

**APPROVED**  
**MAY 02 2012**

REPORT OF GENERAL MANAGER

NO. 12-135

DATE May 2, 2012

**BOARD OF RECREATION  
and PARK COMMISSIONERS**

C.D. 6

BOARD OF RECREATION AND PARK COMMISSIONERS

SUBJECT: SOUTHEAST VALLEY ROLLER AND SKATEBOARD RINK - PHASE I  
(SKATEBOARD RINK/SKATEPARK) (W.O. #E170125F) PROJECT -  
STATUS REPORT AND REQUEST FOR DIRECTION FROM THE BOARD

R. Adams	_____	K. Regan	_____
H. Fujita	_____	*M. Shull	_____ <i>MS</i>
V. Israel	_____	N. Williams	_____

*[Handwritten Signature]*  
 \_\_\_\_\_  
 General Manager

Approved \_\_\_\_\_ Disapproved \_\_\_\_\_ Withdrawn \_\_\_\_\_

RECOMMENDATION:

That the Board consider this Status Report regarding the bids for the Southeast Valley Roller and Skateboard Rink - Phase I (Skateboard Rink/Skate Park) (W.O. #E170125F) project and provide direction to Department of Recreation and Parks staff regarding next steps, as outlined in the Summary of this Report.

SUMMARY:

The Southeast Valley Roller and Skateboard Rink - Phase I (Skateboard Rink/Skate Park) (W.O. #E170125F) project, located at 12477-12511 Sheldon Street, Sun Valley, California 91352, is a specified Proposition K project. The scope of work includes the design and construction of a new skate park featuring plaza/streetscape style skating elements including hubbas, stairs, flat rails, manual pads, ledges, bumps, kickers, grass pads, tranny ramps, and hand rails. The skate plaza will have areas for beginner, intermediate, and advanced skaters. In addition to the plaza, other supplemental amenities includes the installation of an Americans with Disabilities Acts (ADA) compliant pre-fabricated restroom building with storage areas, new drinking fountain, parking lot, landscaping, and security lighting.

The skate plaza is proposed to be completed by utilizing a pre-qualified design/build consultant-contractor selected from the Department of Recreation and Parks (RAP) approved On-Call Skate Park/Skate Plaza Design-Build List (Board Report No. 08-306).

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On May 4, 2011, the Board approved the bid documents and call for bids for the project (Board Report No. 11-118). The City Engineer's Estimate for the work was \$1,100,000. Two bids were received for the project on June 21, 2011.

<u>Bidders</u>	<u>Base Bid</u>
California Skateparks	\$ 937,000
Spohn Ranch, Inc.	\$1,429,800

After receipt of the bids, it was determined that the project would be re-bid in order to modify the scope of work to increase the size of the skate plaza, install shade structures, and add a storage area.

On September 7, 2011, the Board rejected the two original bids, and approved the re-bid documents with the expanded scope and call for re-bids (Board Report No. 11-230). The City Engineer's estimate for the revised scope of work was revised to \$1,500,000. On October 25, 2011, the re-bid resulted with two bids received for the project. The re-bid amounts are as follows:

<u>Bidders</u>	<u>Base Bid</u>
California Landscape & Design, Inc. dba California Skateparks	\$1,456,650
Spohn Ranch, Inc.	\$2,192,875

During the review of the bids, legal counsel for Spohn Ranch, Inc., filed a complaint under the City's Contractor Responsibility Ordinance alleging that California Landscape & Design, Inc. dba California Skateparks (California Landscape) was not a responsible bidder for a variety of reasons. Attached are copies of communications regarding that complaint from legal counsel for Spohn Ranch, legal counsel for California Landscape, and the City's Department of Public Works, Bureau of Contract Administration (BCA) which administers the City's Contractor Responsibility Ordinance.

The initial recommendation from BCA in a communication dated December 16, 2011, was to find California Landscape non-responsive for failure to disclose in their Contractor Responsibility Ordinance Questionnaire (CROQ) that they had been a defendant in litigation. The communication from BCA indicates that the remaining allegations are outside of BCA's jurisdiction. Mr. Dermer, on behalf of Spohn Ranch, Inc., filed a related complaint with the City Controller's Office regarding California Landscape not being a responsible bidder.

At the Board meeting, on February 15, 2012 (Board Report No. 12-051) staff recommended that the Board reject all bids and that the project be re-bid, anticipating that perhaps during the re-bid process the Controller's Office would conclude their investigation. Re-bidding the project might also have resulted in bids that were more in line with the engineer's estimate, and were within

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the available funding for construction. Also, the second lowest bidder's price far exceeded the available funding. So, if the lowest bidder were to be found non-responsive or non-responsible, the contract could not be awarded to the second lowest bidder due to insufficient funds. Additionally, it would be difficult to justify awarding a contract to the second lowest bidder for an amount that is almost \$700,000 above the engineer's estimate (150% of the engineer's estimate).

The Board did not accept the recommendation to reject all bids and re-bid the project, and instead directed staff to proceed to schedule a responsibility hearing and inform the Controller's Office of the Board's desire to have input from the Controller's Office about the allegations in the complaint. At that time there was also some concern about having to execute the construction contract prior to June 30, 2012, in order to obligate and preserve the Proposition K funding for the current fiscal year. It has since been determined that the Proposition K funds were previously contractually obligated as part of the earlier transaction to acquire the property where this project will be developed (Board Report No. 10-330). Thus, the construction contract does not have to be awarded and executed prior to June 30, 2012 in order to preserve the funds.

In a follow-up communication dated April 19, 2012, BCA retracted their initial recommendation to find California Skatepark non-responsive, based on recent case law regarding what constitutes responsiveness (*Great West Contractors, Inc., v. Irvine Unified School District 187 Cal.App.4th1425 (2010)*). The Controller's Office has confirmed that they have an open investigation in response to the complaint filed by Mr. Dermer on behalf of Spohn Ranch, Inc. But, as is their policy, the Controller's Office has declined to provide any further information, including what is the timeline for concluding their investigation.

