flavor LLC, Enrique Ibarra became sick  
17 from the stress of working with Chong and Lara, and their constant pressure to involve him in their  
18 illegal activities. Enrique Ibarra was unable to work due to extreme stress and resulting illness. Cross-  
19 Defendants Chong and Lara got mad and constructively terminated Enrique Ibarra. Cross-Defendants  
20 wrongfully terminated Silvia Ibarra's position.

21 10. Cross-Complainants are informed and believe that Cross-Defendants thereafter falsified  
22 claims of embezzlement against Enrique Ibarra and Silvia Ibarra with the motive and intent to freeze  
23 Silvia Ibarra out of her interest in ENSI now that the lucrative deal with Walmart was pending and to  
24 retaliate against Enrique Ibarra for being unwilling to participate in Chong's and Lara's illegal  
25 activities, and for being too sick to run ENSI's operations. In order to carry out their bad acts, Cross-  
26 Defendants converted all of the monies of ENSI to their own use; cutoff the Ibarras' income stream in  
27 order to deprive them of funds to defend themselves; sued their own friends and people they had no  
28 viable claim against, all to pressure the Ibarras to walk away from ENSI with nothing. Cross-

1 Defendants threatened Enrique Ibarra that if he sought workers compensation benefits for his work  
2 related stress and resulting health problems that they would inflict great harm and personal injuries on  
3 him and his family.

4 **FIRST CAUSE OF ACTION**  
5 **FOR CONSTRUCTIVE DISCHARGE IN**  
6 **VIOLATION OF PUBLIC POLICY**  
7 **(Against All Cross-Defendants)**

8 11. Cross-Complainants refer to and incorporate herein by reference each of the allegations  
9 set forth in Paragraphs 1-10 of this Cross-Complaint as though set forth at length hereinafter.

10 12. Cross-Complainants Silvia Ibarra and Enrique Ibarra were both forced out of ENSI  
11 and/or constructively terminated by Cross-Defendants. Silvia Ibarra worked as ENSI's controller and  
12 by agreement was paid \$6,000.00 per month. Enrique Ibarra ran all other operations and his salary  
13 was \$4,000.00 per month, including compensation for a car and reimbursement of expenses for  
14 promotion and travel.

15 13. In or about September 2011, Cross-Defendants unilaterally replaced Silvia Ibarra with  
16 Lara's daughter's boyfriend, Erik Diaz. On December 23, 2011, Enrique Ibarra went on disability  
17 leave due to excessive pressure and threats imposed upon him by Cross-Defendants. Cross-  
18 Defendants responded by canceling Enrique Ibarra's medical coverage and threatening him with  
19 physical harm if he filed a worker's compensation claim.

20 14. Beginning in or about September 2011 and thereafter, Cross-Defendants engaged in  
21 conduct amounting to a constructive termination of Cross-Complainant Enrique Ibarra (1) because he  
22 was injured on the job; (2) in order to avoid paying him his agreed compensation; (3) and to freeze  
23 Silvia Ibarra out of her interest in ENSI; and 4) so Cross-Defendants could effectively cut Silvia Ibarra  
24 out of her share of the profits realized by Walmart deal; and (5) because Enrique Ibarra refused to  
25 participate in their illegal schemes and activities.

26 15. Cross-Defendants thereafter and to further their activities, converted all the records,  
27 assets, employees and monies of ENSI to their own use and by falsely accusing Cross-Complainants  
28 of theft, among other wrongs.



1 adverse to their interests so as to attempt to unfairly deprive them of Silvia's interest in ENSI and to  
2 instead reap all the benefits for themselves. *Kurwa v. Kisinger* (2012) WL 688242, 12 Cal. Daily Op.  
3 Service 272, 2012 Daily Journal D.A.R. 3026 and *Pelegriani v. Weiss* (2008) 165 Cal.App.4<sup>th</sup> 515.

4 23. In or about 2012, Cross-Defendants began falsely accusing Cross-Complainants of  
5 wrongs and undermining Cross-Complainants' interests and attempting to freeze Cross-Complainants  
6 out of their interest in ENSI. To accomplish this scheme and apply pressure, Cross-Defendants caused  
7 all of Cross-Complainants' historical records regarding the Company to be withheld from them, cut off  
8 their income stream and seized all of the expense back up documentation so Cross-Complainants  
9 would be ill-equipped to defend themselves.

10 24. Cross-Defendants additionally took monies and property from ENSI, and to detract  
11 from their own misdeeds, Cross-Defendants falsely accused Cross-Complainants of taking monies.

12 25. These actions of Cross-Defendants were all in breach of fiduciary duties owed to Cross-  
13 Complainants as their business joint venture partners and minority member interest in ENSI, all to  
14 Cross-Complainants' detriment.

15 26. As a proximate result of Cross-Defendants' breaches of fiduciary duties, Cross-  
16 Complainants have sustained damages which exceed the jurisdictional minimum of this Court.  
17 Altogether, Cross-Complainants are informed and believe they have sustained damages equal to  
18 several million dollars, plus interest thereon at the legal rate. Cross-Complainants have sustained  
19 severe emotional distress, loss of reputation, loss of income all to their detriment in an amount within  
20 the jurisdiction of this Court.

21 27. Additionally, Cross-Complainants are incurring Court costs, investigation costs and  
22 other costs in connection with pursuit of this action, all in an amount to be proven at time of trial.

23 28. The actions of Cross-Defendants were malicious, willful and made in conscious  
24 disregard for the rights of Cross-Complainants and therefore warrant, in addition to compensatory  
25 damages, an aware of exemplary and/or punitive damages sufficient to deter Cross-Defendants and  
26 others similarly situated from engaging in such acts in the future.

27 ///

28 ///

**THIRD CAUSE OF ACTION**

**FOR \$17200 UNFAIR BUSINESS PRACTICES**

**(Against All Cross-Defendants)**

1  
2  
3  
4 29. Cross-Complainants refer to and incorporate herein by reference each of the  
5 allegations set forth in Paragraphs 1 through 28 of this Cross-Complaint as though set forth at length  
6 hereinafter.

7 30. Cross-Defendants engaged in unfair acts and business practices with the plan to freeze  
8 Cross-Complainants out of the Joint Venture and deprive them of any benefits to be derived therein, to  
9 deflect from their own misdeeds and conversions of monies, and wrongly terminated Cross-  
10 Complainant Enrique Ibarra because he had a work related injury.

11 31. Cross-Defendants knowingly and fraudulently engaged in these activities in order to  
12 freeze Cross-Complainants out of their interest in the Joint Venture and particularly in the Walmart  
13 deal and to deprive them of salary and dividends, avoid paying Cross-Complainants earned wages and  
14 to avoid performing contractual obligations owed to them.

15 32. Cross-Defendants' actions constitute an unfair business practice which is designed to  
16 harm competition and which violates the spirit and intent of anti-competitive laws. These practices  
17 were employed with Cross-Complainants and with other employees.

18 33. Therefore, Cross-Defendants should be preliminarily and permanently enjoined and  
19 prevented from engaging in such unfair, fraudulent and unlawful acts in the future and should be  
20 ordered to make restitution to investors and employees adversely impacted by such unlawful,  
21 fraudulent and unfair practices.

22 34. Cross-Complainants additionally seek an award of reasonable attorneys' fees and costs  
23 pursuant to the Labor Code and as otherwise permitted at law.

24 35. Labor Code §§ 201, 202, and 204 govern the timing of payment of wages. Employees  
25 are required to be paid all wages owed immediately. Employees that voluntarily terminate their  
26 employment must be paid all vested compensation within seventy-two hours. Employees are required  
27 to be paid their wages (i.e., exercised options), bi-monthly in the case of nonexempt employees and  
28 monthly in the case of exempt employees.



**FIFTH CAUSE OF ACTION**

**FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

**(Against All Cross-Defendants and DOES 1-50)**

43. Cross-Complainants refer to and incorporate herein by reference each of the allegations set forth in Paragraphs 1 through 42 of this Cross-Complaint as though set forth at length hereinafter.

44. Cross-Defendants and each of them systematically and intentionally harassed the Ibarra with the plan and intention of causing them and did cause them extreme emotional distress by among other acts: 1) falsely accusing them of theft; 2) pressuring Enrique Ibarra to be a front man for weapons trafficking company; 3) cutting off the Ibarra's income stream when they refused to be used as Cross-Defendant's puppets; 4) by cutting off the Ibarra's medical coverage and then threatening them with physical harm if they pursued their legitimate rights to worker's compensation benefits; and 5) threatening the Ibarra's friends and associates with false claims if they in any way supported the Ibarra's efforts to work.

45. As a proximate result of Cross-Defendants' actions, Cross-Complainants have sustained severe emotional distress and physical injuries and loss of reputation, loss of income all to their detriment in an amount which exceeds the jurisdictional minimum of this Court.

46. Additionally, Cross-Complainants are incurring Court costs, investigation costs and other costs in connection with pursuit of this action, all in an amount to be proven at time of trial.

47. The intentional actions of Cross-Defendants were malicious, willful and made in conscious disregard for the rights of Cross-Complainants and therefore warrant, in addition to compensatory damages, an award of exemplary and/or punitive damages sufficient to deter Cross-Defendants and others similarly situated from engaging in such acts in the future.

**SIXTH CAUSE OF ACTION**

**FOR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

**(Against All Cross-Defendants and DOES 1-50)**

48. Cross-Complainants refer to and incorporate herein by reference each of the allegations set forth in Paragraphs 1 through 47 of this Cross-Complaint as though set forth at length hereinafter.



**PRAYER FOR RELIEF**

WHEREFORE, Cross-Complainants pray Judgment be entered, as follows:

**First Cause Of Action**

1. For General Damages according to proof;
2. For Special Damages according to proof;
3. Attorney Fees and costs, as allowed under the law, including but not limited to the Labor Code;
4. Statutory penalties and damages as allowed under the law, including but not limited to the Labor Code;
5. For Pre-Judgment Interest and Post Judgment Interest, as allowed under the law at the legal rate;
6. For Punitive or Exemplary Damages.

**Second, Fourth, and Fifth Causes Of Action**

7. For General Damages according to proof;
8. For Special Damages according to proof;
9. For Pre-Judgment Interest and Post Judgment Interest, as allowed under the law at the legal rate;
10. For Punitive or Exemplary Damages.

**Third Cause of Action**

11. That Defendants be preliminarily and permanently enjoined from:
  - a. Falsifying information that Plaintiff committed acts of theft or other unsubstantiated wrongs; and
  - b. Falsifying Contracts, and other legal documents;
12. That Cross-Defendants be ordered to make restitution to affected current and prior employees.
13. For General Damages according to proof;
14. For Special Damages according to proof;
15. Attorney Fees and costs, as allowed under the law, including but not limited to the

1 Labor Code and Business and Professions Code;

2 16. Statutory penalties and damages as allowed under the law, including but not limited to  
3 the Labor Code and the Business and Professions Code;

4 17. For Pre-Judgment Interest and Post Judgment Interest, as allowed under the law at the  
5 legal rate;

6 18. For Punitive or Exemplary Damages.

7 Fourth Cause Of Action

8 19. For General Damages according to proof;

9 20. For Special Damages according to proof;

10 21. Attorney Fees and costs, as allowed under the law, including but not limited to the  
11 Labor Code;

12 22. Statutory penalties and damages as allowed under the law, including but not limited to  
13 the Labor Code;

14 23. For Pre-Judgment Interest and Post Judgment Interest, as allowed under the law at the  
15 legal rate;

16 24. For Punitive or Exemplary Damages.

17 Sixth and Seventh Causes Of Action

18 25. For General Damages according to proof;

19 26. For Special Damages according to proof;

20 27. For Pre-Judgment Interest and Post Judgment Interest, as allowed under the law at the  
21 legal rate;

22 As To All Causes Of Action

23 28. For costs of suit;

24 29. For such other and further relief as may be deemed just and proper.

25 Dated: May 30, 2012

THE HALL LAW CORPORATION

26 By:   
27

LAURENCE C. HALL  
Attorneys for Cross-Complainants

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF RIVERSIDE

I am employed in the County of Riverside, California. I am over the age of eighteen years and not a party to the within cause; my business address is 36856 Quasar Road, Murrieta, CA 92563.

On May 30, 2012, I served the within following documents: **CROSS COMPLAINT FOR:**  
**1. Wrongful Termination In Violation of Public Policy 2. Breach of Fiduciary Duty**  
**3. §17200 Unfair Business Practices 4. Conversion 5. Intentional Infliction of Emotional Distress 6. Negligent Infliction of Emotional Distress 7. Loss of Consortium** on the interested parties in said cause, by the placing true copies thereof enclosed in sealed envelopes addressed as follows:

Robert Pacheco/Gayle E. Pacheco  
Law Offices of Pacheco & Pacheco  
161 Commerce Way  
Walnut, CA 91789  
Tel: 909-595-5823 Fax: 909-595-6207  
Attorneys for plaintiffs

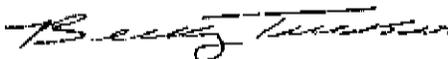
XX (First Class Mail) I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Murrieta, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

\_\_\_ (By Facsimile) The above-described document(s) were sent by facsimile transmission to the facsimile number(s) of the law offices) stated below. The transmission was reported as complete and without error.

\_\_\_ **BY FEDERAL EXPRESS. (PRIORITY OVERNIGHT)** I deposited such envelope in the Federal Express Depository at Murrieta, California. The envelope was mailed with postage thereon fully prepaid.

\_\_\_ By Personal Service, I caused such envelope(s) to be delivered by hand to the individuals so indicated at the address listed.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on May 30, 2012, at Murrieta, California.



Becky Tucker

# **EXHIBIT 3**

1 Robert Pacheco, Esq. #062336  
2 Gayle E. Pacheco, Esq. #164231  
3 Law Offices of Pacheco & Pacheco  
4 161 Commerce Way  
5 Walnut, Ca 91789  
6 Tel: 909-595-5823  
7 Fax: 909-595-6207

8 Co-Counsel

9 Robert G. Uriarte, Esq. #110055  
10 Abby Wood, Esq. #236920  
11 Uriarte & Wood  
12 1175 E. Garvey Street, Suite 210.  
13 Covina, California  
14 Tel: 626-859-1100  
15 Fax: 626-859-3150

16 Attorneys for Plaintiffs/Cross-Defendants Francisco Lara and Luis M. Chong

17 **UNITED STATES BANKRUPTCY COURT FOR THE**  
18 **CENTRAL DISTRICT OF CALIFORNIA- LOS ANGELES DIVISION**

19 **IN RE:**

**Bk. Case No.: 2:14-bk-11105**

**Adv. Case No.:**

20 **ENRIQUE IBARRA and SILVIA IBARRA**

21 Debtors

**NOTICE OF REMOVAL**

**[FRBP Rule 9027, 28 U.S.C. 1452]**

22 **Francisco Lara, Luis M, Chong, Ensi Group,**  
23 **LLC**

24 Plaintiff(s),

**[No Hearing Set]**

25 vs.

26 **Enrique Ibarra, Silvia Ibarra, Eugenia Acosta,**  
27 **Octavio Barba, N & D Meats, Inc., Linda's**  
28 **Sefood, Juan Alfaro, Juan Manuel Lugo, and**  
**Does 1-20, Inclusive**

Defendant(s)

**Enrique Ibarra, Silvia Ibarra,**  
**Cross-Complainant(s),**

vs.

**Francisco Lara, Luis M, Chong, Ensi Group,**  
**LLC**

**Cross-Defendant(s)**

1 **TO THE HONORABLE RICHARD M. NEITER, UNITED STATES BANKRUPTCY JUDGE,**  
2 **OFFICE OF THE UNITED STATES TRUSTEE, AN ALL PARTIES IN INTEREST:**

3 **NOTICE IS HEREBY GIVEN** that Francisco Lara and Luis M. Chong, (hereinafter "Plaintiffs"),  
4 Plaintiffs in an action commenced in the Superior Court of the State of California for the County of Los  
5 Angeles, entitled Francisco Lara and Luis Chong v. Ibarra et al., Case Number BC 481527, hereby  
6 remove this action from the Superior Court County of Los Angeles, to the United States Bankruptcy  
7 Court for the Central District of California, Los Angeles Division pursuant to Title 28 United States  
8 Code Section 1452 and Federal Rule of Bankruptcy Procedure Section 9027.

9  
10 1. On March 26, 2012, an action was commenced in the Superior Court of the State of  
11 California for the County of Los Angeles, entitled Francisco Lara and Luis M. Chong v. Enrique Ibarra,  
12 Silvia Ibarra, Eugenia Acosta, Octavio Barba, N & D Meats, Inc., Linda's Seafood, Juan Alfaro, Juan  
13 Manuel Lugo and Ensi Group, LLC, a California Limited Liability Company, Does 1-20 inclusive, Case  
14 Number BC481527 ("Removed Case").

15 2. The Removed Case was amended on April 25, 2012, and subsequently Plaintiffs filed a motion  
16 for leave to file a second amended complaint on October 4, 2013, such that the Second Amended  
17 Complaint is now the operative complaint.

18 3. The Removed Case alleges damages arising from: (1) breach of Fiduciary Duty, constructive  
19 fraud, actual fraud and deceit, embezzlement, a derivative action for conversion and unfair business  
20 practices, among other causes, against the Debtors.

21 4. Co-Defendants Manuel Lugo, Juan Alfaro and Linda's Seafood have been dismissed without  
22 prejudice

23 5. Enrique Ibarra and Silvia Ibarra filed for protection under Chapter 7 of the United States  
24 Bankruptcy Code on January 21, 2014.