Given that the Controller's Office has not yet concluded their investigation, at this time there is no basis upon which to proceed with a responsibility hearing within the procedural requirements of the Contractor Responsibility Ordinance. Also, it has been determined that the construction contract does not have to be executed by June 30, 2012, in order to preserve the Proposition K funds. Therefore, the Board has the following options: 1) the Board's action in awarding a construction contract could be placed on hold until such time as the Controller's Office concludes its investigation; 2) the Board could proceed to treat the situation like a bid protest and conduct a bid protest hearing wherein both bidders may make a presentation to the Board, if they so choose; 3) after the bid protest hearing, the Board could decide whether to award to the lowest bidder or to wait for the results of the Controller's Office investigation; or 4) the Board could reconsider the original recommendation to reject all bids and re-bid the project either to firms on the pre-qualified design-build list, or re-bid outside of the pre-qualified list thereby soliciting bids from design-build firms at-large who have not been pre-qualified for skatepark projects or not use a design-build approach and instead have an architectural firm design the project and prepare construction documents and then bid out the construction work only. Staff requests that the Board direct which option to proceed with so that the selected option can be scheduled for

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the Board meeting on May 16, 2012. Both bidders have previously extended their bids until May 22, 2012, so it is likely that the bidders will be requested to extend their bids for another 60 days in order to accommodate further proceedings.

In compliance with the California Environmental Quality Act (CEQA), on February 15, 2012, the Board adopted the Initial Study (IS) and Mitigated Negative Declaration (MND) and associated Mitigation Monitoring and Reporting Plan for the Southeast Valley Roller and Skateboard Rink – Phase I (Skateboard Rink/Skatepark) project (Board Report No. 12-051). The Notice of Determination for the adopted IS/MND was filed with the Los Angeles City Clerk and the Los Angeles County Clerk on February 23, 2012.

### FISCAL IMPACT STATEMENT:

The Department will request \$31,000 for yearly maintenance of this facility. This amount would include one part-time employee, materials, and supplies. This would provide adequate maintenance seven days a week, year round. If the funding is not granted, this facility will be included in the existing Valley Region routes, resulting in reduction of core functions on the existing routed facilities. This may also impact the hours of operation of these facilities.

This report was prepared by Gary Lam, Project Manager, Recreational and Cultural Facilities Program, Department of Public Works, Bureau of Engineering (BOE). Reviewed by Neil Drucker, Program Manager, Recreational and Cultural Facilities Program, BOE; Deborah Weintraub, Chief Deputy City Engineer, BOE, and Michael A. Shull, Superintendent, Planning, Construction and Maintenance Division, Department of Recreation and Parks.

### Attachments:

1. Inter-Departmental Correspondence dated December 16, 2011, from Bureau of Contract Administration, which includes original Letter of Complaint under the CRO dated September 8, 2011, from Jeffrey Dermer, legal counsel for Spohn Ranch, Inc.
2. Letter dated January 17, 2012, from Jeremy Johnson and Michael Shen, legal counsel for California Landscape
3. Inter-Departmental Correspondence dated April 19, 2012, from the Department of Public Works, Bureau of Contract Administration (BCA) retracting original recommendation in prior correspondence from BCA dated December 16, 2011

EXCERPT FROM THE MINUTES OF THE SPECIAL MEETING  
BOARD OF RECREATION AND PARK COMMISSIONERS  
MAY 2, 2012

GENERAL MANAGER'S REPORT:

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SOUTHEAST VALLEY ROLLER AND SKATEBOARD RINK  
– PHASE I (SKATEBOARD RINK/SKATEPARK) (W.O.  
#E170125F) PROJECT – STATUS REPORT AND REQUEST  
FOR DIRECTION FROM THE BOARD

The above item was described and presented to the Board by Michael Shull, Superintendent, Planning, Construction and Maintenance Division and Marcia Gonzales-Kimbrough, Deputy City Attorney IV. A detailed discussion by the Commission ensued. Public comment was invited on this item and four requests for public comment were received and presented to the Commission.

President Sanders made the following Motion:

1. This matter be set for a bid protest hearing for the next meeting at the EXPO Center, first meeting in June;
2. That a letter from this Commission be sent to the Controller urging that their findings of their responsibility investigation be made available to the Commission before then, if at all possible;
3. That the parties be instructed that each of them shall file a brief with us should they want to have anything on record with us at least 10 days before the hearing;
4. That each of them may file a responsive brief then to what the other party has said 5 days before the hearing;
5. That at the hearing each [party] will be given 5 minutes to speak directly and then 2 minutes to respond to what the other said; and
6. Then we [the Commission] will consider the matter.

Michael Shull further stated that the bids for the project had been extended until May 22, 2012 and that as a part of this both parties would have to extend their bids. At that time, representatives from both parties agreed to extend their bids.

The resolution proposed by President Sanders was moved by Commissioner Stanley, seconded by Vice President Alvarez and adopted.

CITY OF LOS ANGELES  
INTER-DEPARTMENTAL CORRESPONDENCE

BOARD OF RECREATION  
AND PARK COMMISSIONERS

2011 DEC 19 AM 10:52

**Date:** Friday, December 16, 2011

**To:** Mary Alvarez, Executive Officer  
Board of Commissioners  
Department of Recreation and Parks

Michael Shull  
Project Manager III  
Department of Recreation and Parks

Neil Drucker  
Project Manager III  
Bureau of Engineering  
Department of Public Works

**From:** H.R. Strazzella, Chief  
Special Projects Division  
Bureau of Contract Administration  
Department of Public Works



**Subject:** Project Award SOUTHWEST VALLEY ROLLER AND SKATEBOARD RINK – Ph. I.

This is to advise the staff, Executive Officer, General Counsel of the Department of Recreation and Parks, and the Project Delivery staff of the Bureau of Engineering, Department of Public Works, of findings by this office related to an upcoming construction contract award in your Department.

It is recommended that this advisory be included in the Award Report for the below mentioned project, for the benefit of the Board of Commissioners in its Public hearing on the matter.

The Bureau of Contract Administration is the Designated Administrative Agency for enforcement of Article 14, Chapter 1, Division 10 of the Los Angeles Administrative Code, (Contractor Responsibility Ordinance). In that capacity, this agency was referred by the Office of the City Attorney, a complaint registered under those provisions against the conduct, quality and fitness of a bidder on your pending re-bid project, SOUTHWEST VALLEY ROLLER AND SKATEBOARD RINK – Ph. I.

*Bureau of Contract Administration – Department of Public Works  
Special Research & Investigation*

*SOUTHWEST VALLEY ROLLER AND SKATEBOARD RINK*

*– Ph. I. Dec. 2011*

**CITY OF LOS ANGELES**  
INTER-DEPARTMENTAL CORRESPONDENCE

Counsel for the complainant contacted this office by direct mail [**Transmittal 1**], with a request that this office review enclosed material under ordinance provisions.

In verifying this complaint, staff has reviewed documents submitted at that time, in addition to the Ordinance mandated forms submitted for the abovementioned project's bid offering.

We inform you that the responses from California Landscape and Design, dba California Skateparks, ("**California**") (CA Lic #799795) submitted on the Responsibility Questionnaire received by this office on October 31, 2011, show failures to disclose information the Board of Commissioners may deem germane to its determinations.

Competitors for the City's business are required by the Code, as clearly stated on the Questionnaire itself, to fully complete these questionnaires without making false statements or failing to answer any questions when and where required. Bidders also must provide explanations where the questionnaire instructs that such elaboration is needed.

**CRO Questionnaire questions, and answers submitted**

**(CROQ §G.-DISPUTES, 18b)**

California's owner, and company President, Joseph Ciaglia, Jr., failed to provide your department with information regarding his company's litigation history, by negatively answering question G. 18b. The conspicuous omission of disclosures related to two lawsuits in which both he and his company were named, and have appeared in court as defendants, are as follows:

**[Transmittal 2]**

**California Superior Court FRESNO**

**Case # 09 CE CG 01156 AMC**

**Filed July, 30th, 2009**

**GEOCON ENGINEERING INC., v California Skateparks Inc, / Insurance Company of the West / (and individuals)**

**Resolved in Settlement**

**[Transmittal 3]**

**California Superior Court L.A.**

**Case # BC454172**

**Filed May 5th, 2011**

**CONRAD CHAVIS and MICHELLE CHAVIS v California Landscape Design Inc / California Skateparks Inc / Joseph M. Ciaglia / The BERRICS, LLC / (and individuals)**

**To be heard June 2012**

The terms under which contractors (bidders) compete for this and all other public construction projects, include full submission of all information as requested by the City in this as well as other documents. The Responsibility Questionnaire clearly admonishes all participants in its introductory section prior to Section A on the face page, that "**Failure to complete and return this questionnaire, any false statements, or failure to answer (a) questions(s) when required, may render the bid/proposal non-responsive.**"

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*Bureau of Contract Administration – Department of Public Works  
Special Research & Investigation*

**SOUTHWEST VALLEY ROLLER AND SKATEBOARD RINK – Ph. I. Dec. 2011**

**CITY OF LOS ANGELES**  
INTER-DEPARTMENTAL CORRESPONDENCE

Further, the City also clearly indicates its reliance upon the accuracy and forthrightness of the submittal by stating the *“The signatory of this questionnaire guarantees the truth and accuracy of all statements and answers to the questions herein.”*

Other evidence and allegations were also submitted which are of a nature that lies outside the civil, administrative jurisdiction of this Agency [Ref. Transmittal 1]. These require the expertise, resources and investigative authority of other enforcement agencies. The complainant has been advised to contact the appropriate sources for resolution.

This office has verified, minimally, by a review of the evidence provided, that the complaint is valid and pertinent to your Board’s efforts to make a fair determination as to the responsiveness of this bid, by California Landscape and Design, dba California Skateparks. This office respectfully recommends that this bidder be deemed non-responsive.

Cc     E. Jordan, Esq.  
       M. Gonzalez-Kimbrough, Esq.  
       L. Dean  
       C. Santo-Dominguez  
       T. Allen

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September 8, 2011

VIA PERSONAL DELIVERY

Mr. Russell Strazzella  
Division Manager  
LA Bureau of Contract Administration, Special Projects  
Bureau of Contract Administration  
1149 S. Broadway Suite #300  
Los Angeles, CA 90015

Re: Investigation of On-Call Specialty Contractor California  
Skateparks, Inc. & Joseph Ciaglia, Jr. for Acts of Moral Turpitude

Dear Mr. Strazzella:

I represent Spohn Ranch, Inc. I write to follow up on a voice message that I left for you on Friday, September 2, 2011. I was referred to you by Marcia Gonzalez-Kimbrough of the City Attorney's Office. I had sent her a letter dated August 4, 2011 and an email dated August 24, 2011, which I have attached as Exhibits A and B.

Those emails and my message pertain to my belief that California Skateparks, Inc. ("California"), and Joe Ciaglia, Jr., ("Ciaglia") should be investigated and subsequently debarred by the City of Los Angeles. California is party to two (2) on-call contracts with the City. The first, let in 2008, is for Pre-Qualification for Design-Build Services ("DB Agreement")<sup>1</sup>. The second, let in 2010, is for Specialty Concrete for the provision of skateparks ("Skatepark

<sup>1</sup> SOQ submitted on August 29, 2008 to Department of Recreation and Parks.

Agreement")<sup>2</sup>. California has been the general contractor or subcontractor on most, if not all, of Los Angeles' publicly funded skateparks for many years. California also does other significant work under the DB Agreement. The total amount of work paid to California is in the millions. **California is currently representing itself as the "preferred design builder" of skateparks for the City of Los Angeles.** If this is in fact true then the City has a tremendous moral obligation to insist that its "preferred" providers do not systematically lie, cheat, and steal while providing subpar construction work during a time of massive unemployment and limited municipal budgets. **The City must not allow California to continue putting profits over people.**

I base this request and conclusion upon Ciaglia's and California's verifiable felonies (attempted bid-rigging, perjury, and fraud) of moral turpitude in City contracting as well as with at least one other local government. I also allege and the City can easily prove (by looking at its own records that it has so far refused my client's efforts to review) the existence of scores of other examples of perjury, fraud, and violation of the California False Claims Act against the City of Los Angeles. I further base these allegations upon information gathered as part of my representation of Spohn Ranch, Inc., which is also party to similar on-call agreements and has been systematically injured by virtue of Ciaglia's actions. I am highly confident that every allegation contained in here is proveably true.

Ciaglia, through California, appears to have committed the following acts of moral turpitude:

- (1) **attempting to collude and bid-rig** the Hansen Dam skatepark project in October, 2010;
- (2) **perjury and fraud** arising against the City of Los Angeles pursuant to the Skatepark Agreement;
- (3) **perjury, fraud, and violations of the California False Claims Act** on the following specific bids and projects: Hansen Dam Skate Plaza, Proposition 40, PRJ #1237A, Bid Date 10/26/10 ("Hansen II"), Hansen Dam Skate Plaza, Proposition 40, PRJ #1237A, Bid Date 6/30/10 ("Hansen P"), Stoner Skate Park ("Stoner"), Jackie Tatum Harvard Recreation Center Skatepark (contract number

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<sup>2</sup> On-Call Specialty Contract subject to RFP dated May 13, 2010 from the City of Los Angeles.