25 6. The Removed Case is a case related to the bankruptcy case. As such, the United States District  
26 Court for the Central District of California has jurisdiction of the Removed Case pursuant to 28 USC  
27 Section 1334(b). Therefore, pursuant to 28 USC Section 1452(a) the Removed Case may be removed to  
28 the District Court.

1 7. By the District Court's general order, the District Court has referred to the bankruptcy judges for  
2 this district all cases under Title 11 and all proceedings under Title 11 or arising in or related to a case  
3 under Title 11. That includes the Removed Case.

4 8. As permitted by Bankruptcy Rule 9027(a)(2), this Notice of Removal is being filed within ninety  
5 (90) days after the order for relief in the bankruptcy case.

6 9. The Removed Case, inasmuch as it presents dischargeability issues under 11 U.S.C. §§  
7 523(a)(2)(A), 523(a)(4) and 523(a)(6) is a core proceeding within the meaning of 28 U.S.C. Section  
8 157(b). Pursuant to Bankruptcy Rule 9027(a)(1), and to the extent that any issues are determined to be  
9 "non-core" the removing party consents to the entry of final orders or judgments by the bankruptcy  
10 judge.

11 10. A copy of the operative complaint (Second Amended Complaint) and a copy of the Cross-  
12 complaint and copies of all other process and pleadings filed in the state court are filed concurrently  
13 herewith under cover of document entitled Process and Pleadings filed in State Court Action Removed  
14 to Federal Bankruptcy Court.

15 11. Promptly after filing hereof, the undersigned shall file a copy of this notice with the Clerk of the  
16 Superior Court for the County of Los Angeles.

17  
18  
19 DATED: March 10, 2014

LAW OFFICES OF PACHECO & PACHECO  
URIARTE & WOOD, ATTORNEYS AT LAW

20  
21  
22 

23 BY: ROBERT G. URIARTE, Attorneys for  
24 Plaintiffs  
25  
26  
27  
28

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 1175 E. Garvey St., Ste. 210, Covina, CA 91724.

A true and correct copy of the foregoing document entitled (*specify*): "**Notice of Removal**" will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On 3/11/14, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Raymond Gaitan: rgaitan628@aol.com  
Marian Garza: ecfnotices@ascensioncapitalgroup.com  
Ramesh Singh: claims@recoverycorp.com  
Sam S Leslie (TR): sleslie@trusteeleslie.com  
United States Trustee (LA): ustpreion16.la.ecf@usdoj.gov

Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On (*date*) 3/11/14, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

United States Bankruptcy Court  
Central District of California  
Edward R. Roybal Federal Building and Courthouse  
255 E. Temple Street, Suite 1652 / Courtroom 1645  
Los Angeles, CA 90012

Service information continued on attached page

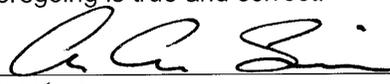
**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served):** Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) \_\_\_\_\_, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

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

3/11/14  
Date

Adam Simon  
Printed Name

  
Signature

**Service list Lara, Chong v. Ibarra et al.**

Enrique Silva and Sivia Silva  
2819 South Harcourt Ave.  
Los Angeles, California 90016

Raymond Gaitan, Esq.  
1855 W. Katella Ave., Suite 365  
Orange, California 92867

Sam Leslie, Chapter 7 Trustee  
3435 Wilsire Blvd. Suite 990  
Los Angeles, California 90010

Laurence C. Hall, Esq.  
The Hall Corporation  
200 N. Sepulveda Blvd., Suite 300  
El Segundo, California 90245

BADKOUBEHI KEVIN M. ESQ  
Badkoubehi & Dadmehr  
10866 Wilshire Blvd Ste 400  
Los Angeles, CA 90024

Robert Pacheco, Esq.  
Law Offices of Pacheco & Pacheco  
161 Commerce Way  
Walnut, Ca 91789

ENSI Sales, LLC  
ENSI Group, LLC  
1514 Washington Blvd.  
Montebello, California 90640

0810041211  
0078228-118

# **EXHIBIT 4**

1 Robert Pacheco #062336  
2 Gayle E. Pacheco #164231  
3 Law Offices of Pacheco & Pacheco  
4 161 Commerce Way  
5 Walnut, Ca 91789  
6 Tel: 909-595-5823  
7 Fax: 909-595-6207  
8 Co-Counsel: Robert G. Uriarte #110055  
9 175 E. Garvey, # 210,  
10 West Covina, CA 91724  
11 Tel: (626) 859-1100  
12 Fax: (626)

13 Attorneys for Plaintiffs

14 **UNITED STATES BANKRUPTCY COURT**  
15 **CENTRAL DISTRICT OF CALIFORNIA LOS ANGELES DIVISION**

16 In re:	)	Case No. 2:14-bk-11105 RN
17 Enrique Ibarra and Silvia Ibarra	)	Chapter 7
	)	
18 Debtors	)	Adversary Proceeding:
	)	
19 Adversary Proceeding	)	Case No. 2:14-bk-01154 RN
	)	
20 Francisco Lara, Luis M. Chong, ENSI Group, LLC	)	JOINT PRE-TRIAL ORDER
	)	
21 Plaintiffs	)	Hearing:
22 vs.	)	Date: January 7, 2015
	)	Time: 10:30 am
23 Enrique Ibarra, Silvia Ibarra, et. al.	)	Place: Courtroom 1645
	)	255 E. Temple Street
24 Defendants	)	Los Angeles, CA 90012
	)	
	)	

25 **PRE-TRIAL STIPULATION**

26 Francisco Lara and Luis M. Chong, (Plaintiffs) and Enrique Ibarra and Silvia Ibarra (Defendants)  
27 submit the following Pre-Trial Stipulation through their respective counsels pursuant to Local  
28 Bankruptcy Rule 706-1(b)(2).

///

1           I.       **UNDERLYING ISSUES OF FACT COMMON TO ALL CLAIMS FOR RELIEF**

2           A.       Defendant filed a petition for relief under Chapter 7 on January 21, 2014 (the petition  
3 date).

4                     Not contested

5           B.       Plaintiff commenced this adversary proceeding by filing a 3<sup>rd</sup> Amended Complaint on  
6 March 11, 2014 after the case was removed from the Los Angeles County Superior Court.

7                     Not contested.

8           C.       Enrique Ibarra, previously individually filed a petition in bankruptcy on August 11, 2005,  
9 finalized in 2009.

10                    Not contested. Not relevant.

11           D.       On June 22, 2005, Silvia Ibarra and Octavio Barba formed ENSI Sales, LLC, later  
12 changed its name to ENSI Group, LLC, (hereinafter ENSI).

13                    Not contested.

14           E.       ENSI Group, LLC created an Operating Agreement to which all members agreed to be  
15 bound.

16                    Not contested

17           F.       Enrique Ibarra agreed to act as manager of ENSI in accordance with the terms of the  
18 ENSI Operating Agreement.

19                    Not contested

20           G.       As manager for ENSI, Enrique Ibarra was responsible for all investments the company  
21 made and operation of the company.

22                    Not contested

23           H.       Article IV, Section 4.9 of the ENSI Operating Agreement, under which Enrique acted as  
24 manager, stated "The manager shall perform his managerial duties in good faith, in a manner he  
25 reasonably believes to be in the best interests of the Company and its Members ...".

26                    Not Contested  
27  
28

1 I. Enrique Ibarra was paid by ENSI, to perform duties as manager, to develop a contract  
2 with Royal Flavor, LLC and Divine Flavor, LLC to generate commissions for ENSI from sale of  
3 products sold by Royal Flavor, LLC and Divine Flavor, LLC to ENSI customers.

4 Contested

5 J. For the year 2008, Silvia Ibarra received \$92,776.00 in guaranteed payments from SVL  
6 Holding I, LLC.

7 Contested

8 K. Plaintiffs Francisco Lara and Luis M. Chong have paid \$346,500.00 in attorney fees to  
9 pursue the claims of fraud, interference with business and contractual relations, embezzlement and  
10 defalcation against Enrique Ibarra, Silvia Ibarra and SVL Holdings I, LLC.

11 Not contested

12 L. Plaintiffs Francisco Lara and Luis M. Chong have paid \$38,000.00 in court costs to  
13 pursue the claims of fraud, interference with business and contractual relations, embezzlement and  
14 defalcation claims against Enrique Ibarra, Silvia Ibarra and SVL Holdings I, LLC.

15 Not contested

16 M. The Operating Agreement under which ENSI operated contains a provision for payment-  
17 of-attorney fees and court costs to the prevailing party in the event of litigation.

18 Not contested

19 N. Silvia Ibarra and Enrique Ibarra both denied under oath that they caused the falsification  
20 of invoices for a series of transactions with Linda's Seafood, Inc. to obtain \$47,414.46 from ENSI  
21 accounts.

22 Not contested

23 O. On June 22, 2005 Silvia Ibarra acquired a 20% interest in ENSI Sales, LLC "as her sole  
24 and separate property".

25 Contested  
26  
27  
28

1 P. Prior to Enrique Ibarra and Silvia Ibarra's current bankruptcy petition of January 21,  
2 2014, Plaintiffs Francisco Lara, Luis Chong and Silvia Ibarra entered into the ENSI Operating  
3 Agreement on July 1, 2006, each as 1/3<sup>rd</sup> owners of ENSI Group, LLC.

4 Not contested.

5 Q. On July 1, 2006, when Silvia Ibarra became a 1/3<sup>rd</sup> owner of ENSI with Francisco Lara  
6 and Luis Chong, Exhibit B to the Operating Agreement, stated that she held her 1/3<sup>rd</sup> interest in ENSI as  
7 her sole and separate property.

8 Contested

9 R. Defendants Enrique Ibarra and Silvia Ibarra by virtue of their involvement and role in  
10 ENSI became fiduciaries to Plaintiffs Francisco Lara and Luis M. Chong in operating ENSI Group,  
11 LLC.

12 Not contested

13 S. Pursuant to the ENSI Operating Agreement, Enrique Ibarra was the manager and held no  
14 ownership interest in ENSI.

15 Contested

16 T. Pursuant to the ENSI Operating Agreement, Silvia Ibarra, a married woman was dealing  
17 with her 1/3<sup>rd</sup> interest in ENSI, at all times, as her sole and separate property.

18 Not contested

19 U. All members as 1/3 owners of ENSI had a fiduciary duty to act in good faith and deal  
20 fairly with Plaintiffs, Francisco Lara, Luis M. Chong and ENSI.

21 Not contested

22 V. Silvia was stated in the Operating Agreement to be the Tax Matters Member.

23 Not contested

24 W. According to the ENSI Operating Agreement, no Member was authorized to withdraw  
25 his or her capital contribution.

26 Not contested

27 X. Plaintiffs placed confidence in the fidelity and integrity of Silvia Ibarra and Enrique  
28 Ibarra to make full disclosure of ENSI transactions and financial dealings that would impact Plaintiffs.

1 Contested

2 Y. Pursuant to Article VIII, Section 8.4, all checks, drafts, and other instruments obligating  
3 the Company to pay money for ordinary business expenses may be signed by the Manager, acting alone.

4 Not contested

5 Z. Silvia Ibarra signed checks, drafts and other instruments obligating the Company to pay  
6 money for ordinary business expenses.

7 Not contested

8 AA. Enrique Ibarra was entitled, pursuant to Article IV, section 4.10.1 only to a reasonable  
9 annual fee for management services rendered to the Company.

10 Contested

11 BB. Silvia Ibarra created a company called SVL Holdings I, LLC on March 19, 2007  
12 (hereinafter SVL)

13 Not contested.

14 CC. When the SVL Operating Agreement was created, Silvia Ibarra was described in the  
15 Operating Agreement for SVL as the only member of SVL.

16 Not contested

17 DD. According to the SVL Operating Agreement Enrique Ibarra held no ownership interest in  
18 SVL.

19 Not contested

20 EE. Enrique Ibarra caused SVL to receive commissions from sales of products purchased and  
21 paid for by ENSI.

22 Not contested

23 FF. Pursuant to Article IV, section 4.10, Enrique was not entitled to remuneration for services  
24 rendered or goods provided to the Company. .

25 Contested

26 GG. Silvia Ibarra received \$92,776.00 in guaranteed payments from SVL Holdings I, LLC  
27 from commissions paid by Royal Flavor LLC in the year 2008.

28 Not contested.

1 HH. Silvia Ibarra and Enrique Ibarra caused erasure of SVL Holdings I, LLC business records  
2 and personal e-mails maintained on ENSI computers, before terminating their relationship with ENSI in  
3 2011.

4 Not contested

5 II. Silvia Ibarra and Enrique Ibarra used the equipment and assets of ENSI to conduct  
6 business for SVL without compensation being paid to ENSI.

7 Contested

8 JJ. ENSI a broker of products, as part of its normal business, paid for purchased goods with  
9 ENSI funds then sold the purchased products to customers, at a marked up price, to enable ENSI to  
10 receive a profit.

11 Not contested

12 KK. SVL received commissions from sales as a broker, but did not purchase the goods with  
13 SVL funds, acting only as an intermediary to retailers/customers that purchased the goods.

14 Not contested

15 LL. Enrique Ibarra and Silvia Ibarra requested Royal Flavor, LLC to increase prices of  
16 products sold to ENSI so that SVL would receive a commission on sales of products to ENSI.

17 Contested

18 MM. SVL Holdings I, LLC received commissions on sales of products purchased and paid for  
19 by ENSI from Royal Flavor LLC and Divine Flavor, LLC.

20 Contested

21 NN. Silvia Ibarra notified Divine Flavor, LLC to increase the prices of products sold to ENSI  
22 to enable SVL to receive a commission from products purchased by ENSI.

23 Contested

24 OO. Silvia Ibarra, as owner was entitled to receive 100% of the net income from SVL and  
25 under the SVL operating agreement paid Enrique Ibarra, SVL's manager, a salary.

26 Contested

27 PP. Francisco Lara and Luis Chong did not receive complete financial information regarding  
28 the operation of ENSI until the year 2011.

1 Contested

2 QQ. Divine Flavor, LLC did not exist as a separate legal entity with the California Secretary  
3 of State until June 1, 2010.

4 Not contested

5 RR. Enrique Ibarra was required to provide financial and other relevant information to  
6 Plaintiffs regarding actions he took but failed to provide that information.

7 Contested

8 SS. Plaintiffs were not informed of the creation of SVL by either Silvia Ibarra or Enrique  
9 Ibarra

10 Not contested..

11 TT. Enrique diverted commissions due to ENSI to SVL even those on which ENSI was  
12 named as broker

13 Contested.

14 UU. Enrique used ENSI funds to pay for personal violations from law enforcement agencies

15 Contested.

16 VV. Enrique used ENSI funds to pay for personal expenditures unrelated to anything  
17 benefiting ENSI.

18 Contested

19 WW. Silvia Ibarra received the benefit of all commissions diverted from ENSI to SVL.

20 Contested

21 Evidence: E-mails to Enrique and Silvia Ibarra requesting information

22 Evidence: ENSI financial records maintained by Silvia Ibarra without disclosure to  
23 Plaintiffs.

24 Evidence: Silvia and Enrique Ibarra admitted to erasure of computer information and  
25 E-mails that would have provided information to Plaintiffs regarding SVL operating using ENSI assets.

26 XX. Silvia and Enrique Ibarra withheld financial information from Francisco Lara and Luis  
27 M. Chong which would have provided information regarding the actions taken by Defendants.

28 Contested

1 YY. Silvia Ibarra made false entries into ENSI computers to hide fraudulent transactions  
2 which would have provided information to Plaintiffs of Defendants malfeasance, embezzlement and  
3 defalcation.

4 Contested

5 ZZ. Silvia Ibarra created false invoices of sale of products to Linda's Seafoods on ENSI  
6 computers to allow her to make general ledger entries related to transactions totaling \$47,414.46.

7 Contested

8 AAA. No products were sold to Linda's Seafoods for the sum of \$47,414.46.

9 Contested

10 BBB. Enrique Ibarra received \$47,414.46 in cash from the owner of Linda's Seafoods from the  
11 transaction involving the false invoices created by Silvia Ibarra.

12 Contested

13 CCC. On December 15, 2006 Silvia Ibarra recorded an entry in the general ledger records of  
14 ENSI alleging a bonus was to be paid to her for \$47,414.46.

15 Contested

16 DDD. The bonus of \$47,414.46 was never approved by Francisco Lara and Luis M. Chong.

17 Contested

18 EEE. Silvia Ibarra made an entry into ENSI general ledger on 1/31/06 for the amount of  
19 \$42,000.00 stating she made a loan to ENSI in that amount.

20 Contested

21 FFF. The \$42,000.00 claimed by Silvia Ibarra as a loan to ENSI was actually a loan from  
22 Rafael Lara, by wire transfer on 1/12/2006 to ENSI but Silvia Ibarra made a computer entry converting  
23 the \$42,000.00 as loan from her by another general ledger entry on 1/31/2006 and later converted the  
24 same as capital contributed by Silvia Ibarra.

25 Contested

26 GGG. A \$43,000.00 false transaction dated 6/30/2006 was entered into the ENSI general ledger  
27 as a loan to ENSI from Silvia Ibarra. No funds totaling \$43,000.00 were deposited into ENSI bank  
28 accounts to represent the transaction. The amount was later converted to capital when Silvia created the

1 \$47,414.46 transaction with Linda's Seafoods on 12-31-2006 allegedly paying back the \$43,000.00 loan  
2 she never made.