- C-117964) (“Harvard”); and the Southeast Valley Roller and Skateboard Rink – Phase I (Skateboard Rink/Skatepark) (W.O.#E170125F) (“SE Valley”);
- (4) **fraud** in securing a design-build project in Kennesaw, Georgia within the past six months including misrepresenting California as Los Angeles’ “Preferred Skatepark Vendor” in the Kennesaw Proposal
  - (5) **undisclosed conflicts of interest** arising from a series of ‘sole source’ preferred vendor projects funded by the Rob Dyrdek Foundation that would never have been let had the true facts been disclosed (that Dyrdek is his business partner and design consultant)
  - (6) **engaging in sham bidding** as part of an admitted “low-bid and change-order” strategy used to take control and change projects outside the scope of the competitive bidding laws;
  - (7) deliberately failing to disclose collective-bargaining agreements on one or more bids to avoid payment of union dues (Iron Workers, Int’l Cements Masons, Carpenter’s Union);
  - (8) failing to use the listed design team in the DB Agreement in subsequent projects and instead using related parties such as its subsidiary, SITE Design;
  - (9) building concrete skatepark structures **without a Los Angeles building permit** leading to a **major accident** where a concrete truck fell through a ramp; and
  - (10) engaging in unlawful business practices in Utah, leading to an Utah Attorney’s General investigation.

I am certain that there are many more instances -- I have just begun collecting this information and much of it was only discoverable thanks to a former-employee whistleblower. I am informed that there may be IRS and employment-law issues as well. Ciaglia has been known to state that “Los Angeles is his client” and that he is entitled to “all the skatepark work” from the City. His conduct speaks to that. Ciaglia apparently does not feel the need to disclose the most basic facts such as conflicts of interest and routinely commits perjury and fraud to obtain work. I respectfully request a full investigation and that California be precluded from being awarded any further work in the interim given the egregious, systematic, and verifiable nature of his despicable conduct. Failure to do so risks proving that the Department of Recreation and Parks

and/or the City really does hold California as its preferred vendor and is interested in protecting that relationship over the interests of the taxpayer, general public, and most importantly, the children of this City who use these skateparks.

## **I. Factual Background**

California Skateparks, Inc., is one of several entities owned by Joseph M. Ciaglia, Jr. He also owns SITE Design, Inc., California Rampworks, California Landscaping & Design, and is a partner in the 'Street League' business with Rob Dyrdek (for whom Ciaglia also builds skate park equipment at below cost for use on Dyrdek's Television Program on MTV). California once held close to a monopoly position in the 'poured in place' concrete skatepark market. Between celebrity endorsements and a high-quality team led by design-builder Wally Holiday and the project management skills of Nikolai Samarin, California had a well-deserved reputation for excellence.

Due to Ciaglia's business methods, it has lost these key employees and is a shade of its former self. These losses have resulted in the conduct that will be outlined below -- from lesser work product, to taking shortcuts, and finally, to serial non-compliance, fraud, and deceit in obtaining public work. California's work product has been rejected or repaired in Fresno, Ojai, and Moorpark during the past few years.

My client, Spohn Ranch, Inc., has been building skateparks for 19 years. It is a woman-owned business based in Los Angeles County. The principals are all residents of Council District 11. Spohn was the low-bidder (twice) on the Hansen Dam Skatepark Project (currently in process). Spohn listed California as its subcontractor before having any of the knowledge contained in this letter.

Spohn submitted the only responsive bid on the initial SE Valley bid. Spohn protested California's bid on the grounds that it was an admitted sham (by Ciaglia to a former employee) and California's failure to comply with the bid documents, as well as its failure to make proper and material disclosures on its Contractor Responsibility form. Subsequent to that very limited

protest, I conducted an investigation and have discovered the information set forth herein. I continue, on a weekly basis, to find additional examples of moral turpitude and general dishonesty.

## II. Bid Rigging & Mail Fraud On Hansen Dam

In October, 2010, Joseph Ciaglia, Jr. attempted to rig a bid against the City of Los Angeles for the Hansen Dam Skatepark project.

On October 26, 2010, the date of the Hansen Dam bid opening, Ciaglia contacted out of state contractors on the Skatepark Agreement and the DB Agreement to determine whether they intended to bid the project. After discovering that they did not, Ciaglia attempted to obtain Spohn Ranch's participation in his scheme. At approximately 1:10 pm, Scott Rice, California's then and now former project manager sent an unsolicited email to Doug Hagen, an employee of Spohn Ranch. The e-mail reads, in relevant part:

**Joe's final number for our bid is \$750,000 total (\$660,000 design + construction plus the required \$90k for landscape, drainage, etc.) He's suggesting \$770,000 (\$680,000 + \$90k) for you guys.**

(Emphasis added). E-mail attached as Exhibit C. Spohn did not receive it until the bid package had left its office and been submitted to the City.

At approximately 4 p.m. that day, after hearing the bid results, Ciaglia drove to and entered Spohn's office without permission and over the objection of employees. He proceeded to locate Hagen. He then demanded to know why Spohn and Hagen had not followed his instructions with respect to the amount to bid. Because Hagen had been out of his office on a conference call, he didn't know about the email. He was shocked and visibly shaken to hear Ciaglia rant and talk about it. Ciaglia then demanded that Hagen go into Hagen's office, accompanied by Ciaglia, view and print the email.

**After realizing that Spohn had no interest in colluding, Ciaglia demanded that Hagen delete the email off of his computer. Ciaglia, lacking technological savvy, did not realize that the email remained on the server.**

Not satisfied, Ciaglia showed Kirsten Bradford, CEO of Spohn, text messages between him and other potential bidders (purportedly Grindline Skateparks and American Ramp Company). These text messages contained Ciaglia's request and their affirmation that they would not be bidding on the project. He apparently showed these messages to Bradford to illustrate the feasibility of his scheme. He asserted that Bradford did not know how "the game was played" and that Spohn had "left a lot of money on the table." He subsequently demanded to Aaron Spohn, President of Spohn Ranch, Inc., that Spohn rescind its winning bid to be "fair" to Ciaglia. Spohn refused to do so and since that time has been extremely hesitant to even communicate with Ciaglia.