3 Contested

4 HHH. Silvia Ibarra received \$3,000.00 in compensation from ENSI in the year 2005

5 Contested

6 III. Enrique Ibarra received \$2,500.00 in compensation from ENSI in the year 2005

7 Contested

8 JJJ. Silvia Ibarra drew ENSI cash checks in the amount of \$2,200.00 in the year 2005.

9 Contested

10 KKK. Silvia Ibarra made numerous entries into ENSI computer data showing that she loaned  
11 funds to ENSI although the funds were provided by others.

12 Contested

13 LLL. If the loans were repaid,

14 Contested

15 MMM. Francisco Lara and Luis M. Chong were never employers of Silvia Ibarra.

16 Contested

17 NNN. Francisco Lara and Luis M. Chong were never employers of Enrique Ibarra.

18 Contested.

19 **II. CLAIMS FOR RELIEF**

20 **A. First Claim: Claims alleged by Plaintiffs against Silvia Ibarra are not**  
21 **dischargeable because the obligations arose from actual fraud, deceit, fraudulent omission while**  
22 **acting in a fiduciary capacity toward Plaintiffs or for fraud or defalcation while acting in a**  
23 **fiduciary capacity.**

24 **1. ELEMENTS OF THE CLAIM-FRAUD AND DECEIT**

25 **PLAINTIFFS:**

26 a. Silvia Ibarra, as a Member/Owner of ENSI, had a fiduciary duty to act in good faith  
27 toward Plaintiffs.

28 Not contested

1 b. Silvia Ibarra intentionally withheld information from Plaintiffs, formed SVL Holdings I,  
2 LLC (hereinafter SVL) and did not disclose to Plaintiffs she was the sole owner of SVL on March 19,  
3 2007.

4 Contested

5 c. Silvia Ibarra intentionally withheld the fact and information from Plaintiffs that she  
6 created SVL, for the purpose of diverting income from ENSI to SVL.

7 Contested

8 Evidence: Testimony of Silvia Ibarra; formation documents from SVL; admission Silvia  
9 Ibarra.

10 d. Silvia Ibarra became 100% owner of SVL when it was created.

11 contested.

12 Evidence: Formation documents for SVL and operating agreement showing SVL was  
13 owned 100% by Silvia Ibarra.

14 Admission, Silvia Ibarra is 100% owner of SVL.

15 Exhibit Formation document for SVL

16 Exhibit Operating Agreement for SVL showing Silvia Ibarra as sole owner.

17 California Constitution, §21

18 California Family Code §752

19 U.S.C. §541(a)(2) inclusion of all community property of estate.

20 California Family Code §852 requirement for transmutation of property

21 Defendants' Evidence: California community property law, Family Code §760, and  
22 California separate property law, Family Law Code §770.

23 e. Silvia Ibarra intentionally breached her fiduciary duty to deal fairly with Plaintiffs by  
24 creating an entity in direct competition with ENSI that in turn created damage to ENSI.

25 Contested

26 Evidence: Testimony of Luis M. Chong,

27 Francisco Lara, Silvia Ibarra

28 Exhibit 3: ENSI Operating Agreement.

1 Exhibit 4: SVL Holding I, LLC, Operating Agreement.

2 Defendants' Evidence: Creation of Montebello Farms, LLC by Francisco Lara and Silvia  
3 Ibarra waived any duty not to operate a separate business by the members.

4 f. Silvia Ibarra acted intentionally  
5 with deceit in violation of her fiduciary duties of full disclosure in diverting income from ENSI through  
6 SVL with the intention of causing damage to Plaintiffs or with reckless disregard for the consequences  
7 of her actions.

8 Contested

9 Exhibit: Billing statements from Royal Flavor, LLC

10 Exhibit Billing statements from Divine Flavor, LLC.

11 Defendant's Evidence: Actions alleged were done by Enrique Ibarra who had contractual  
12 right to conduct such activities as stated in the Operating Agreement.

13 g. Plaintiffs were not aware Silvia Ibarra created SVL due to her deceit, which in turn  
14 damaged the interests of Plaintiffs and ENSI.

15 Contested

16 Evidence: Testimony of Luis M. Chong, Francisco Lara, Silvia Ibarra

17 Evidence: Formation documents SVL

18 Exhibit : Billing statements Royal Flavor and Divine Flavor

19 Defendant's Evidence: Actions alleged were done by Enrique Ibarra who had contractual  
20 right to conduct such activities as stated in the Operating Agreement.

21 h. Silvia Ibarra acted with deceit and conspired with Enrique Ibarra to create SVL.

22 Contested

23 Exhibit 4: SVL Holding I, LLC originating statement filed with Secretary of State

24 Exhibit 4. SVL Operating Agreement.

25 Evidence: Testimony of Silvia Ibarra, Luis Chong

26 Defendant's Evidence: Actions alleged were done by Enrique Ibarra who had contractual  
27 right to conduct such activities as stated in the Operating Agreement.

1 i. Silvia Ibarra deceived Plaintiffs by secretly using ENSI assets to conduct SVL business  
2 on behalf of SVL.

3 Contested

4 Exhibit 1: ENSI Operating Agreement,

5 Admission by Silvia Ibarra, deposition testimony

6 Evidence: ENSI financial documents, e-mails and other internal documents showing  
7 use of ENSI assets, ENSI e-mail address and ENSI payroll records use to conduct SVL business.

8 Evidence: ENSI documents showing expenditure of funds to acquire contracts with  
9 Royal Flavor and Divine Flavor which were used to benefit SVL.

10 Testimony of Luis M. Chong,

11 Testimony of Erick Diaz

12 ENSI computer records showing transactions for SVL

13 Defendant's Evidence: Actions alleged were done by Enrique Ibarra who had contractual  
14 right to conduct such activities as stated in the Operating Agreement.

15 j. Silvia Ibarra and Enrique Ibarra intentionally requested increased prices of products sold  
16 to ENSI by Royal and Divine Flavor so commissions would be paid to SVL.

17 Contested

18 Evidence: Exhibit E-mail from Silvia June 15, 2010.

19 Testimony Erick Diaz

20 Testimony Luis Chong

21 Testimony Pedro Batiz

22 Testimony Myrna Vasquez

23 Defendants' Evidence: Testimony of Pedro Batiz

24 k. Silvia Ibarra sent specific names taken from list of ENSI retailer/customers to Divine  
25 Flavor and Royal Flavor, LLC so SVL would be paid commissions on products purchased and paid for  
26 by ENSI.

27 Contested

28 Evidence: Exhibit \_\_\_ E-mail from Silvia Ibarra to Divine Flavor, Royal Flavor

1 Testimony Erick Diaz

2 Testimony Luis Chong

3 Testimony Pedro Batiz

4 Testimony Leslie Orduno

5 Testimony Myrna Vasquez

6 Defendants' Evidence: Testimony of Pedro Batiz

7 **2. FRAUDULENT OMISSION-SILVIA IBARRA**

8 Silvia Ibarra, as a fiduciary, failed to disclose material facts related to the establishment  
9 of SVL Holdings I, LLC. A fraudulent omission under Section 523(a)(2)(A). Silvia was under a duty to  
10 disclose. Her omission was motivated by intent to deceive and for personal gain.

11 a. All facts stated above in item #1 apply here as well.

12 Contested

13 All Defendants' evidence stated in Item #1 applies here as well

14 **3. DEFALCATION AS A FIDUCIARY WITH UNJUSTIFIED RISK OF BREACH**  
15 **OF FIDUCIARY DUTY OR WILLFULLY BLIND OF RISK TO PLAINTIFFS**

16 Silvia Ibarra undertook to create a company to compete with ENSI to commit "defalcation" with  
17 a substantial and unjustified risk that her fiduciary duty would be breached, and Silvia Ibarra  
18 consciously disregarded the risk to ENSI or was willfully blind to the risk.

19 a. Silvia Ibarra, as a Member/Owner of ENSI, had a fiduciary duty to act in good faith  
20 toward Plaintiffs. As a fiduciary, Silvia fraudulently omitted disclosing the creation of SVL; Silvia was  
21 deceptive in her conduct keeping the formation of SVL secret. Silvia was aware of her deception and of  
22 her conduct; Silvia intended to deceive Plaintiffs; Plaintiffs justifiably relied on her actions as a  
23 fiduciary and that she would deal fairly and honestly with them; Plaintiffs were damaged as the result of  
24 her fraudulent omission.

25 Contested

26 b. Silvia Ibarra became 100% owner of SVL when it was created.

27 Not contested.

1 Evidence: Formation documents for SVL and operating agreement showing SVL was  
2 owned 100% by Silvia Ibarra.

3 Admission, Silvia Ibarra, that she is 100% owner of SVL.

4 c. Silvia Ibarra acted with deceit violating her fiduciary duties of full disclosure in diverting  
5 income from ENSI through SVL with the intention of causing damage to Plaintiffs.

6 Contested

7 Evidence: Billing statements from Royal Flavor, LLC and Divine Flavor, LLC.

8 Exhibit \_\_ Emails to Divine Flavor and Royal Flavor

9 d. Silvia Ibarra took ENSI assets for the use of SVL and used them to operate SVL to  
10 generate income which she would receive 100% as owner of SVL.

11 Contested

12 Evidence: Various E-mails showing use of ENSI computers for transactions,

13 Exhibit \_\_ Billing to Divine Flavor and Royal Flavor from ENSI computers

14 Exhibit \_\_ Payroll records of employees of ENSI working for SVL

15 Defendant's Evidence: Actions alleged were done by Enrique Ibarra who had contractual right  
16 to conduct such activities as stated in the Operating Agreement.

17 Defendants' Evidence: Creation of Montebello Farms, LLC by Francisco Lara and Silvia Ibarra  
18 waived any duty not to operate a separate business by the members.

- 19 ■ Plaintiffs: There can be no waiver where the one against whom it is asserted has acted without  
20 full knowledge of the facts. It cannot be presumed, in the absence of such knowledge, that there  
21 was an intention to waive an existing right. (Craig v. White (1921) 187 Cal. 489, 498 [202 P.  
22 648].)

23 Defendants' Evidence: California community property law, Family Code §760, and California separate  
24 property law, Family Law Code §770.

25 **B. SECOND CLAIM Claims alleged against Enrique Ibarra are not dischargeable because**  
26 **the obligations arose from actual fraud and deceit while acting in a conspiracy with Silvia Ibarra**  
27 **while both were fiduciaries to Plaintiffs. Intentional acts, improper and reckless.**

28 1. **ELEMENTS OF THE CLAIM**

1 a. Enrique Ibarra as manager of ENSI acted in bad faith, conspiring with Silvia Ibarra to  
2 create SVL solely to be held in Silvia Ibarra's name, with the intent to deceive Plaintiffs, then used  
3 ENSI assets to conduct business for SVL while having no ownership interest in SVL. Later caused  
4 increased prices to be charged to ENSI by Royal and Divine Flavor, LLC so SVL would receive  
5 commissions on products purchased by ENSI.

6 Contested

7 Evidence: Operating agreement for SVL and ENSI.

8 Evidence: Testimony of Silvia Ibarra

9 Evidence: E-mails by Silvia Ibarra, billings from Divine Flavor and Royal Flavor.

10 Evidence: Billings showing payments of commissions to SVL

11 Testimony of Pedro Batiz

12 Testimony of Erick Diaz

13 Testimony of Luis Chong

14 b. Silvia Ibarra held 100% ownership interest in both SVL and ENSI while Enrique Ibarra  
15 had no ownership interest in either company.

16 Contested

17 Evidence: ENSI and SVL Operating Agreement and initiating documents filed with  
18 Secretary of State.

19 Evidence: Exhibit 1

20 Admissions by Silvia Ibarra

21 c. Silvia Ibarra's 100% ownership in ENSI all came from borrowed funds from Plaintiffs  
22 Luis Chong and Francisco Lara. Silvia never repaid the loans, so no funds for Silvia's 1/3<sup>rd</sup> interest came  
23 from community property.

24 Contested.

25 Evidence: Loans to Silvia Ibarra, SVL operating agreement.

26 d. Enrique Ibarra represented to the bankruptcy court in 2008 that he had no interest in  
27 ENSI, and did not disclose existence of SVL stated he only worked with ENSI and SVL as manager.

28 Contested

1 Evidence: During Enrique Ibarra's bankruptcy, the bankruptcy Trustee's examination  
2 of debtor in 2008, Enrique Ibarra denied any ownership interest in SVL or ENSI.

3 Evidence: Testimony of Luis M. Chong, Francisco Lara, Enrique Ibarra

4 Evidence: ENSI Operating Agreement

5 Evidence: SVL originating documents

6 Evidence: Admission by Silvia Ibarra

7 Evidence: ENSI Operating Agreement, Exhibit B to agreement.

8 Evidence: Judicial notice of California Family Code, §72 "neither husband nor wife  
9 has any interest in the separate property of the other."

10 Evidence: Judicial notice of 11 U.S.C. §541(a)(2), "property of the estate". (1)  
11 Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the  
12 debtor in property as of the commencement of the case. (2) All interests of the debtor and the debtor's  
13 spouse in community property as of the commencement of the case... All community property of the  
14 debtor and the debtor's spouse is subject to administration.

15 Evidence:

16 e. Enrique Ibarra admitted he held no interest in ENSI in 2005 when he filed bankruptcy.  
17 Enrique Ibarra as manager of ENSI had a fiduciary duty to disclose to Plaintiffs his part in the  
18 conspiracy with Silvia Ibarra in the creation of SVL, of which Silvia Ibarra held 100%, with the  
19 intention of diverting income from ENSI although Enrique had no ownership interest in SVL.

20 Contested;

21 Plaintiffs:

22 f. Enrique Ibarra had no ownership interest in ENSI; can make no claim he with a  
23 contractual right to create SVL when he did not become owner; conspired with Silvia Ibarra to create  
24 SVL only to place ownership solely in Silvia Ibarra's name to avoid bankruptcy investigation into his  
25 ownership interests.

26 Contested

27 Evidence: ENSI Operating Agreement, Exhibit B

28 Evidence: SVL originating documents and Operating Agreement

1 Defendant's Evidence: Actions alleged were done by Enrique Ibarra who had contractual right  
2 to conduct such activities as stated in the Operating Agreement.

3 Defendants' Evidence: Creation of Montebello Farms, LLC by Francisco Lara and Silvia Ibarra  
4 waived any duty not to operate a separate business by the members.

5 Defendants' Evidence: California community property law, Family Code §760, and California  
6 separate property law, Family Law Code §770.

7 Plaintiffs: There can be no waiver where the one against whom it is asserted has acted without  
8 full knowledge of the facts. It cannot be presumed, in the absence of such knowledge, that there was an  
9 intention to waive an existing right. (Craig v. White (1921) 187 Cal. 489, 498 [202 P. 648].)

10 **C. THIRD CLAIM Conduct that consciously disregarded or was willfully blind to**  
11 **or such that it carried a substantial and unjustifiable risk or was reckless and improper conduct**  
12 **that it violated the fiduciary responsibilities of Enrique Ibarra.**

13 1. Enrique Ibarra acted, contrary to his fiduciary duties to Plaintiffs, to acquire the other  
14 50% interest in E-Produce knowing that to contract with other 50% owner to do so he would assume  
15 substantial debts that were charged to ENSI.

16 Contested

17 Evidence: Purchase agreement on E-Produce

18 Evidence: E-Produce financial statements

19 Evidence: ENSI Tax returns

20 Testimony: Enrique Ibarra

21 Testimony: Luis Chong, Francisco Lara,

22 Defendants' Evidence: Actions alleged were done by Enrique Ibarra who had contractual right  
23 to conduct such activities as stated in the Operating Agreement.

24 Defendants' Evidence: Business Judgment Rule

25 Defendants' Evidence: Claim for breach of fiduciary is time-barred under CCP §338.

26 **D. FOURTH CLAIM a) Intentional interference with prospective economic**  
27 **advantage; b) misappropriation of trade secrets c) fraud & deceit as fiduciary**

28 1. Elements of claim:

1 a. Plaintiff ENSI, a broker of products, “purchases” and resells products with a  
2 percentage markup to generate a profit. From 2005 to 2012 Plaintiffs expended considerable sums to  
3 establish relationships with “Producers” (wholesalers) from whom they purchased products and to  
4 establish relationships with “Customers” (retailers) to whom ENSI sold products, later sold by retailers  
5 to consumers.

6 Not contested

7 b. Two Producer/wholesaler contracts generated by ENSI, first with Royal Flavor.  
8 LLC in 2007 and later with Divine Flavor, LLC in 2009, were interfered with by SVL and Silvia Ibarra.  
9 Silvia Ibarra used SVL as a commission agent to broker products from Royal and Divine Flavor, to  
10 customer/retailers whose names existed on ENSI customer lists. (Royal and Divine were wholesalers  
11 that did not purchase from ENSI but only sold products to ENSI).

12 Contested

13 c. Relationships with several Customers (retailers) were interfered with by SVL  
14 brokering products to those retailers who were existing customers on ENSI customer lists.

15 Contested

16 d. SVL acted only as an intermediary; SVL did not “purchase” products for resale  
17 but acted only as a middleman, requiring no capital resources, but yet receiving a commission from each  
18 sale, in some instances using ENSI capital to purchase products.

19 Contested

20 e. Enrique Ibarra, acting as manager for SVL, secretly caused commissions to be  
21 paid to him and SVL by producers for products purchased by ENSI which ENSI then sold to retailers.

22 Contested

23 f. ENSI ultimately lost income and lost the relationship with the two  
24 Producers/wholesalers and Customers/retailers due to the SVL/Enrique interference.

25 Contested

26 g. Silvia Ibarra caused prices of products sold to ENSI to be increased above normal  
27 pricing so that SVL would receive a commission on products purchased by ENSI as well commission on  
28 products sold to retailers by the Royal and Divine Flavor.

1 h. Unknown and undisclosed to Plaintiffs, SVL charged and received thousands of  
2 dollars in commissions on products purchased for resale by ENSI which ENSI sold to retailers.

3 Contested

4 Plaintiffs: Enrique Ibarra was hired and paid as manager by ENSI to develop  
5 business relationships with wholesalers and retailers. Enrique Ibarra had a fiduciary responsibility to  
6 perform the services to ENSI in good faith, in a manner that would be in the best interests of the  
7 Company and its Members and with such care, including reasonable inquiry, as an ordinarily prudent  
8 person in a like position would use under similar circumstances (Operating Agreement).

9 Contested

10 i. Enrique Ibarra's secretly conspired with Silvia Ibarra to undermine the  
11 relationships ENSI had with producers, a violation of his fiduciary duty to act in good faith toward ENSI  
12 or its Members.

13 Contested

14 j. From 2006 to 2012 Enrique Ibarra did not acquire any other business interest in  
15 which he held ownership. Enrique only acted as manager in operating SVL Holdings I, LLC. He was  
16 paid a salary by ENSI and SVL for his services as a manager.

17 Contested

18 k. Silvia held 100% ownership in SVL Holdings I, LLC.

19 Contested

20 l. SVL received \$469,363.01 in gross commissions from Royal Flavor and Divine  
21 Flavor, LLC through SVL without justification in violation of fiduciary duties owed by Silvia and  
22 Enrique Ibarra.

23 Contested

24 m. Malice is shown in the deliberate hiding of the creation of SVL by a fiduciary,  
25 Silvia, who did not have a protected right to deliberately create a competing company to intentionally  
26 divert income.

27 Contested

1 n. Silvia held a 100% interest in SVL as her “sole and separate property” similar as  
2 she did for ENSI. As such Enrique had no rights or interest in SVL except to receive a salary as  
3 manager, not as owner of SVL. Silvia had no basis which allowed her to violate her duty to disclose to  
4 Plaintiffs. In failing to disclose, Silvia was fully aware her intended actions and how it would cause  
5 harm to Plaintiffs by diverting ENSI income to a SVL, a company she created.

6 Contested

7 o. Silvia Ibarra in fact benefited, she received guaranteed payments of \$92,776.05 in  
8 2008 from SVL alone while she was receiving \$75,000.00 guaranteed income from ENSI as well.

9 Not contested.

10 Evidence: Plaintiffs: ENSI Operating Agreement with Exhibit B

11 Evidence: SVL originating documents and Operating Agreement

12 Testimony of Luis M. Chong, Francisco Lara

13 Testimony of Luis Batiz

14 Testimony Pedro Batiz

15 List of customers for ENSI in 2008

16 List of customers for SEMCO

17 List of billings from Royal and Divine Flavor LLC

18 E-mail from Silvia Ibarra requesting that commission for SVL be paid on  
19 sales to ENSI and on sales to existing retailer customers of ENSI as well.

20 Payment of guaranteed payments to Silvia Ibarra

21 Defendants’ Evidence: Actions alleged were done by Enrique Ibarra who had contractual right  
22 to conduct such activities as stated in the Operating Agreement.

23 **E. FIFTH CLAIM: UNFAIR BUSINESS PRACTICES**

24 Silvia Ibarra and Enrique Ibarra, fiduciaries to Plaintiffs and trustees of ENSI Assets,  
25 violated their duties under California Law by the commission of fraud, deceit, failure to disclose while  
26 acting in a fiduciary capacity and by unjust enrichment.

27 Contested

1 a. Together with Enrique Ibarra, Silvia Ibarra conspired to and intentionally  
2 disrupted the business relationship of ENSI with Royal Flavor and Divine Flavor through secret  
3 communications with owners and agents of Royal Flavor and Divine Flavor.

4 Contested

5 b. Silvia Ibarra diverted income from ENSI to SVL for her personal benefit, a  
6 violation of her fiduciary duty as trustee to Plaintiffs under California Law.

7 Contested

8 c. Silvia Ibarra committed fraud and deceit in violation of her fiduciary duties by  
9 withholding information, deceptive actions and by deliberate taking of ENSI customers.

10 Contested

11 d. Silvia Ibarra, secretly used SVL to charge commissions on sales of products to  
12 ENSI.

13 Contested

14 e. Silvia Ibarra deceived Plaintiffs by making a secret arrangement for pricing of  
15 products purchased adding on commissions to the cost of the products purchased by ENSI.

16 Contested

17 **1. Elements of Claim:**

18 a. Plaintiffs: Sustained losses of over \$469,363.01 (\$356,000 claimed by Enrique)  
19 by diversion of sales from ENSI by deceitful and intentional conduct of Defendants through  
20 misrepresentations and deceit of Enrique Ibarra and Silvia Ibarra, and by conspiring to create SVL to  
21 intentionally divert income from ENSI without disclosure to Plaintiffs.

22 b. Enrique Ibarra contends he had a contractual right by the ENSI Operating  
23 Agreement to create another company for himself. However, facts show Enrique did not actually create  
24 another company as owner for himself but rather created it for Silvia Ibarra who had a fiduciary  
25 obligation to Plaintiffs of disclosure and to act fairly in operating ENSI.

26 Contested

1 c. SVL formation documents show Enrique retained no ownership rights in SVL.  
2 Enrique Ibarra received a salary and commissions, but not profits from SVL. Silvia Ibarra received  
3 100% of the profits from SVL.

4 Contested

5 d. **Causal connection between Defendants' conduct and losses**

6 PLAINTIFFS:

7 i. Defendants diverted income derived from Royal Flavor and Divine Flavor  
8 LLC. Losses sustained by ENSI were the direct result of the deception and the diversion of income.

9 ii. Silvia and Enrique's fraudulent actions were violative of California  
10 Business and Professions Code §17200.

11 e. Also, violation of fiduciary duties of fair and full disclosure with intent to cause  
12 the damages raises question of whether conduct was willfulness and with malice and non-  
13 dischargeability of the obligation under section 11 U.S.C., §523(a)(6).

14 i. Defendants intended to inflict injury on Plaintiffs by secretly by  
15 withholding information and secretly taking profits Defendants knew would certainly result in damages  
16 to Plaintiffs. To meet the willful injury requirement, plaintiff must show either that the debtor had a  
17 subjective motive to inflict the injury or that the debtor believed that injury was substantially certain to  
18 occur as a result of his conduct.

19 ii. A "malicious injury" under Section 523(a)(6) involves: a wrongful act;  
20 done intentionally; which necessarily causes injury; and is done without just cause or excuse.

21 iii. "Maliciousness" may be implied from circumstances surrounding the  
22 debtor's conduct, even without proof that the debtor acted with spite, hatred or ill will toward the  
23 victim.

24 PLAINTIFFS:

25 iv. Willful conduct: Enrique is an experienced businessman  
26 knowledgeable of how ENSI business was conducted. Knowing how business was conducted he knew  
27 commissions would be received. He knew if commissions were not paid to ENSI there would be a loss  
28 and certain damages to ENSI.

1 Contested

2 v. Malice is shown by the fact that although Enrique could have created a  
3 business for himself, instead he created SVL for Silvia making her 100% owner to avoid discovery at a  
4 time he was involved in a bankruptcy proceeding. The intent was to avoid inquiry of the bankruptcy  
5 trustee into SVL. The avoidance of disclosure to the bankruptcy trustee is not a just cause or excuse for  
6 what he did. Whether he did so with out spite, hatred or ill will, the circumstances show his intent to  
7 cause harm by diversion of commissions from ENSI because if he didn't, he was limited to only  
8 receiving a salary which was a smaller amount than the amounts paid in commissions to ENSI if ENSI  
9 retained the business interest.

10 Contested

11 Defendant's Evidence: Actions alleged were done by Enrique Ibarra who had contractual right  
12 to conduct such activities as stated in the Operating Agreement.

13 Defendants' Evidence: Creation of Montebello Farms, LLC by Francisco Lara and Silvia Ibarra  
14 waived any duty not to operate a separate business by the members.

15 Defendants' Evidence: California community property law, Family Code §760, and California  
16 separate property law, Family Law Code §770.

17 Plaintiffs: There can be no waiver where the one against whom it is asserted has acted without  
18 full knowledge of the facts. It cannot be presumed, in the absence of such knowledge, that there was an  
19 intention to waive an existing right. (Craig v. White (1921) 187 Cal. 489, 498 [202 P. 648].)

20 **F. SIXTH CLAIM; Silvia Ibarra, for Fraud, deceit and embezzlement, or**  
21 **defalcation while acting in a fiduciary capacity.**

22 **1. Elements of Claim:**

23 a. From 2006 to 2012, Silvia Ibarra engaged in fraud, deceit, embezzlement and  
24 defalcation of ENSI funds and assets while in Fiduciary capacity through various transactions. Funds  
25 taken by Silvia Ibarra, possession of which were entrusted to her, were ENSI funds. Silvia Ibarra  
26 appropriated funds for a use other than the intended use for which the property was entrusted to her. The  
27 circumstances indicate fraud.

28 Contested

1 PLAINTIFF:

2 i. \$23,490.00 taken as a Loan by Silvia Ibarra, not authorized nor repaid to ENSI.

3 Silvia Ibarra made a later journal entry on December 31, 2008 showing she received a dividend to  
4 allegedly pay back the loan she had given herself. At the time of the entry of a dividend (December 31,  
5 2008), Silvia's capital account was negative due to extensive business losses sustained by ENSI in 2008.  
6 No funds existed in her capital account to pay her a dividend; No profit was generated in 2008 from  
7 which a dividend could be paid.

8 Contested

9 Evidence: ENSI Capital account ledger for Silvia Ibarra showing a negative balance  
10 of -\$39,882.55 on 12/31/2008.

11 ii. \$4,716.62 unauthorized loan to Silvia Ibarra for taxes; 2009, never repaid.

12 iii. \$9,116.00, credit to a vendor, Texas Natural Meats; Silvia Ibarra fraudulently  
13 credited, without authorization, the amount to herself as payment to ENSI for loans she took for herself.

14 Evidence: General ledger for ENSI; transaction journal for ENSI

15 iv. \$5,117.67 credited as reimbursement of Expenses, a paprika inventory adjustment  
16 fraudulently credited, without authorization, on ENSI books as payment by Silvia for loans she took for  
17 herself.

18 Evidence: General ledger for ENSI; transaction journal for ENSI

19 v. \$47,414.46, an alleged bonus, not justified or approved by Plaintiffs; paid with  
20 false invoices; false computer entries and false computer entries to cover up the transaction. Bonus claim  
21 by Silvia based on statement she was owed a salary for 6 months of service to ENSI in 2005. ENSI  
22 began operation on 11-1-2005 (tax return) and operated only for 2 months in 2005. Silvia did not work  
23 at ENSI for 6 months in 2005.

24 Evidence: Tax return for ENSI- year "2005"

25 Evidence: false computer entries, false invoices

26 ledger entries into ENSI computer records,

27 copies of ledgers showing entries

28 Testimony of Erick Diaz

1 Testimony of Silvia Ibarra

2 vi. \$12,985.00 taken as a loan by Silvia Ibarra on 4/11/07. Silvia made various false  
3 entries giving her credit as having paid the loan.

4 Defendants' Evidence: Loan taken by Silvia Ibarra for \$3,800 on 4/11/07 and Texas  
5 Natural Meat adjustment for \$9,116.20, and journal entry adjustment for \$68.80.

6 Evidence: ENSI general ledger

7 vii. On 1/31/2006 Silvia Ibarra made an entry into ENSI general ledger for the  
8 amount of \$42,000.00 stating she made a loan to ENSI in that amount. The \$42,000.00 amount was  
9 actually a loan from Rafael Lara to ENSI, by wire transfer on 1/12/2006 but Silvia Ibarra made a  
10 computer ledger entry converting the \$42,000.00 on 1/31/2006 as a loan from her and later with another  
11 ledger entry converted the same as capital contributed by Silvia Ibarra.

12 Contested

13 Evidence: ENSI general ledger for 2006

14 Evidence: Wire transfer from Rafael Lara payable to ENSI

15 Evidence: ENSI record of "Aportaciones" prepared by Silvia Ibarra

16 viii. A \$43,000.00 transaction dated 6/30/2006, prior to Francisco Lara and Luis  
17 Chong acquiring an interest in ENSI, was entered into the ENSI general ledger as a "loan" to ENSI from  
18 Silvia Ibarra. Funds totaling \$43,000.00 were never deposited into ENSI bank accounts on that date by  
19 Silvia Ibarra to accurately represent the transaction. The amount was later deemed paid by Silvia and  
20 converted to capital when Silvia created the \$47,414.46 transaction with Linda's Seafoods on 12-31-  
21 2006 allegedly paying back the \$43,000.00 loan she never made.

22 Contested.

23 Evidence: ENSI general ledger

24 ix. Silvia Ibarra borrowed \$24,000.00 from Francisco Lara as part of her investment  
25 in ENSI and never repaid that \$24,000.00 to Francisco Lara.

26 Not contested

27 Evidence: Admission Silvia Ibarra  
28

1 x. Silvia Ibarra borrowed \$57,000.00 from Luis Chong as part of her investment in  
2 ENSI and never repaid that \$57,000.00 to Luis Chong.

3 Not contested

4 Evidence: Bankruptcy filing- Silvia Ibarra schedule of debts

5 Evidence: Admission Silvia Ibarra

6 xi. Silvia Ibarra entered the foregoing false transaction in computer ledgers of ENSI  
7 which fraud Plaintiffs did not discover until after Silvia Ibarra and Enrique Ibarra stopped working, upon  
8 their resignation from ENSI in 2012 and Plaintiffs had access to internal financial computer records of  
9 ENSI.

10 Defendants' Evidence: Plaintiffs' claim for fraud, deceit, and embezzlement, or defalcation  
11 while acting in a fiduciary capacity was time-barred under CCP §338.

12 Plaintiffs: "the statute of limitations does not begin to run on any part of a plaintiff's claim until  
13 the 'last overt act' pursuant to the conspiracy has been completed." Wyatt v. Union Mortgage Co., 24  
14 Cal.3d 773, 786, 598 P.2d 45, 53, 157 Cal.Rptr. 392, 400 (1979)

15 **G. SEVENTH CLAIM- Enrique Ibarra, Fraud, deceit and embezzlement, or**  
16 **defalcation while acting in a fiduciary capacity.**

17 **1. Elements of Claim**

18 a. Enrique Ibarra received a false credit of \$5,117.57 and received checks in the total  
19 of \$6,500.00 without repayment of the amount to ENSI.

20 Contested

21 b. Enrique was credited with a false credit of \$5,117.57. He now claims without any  
22 proof to support his contention that the amount was a bonus from a customer. What he fails to say is that  
23 if a bonus was received it belonged to ENSI since ENSI paid for the product. There is no contractual  
24 basis for payment of a commission to Enrique for products paid for by ENSI. Enrique was being paid a  
25 salary for his services.

26 Contested

27 c. Enrique received checks totaling \$6,500.00 and now claims they were payroll  
28 checks. The ledger attached to his explanation show other entries for payroll marked appropriately as

1 payroll. The handwritten entry next to the items on the ledger, are made after the fact by Enrique. If in  
2 fact the checks were for payroll an indication on the check would have been adequate.

3 Contested

4 Evidence: Copies of the general ledger showing entries

5 Evidence: Copies of checks endorsed and deposited by Enrique into personal acct.

6 Evidence: State of California Check from employment development dept paid to  
7 Enrique Ibarra for the period he received the alleged payroll checks. Apparently Enrique made claim for  
8 the same period to the employment development department of California because he did not work  
9 during the period. (Title 22, California Code of Regulations, Section 1253(c)-1(b))

10 Testimony: Erick Diaz

11 Evidence: State of California check

12 d. Embezzlement/defalcation, ENSI paid \$9,198.95 personal expenses and ENSI  
13 paid \$1,248.00 in Enrique violations

14 Evidence: Copies of checks and statements for each payment

15 Defendants' Evidence: Unsure of Plaintiffs' claim for damages for personal expenses;  
16 claim is time-barred and/or approved by Plaintiffs.

17 e. Silvia Ibarra and Enrique Ibarra entered the foregoing false transaction in  
18 computer ledgers of ENSI which fraud Plaintiffs did not discover until after Silvia Ibarra and Enrique  
19 Ibarra stopped working, upon their resignation from ENSI in 2012 and Plaintiffs had access to internal  
20 financial computer records of ENSI.

21 Defendants' Evidence: Plaintiffs' claim for fraud, deceit, and embezzlement, or defalcation while acting  
22 in a fiduciary capacity was time-barred under CCP §338.

23 Plaintiffs: "the statute of limitations does not begin to run on any part of a plaintiff's claim until  
24 the 'last overt act' pursuant to the conspiracy has been completed." Wyatt v. Union Mortgage Co., 24  
25 Cal.3d 773, 786, 598 P.2d 45, 53, 157 Cal.Rptr. 392, 400 (1979)

26 **H. EIGHTH CLAIM - Enrique Ibarra - UNJUSTIFIED RISK OF BREACH OF**  
27 **FIDUCIARY DUTY OR WILLFULLY BLIND OF RISK TO PLAINTIFFS**

1 a. Enrique Ibarra, willfully and without justification, in breach of his fiduciary duty and/or  
2 willfully blind to the risk to Plaintiffs assuming debt owing by E-Produce knowing that ENSI would  
3 have to absorb the entire loss. Enrique entered into an agreement without the knowledge or consent of  
4 plaintiffs, falsely denied having entered into the agreement, and in violation of this fiduciary duties  
5 committed fraud, deceit, gross negligence, reckless or intentional misconduct and failure to disclose  
6 information to Plaintiffs.