Ciaglia's actions were criminal. They violate the Wire Act as an attempted bid rig through the use of interstate commerce. 18 U.S.C. § 1804. They also violated the bid affidavit and constitute perjury under California Penal Code § 118.<sup>3</sup>

### **III. Civil Fraud/Perjury**

California has entered and continues to be party to the DB Agreement and the Skatepark Agreement. Each independently requires full and continuing disclosure<sup>4</sup> of many items, subject to the penalty of perjury if such omissions were knowingly and intentionally done. California's bidding on the following projects was done upon the City's standard Contractor Responsibility Questionnaire as well:

- (1) Hansen Dam Skate Plaza, Proposition 40, PRJ #1237A, Bid Date 6/30/10 ("Hansen I"),

<sup>3</sup> Perjury is punishable by two, three, or four years in prison.

<sup>4</sup> See PSC-33 that requires notification within 30 days of changes in responses and for knowledge of any investigation such as the Utah AG investigation or the LA City Code Enforcement Investigation.

- (2) Hansen Dam Skate Plaza, Proposition 40, PRJ #1237A, Bid Date 10/26/10  
("Hansen II")
- (3) Stoner Skate Park ("Stoner"),
- (4) Jackie Tatum Harvard Recreation Center Skatepark (contract number C-117964)  
("Harvard");
- (5) Southeast Valley Roller and Skateboard Rink – Phase I (Skateboard  
Rink/Skatepark) (W.O.#E170125F) ("SE Valley")

Thus, for each willful non-disclosure, seven counts of perjury and fraud exist. As set forth below, I believe there are at least seven material non-disclosures.

My client sought and was refused access to the SE Valley Contractor Responsibility Questionnaire. Ms. Gonzalez-Kimbrough stated that it and those pertaining to past projects will be disclosed pursuant to a pending Cal Records Act Request. My statements are thus made based on information and belief -- however, I am *highly* confident that there have been no disclosures made given the representations of fact made in California's Kennesaw proposal and in speaking with California's former employee whistleblower. Further, it would shock me greatly to discover the City would do business with California if it disclosed all material facts.

Assuming that each mandatory disclosure was systematically excluded, which I believe is the case and your office can verify, Ciaglia has committed upwards of 49 counts of perjury (Penal Code Section 118) and 49 counts of civil fraud (Civil Code Sections 1572 *et seq.*) and, where California submitted claims, violation of the California False Claims Act (Government Code Sections 12650 *et seq.*), each, not counting the bid-rigging. Finally, this is not a complete list -- California was "sole sourced" on many other projects based on contingent donations (discussed below). I am unsure whether those projects required any disclosures.

#### **IV. Disclosures Not Made Under On-Call Agreements and Bid-Specific Submissions**

The following is a breakdown of the various areas where I believe Ciaglia, through California, has intentionally misled the City. There are specific references to the relevant City of Los Angeles Contractor Responsibility Questionnaire, which you are no doubt familiar with.

##### **A. Entities (Question C.1.) - (Two Counts)**

Ciaglia owns and should have disclosed his ownership interests in **SITE Design, Inc.** ("SITE"), California Rampworks, Inc., California Landscape and Design, and **Street League** (co-owned with Rob Dyrdek.

SITE, which is a skatepark design firm and which has been awarded design and construction management of California-built skateparks should have been disclosed -- it is clearly related to the existence of a conflict of interest. I believe that Ciaglia has used this firm to select and/or manage California as a builder under the auspices that they are not related, including on the Stoner project.

Ciaglia's interest in Street League should have also been disclosed. Because of his and Dyrdek's joint ownership, the City would have wanted to know about this conflict when evaluating whether to agree to "contingent donations" made or facilitated by Dyrdek's foundation when the sole contingency was hiring California and/or SITE.

Because the Rob Dyrdek foundation has made or facilitated numerous "conditional" donations for the building of public skateparks with City money, conditioned upon selection of Ciaglia's firm as the builder, this disclosure becomes very material.

##### **B. Insurance and Bonding (Question 8) -- (One Count)**

California has had its bond for the Moorpark skatepark at Poindexter Park attached and payment sought therefrom. Ciaglia has stated to third parties that he is "fighting for his life" on that

project and has hired highly reputed concrete expert Sir Oscar Duckworth at substantial expense. If payment has been made then this should have been disclosed. I have made a public records act request to acquire documentary evidence. I have sufficient hearsay evidence to believe it is true.

### C. Disputes (Question 18b) - (Two Counts)

California should have disclosed at least two lawsuits to Question 18 b. Both lawsuits are directly related to California's alleged insufficient performance on a contract. **Because Ciaglia was personally served in one suit, there simply could never be a negligence defense -- it is blatant fraud and perjury.**

*Geocon Engineering, Inc. v. California Skateparks, et al*<sup>5</sup>, filed in 2009, is a lawsuit by the general contractor, Geocon, against California, its subcontractor, arising out of rejected shotcrete work on the Mosqueda BMX Park for the City of Fresno. The case has been settled. It unquestionably should have been disclosed as it relates directly to performance on a public skatepark contract. Moreover, the nondisclosure is strategic because it illustrates the quality of workmanship issues that have befallen California after the loss of its key personnel. The complaint is attached as Exhibit D.

*Chavis v. California Landscape & Design, California Skateparks, Inc., Joseph M. Ciaglia et al.*, is pending in Los Angeles Superior Court as of January 31, 2011<sup>6</sup>. The case arises out of California's and Ciaglia's allegedly negligent performance of a contract to build skatepark equipment for a several private entities. The complaint alleges that California attempted to build an unpermitted skatepark on the roof of a building in Los Angeles. The end result was a concrete truck falling through a ramp that was designed for autos, not 60,000 lb concrete trucks.<sup>7</sup> California Skateparks has been sued on several theories. One theory, negligence *per se*, is predicated upon the alleged legal requirement of a permit for the project that was not followed. The City of Los Angeles Code Enforcement has allegedly opened an investigation 389518 for

<sup>5</sup> California Superior Court, Fresno County, Case Number 09 CE CG 01156 AMC.

<sup>6</sup> California Superior Court, Los Angeles County, Case Number BC 454172.

<sup>7</sup> <http://blogdowntown.com/2010/08/5579-cement-truck-upended-by-arts-district-ramp>

violation of the City's Municipal Code. Again, this disclosure should have been made as it undermines California's claims to always follow building codes that is stated in the very beginning of its bid package. The complaint is attached as Exhibit E. The lawsuits are the most blatant nondisclosures. These are easily verifiable and had to have been known because the complaints were personally served upon California.