7 Contested:

8 Evidence: Written agreement signed by Enrique Ibarra on behalf of ENSI assuming  
9 all debt of the E-Produce failed business.

10 Evidence: Financial statements for E-Produce and ENSI showing losses assumed by  
11 ENSI.

12 b. Enrique Ibarra withheld information from Plaintiffs and failed to disclose the assumption  
13 of E-Produce debt. To this date Enrique denies having entered into an agreement to have ENSI assume  
14 all the debt of E-Produce. Consideration for the agreement was paid by ENSI by dismissing the pending  
15 action against the other owner of E-Produce and payment of a settlement amount to one party to the  
16 action to dismiss his claim.

17 Defendants' Evidence: Plaintiffs' claim for breach of fiduciary duty for assuming the debt of E-  
18 Produce is time-barred under CCP §338.

19 No consideration paid for 50% interest in E-Produce.

20 Plaintiffs: "the statute of limitations does not begin to run on any part of a plaintiff's claim until  
21 the 'last overt act' pursuant to the conspiracy has been completed." Wyatt v. Union Mortgage Co., 24  
22 Cal.3d 773, 786, 598 P.2d 45, 53, 157 Cal.Rptr. 392, 400 (1979)

23 **III. DAMAGES**

24 **A.** By reason of Defendants' actions, Plaintiffs have been damaged in the following sums:  
25 SUMMARY OF LOSSES

26 Contested

- 27 1. Loss of commissions from Royal Flavor LLC and Divine Flavor, LLC \$469,363.01  
28 2. Withheld commission retained by Divine Flavor, LLC 32,000.00

1	3.	Guaranteed payment to Silvia Ibarra from SVL	92,776.00
2	4.	Loan embezzlement/defalcation by Silvia Ibarra	23,490.00
3	5.	Loan embezzlement/defalcation by Silvia Ibarra	12,985.00
4	6.	False accounting entry to cover-up embezzlement	9,116.00
5	7.	Defalcation/embezzlement from Linda's Seafood, Inc. transaction	47,414.46
6	8.	False credit to Enrique Ibarra	5,117.57
7	9.	Company checks to Enrique Ibarra deposited to personal account	6,500.00
8	10.	Enrique embezzlement/defalcation payment of fines/ personal expenses	10,446.95
9		Total	\$ 709,208.99

11 EVIDENCE:

- 12 Testimony of Luis M. Chong
- 13 Deposition testimony of Pedro Batiz
- 14 Testimony of Enrique Ibarra
- 15 Testimony of Silvia Ibarra
- 16 Business records of ENSI

18 IV. DEFENDANTS' ISSUE STATEMENTS

19 **Defendants' Issue Statements Regarding Claim 1**

- 20 1. Whether Silvia Ibarra's interest in SVL is a community property interest.
- 21 2. Whether or not Enrique Ibarra had Plaintiffs' consent based on the authority given to the  
 22 Manager in the ENSI Operating Agreement.
- 23 3. Whether Enrique Ibarra's contract provision that provides that, "The Manager shall not be  
 24 obligated to present any investment opportunity or prospective economic advantage to the  
 25 Company, even if the opportunity is of a character that if presented to the Company, could be  
 26 taken by the Company," applies to his wife, Silvia Ibarra.
- 27 4. Whether having a copy of SVL's accounting software on an ENSI computer amounts to a  
 28 material use of ENSI's assets.

1 5. Whether Plaintiffs waived provision in the Operating Agreement not allowing ownership in  
2 competing companies by forming and operating Montebello Farms, LLC.

3

4 **Plaintiffs' statements on Defendants' issue statements.**

5 1. Silvia Ibarra held her 100% interest in SVL as separate property.

6 2. Silvia Ibarra did not have a contractual right to create SVL in competition to ENSI and she  
7 violated her fiduciary duty of disclosure and fair dealing by conspiring with Enrique Ibarra..

8 3. The provision that Manager is not obligated to present and investment to the company is  
9 irrelevant since it was Silvia Ibarra who owned SVL 100%.

10 4. SVL utilized computer equipment, office supplies, payroll to employees paid by ENSI and  
11 charged commissions on products purchased and paid for by ENSI.

12 5. Montebello Farms was not created until 2011, 4 years after the creation of SVL. The creation of  
13 Montebello Farms was disclosed to Francisco Lara unlike the failure to disclose the creation of SVL.  
14 There can be no waiver of past fraudulent acts by a subsequent act without a written or acknowledged  
15 waiver.

16 **Defendants' Issue Statements Regarding Claim 2**

17 1. Whether Enrique Ibarra's 2005 bankruptcy petition is relevant to this action.

18 2. Whether Silvia Ibarra's interest in SVL is a community property interest.

19 3. Whether or not Enrique Ibarra had Plaintiffs' consent based on the authority given to the  
20 Manager in the ENSI Operating Agreement.

21 4. Whether Enrique Ibarra's contract provision that provides that, "The Manager shall not be  
22 obligated to present any investment opportunity or prospective economic advantage to the  
23 Company, even if the opportunity is of a character that if presented to the Company, could be  
24 taken by the Company," applies to his wife, Silvia Ibarra.

25 5. Whether having a copy of SVL's accounting software on an ENSI computer amounts to a  
26 material use of ENSI's assets.

27 **Plaintiffs' opposition statement on Defendants' issue statements:**

28

1. Enrique Ibarra's 2005 bankruptcy was the basis for Silvia Ibarra holding her interest in ENSI as her sole and separate property. Reason, to avoid inquiry by the bankruptcy court.
2. Silvia Ibarra in a written statement to the purchase of an interest in ENSI was specific and direct that she held it as her separate property. Enrique acknowledged that statement and agreed she held the interest as her separate property.
3. Enrique had no authority or consent except as to a business interest in which he held the ownership.
4. The contract provision speaks for itself and binds only the "Manager". See California statutory and Constitutional law relating to a wife's separate property.
5. Defendants used employees paid by ENSI, use computer equipment, took ENSI customers lists, used ENSI capital to purchase products and then charged a commission paid to SVL.

### **Defendants' Issue Statements Regarding Claim 3**

1. Whether or not Plaintiffs' claim for breach of fiduciary duty to acquire an interest in E-Produce was time-barred under CCP §338.

Plaintiff:

2. Enrique Ibarra failed to disclose the secret arrangement to acquire the 50% interest in E-Produce which he acknowledges was objected to by Plaintiffs. To date Enrique denies entering into the agreement.

### **Defendants' Issue Statements Regarding Claim 4**

1. Whether or not Enrique Ibarra had Plaintiffs' consent based on the authority given to the Manager in the ENSI Operating Agreement.
2. Whether Enrique Ibarra's contract provision that provides that, "The Manager shall not be obligated to present any investment opportunity or prospective economic advantage to the Company, even if the opportunity is of a character that if presented to the Company, could be taken by the Company," applies to his wife, Silvia Ibarra.
3. What is the definition of a "customer" for purposes of SVL's customer list.

1 Plaintiff opposition

- 2 1. Enrique Ibarra was bound to act in good faith and deal fairly with Plaintiffs. There was no waiver  
3 of that obligation. Enrique was obligated to make full disclosure and failed to do so.
- 4 2. Silvia Ibarra is not intended by the language of the contract to have a right to operate a company  
5 in competition with ENSI. She had a duty of fair disclosure
- 6 3. Silvia Ibarra in a written statement to the purchase of an interest in ENSI was specific and direct  
7 that she held it as her separate property. Enrique acknowledged that statement and agreed she  
8 held the interest as her separate property.
- 9 4. Enrique had no authority or consent except as to a business interest in which he held the  
10 ownership.
- 11 5. The contract provision speaks for itself and binds only the "Manager". See California statutory  
12 and Constitutional law relating to a wife's separate property.
- 13 6. Defendants used employees paid by ENSI, used computer equipment, took ENSI customers lists,  
14 used ENSI capital to purchase products and then charged a commission paid to SVL.

15  
16 **Defendants' Issue Statements Regarding Claim 5**

- 17 1. Whether Silvia Ibarra's interest in SVL is a community property interest.
- 18 2. Whether or not Enrique Ibarra had Plaintiffs' consent based on the authority given to the  
19 Manager in the ENSI Operating Agreement.
- 20 3. Whether Enrique Ibarra's contract provision that provides that, "The Manager shall not be  
21 obligated to present any investment opportunity or prospective economic advantage to the  
22 Company, even if the opportunity is of a character that if presented to the Company, could be  
23 taken by the Company," applies to his wife, Silvia Ibarra.

24 Plaintiffs' opposition:

- 25 1. The creation of SVL was fraudulent and deceitful and a violation of her duty of full and fair  
26 disclosure.
- 27 2. Silvia Ibarra had no consent or contractual authority to create a competing company without full  
28 and fair disclosure

1 3. The contractual agreement does not apply to Silvia Ibarra who held her ownership interest in  
2 ENSI as her sole and separate property. No right may be derived by Enrique except as to himself.  
3

4 **Defendants' Issue Statements Regarding Claim 6**

- 5 1. Whether or not Plaintiffs' claim for fraud, deceit, and embezzlement, or defalcation while acting  
6 in a fiduciary capacity was time-barred under CCP §338.
- 7 2. Plaintiffs: "the statute of limitations does not begin to run on any part of a plaintiff's claim until  
8 the 'last overt act' pursuant to the conspiracy has been completed." Wyatt v. Union Mortgage  
9 Co., 24 Cal.3d 773, 786, 598 P.2d 45, 53, 157 Cal.Rptr. 392, 400 (1979)

10

11 **Defendants' Issue Statements Regarding Claim 7**

- 12 1. Whether or not Plaintiffs' claim for fraud, deceit, and embezzlement, or defalcation while acting  
13 in a fiduciary capacity was time-barred under CCP §338.
- 14 2. Plaintiffs: "the statute of limitations does not begin to run on any part of a plaintiff's claim until  
15 the 'last overt act' pursuant to the conspiracy has been completed." Wyatt v. Union Mortgage Co., 24  
16 Cal.3d 773, 786, 598 P.2d 45, 53, 157 Cal.Rptr. 392, 400 (1979)

17

18 **Defendants' Issue Statements Regarding Claim 8**

- 19 1. Whether or not Plaintiffs' claim for breach of fiduciary duty for assuming the debt of E-Produce  
20 was time-barred under CCP §338.
- 21 2. Whether or not consideration was paid for the 50% interest in E-Produce.
- 22 3. Plaintiffs: "the statute of limitations does not begin to run on any part of a plaintiff's claim until  
23 the 'last overt act' pursuant to the conspiracy has been completed." Wyatt v. Union Mortgage  
24 Co., 24 Cal.3d 773, 786, 598 P.2d 45, 53, 157 Cal.Rptr. 392, 400 (1979)

25 4. Consideration paid was assumption of all liabilities.

26 ///  
27 ///  
28 ///

1           **V.      AFFIRMATIVE DEFENSES**

2           1.      Failure to mitigate: DEFENDANTS are informed and believe and thereon allege that as  
3 to each purported cause of action, PLAINTIFFS have failed to take affirmative steps to mitigate  
4 damages. . . .

5           2.      Excuse: As to each purported cause of action, PLAINTIFFS have expressly and  
6 impliedly, by operation of law, excused DEFENDANTS from any and all obligations under any  
7 agreement or facts at issue herein.

8           3.      Estoppel: PLAINTIFFS are estopped from asserting the allegations contained in each and  
9 every alleged cause of action in this pleading being responded to herein by reason of the acts, omissions,  
10 representations, and courses of conduct of the PLAINTIFFS and their agents, upon which  
11 DEFENDANTS relied to their prejudice and detriment.

12           4.      Unclean hands:      PLAINTIFFS are barred from seeking the relief prayed for in the  
13 pleading being responded to herein from DEFENDANTS because the PLAINTIFFS do not come into  
14 court with clean hands and the PLAINTIFFS are guilty of wrongful conduct in connection with the  
15 transaction or subject matter as described in the pleadings being responded to herein.

16           5.      Waiver: PLAINTIFFS have expressly and impliedly waived all claims arising from the  
17 allegations of its pleading being responded to herein and from each and every alleged cause of action  
18 contained therein.

19           6.      No damages: DEFENDANTS allege that PLAINTIFFS have not sustained any damages  
20 and therefore its causes of action are barred.

21           7.      Bar statute of limitations: DEFENDANTS allege that the action is barred by the  
22 provisions of Section 339 of the Code of Civil Procedure.

23           8.      Ratification: PLAINTIFFS confirmed all the acts and all the accounting prepared by  
24 DEFENDANTS from the inception of the company until their departure in December 2011. The  
25 ratification is equivalent to a previous authorization and relates back to the time when the act ratified  
26 was done.

27      ///

28      ///

**Plaintiffs' objection to Defendants' affirmative defenses.**

All of Defendants asserted affirmative defenses fail to meet the basic pleading requirements of Federal Rules of Civil procedure §8(c). Affirmative defenses are required to raise matters extraneous to the plaintiff's prima facie case. Where affirmative defenses fail to meet the basic requirements, these defenses may be excluded from the definition of affirmative defense in Fed. R. Civ. P. 8(c) and will be stricken as impertinent.

Defendants' affirmative defenses should be stricken as legally insufficient. They recite "no more than bare-bones conclusory allegations. Courts can grant a motion to strike an affirmative defense under Rule 12(f) upon a finding that (1) there was no question of fact or law that might allow the challenged defense to succeed; (2) under no set of circumstances could the defense succeed, regardless of what evidence could be marshaled to support it; and (3) prejudice would result from the defense remaining in the case. Thus affirmative defenses of estoppel, laches, unclean hands and pari delicto are mere conclusory legal statements wholly devoid of any supporting factual content.

Contested

**VI. CLAIMS FOR RELIEF ON CROSS-COMPLAINT**

**A. FIRST CLAIM: Wrongful Discharge/Termination**

**1. ISSUES TO BE DETERMINED**

1. Were Enrique Ibarra and Silvia Ibarra employed by ENSI?
2. Were Enrique Ibarra and Silvia Ibarra subjected to working conditions that violated public policy, when employer Miguel Chong threatened their lives to get Enrique to engage in illegal business activities and also threatened the kidnapping of their son?
3. Did Miguel Chong intentionally create or knowingly permit these working conditions?
4. Were these working conditions so intolerable that a reasonable person in Enrique Ibarra's and Silvia Ibarra's position would have had no reasonable alternative except to resign?
5. Did Enrique resign because of these working conditions?
6. Was Silvia fired because of these working conditions?
7. Were the working conditions a substantial factor in causing harm to Enrique Ibarra and Silvia Ibarra?

1 8. What are Enrique and and Silvia Ibarra's damages? [medical expenses \$4,867.85]  
2 [physical pain/mental suffering: \$500,000]

3 **PLAINTIFFS CONTENTIONS:**

4 1. Enrique was employed by contract subject to its terms including discharge for violation  
5 of his duties. Silvia was a member of ENSI and not officially an employee. She had no contractual right  
6 to be an employee or to receive employee compensation. The Operating agreement prohibited payment  
7 of a salary to a member..

8 2. Working conditions were created by Enrique Ibarra who had sole and exclusive  
9 contractual rights to operate ENSI.

10 3. Miguel Chong was not an employer, rather an owner of a 1/3<sup>rd</sup> interest subject to the  
11 management of operations by Enrique. ENSI is the only employer. If ENSI is liable to Cross-  
12 complainants, Silvia Ibarra is liable to the extent of her 1/3<sup>rd</sup> interest.

13 4. The resignation of Enrique and Silvia were voluntary with full knowledge of the working  
14 conditions created by Enrique Ibarra who had full authority to control all operations.

15 5. Silvia and Enrique committed numerous fraudulent and deceitful acts for which their  
16 employment was terminated by their voluntary resignation in the face of legal action for their fraud.

17 6. Enrique resigned voluntarily knowing of the false and fraudulent actions he committed.

18 7. Working conditions were created by Silvia and Enrique Ibarra by their own actions.

19 8. Enrique and Silvia had no damages. Medical expenses were due to existing medical  
20 conditions not work related.

21 9. All defenses stated in the answer to the Cross-Complaint are equally pleaded here.

22 Evidence: Application for Life Insurance by Enrique Ibarra relating all existing illness and  
23 medical conditions.

24 Evidence: Resignation of Silvia and Enrique Ibarra

25 **B. SECOND CLAIM: Intentional Infliction of Emotional Distress**

26 **1. ELEMENTS OF CLAIM**

27 Enrique and Silvia Ibarra claim that Miguel Chong's conduct caused them to suffer severe  
28 emotional distress. To establish this claim, Enrique and Silvia Ibarra must prove all of the following:

1. That Miguel Chong's conduct was outrageous;
2. That Miguel Chong intended to cause Enrique and Silvia Ibarra emotional distress;
3. That Enrique and Silvia Ibarra suffered severe emotional distress; and
4. That Miguel Chong's conduct was a substantial factor in causing Enrique and Silvia Ibarra's severe emotional distress.

**PLAINTIFFS' CONTENTIONS:**

1. Defendants committed various fraudulent acts while acting as fiduciaries with a duty to full and fair disclosure.
2. Defendants admitted Miguel Chong committed no wrong by their own admissions.
3. Enrique and Silvia suffered no emotional distress caused by Plaintiffs, rather it was caused by their own actions
4. Enrique and Silvia caused their own problems and any reaction was due to their own guilt due to their fraudulent and violation of their fiduciary duties.
5. All defenses stated in the answer to the Cross-Complaint are equally pleaded here.

**C. THIRD CLAIM: Negligent Infliction of Emotional Distress**

**1. ELEMENTS OF CLAIM**

Enrique and Silvia Ibarra claims that Miguel Chong's conduct caused them to suffer severe emotional distress. To establish this claim, Enrique and Silvia Ibarra must prove all of the following:

1. That Miguel Chong's conduct was outrageous;
2. That Miguel Chong intended to cause Enrique and Silvia Ibarra emotional distress;
3. That Enrique and Silvia Ibarra suffered severe emotional distress; and
4. That Miguel Chong's conduct was a substantial factor in causing Enrique and Silvia Ibarra's severe emotional distress.

**Plaintiffs: Same defenses as state above.**

**VII. DAMAGES**

- A. By reason of Plaintiffs' actions, Defendants have been damaged in the following sums:  
\$1,000,000 for emotional distress

**Plaintiff:** No damages were sustained.

1 **VIII. AFFIRMATIVE DEFENSES**

2 1. Cross-Complainants' conduct was such as to bring them into this action with unclean hands so  
3 that the Cross-Complaint and each of its causes of action are barred or Cross-Complainants are barred  
4 from any remedy, or certain remedies, under the doctrine of unclean hands.

5 2. The Cross-Complaint and each and every of its causes of action are barred and/or Cross-  
6 Complainants are barred from any remedy, or certain remedies, under the doctrine of laches and undue  
7 delay in giving notice and/or failing to give notice to Cross-Defendants of the matters alleged in the  
8 Cross-Complaint and in commencing and pursuing this litigation.

9 3. The Cross-Complaint and each and every cause of action is barred from recovery in whole, or in  
10 part, by the equitable doctrine of estoppel by, among other things, concealing the claims asserted or of  
11 other alleged attributes or entitlements of employment allegedly not received.

12 4. As to Cross-Complainants' Cross-Complaint and each cause of action contained therein,  
13 recovery of any amounts by Cross-Complainants would constitute unjust enrichment.

14 5. As a matter of law, Cross-Complainants fail to state a claim for relief upon which an award of  
15 statutory damages or penalties can be made and Cross-Complainants are not entitled to recover from  
16 Cross-Defendants those penalties alleged in the Complaint and each and every cause of actions therein.

17 6. Cross-Defendants have appropriately, completely and fully performed and discharged any and all  
18 of their obligations and legal duties arising out of the matters alleged in the Cross-Complaint, and any  
19 recovery by Cross-Complainants, would be unjust and inequitable under these circumstances and barred  
20 by the doctrine of preponderance of the equities.

21 7. As to Cross-Complainants' Cross-Complaint and each and every cause of action contained  
22 therein, Cross-Complainants have suffered no damages by reason of any act or omission by Cross-  
23 Defendants, but rather any alleged damages are wholly or in part the result of Cross-Complainants'  
24 actions or omissions or the actions or omissions of others.

25 8. As to Cross-Complainants' Cross-Complaint and each and every cause of action contained  
26 therein, Cross-Complainants have suffered no damages by reason of any act or omission by Cross-  
27 Defendants, but rather any alleged damages are wholly or in part the result of Cross-Complainants'  
28 actions or omissions or the actions or omissions of others.

1 9. As to Cross-Complainants' First Count, Cross-Complainants failed to exhaust administrative  
2 remedies, including but not limited to such exhaustion of remedies which is required as a condition  
3 precedent to maintenance of this action under the California Labor Code section 2699.3, which failure  
4 bars their recovery, if any, against Cross-Defendants.

5 10. All transactions by and between Cross-Defendants and Cross-Complainants were fully disclosed  
6 as part of ordinary business practice by the terms of the agreement between the parties and Cross-  
7 Complainants suffered no harm because Cross-Complainants by their actions were at all times in full  
8 control of the management and control under terms of the agreement.

9 11. Cross-Defendants allege that Cross-Complainants are not entitled to penalties under the  
10 California Labor Code because any alleged violation of California rules and regulations was made in  
11 good faith and Cross-Defendants had reasonable grounds for believing any actions taken relevant to the  
12 allegations in the Cross-complaint were in compliance with the law.

13 12. Cross-Complainants' recovery, if any, should be reduced under the collateral source rule by the  
14 monetary amount or value received by Cross-Complainants from other sources, including but not limited  
15 to, unemployment benefits or other employment or ownership interests.

16 13. Cross-Complainants have failed to mitigate their damages and because of their failure to do so  
17 Cross-Complainants right if any they have to recovery are diminished or extinguished against Cross-  
18 Defendants.

19 14. Cross-Complainants made material misrepresentations and concealed numerous facts from  
20 Cross-Defendants. By committing fraud and deceit against Cross-Defendants these answering parties  
21 have suffered substantial and irreparable harm and Cross-Defendants are entitled to full recovery of all  
22 damages that are the consequential result of Cross-Complainants actions.

23 15. Cross-Defendants have been released from any obligations arising from any contractual  
24 agreement when Cross-Complainants materially breached the contract by failing to materially perform  
25 the terms and conditions of the contract.

26 16. All claims for relief are barred. Cross-complainants failed to disclose the existence of Cross-  
27 Complaint to the Trustee in Bankruptcy and failed to disclose the pending action or claims to enable the  
28 Trustee to take action on behalf of the bankruptcy estate.

1 17. All other affirmative defenses stated in the answer to the Cross-complaint are equally pleaded  
2 here.

3 18. The claims and damages alleged against Cross-Defendants are barred, unenforceable or invalid  
4 because Cross-Complainants have no standing to prosecute this Cross-Complaint. This action can only  
5 be maintained by the Trustee in Bankruptcy of debtors' estate.

6 19. Cross-Complainants have failed to mitigate their damages and because of their failure to do so  
7 Cross-Complainants right if any they have to recovery are diminished or extinguished against Cross-  
8 Defendants.

9 20. Cross-Complainants made material misrepresentations and concealed numerous facts from  
10 Cross-Defendants. By committing fraud and deceit against Cross-Defendants these answering parties  
11 have suffered substantial and irreparable harm and Cross-Defendants are entitled to full recovery of all  
12 damages that are the consequential result of Cross-Complainants actions.

13 21. Cross-Defendants have been released from any obligations arising from any contractual  
14 agreement when Cross-Complainants materially breached the contract by failing to materially perform  
15 the terms and conditions of the contract.

16 **IX. EXHIBITS TO BE OFFERED BY EACH PARTY AND OBJECTIONS TO**  
17 **EXHIBITS**

18 **A. SEE ATTACHED PLAINTIFFS' APPENDIX 1 TO JOINT ORDER FOR ALL**  
19 **EXHIBITS**

20 **B. OBJECTIONS TO PLAINTIFFS' DOCUMENTS:**

21 Exhibit 5 – Relevance, res judicata

22 Exhibit 6 – Relevance, res judicata

23 Exhibit 14 – Lack of foundation

24 Exhibit 19 – Lack of foundation

25 Exhibit 55 – Lack of foundation, relevance, right to privacy

26 Exhibit 56 – Lack of foundation, relevance, right to privacy

27 Exhibit 68 – Lack of foundation

28

1           C.     Except as stated, Defendant stipulates to the admission and authenticity of the 71  
2 exhibits listed by Plaintiffs in Appendix 1.

3           **D.     DEFENDANTS EXHIBITS:**

4           Defendants' exhibits are listed in and attached to Appendix 2 of this order. Defendants stipulate  
5 to the admission and authenticity of the exhibits listed in Appendix 2 [and contests the admissibility of  
6 the exhibits listed in the concurrently filed "Motion to Exclude Evidence"

7           Exhibit A.     2011+2012 Schedule K-1's from Montebello Farms for Francisco Lara and Silvia  
8 Ibarra

9           Exhibit B.     SVL general ledger Royal + Divine Flavor from 2007 to December 31, 2011

10          Exhibit C.     ENSI general ledger for Royal + Divine Flavor from January 1, 2007 to  
11 December 31, 2011

12          Exhibit D.     Contract for Wal-Mart, Sam's Club, and Publix

13          Exhibit E.     ENSI general ledger which shows a summary of the travel and meal expenses  
14 incurred each year from 2006 to 2011

15          Exhibit F.     Summary of meals and travel expenses for SVL from 2008 to 2011, along with  
16 annual income statements for each year

17          Exhibit G.     Income statements for ENSI for December 31, 2007 and 2008

18          Exhibit H.     ENSI general ledger for customer Divine Flavor which shows a zero balance as of  
19 April 14, 2011

20          Exhibit I.     Deposition transcript of Pedro Batiz

21          Exhibit J.     Summary of the gross sales for ENSI from 2006 through 2011

22          Exhibit K.     General ledger of ENSI regarding prepaid insurance

23          Exhibit L.     Journal entry ID No. 2473 for \$500 (Maribel Cookies)

24          Exhibit M.     Ledger – four checks for payroll

25          Exhibit N.     Secretary of State's website showing date of filing of the E-Produce

26          Exhibit O.     Copy of the letter from PACA detailing ENSI's liability for non-payment

27          Exhibit P.     E-Produce general ledger showing reimbursement to ENSI of \$77,912.00  
28

- 1 Exhibit Q. ENSI journal entry for travel expense for Chong's visit to TIF plant + journal  
2 entry for \$500 check to Guadalajara
- 3 Exhibit R. Invoice from AFJ for accounting, meeting and tax returns prepared for both ENSI  
4 and E-Produce .....
- 5 Exhibit S. E-mail from Silvia to Eugenia
- 6 Exhibit T. Check no. 1573 from Francisco Lara to Silvia in the amount of \$47,414.16
- 7 Exhibit U. Silvia's personal check no. 679 made payable to ENSI Group, LLC in the amount  
8 of \$47,414.16
- 9 Exhibit V. Pages 1 to 25 of the deposition transcript for the deposition of Juan Alfaro
- 10 Exhibit W. Cancelled checks, bank account statements showing the \$22,000.00 wire transfer,  
11 and the ENSI General Ledger showing the bonus paid to Silvia
- 12 Exhibit X. 2006 Partnership Return for ENSI
- 13 Exhibit Y. General ledger and 2010 K-1
- 14 Exhibit Z. General ledger for my earnings account at year end 2008
- 15 Exhibit AA. Silvia's cancelled check payable to ENSI in the amount of \$10,500
- 16 Exhibit BB. Check Silvia Ibarra gave to Alex to cash for payroll
- 17 Exhibit CC. Journal entry on March 27, 2007 to reflect the \$47,417.03 recording of a liability,  
18 payable to Silvia Ibarra at 12/31/06 and reversed the payments that had previously been made to Linda's  
19 Seafood
- 20 Exhibit DD. Audit trail
- 21 Exhibit EE. Genie's invoices dated March 2007, March 2009, March 2010, and March 2011
- 22 Exhibit FF. 2008 Partnership Return for ENSI
- 23 Exhibit GG. Genie's email dated August 21, 2008 to Raquel M. de la Hoya
- 24 Exhibit HH. Enrique and Silvia's 2013 Federal tax return
- 25 Exhibit II. 2007 + 2008 E-Produce general ledger reflecting payments to ENSI
- 26 Exhibit JJ. Minute Order dated 11/19/09 + Original complaint filed of E-Produce lawsuit vs.  
27 RDP Floral on December 11, 2008
- 28 Exhibit KK. Income statement ending 12/31/09

- 1 Exhibit LL. ENSI partnership return for 2009 and K1 for all partners  
2 Exhibit MM. 2007 + 2008 K1 for E-Produce  
3 Exhibit NN. General ledger for SVL showing travel and meal expenses  
4 Exhibit OO. ENSI's vendor ledger for Divine flavor showing how much product was  
5 purchased from Divine Flavor  
6 Exhibit PP. ENSI's vendor ledger for Royal Flavor showing how much product purchased  
7 from Royal Flavor  
8 Exhibit QQ. Income Statement for E-Produce for 2008  
9 Exhibit RR. Balance Sheet for ENSI as of December 31, 2006  
10 Exhibit SS. First Bank statement showing transfer to N&D Meats  
11 Exhibit TT. First Bank statement showing check paid to N&D Meats  
12 Exhibit UU. ENSI Purchase Journal for N&D Meats through December 31, 2007  
13 Exhibit VV. Medical report from Dr. Katrina Debonis  
14 Exhibit WW. Medical report from Dr. Lilibeth Filgueira  
15 Exhibit XX. Medical bills for Enrique Ibarra  
16 Exhibit YY. Medical bills for Silvia Ibarra  
17 Exhibit ZZ. Declaration of Francisco Lara submitted in opposition to Defendants' Motion for  
18 Summary Judgment  
19 Exhibit AAA. Declaration of Luis M. Chong submitted in opposition to Defendants' Motion for  
20 Summary Judgment  
21 Exhibit BBB. Declaration of Francisco Lara submitted in support of Plaintiffs' Motion for  
22 Summary Judgment  
23 Exhibit CCC. Declaration of Luis M. Chong submitted in support of Plaintiffs' Motion for  
24 Summary Judgment  
25 **E. PLAINTIFFS' OBJECTIONS TO DEFENDANTS OFFERED EXHIBITS:**  
26 Exhibit H Hearsay, lack foundation  
27 Exhibit M Lacks foundation  
28 Exhibit AA Irrelevant

- 1 Exhibit HH Irrelevant and lacks foundation, not authenticated
- 2 Exhibit SS Irrelevant, lacks foundation
- 3 Exhibit TT Irrelevant, lacks foundation
- 4 Exhibit UU Irrelevant, lack foundation
- 5 Exhibit VV Hearsay, lack foundation
- 6 Exhibit WW Hearsay, lack foundation
- 7 Exhibit XX Hearsay, lack foundation
- 8 Exhibit YY Hearsay, lack foundation

9 **X. WITNESSES TO BE OFFERED BY EACH PARTY**

10 **A. PLAINTIFF**

- 11 Luis M. Chong Testimony as to transactions involving Defendants; loans to
- 12 Defendants; transactions involving ENSI; and documents
- 13 to establish fraudulent acts
- 14 Erick Diaz Testimony as to transactions; fraudulent acts
- 15 committed by Silvia Ibarra; custodian of ENSI and SVL
- 16 documents and invoices found in computers.
- 17 Silvia Ibarra Testimony regarding her involvement in
- 18 various transactions, including computer entries and
- 19 creation of invoices, writing of checks and payments
- 20 received by her; payments to vendors.
- 21 Enrique Ibarra Testimony regarding his involvement in transactions,
- 22 removing assets from ENSI. transactions creating
- 23 ENSI, SVL and E-Produce, diversion of sales from ENSI
- 24 and authority for such acts.
- 25 Francisco Lara Testimony relating to transaction with ENSI, loans to
- 26 ENSI, and, loans to Silvia Ibarra.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Pedro Batiz                      Testimony regarding his involvement with Royal Flavor and Divine Flavor, LLC; Sales to ENSI; payment of commissions to SVL; relationships with parties

----- Leslie Orduno              Testimony re: communication, transactions between Royal Flavor and Divine Flavor with Silvia Ibarra and Enrique Ibarra

**B. DEFENDANTS' WITNESSES:**

Enrique Ibarra                      Testimony as to his activities and daily duties of generating sales for ENSI. Plaintiff actual involvement with daily affairs of ENSI and exercising control over Defendants. Threats made by Miguel Chong for refusing to work as a front man for the purchase of military equipment.

Silvia Ibarra                      Testimony as to education experience when she started at ENSI. Who she took orders from, and threats made by Miguel Chong against her, her husband and her son.

Eugenia Acosta                      Testimony as to tutoring Silvia Ibarra on Peachtree Software, review of accounting entries, explanation of journal entries related to alleged fraudulent acts, and her personal knowledge of threats made by Miguel Chong against Enrique and Silvia Ibarra.

Alex Echeverria                      Testimony as to his personal contact with Francisco Lara and knowledge and operation of E-Produce at its inception.

Pedro Batiz                      Testimony as to his relationship with Enrique Ibarra, when it began. Connection with Royal Flavor and Divine Flavor.

Jorge Gomez                      Testimony as to his preparation of financial statements and tax returns for ENSI and meeting with Miguel Chong and Francisco Lara to deliver financial information.

1 Katrina Debonis M.D. Expert witness Testimony as to her treatment of  
2 Enrique Ibarra for anxiety and emotional distress.

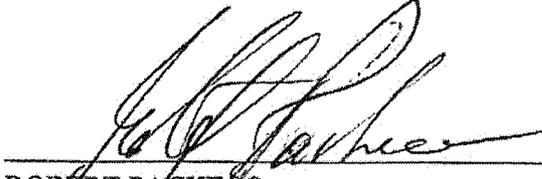
3 Lilibeth Filgueira, L.M.F.T. – Expert witness – Testimony as to her treatment  
4 of Silvia Ibarra for anxiety and emotional distress.