**D. Compliance (Question 21) (Two Counts Known)**

California has been investigated, to my knowledge, by the U.S. Department of Justice (for the bid rigging), Utah Attorney General (unknown but disclosed to Spohn by former SITE principal with personal knowledge), and Los Angeles City Code Enforcement Division (*see* Chavis complaint, above). I am also informed that the Internal Revenue Service has investigated and settled a dispute with California during the past five years over paying employees under the table. Unquestionably, the Utah and Los Angeles investigations should have been disclosed.

**V. Fraud in Kennesaw, GA (Four Material Misrepresentations - i.e., Fraud)**

The most recent project that I am aware of that California has been awarded is in Kennesaw, Georgia. The recent public records act request I submitted led to the discovery of three acts of civil fraud and perjury.

The City sought each bidder to testify that it had neither been subject of a lawsuit nor had its bond been attached. California said no to each. The relevant pages are attached as Exhibit F.

In addition, California stated as fact to the "The Preferred Skate Park Designer & Builder For The City Of Los Angeles." (*See* Exhibit F). It is my understanding, from conversations with RAP administrators, that Los Angeles does not engage in anything other than low-bidding, outside of the conditional donations arranged for by Ciaglia's business partner, Dyrdek. Therefore, this *could never be true*, or if it were, it would mean the City of Los Angeles was breaking the law, which we know would never be the case.

Accordingly, California and Ciaglia have committed at least three and possibly four counts of civil fraud and perjury in this one proposal. The fact that California has so cavalierly lied suggests that all of the City of Los Angeles disclosures are similarly false.

#### **VI. Undisclosed Conflicts of Interest**

The City's Recreation and Parks Department has engaged in a series of "sole source" awards to California for skatepark work throughout the City<sup>8</sup>. The basis for these sole source determinations were contingent offers of donations made by or facilitated in part by the Rob Dyrdek Foundation. The stated intent of the Dyrdek Foundation is to provide one in every Council District. Dyrdek, the namesake of the foundation, and Ciaglia are business partners in Street League (a series of skateboarding competitions, televised on ESPN). Dyrdek is also listed as a "design consultant" in California's Kennesaw proposal. (See Exhibit F.) Dyrdek seems to be a beneficiary of his own donation -- which appears to have been hidden from the eyes of the Recreation and Parks Commission.

#### **VII. Sham Bidding**

Ciaglia has admitted to former employees that he has engaged in "low bid and change order" strategies commonly understood as "sham bids." He admitted to doing this on the SE Valley project and the facts bear it out. California bid some \$900,000 versus Spohn's \$1.4 million. Spohn's bid was designed to be competitive -- in the ballpark of what streamlined and effective bid would have been. It could have been underbid but not by some 35%. Ciaglia has admitted that his strategy is to get control of the project and then make profit via change orders.

California obtained the Stoner Park job similarly. It low bid all other bidders by a huge percentage. Hundreds of thousands in change orders were issued.

---

<sup>8</sup>Hollenbeck Skate Spot, Lafayette Skate Spot, Westchester Park Skate Spot, Charmette Bonpua - Rancho Cienega Skate Spot, North Hollywood Skate Plaza. See <http://robdyrdekfoundation.org/safe-spot-skate-spot> for more information.

**VIII. Collective Bargaining Issues**

California is purportedly a member of multiple unions including the Iron Workers, International Cements Masons, and Carpenter's Union. Yet, in the SE Valley bid documents, California stated "N/A" when asked whether any collective bargaining agreements existed. My understanding is that this is deliberately done to avoid paying benefits and/or dues. I expect to find similar misstatements made on the other bids. These omissions raise the possibility of California's putative union employees being disadvantaged as a result.

**IX. Failure to Continue to Use the Design-Build Team in the DB Agreement**

California listed a particular group of contractors in the DB Agreement. It is my understanding that California no longer uses those entities and persons. It stands to reason that this was intentional and, if so, it may constitute fraud.

**X. The Berrics Incident -- Gross Negligence; Deliberate Disregard of Permitting Process**

The Berrics' accident is the subject of the Chavis lawsuit. Ciaglia's alleged conduct there -- seeking to build a concrete structure on the roof of a building, without a permit -- led to allegedly serious injuries and a concrete truck falling through a ramp designed for autos 1/10th of the weight. Conduct such as this is clearly "irresponsible" in the truest sense of the word.

**XI. Unlawful Business Practices in Utah**

I am informed that the Utah Attorney General has and is conducting an investigation into California and/or SITE for improprieties on a job there. This information could be verified by another public agency. If so, this is a serious matter and also should have been disclosed, but, in its own right, suggests irresponsibility.

**XII. Shoddy Work**

Currently, I am aware of the following public skate or BMX parks where California's work has been questioned, replaced, or repaired in some way:

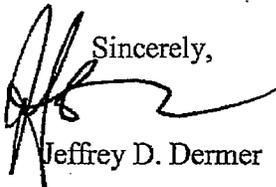
- (1) Ojai Skatepark (Prime)
- (2) Moorpark (Poindexter) Skatepark (Prime)
- (3) Fresno (Mosequeda) BMX Park (Sub)
- (4) Rialto Skatepark (Sub)

These are all relatively recent - suggesting California is no longer the same firm that it was when it gained its reputation. It suggests a reason for resorting to willful obfuscation of its record -- it simply is no longer a responsible firm with which the City of Los Angeles should do business.

**XIII. Conclusion**

California and Ciaglia have unquestionably engaged in serial violations of California civil and criminal laws. These are not mere technicalities. If California's conduct is similar on the other projects listed then it has committed scores of felonies directly related to the building of skateparks in Los Angeles. I simply cannot fathom how a company or person could be allowed to bid on projects with such a track record. I respectfully request that the City extend my investigation using its broader powers. I also request that California not be allowed to participate in the rebid of the SE Valley project given its prior the sham bid and the substantiated allegations contained herein.

Please contact me with any questions that you may have. I will assist you in any way that I can.

  
Sincerely,  
Jeffrey D. Dermer  
Dermer Behrendt

Personally Deliver To the Office Of:

Mr. Russell Strazzezza

LA Bureau of Contract Administration  
Special Projects

1149 S. Broadway Ste # 300

TRANSMITTAL 1

1 Kevin R. Carlin, Esq. SBN 185701  
 2 CARLIN LAW GROUP, APC  
 3 4452 Park Boulevard, Suite 310  
 4 San Diego, California 92116  
 5 Telephone (619) 615-5325  
 6 Telefax (619) 615-5326

**FILED**

JUN 30 2009

FRESNO COUNTY SUPERIOR COURT  
 By: *[Signature]*  
 SSG - DEPUTY

Attorneys for Plaintiff GEOCON ENGINEERING, INC.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF FRESNO**

10 GEOCON ENGINEERING, INC., a  
 11 California corporation;

Plaintiff,

v.