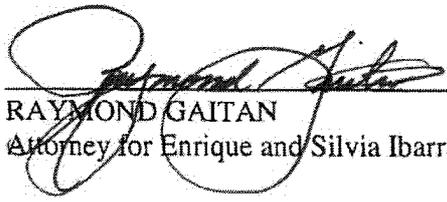
5  
6 **XI REBUTTAL EVIDENCE**

7 **To be completed**

8  
9 **XII REBUTTAL WITNESSES**

10 **To be completed**

11  
12   
13 \_\_\_\_\_  
14 ROBERT PACHECO  
15 Attorney for Francisco Lara and Luis M. Chong

16   
17 \_\_\_\_\_  
18 RAYMOND GAITAN  
19 Attorney for Enrique and Silvia Ibarra

20 **APPENDIX 1 TO JOINT ORDER**

21 **PLAINTIFFS' LIST OF EXHIBITS LARA v. IBARRA CASE NO. 2:14-bk-11105-RN**

- 22 1. Operating Agreement ENSI Sales and Amendments (ENSI)  
23 2. ENSI Tax return year 2005  
24 3. ENSI Tax Return 2006  
25 4. SVL Holding Operating Agreement  
26 5. Enrique Ibarra 2005 Bankruptcy filing  
27 6. Notice of Trustee examination of Enrique Ibarra  
28 7. Article 1, Section 21, California Constitution  
8. 11 U.S.C. Section 541(a)(5)  
9. California Family Code §752

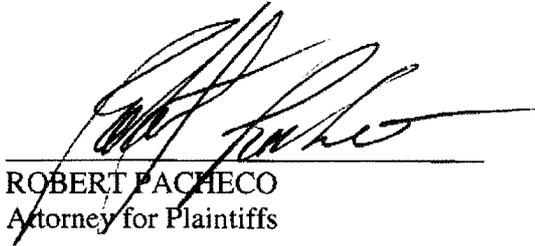
- 1 10. California Family Code §852
- 2 11. E-Produce, LLC Operating Agreement
- 3 12. Declaration Debtor's Enrique Ibarra schedules
- 4 13. letter from Eugenia Acosta dated 2-16-2011 re: ownership of businesses
- 5 14. Loan from Rafael Lara 1-12-2006
- 6 15. Records of loans converted to capital by owners entries by Silvia Ibarra
- 7 16. ENSI transaction journal \$42,000 and \$43,000 loans by Silvia Ibarra
- 8 17. Second Amendment to ENSI Operating agreement July, 1, 2006
- 9 18. Loans Enrique Ibarra 2005-2011
- 10 19. ENSI-Excel transaction 2005 showing payments-Silvia and Enrique & loans
- 11 20. Copies of Loans made to ENSI by Francisco Lara
- 12 21. Copies of checks-payments Enrique and Silvia Ibarra 2005
- 13 22. Ledger showing \$3,000 payment to Silvia in January 2006
- 14 23. \$23,490.00 loan taken by Silvia for taxes
- 15 24. 2006 General ledger of expenditures- showing loans from Francisco Lara
- 16 25. E-mail for \$47,414.16 bonus taken by Silvia in 2006
- 17 26. ENSI Transaction journal, \$47,414.16, invoices, transaction entries, checks
- 18 27. Enrique Ibarra admissions
- 19 28. Check payments to Francisco Lara for loans made to ENSI.
- 20 29. Payroll general ledger for 2008 showing employee payments
- 21 30. Loans to Silvia Ibarra to pay taxes \$4,716.62
- 22 31. SVL financial statements 2008, 2009 and 2010
- 23 32. SVL ledger -commissions from Divine Flavor to SVL 2009-2012, \$168,640.29
- 24 33. ENSI ledger- Receipts commissions from Royal Flavor start Nov-2008-2010
- 25 34. ENSI ledger-purchases from Royal Flavor July 2008 to 12-21-2009 -\$277,351.32
- 26 35. ENSI sales invoice ledger to retailers Nov 2008 to 12-31-2009
- 27 36. E-mail Batiz to Silvia stating billing ENSI with Brokerage SVL re: Numero Uno; Invoices payable  
28 by ENSI showing SVL is broker; mistake duplicated invoices; ENSI records showing sales and  
commission ledger entries part ENSI part SVL.
37. E-mail from Divine to Silvia give list of clients to which brokerage is paid.
38. E-mail Silvia to Divine re billing amount that ENSI purchases are to be charged

- 1 39. SVL Holdings commissions received from Divine Flavor
- 2 40. E-mail Pedro Batiz re commissions from Northgate and Superior being held
- 3 41. Royal Flavor commissions paid to SVL \$202,366.52
- 4 42. Royal Flavor commissions paid to-SVL showing ENSI as broker on billing
- 5 43. ENSI commissions from Divine Flavor matched by ledgers showing payment
- 6 44. ENSI purchases from Divine Flavor 2009-2012
- 7 45. Checks showing payment of commission split between SVL and ENSI
- 8 46. E-mails Divine Flavor to Silvia regarding duplicated invoices SVL and ENSI
- 9 47. ENSI Group customer list
- 10 48. Invoices showing sales to ENSI with commission being paid to SVL
- 11 49. E-mail from Enrique stating sales to ENSI do not get commission
- 12 50. ENSI general ledger capital account for Silvia Ibarra Re negative 1/1/04 to 6/4/13
- 13 51. ENSI general ledger, Silvia false credits paying off \$12,985.00 loan 11/30/07
- 14 52. ENSI general ledger showing Silvia and Enrique Loans start 2/1/05
- 15 53. Agreement-Purchase-Sale of E-Produce LLC 50% interest by Enrique
- 16 54. Sec State Business Entity detail Divine Flavor
- 17 55. Enrique Ibarra information for his will
- 18 56. Enrique Life Insurance application dated 1-20-11
- 19 57. Enrique and Silvia Resignations
- 20 58. Loan to Silvia \$12,985.00, 4-11-2007
- 21 59. Embezzlement/defalcation, ENSI paid \$9,198.95 personal expenses for Enrique
- 22 60. Embezzlement/defalcation, ENSI paid \$1,248.00 in Enrique violations
- 23 61. Receivables ledgers for ENSI from 2006 to 2007
- 24 62. ENSI purchases from Royal Flavor 7-31-08 to 1-31-10
- 25 63. SVL general ledger from 1-1-2008 to 12-31-2011
- 26 64. E-mail from Eugenia to Enrique 3-5-10 preparing taxes for SEMCO
- 27 65. E-mail from Enrique never involved in E-Produce operations.
- 28 66. General ledger entry Silvia \$43,000.00 loan on 6-30-06
67. General ledger showing \$43,000, \$42,000-Silvia; Enrique \$3,180.19 loan
68. ENSI tax return year 2008
69. Deposition of Pedro Batiz

1 70. Deposition of Silvia Ibarra

2 71. Deposition of Enrique Ibarra

3 Respectfully submitted:

4   
5 ROBERT PACHECO  
6 Attorney for Plaintiffs

# **EXHIBIT 5**

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address  1855 W Katella Ave Ste 365 Orange, CA 92867-3475 Phone: Fax: Email: Bar Number:  <input type="checkbox"/> Individual appearing without attorney <input checked="" type="checkbox"/> Attorney for Debtor Ibarra, Enrique & Ibarra, Silvia	FOR COURT USE ONLY
<b>United States Bankruptcy Court                  Central District of California</b>	
In re : <b>Ibarra, Enrique &amp; Ibarra, Silvia</b>	CASE NO: 2:14-bk-11105 CHAPTER 7
Debtor (s).	<b>SUMMARY OF AMENDED SCHEDULES,                  MASTER MAILING LIST,                  AND/OR STATEMENTS                  [LBR 1007-1(c)]</b>

A filing fee is required to amend Schedules D or E/F (see Abbreviated Fee Schedule on the Court's website [www.cacb.uscourts.gov](http://www.cacb.uscourts.gov)). A supplemental master mailing list (do not repeat any creditors on the original) is required as an attachment if creditors are being added to the Schedule D or E/F.

Are one or more creditors being added?  Yes  No

The following schedules, master mailing list or statements (check all that apply) are being amended:

- Schedule A/B       Schedule C       Schedule D       Schedule E/F       Schedule G  
 Schedule H       Schedule I       Schedule J       Schedule J-2       Statement of Financial Affairs  
 Statement About Your Social Security Numbers       Statement of Intention       Master Mailing List  
 Other (specify) \_\_\_\_\_

I/we declare under penalty of perjury under the laws of the United States that the amended schedules, master mailing list, and or statements are true and correct.

Date: January 20, 2016

/s/ Enrique Ibarra  
 Debtor 1 Signature

/s/ Silvia Ibarra  
 Debtor 2 (Joint Debtor) Signature (if applicable)

**NOTE:** It is the responsibility of the Debtor, or the Debtor's attorney, to serve copies of all amendments on all creditors listed in this Summary of Amended Schedules, Master Mailing List, and/or Statements, and to complete and file the attached Proof of Service of Document.

This form is mandatory. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

**Fill in this information to identify your case and this filing:**

Debtor 1 Enrique Ibarra  
First Name Middle Name Last Name

Debtor 2 Silvia Ibarra  
(Spouse, if filing) First Name Middle Name Last Name

United States Bankruptcy Court for the: CENTRAL DISTRICT OF CALIFORNIA

Case number 2:14-bk-11105

Check if this is an amended filing

Official Form 106A/B  
**Schedule A/B: Property**

12/15

In each category, separately list and describe items. List an asset only once. If an asset fits in more than one category, list the asset in the category where you think it fits best. Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

**Part 1: Describe Each Residence, Building, Land, or Other Real Estate You Own or Have an Interest In**

1. Do you own or have any legal or equitable interest in any residence, building, land, or similar property?

- No. Go to Part 2.
- Yes. Where is the property?

1.1

2817 S Harcourt Ave # 2819  
Street address, if available, or other description

Los Angeles CA 90016-3527  
City State ZIP Code

\_\_\_\_\_  
County

**What is the property?** Check all that apply

- Single-family home
- Duplex or multi-unit building
- Condominium or cooperative
- Manufactured or mobile home
- Land
- Investment property
- Timeshare
- Other \_\_\_\_\_

**Who has an interest in the property?** Check one

- Debtor 1 only
- Debtor 2 only
- Debtor 1 and Debtor 2 only
- At least one of the debtors and another

Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule D: Creditors Who Have Claims Secured by Property*.

<b>Current value of the entire property?</b>	<b>Current value of the portion you own?</b>
<u>\$188,000.00</u>	<u>\$188,000.00</u>

Describe the nature of your ownership interest (such as fee simple, tenancy by the entireties, or a life estate), if known.

**Fee Simple**

Check if this is community property (see instructions)

Other information you wish to add about this item, such as local property identification number:

Duplex, 1/2 undivided interest  
 Full value \$396,000.00

Debtor 1  
Debtor 2 Ibarra, Enrique & Ibarra, Silvia

Case number (if known) 2:14-bk-11105

**If you own or have more than one, list here:**

1.2 **What is the property?** Check all that apply

Street address, if available, or other description \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 City State ZIP Code \_\_\_\_\_  
 \_\_\_\_\_  
 County \_\_\_\_\_

Single-family home  
 Duplex or multi-unit building  
 Condominium or cooperative  
 Manufactured or mobile home  
 Land  
 Investment property  
 Timeshare  
 Other \_\_\_\_\_

**Who has an interest in the property?** Check one  
 Debtor 1 only  
 Debtor 2 only  
 Debtor 1 and Debtor 2 only  
 At least one of the debtors and another

Check if this is community property (see instructions)

Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule D: Creditors Who Have Claims Secured by Property*.

Current value of the entire property? \$10,000.00 Current value of the portion you own? \$10,000.00

Describe the nature of your ownership interest (such as fee simple, tenancy by the entirety, or a life estate), if known.  
 \_\_\_\_\_

Other information you wish to add about this item, such as local property identification number:  
**Real Estate in Mexico - desert property - 50% interest**

2. Add the dollar value of the portion you own for all of your entries from Part 1, including any entries for pages you have attached for Part 1. Write that number here.....=> \$198,000.00

**Part 2: Describe Your Vehicles**

Do you own, lease, or have legal or equitable interest in any vehicles, whether they are registered or not? Include any vehicles you own that someone else drives. If you lease a vehicle, also report it on *Schedule G: Executory Contracts and Unexpired Leases*.

3. Cars, vans, trucks, tractors, sport utility vehicles, motorcycles

- No  
 Yes

3.1 Make: MINI Who has an interest in the property? Check one  
 Model: Cooper  Debtor 1 only  
 Year: 2009  Debtor 2 only  
 Approximate mileage: \_\_\_\_\_  Debtor 1 and Debtor 2 only  
 Other information:  At least one of the debtors and another  
In possession of Roselia Valencia  Check if this is community property (see instructions)

Do not deduct secured claims or exemptions. Put the amount of any secured claims on *Schedule D: Creditors Who Have Claims Secured by Property*.

Current value of the entire property? \$13,000.00 Current value of the portion you own? \$13,000.00

4. Watercraft, aircraft, motor homes, ATVs and other recreational vehicles, other vehicles, and accessories  
 Examples: Boats, trailers, motors, personal watercraft, fishing vessels, snowmobiles, motorcycle accessories

- No  
 Yes

5. Add the dollar value of the portion you own for all of your entries from Part 2, including any entries for pages you have attached for Part 2. Write that number here.....=> \$13,000.00

**Part 3: Describe Your Personal and Household Items**

Do you own or have any legal or equitable interest in any of the following items? Current value of the portion you own? Do not deduct secured claims or exemptions.

Debtor 1  
 Debtor 2 Ibarra, Enrique & Ibarra, Silvia

Case number (if known) 2:14-bk-11105

**6. Household goods and furnishings**

Examples: Major appliances, furniture, linens, china, kitchenware

- No  
 Yes. Describe.....

Living room and bedroom furniture \$5,000.00

8 old computers, 2 TVs, stereo \$1,250.00

**7. Electronics**

Examples: Televisions and radios; audio, video, stereo, and digital equipment; computers, printers, scanners; music collections; electronic devices including cell phones, cameras, media players, games

- No  
 Yes. Describe.....

**8. Collectibles of value**

Examples: Antiques and figurines; paintings, prints, or other artwork; books, pictures, or other art objects; stamp, coin, or baseball card collections; other collections, memorabilia, collectibles

- No  
 Yes. Describe.....

**9. Equipment for sports and hobbies**

Examples: Sports, photographic, exercise, and other hobby equipment; bicycles, pool tables, golf clubs, skis; canoes and kayaks; carpentry tools; musical instruments

- No  
 Yes. Describe.....

**10. Firearms**

Examples: Pistols, rifles, shotguns, ammunition, and related equipment

- No  
 Yes. Describe.....

**11. Clothes**

Examples: Everyday clothes, furs, leather coats, designer wear, shoes, accessories

- No  
 Yes. Describe.....

Men's and women's clothing \$750.00

**12. Jewelry**

Examples: Everyday jewelry, costume jewelry, engagement rings, wedding rings, heirloom jewelry, watches, gems, gold, silver

- No  
 Yes. Describe.....

Man's wedding band and watch \$500.00

Woman's wedding ring and other jewelry \$1,000.00

**13. Non-farm animals**

Examples: Dogs, cats, birds, horses

- No  
 Yes. Describe.....

**14. Any other personal and household items you did not already list, including any health aids you did not list**

- No  
 Yes. Give specific information.....

15. Add the dollar value of all of your entries from Part 3, including any entries for pages you have attached for Part 3. Write that number here .....

\$8,500.00

**Part 4: Describe Your Financial Assets**

Debtor 1  
 Debtor 2 Ibarra, Enrique & Ibarra, Silvia

Case number (if known) 2:14-bk-11105

Do you own or have any legal or equitable interest in any of the following?

Current value of the  
 portion you own?  
 Do not deduct secured  
 claims or exemptions.

**16. Cash**

Examples: Money you have in your wallet, in your home, in a safe deposit box, and on hand when you file your petition

- No  
 Yes.....

Cash \$0.00

**17. Deposits of money**

Examples: Checking, savings, or other financial accounts; certificates of deposit; shares in credit unions, brokerage houses, and other similar institutions. If you have multiple accounts with the same institution, list each.

- No  
 Yes..... Institution name:

17.1. **Checking Account** First Bank checking under Silvia Ibarra \$307.28

17.2. **Checking Account** First Bank checking under Enrique Ibarra \$153.24

**18. Bonds, mutual funds, or publicly traded stocks**

Examples: Bond funds, investment accounts with brokerage firms, money market accounts

- No  
 Yes..... Institution or issuer name:

**19. Non-publicly traded stock and interests in incorporated and unincorporated businesses, including an interest in an LLC, partnership, and joint venture**

- No  
 Yes. Give specific information about them.....

Name of entity:	% of ownership:	
<u>Fidelity Investments account no. Z75-659061</u>	<u>%</u>	<u>\$91.72</u>
<u>Fidelity Investment account no. Z75-658944</u>	<u>%</u>	<u>\$27.95</u>
<u>SVL Holdings 1, LLC</u> <u>100% membership interest</u>	<u>%</u>	<u>\$0.00</u>
<u>Montebello Farms, LLC</u> <u>66-2/3 interest - company closed</u>	<u>%</u>	<u>\$0.00</u>
<u>ENSI Group, LLC</u> <u>33-1/3 membership interest</u>	<u>%</u>	<u>unknown</u>

**20. Government and corporate bonds and other negotiable and non-negotiable instruments**

Negotiable instruments include personal checks, cashiers' checks, promissory notes, and money orders.  
 Non-negotiable instruments are those you cannot transfer to someone by signing or delivering them.

- No  
 Yes. Give specific information about them  
 Issuer name:

**21. Retirement or pension accounts**

Examples: Interests in IRA, ERISA, Keogh, 401(k), 403(b), thrift savings accounts, or other pension or profit-sharing plans

- No  
 Yes. List each account separately.  
 Type of account: Institution name:

Debtor 1 **Ibarra, Enrique & Ibarra, Silvia**  
Debtor 2 \_\_\_\_\_

Case number (if known) **2:14-bk-11105**

**22. Security deposits and prepayments**

Your share of all unused deposits you have made so that you may continue service or use from a company  
*Examples:* Agreements with landlords, prepaid rent, public utilities (electric, gas, water), telecommunications companies, or others

- No
- Yes. .... Institution name or individual:

**23. Annuities (A contract for a periodic payment of money to you, either for life or for a number of years)**

- No
- Yes..... Issuer name and description.