13 CALIFORNIA SKATEPARKS, INC., a  
 14 California corporation; INSURANCE  
 15 COMPANY OF THE WEST, a California  
 16 corporation; JOHN MOSES VELARDE, an  
 17 individual; ERIC JAMES VELARDE, an  
 18 individual; RICHARD DESANTOS  
 19 DELGADO and DOES 1 through 200,  
 20 inclusive,

Defendants.

CASE NO: 09 CE CG 01156 AMC

FIRST AMENDED COMPLAINT FOR

- (1) BREACH OF CONTRACT;
- (2) BREACH OF IMPLIED WARRANTIES;
- (3) EXPRESS INDEMNITY;
- (4) EQUITABLE INDEMNITY;
- (5) CONTRIBUTION;
- (6) BREACH OF PERFORMANCE BOND;
- (7) BREACH OF CONTRACT;
- (8) NEGLIGENCE;
- (9) BREACH OF IMPLIED WARRANTIES;
- (10) EQUITABLE INDEMNITY; AND
- (11) CONTRIBUTION;

**FILE BY FAX**

21 Plaintiff GEOCON ENGINEERING, INC. (hereinafter "GEOCON" or " Plaintiff") alleges as  
 22 follows:

**GENERAL ALLEGATIONS**

23 1. Plaintiff is informed and believes, and on that basis alleges, that venue is proper in the  
 24 Superior Court, State of California, County of Fresno, because the contracts at issue in this action were  
 25 performed within the City of Fresno and relate to the work of improvement generally referred to as the  
 26 BMX Bike Park at the Mosqueda Community Center ("Project").

27 ////

**ORIGINAL**

TRANSMITTAL 2

1 2. Plaintiff is, and at all times mentioned was, a duly licensed contractor under the laws  
2 of the State of California and authorized to perform the work stated below.

3 3. Plaintiff is informed and believes, and based thereon alleges, that Defendant  
4 CALIFORNIA SKATEPARKS, INC. (hereinafter "SKATEPARKS"), is, and at all times mentioned  
5 was, a California corporation, doing business in the State of California.

6 4. Plaintiff is informed and believes, and based thereon alleges, that Defendant  
7 INSURANCE COMPANY OF THE WEST (hereinafter "ICW") is, and at all times mentioned was,  
8 a California corporation doing business in the State of California.

9 5. Plaintiff is informed and believes, and based thereon alleges, that Defendant JOHN  
10 MOSES VELARDE (hereinafter "J. VELARDE") is an individual residing and doing business in  
11 Fresno County, State of California.

12 6. Plaintiff is informed and believes, and based thereon alleges, that Defendant ERIC  
13 JAMES VELARDE (hereinafter "E. VELARDE") is an individual residing and doing business in  
14 Fresno County, State of California.

15 7. Plaintiff is informed and believes, and based thereon alleges, that Defendant RICHARD  
16 DESANTOS (hereinafter "DESANTOS") is an individual residing and doing business in Fresno  
17 County, State of California.

18 8. Plaintiff is informed and believes, and based thereon alleges, that Defendants J.  
19 VELARDE, E. VELARDE, DESANTOS are, and at all times mentioned were, individuals acting  
20 together as a general partnership, doing business as VELARDE ORNAMENTAL IRON (and will  
21 hereinafter collectively be referred to as "VOI"), in the County of Fresno, State of California.

22 9. The true names or capacities, whether individual, corporate, associate or otherwise, of  
23 Defendants named and sued as DOES 1 through 200, inclusive, are unknown to Plaintiff. Plaintiff is  
24 informed and believes, and based thereon alleges, that each of these fictitiously named Defendants is  
25 in some way liable to Plaintiff on the causes of action stated below. Pursuant to the California Code  
26 of Civil Procedure, §474, Plaintiff will ask leave to amend this Complaint when the true names of said  
27 fictitiously named Defendants can be ascertained.

28 ////

1 10. Plaintiff is informed and believes, and based thereon alleges that at all times herein  
2 mentioned, each of the Defendants sued herein was the agent and employee of each of the remaining  
3 Defendants and was at all times acting within the purpose and scope of such agency and employment.

4 **FIRST CAUSE OF ACTION**

5 **(Breach Of Contract Against Defendants SKATEPARKS, and DOES 1 Through 10)**

6 11. Plaintiff hereby incorporated by reference each and every allegation contained in  
7 paragraphs 1 through 10 of this Complaint as though set forth fully herein.

8 12. Plaintiff is informed and believes and there on alleges that on January 18, 2008,  
9 Defendants SKATEPARKS, and DOES 1 through 10, and each of them, entered into a written  
10 subcontract with GEOCON relative to the PROJECT wherein they agreed to perform their scope  
11 of work pursuant to the terms and conditions of the subcontract according to the Project plans,  
12 specifications, applicable laws and in accordance with the highest trade practices. A true and  
13 correct copy of the subcontract is attached hereto as Exhibit "A" and incorporated herein by this  
14 reference.

15 13. GEOCON has fully performed all conditions, covenants, and promises required by  
16 them to be performed in accordance with the terms and conditions of said written subcontract with  
17 Defendants SKATEPARKS, and DOES 1 through 10, and each of them except for those which  
18 have been excused or are not yet due.

19 14. Plaintiff is informed and believes and based thereon alleges that Defendants  
20 SKATEPARKS, and DOES 1 through 10, and each of them, have breached said written  
21 subcontract by, *inter alia*, failing to place and finish the shotcrete on the Upper Cradle in  
22 accordance with the subcontract Documents, failing to perform their work in accordance with the  
23 contract documents, failing to comply with all laws, rules, ordinances and/or regulations relating to  
24 their work, failing to perform their work in a workmanlike manner, failing to uncover, correct  
25 and/or replace their work which was and/or was alleged to be nonconforming, defective and/or  
26 improperly installed, failing to reimburse and/or indemnify GEOCON for any and all losses,  
27 claims, actions, demands, damages, liabilities and expenses arising from or relating to the  
28 foregoing and said Defendants' work on the Project.