**24. Interests in an education IRA, in an account in a qualified ABLE program, or under a qualified state tuition program.**

26 U.S.C. §§ 530(b)(1), 529A(b), and 529(b)(1).  
 No  
 Yes..... Institution name and description. Separately file the records of any interests. 11 U.S.C. § 521(c):

**25. Trusts, equitable or future interests in property (other than anything listed in line 1), and rights or powers exercisable for your benefit**

- No
- Yes. Give specific information about them...

**26. Patents, copyrights, trademarks, trade secrets, and other intellectual property**

*Examples:* Internet domain names, websites, proceeds from royalties and licensing agreements  
 No  
 Yes. Give specific information about them...

**27. Licenses, franchises, and other general intangibles**

*Examples:* Building permits, exclusive licenses, cooperative association holdings, liquor licenses, professional licenses  
 No  
 Yes. Give specific information about them...

**Money or property owed to you?**

**Current value of the portion you own?**  
Do not deduct secured claims or exemptions.

**28. Tax refunds owed to you**

- No
- Yes. Give specific information about them, including whether you already filed the returns and the tax years.....

**29. Family support**

*Examples:* Past due or lump sum alimony, spousal support, child support, maintenance, divorce settlement, property settlement  
 No  
 Yes. Give specific information.....

**30. Other amounts someone owes you**

*Examples:* Unpaid wages, disability insurance payments, disability benefits, sick pay, vacation pay, workers' compensation, Social Security benefits; unpaid loans you made to someone else  
 No  
 Yes. Give specific information..

**31. Interests in insurance policies**

*Examples:* Health, disability, or life insurance; health savings account (HSA); credit, homeowners, or renters insurance

- No
- Yes. Name the insurance company of each policy and list its value.  
Company name:

Beneficiary:

Surrender or refund value:

**32. Any interest in property that is due you from someone who has died**

If you are the beneficiary of a living trust, expect proceeds from a life insurance policy, or are currently entitled to receive property because someone has died.

- No
- Yes. Give specific information..

Debtor 1  
Debtor 2 Ibarra, Enrique & Ibarra, Silvia

Case number (if known) 2:14-bk-11105

**33. Claims against third parties, whether or not you have filed a lawsuit or made a demand for payment**

Examples: Accidents, employment disputes, insurance claims, or rights to sue

- No  
 Yes. Describe each claim.....

**34. Other contingent and unliquidated claims of every nature, including counterclaims of the debtor and rights to set off claims**

- No  
 Yes. Describe each claim.....

**Cross-Complaint for Intentional Infliction of Emotional Distress, Negligent Infliction of Emotional Distress, Breach of Fiduciary Duty, and Conversion, Chong and Lara v. Ibarra, State Court action removed to Bankruptcy Court, Adversary Case No. 2:14-ap-01154-DS**

unknown

**35. Any financial assets you did not already list**

- No  
 Yes. Give specific information..

**36. Add the dollar value of all of your entries from Part 4, including any entries for pages you have attached for Part 4. Write that number here.....**

\$580.19

**Part 5: Describe Any Business-Related Property You Own or Have an Interest In. List any real estate in Part 1.**

**37. Do you own or have any legal or equitable interest in any business-related property?**

- No. Go to Part 6.  
 Yes. Go to line 38.

**Part 6: Describe Any Farm- and Commercial Fishing-Related Property You Own or Have an Interest In. If you own or have an interest in farmland, list it in Part 1.**

**46. Do you own or have any legal or equitable interest in any farm- or commercial fishing-related property?**

- No. Go to Part 7.  
 Yes. Go to line 47.

**Part 7: Describe All Property You Own or Have an Interest in That You Did Not List Above**

**53. Do you have other property of any kind you did not already list?**

Examples: Season tickets, country club membership

- No  
 Yes. Give specific information.....

**54. Add the dollar value of all of your entries from Part 7. Write that number here .....**

\$0.00

**Part 8: List the Totals of Each Part of this Form**

55.	Part 1: Total real estate, line 2 .....	<u>\$198,000.00</u>	
56.	Part 2: Total vehicles, line 5	<u>\$13,000.00</u>	
57.	Part 3: Total personal and household items, line 15	<u>\$8,500.00</u>	
58.	Part 4: Total financial assets, line 36	<u>\$580.19</u>	
59.	Part 5: Total business-related property, line 45	<u>\$0.00</u>	
60.	Part 6: Total farm- and fishing-related property, line 52	<u>\$0.00</u>	
61.	Part 7: Total other property not listed, line 54	<u>\$0.00</u>	+
62.	Total personal property. Add lines 56 through 61...	<u>\$22,080.19</u>	Copy personal property total <u>\$22,080.19</u>
63.	Total of all property on Schedule A/B. Add line 55 + line 62		<u>\$220,080.19</u>

**PROOF OF SERVICE OF DOCUMENT**

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

1855 West Katella Avenue, Suite 365, Orange, CA 92867

A true and correct copy of the foregoing document entitled: **SUMMARY OF AMENDED SCHEDULES, MASTER MAILING LIST, AND/OR STATEMENTS [LBR 1007-1(c)]** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (date) 1-20-16, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Sam S Leslie - sleslie@trusteeleslie.com
- United States Trustee (LA) - ustpregion16.la.ecf@usdoj.gov
- Marian Garza - ecfnofices@ascensioncapitalgroup.com
- Robert G Uriarte - robert@uriarte-wood.com
- Elyza P Eshaghi - eeshaghi@shbllp.com
- Leonard M Shulman - lshulman@shbllp.com
- Ramesh Singh - claims@recoverycorp.com

[ ] Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:** On (date) \_\_\_\_\_, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

[ ] Service information continued on attached page

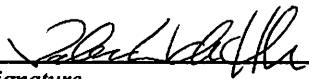
**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (date) \_\_\_\_\_, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

[ ] Service information continued on attached page

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

1-20-16  
Date

VALERIE HSIEH  
Printed Name

  
Signature

This form is mandatory. It has been approved for use in the United States Bankruptcy Court for the Central District of California.

# **EXHIBIT 6**

## PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (the "Agreement") is made as of February 19, 2016, by and between Sam S. Leslie, solely in his capacity as Chapter 7 Trustee ("Trustee" or "Seller") for the bankruptcy estate ("Estate") of Enrique Ibarra and Silvia Ibarra ("Debtors") in the case entitled *In re Enrique and Silvia Ibarra* Case No. 2:14-bk-11105-RN, on the one hand, and Luis M. Chong and Francisco Lara, individuals (referred to herein as "Buyers"), on the other hand (collectively referred to herein as the "Parties" or may sometimes be referred to individually as "Party").

### I. RECITALS

This Agreement is made by the Parties hereto with reference to the following facts:

1.1 On March 26, 2012, Buyers filed a complaint ("Complaint") against the Debtors in the Superior Court of the State of California for the County of Los Angeles, titled *Francisco Lara and Luis M. Chong v. Enrique Ibarra, Silvia Ibarra, Eugenia Acosta, Octavio Barba, N & D Meats, Inc., Linda's Seafood, Jan Alfaro, Juan Manuel Lugo, and ENSI Group, L.L.C., a California Limited Liability Company, Does 1-20 inclusive*, Case No. BC481527 ("State Court Action"). The Complaint alleges causes of action for: (1) breach of fiduciary duty, (2) constructive fraud, (3) fraud and deceit, (4) a derivative action for conversion and unfair business practices, (4) fraud, (5) misappropriation of trade secrets and deceit, and (6) intentional interference with prospective economic advantage.

1.2 On May 30, 2012, Debtors filed a cross-complaint against the Buyers in the State Court Action for: (1) wrongful termination in violation of public policy, (2) breach of fiduciary duty, (3) §17200 unfair business practices, (4) conversion, (5) intentional infliction of emotional distress, (6) negligent infliction of emotional distress, and (7) loss of consortium ("Cross-Complaint").

1.3 Debtors filed a Voluntary Petition for relief under Chapter 7 of the Bankruptcy Code on January 21, 2014 ("Petition Date"). The bankruptcy case is entitled *In re Enrique and Silvia Ibarra*, Case No. 2:14-bk-11105-RN ("Bankruptcy Case"), pending in the United States Bankruptcy Court for the Central District of California, Los Angeles Division ("Bankruptcy Court").

1.4 The Trustee is the duly appointed, qualified and acting Chapter 7 Trustee for the Debtors' Estate and is authorized to administer the assets of the Estate.

1.5 On March 11, 2014, Buyers filed a Notice of Removal ("Notice of Removal") of the State Court Action with the Bankruptcy Court, initiating adversary proceeding no. 2:14-ap-01154 ("Adversary Proceeding"). The Notice of Removal was filed pursuant to 28 U.S.C. § 1452 and Fed. R. Civ. Pro. 9027. Pursuant to the Notice of Removal, the entire State Court Action, including the Cross-Complaint, was removed to the Bankruptcy Court. Pursuant to the Notice of Removal, the basis for removal of the State Court Action are the non-dischargeability issues that relate to the Bankruptcy Case and arise under 11 U.S.C. §§ 523(a)(2)(A), 523 (a)(4) and 523 (a)(6).

1.6 On January 20, 2016, the Debtors filed an amended Schedule A/B to include their interest in the Cross-Complaint as follows: "Cross-Complaint for intentional Infliction of Emotional Distress, Negligent Infliction of Emotional Distress, Breach of Fiduciary Duty, and Conversion, Chong and Lara Ibarra State Court action removed to Bankruptcy Court, Adversary Case no. 2:14-ap-01154-DS," collectively with the Cross-Complaint, shall be referred to as the "Cross-Complaint Claim."

1.7 Seller, solely in his capacity as Trustee for the Debtors' Estate, desires to sell the Estate's interest in the Cross-Complaint Claim, free and clear of all liens, claims, encumbrances, charges, and interests, in exchange for the consideration described herein.

///

///

## II. AGREEMENT

**NOW THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION**, the adequacy of which is hereby acknowledged by each party hereto, and in consideration of the mutual promises and covenants set forth below, the Parties hereto agree as follows:

2.1 Payment. The Trustee agrees to sell, and the Buyers agree to purchase, the Estate's interest in the Cross-Complaint Claim, for Seven Thousand and Five Hundred Dollars (\$7,500.00) (the "Payment") on an "as is where is" basis, without any warranties either express or implied, in immediately available and good funds via cashier's check, or an amount as increased by a successful overbid to be paid by the Buyers (provided Buyers are the successful bidder) upon the entry of a Final Order (defined below). Upon execution of the Agreement, Buyers will tender to the Trustee's counsel a deposit of \$1,000.00 in the form of certified funds ("Deposit"). Once Trustee's counsel receives the Deposit and executed Agreement, they will prepare and file the appropriate pleading to obtain approval of this Agreement. If the Buyers are the successful overbidders, the Deposit shall be applied to the Payment. The Payment, less the Deposit, is due upon entry of the Final Order. If the Buyer is the successful overbidder, then upon receipt of the Payment and entry of a Final Order, the Trustee shall release its interest in all claims and causes of action alleged in the Cross-Complaint Claim by filing a dismissal with prejudice of the Cross-Complaint Claim in adversary No. 2:14-bk-0115 within seven (7) days after entry of the Final Order. If the Buyer is not the successful overbidder, then upon receipt of the Payment and entry of a Final Order, the Estate will take necessary steps to release its interest in all claims and causes of action alleged in the Cross-Complaint Claim in adversary No. 2:14-bk-0115 to the successful overbidder.

2.2 Court Approval. The Agreement is subject to overbid and Bankruptcy Court approval under 11 U.S.C. § 363 at a hearing noticed to creditors of the Debtors (the "Sale Hearing"). The term "Final Order" shall mean an order entered by the Bankruptcy Court at the Sale Hearing which approves this Agreement without modification, and which is not the subject of a stay or a notice of appeal for a period of fourteen (14) days after the date of its entry ("Final Order"). The Parties obligation to consummate the Agreement is conditioned upon the entry of a Final Order by the Court approving the Agreement.

2.3 Overbids. Overbids shall be in minimum increments of \$500.00. The overbidder must tender a Bid Deposit of \$1,000.00 in the form of certified funds to the Trustee's counsel on or before the Sale Hearing in order to bid for the Estate's interest in the Cross-Complaint Claim. If the overbidder is the successful bidder for the Estate's interest in the Cross-Complaint Claim at the Sale Hearing, the Bid Deposit of said overbidder shall be non-refundable and forfeited, if the successful overbidder fails to consummate the sale.

2.4 Warranties. Each party warrants that: she/he/it has full authority to enter into this Agreement; that she/he/it has not assigned or conveyed her/his/its rights to any claim released herein to any other person; that she/he/it is executing this Agreement voluntarily and providing consent unaffected by duress or undue influence; that she/he/it has read this entire Agreement, paragraph by paragraph, and executes it only after being fully advised by counsel; that she/he/it fully understands the meaning of each term in this Agreement and fully understands that this Agreement is a full, final, and complete and integrated Agreement which can only be modified in a written document signed by all of the executing Parties; that she/he/it has neither received nor relied on any promises or representations outside the terms of this Agreement and agrees that none may be offered as evidence of the executing Parties' intentions herein.

2.5 Purchases without Warranties. Buyers acknowledge that they are purchasing the Estate's interest in the Cross-Complaint Claim on an "as is, where is" basis, without any warranties, either express or implied. Buyers forever waive, for themselves, their heirs, successors and assigns, all claims against the Trustee, his attorneys, agents and employees, arising or which might otherwise arise in the future concerning the Estate's interest in the Cross-Complaint Claim.

///

2.6 Trustee's Liability. Buyers acknowledge that the Trustee is acting in his official capacity only. No professional liability shall be sought or enforced against the Trustee with regard to the Agreement. In the event that the Trustee fails or refuses to complete the transaction for any reason, then the limit of the Trustee's liability is only to return the money tendered to the Trustee by Buyers, without deduction.

2.7 Retention of Jurisdiction. The Bankruptcy Court shall retain jurisdiction to consider any dispute arising out of this Agreement or the performance thereof.

2.8 General Provisions.

2.8.1 Additional Documents. Each Party shall, on request of the other Party, take such actions and execute such documents as may be reasonably necessary to carry out the purpose of this Agreement.

2.8.2 Applicable Law. This Agreement shall be interpreted and construed in accordance with the laws of the State of California.

2.8.3 Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the Parties and their respective successors and assigns.

2.8.4 Entire Agreement. This Agreement may be amended, altered, waived, or cancelled, in whole or part, only by a writing signed by all Parties.

2.8.5 Recitals. Each term of this Agreement is contractual and not merely a recital.

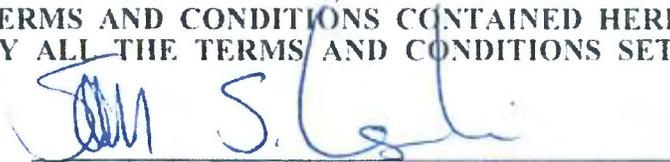
2.8.6 Counterparts. This Agreement may be signed in counterparts, all of which together shall constitute one document.

2.8.7 Drafting. This Agreement has been negotiated at arm's length between persons (or their representatives) sophisticated and knowledgeable in the matters dealt with in this Agreement. Accordingly, any rule of law (including California Civil Code, Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is hereby waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purpose of the Parties and this Agreement.

2.8.8 Attorneys' Fees. In the event any claim, dispute and/or litigation arises out of this Agreement, the prevailing party shall be entitled to recovery of its attorneys' fees and costs incurred in prosecuting or defending said claim, dispute and/or litigation.

**BY SIGNING THIS AGREEMENT WHERE INDICATED BELOW, I CERTIFY THAT I HAVE READ THE FOREGOING AGREEMENT IN ITS ENTIRETY, THAT I FULLY UNDERSTAND ALL THE WORDS, LANGUAGE, TERMS AND CONDITIONS CONTAINED HEREIN AND THAT I AGREE TO BE BOUND BY ALL THE TERMS AND CONDITIONS SET FORTH HEREIN.**

Dated: February 18<sup>th</sup>, 2016



Sam S. Leslie, Chapter 7 Trustee  
for the bankruptcy estate of Enrique Ibarra and Silvia Ibarra

**[SIGNATURES CONTINUED ON THE FOLLOWING PAGE.]**

Dated: February 19, 2016

  
\_\_\_\_\_  
Francisco Lara

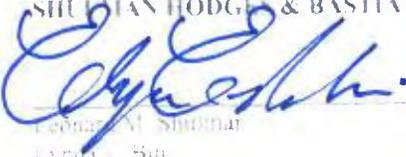
Dated: February 19, 2016

  
\_\_\_\_\_  
Luis M. Chong

**APPROVED AS TO FORM:**

Dated: February 23, 2016

**SHULTAN HODGES & BASTIAN LLP**

  
\_\_\_\_\_  
Leonard M. Shultman  
Lynda A. Bai  
Ellyza P. Frisbiagio  
Attorneys for Sam S. Leslie, Chapter 7 Trustee  
for the bankruptcy estate of Enrique Ibarra and Silvia Ibarra

**URIATE & WOOD ATTORNEYS AT LAW**

Dated: February 19, 2016

  
\_\_\_\_\_  
Robert Uriarte  
Attorney for Francisco Lara and Luis M. Chong