1 16. As a direct and consequential result of the breach of contracts by Defendants  
2 SKATEPARKS, and DOES 1 through 10, and each of them, GEOCON has been damaged in an  
3 amount of \$97,168.34 as the cost to investigate, repair SKATEPARKS scope of work under the  
4 contract and the liquidated damages due to SKATEPARKS's failure to correct its deficient  
5 performance with respect to the Upper Cradle. Plaintiff has offset \$64,845.00 from said  
6 Defendants contract leaving \$32,323.34 still due and owing. Said amount is subject to increase  
7 based on attorneys' fees incurred and recoverable in accordance with the contract.

8 17. Furthermore, as a direct and consequential result of the breach of contracts by  
9 Defendants SKATEPARKS, and DOES 1 through 10, and each of them, GEOCON has been  
10 damaged in an a sum in an amount to be determined according to proof at trial, plus interest,  
11 attorneys' fees and any costs related to this action. Plaintiff will seek leave of Court to amend this  
12 complete when such sums can be reasonably ascertained to or at the time of trial.

13 **SECOND CAUSE OF ACTION**

14 **(Breach of Implied Warranties Against Defendants SKATEPARKS,**  
15 **and DOES 21 Through 30)**

16 18. Plaintiff hereby incorporates by reference each and every allegation contained in  
17 paragraphs 1 through 17 of this Complaint as though set forth fully herein.

18 19. Plaintiff is informed and believes and thereon alleges that on January 18, 2008,  
19 Defendants SKATEPARKS and DOES 21 through 30, and each of them, entered into a written  
20 subcontract with GEOCON, wherein said Defendants were to comply with each and every term and  
21 condition of the subcontract.

22 20. Plaintiff is informed and believes, and based thereon alleges, that said Defendants  
23 pursuant to their subcontracts, impliedly warranted that their work on the Project would be fit for its  
24 intended purpose, namely that all material furnished, labor performed and services provided would be  
25 in a good, conforming, workmanlike and substantial manner.

26 21. Plaintiff further alleges that it relied on such warranties and believed that the work  
27 would be performed in a first-class workmanlike manner. Plaintiff also believed the materials  
28

1 provided, labor performed and services rendered would be properly provided/performed by Defendants  
2 SKATEPARKS and DOES 21 through 30, and each of them, and said Defendants' agents or  
3 employees, and thus said materials, labor and services would be fit for its intended uses and purposes.  
4

5 22. Plaintiff is informed and believes, and based thereon alleges, that said Defendants,  
6 and each of them, breached said warranties in that Defendants SKATEPARKS and DOES 21  
7 through 30, and each of them, engaged in conduct which resulted in, inter alia, defective and/or  
8 non-conforming work as well as damage to their work, the work of other contractors, loss of use of  
9 the Project, damage to the furnishings, fixtures and/or equipment in and around the Project, costs  
10 to investigate, mitigate, repair and/or remedy such damages and costs to defend claims of the third  
11 parties for which Plaintiff has been or will be financially responsible for.  
12

13 23. As a proximate result of the breach of the express and implied warranties by said  
14 Defendants, and each of them, Plaintiff had to step in the shoes of Defendants and remedy the deficient  
15 work, mainly the Upper Cradle. As a result of Defendant's failure to remedy the problem in time, the  
16 Project was not completed by the Contract Time and Plaintiff is responsible for a sum in excess of  
17 \$97,168.34 in total costs incurred. Plaintiff has offset \$64,845.00 from said Defendants contract  
18 leaving \$32,323.34 still due and owing. Said amount is subject to increase based on attorneys' fees  
19 incurred and recoverable in accordance with the contract.  
20

### 21 THIRD CAUSE OF ACTION

#### 22 (Express Indemnity Against Defendants SKATEPARKS, and DOES 31 Through 40)

23 24. Plaintiff hereby incorporated by reference each and every allegation contained in  
24 paragraphs 1 through 23 of this Complaint as though set forth fully herein.  
25

26 25. Plaintiff is informed and believes, and thereon alleges, that on January 18, 2008,  
27 Defendants SKATEPARKS and DOES 31 through 40, and each of them, entered into a subcontract  
28 with GEOCON which stated, among other things, that said Defendants would indemnify and hold

1 GEOCON harmless all claims, losses, damages, injuries and/or liabilities caused by said Defendants,  
2 their agents or employees. Specifically the subcontract states in relevant part:

3 All of the subcontract work performed at the site of construction or in  
4 preparing or delivering materials or equipment to the site shall be at the  
5 risk of SUBCONTRACTOR exclusively. To the greatest extent  
6 permitted by law, SUBCONTRACTOR shall defend, indemnify and  
7 hold harmless CONTRACTOR, OWNER, ARCHITECT, and any other  
8 of their respective directors, officers, agents, employees, parents,  
9 affiliates, subsidiaries, partners, and representatives, and any other  
10 persons or entities designated by any of them (collectively, the  
11 Indemnities) from and against all actions, demands, liabilities, claims,  
12 damages, costs, losses, and expenses, including but not limited to  
13 attorney's fees and costs, which arise out of or are in any way related  
14 to this AGREEMENT, including without limitations any claims,  
15 liabilities, loss, damage cost, expense, award, fine or judgment arising  
16 by reason of death or bodily injury to persons, injury to property,  
17 defects in workmanship one materials, or design defects (if design  
18 originated with SUBCONTRACTOR) or arising by reason of  
19 contractor's alleged or actual negligent act or omission, regardless of  
20 whether such act or omission is active or passive.  
21 SUBCONTRACTOR shall not be obligated to indemnify contractor  
22 with respect to the sole negligence or willful misconduct of contractor,  
23 its agents or servants or other subcontractors who are currently  
24 responsible to contractor.

25 26. The above referenced conduct by Defendants SKATEPARKS and DOES 31 through  
26 40, and each of them, resulted in, inter alia, alleged and/or actual defective and/or non-conforming  
27 work as well as damage to their work, the work of other contractors, loss of use of the Project,  
28 damage to the furnishings, fixtures and/or equipment in and around the Project, costs to investigate,  
mitigate, repair and/or remedy such damages and costs to defend claims of the third parties for which  
GEOCON is financially responsible for in an amount in excess of \$97,168.34. This amount is based  
on GEOCON's review of costs incurred to date due to Defendants failure as it relates to the Upper  
Cradle. Plaintiff has offset \$64,845.00 from said Defendants contract leaving \$32,323.34 still due  
and owing. Said amount is subject to increase based on attorneys' fees incurred and recoverable in  
accordance with the contract. Plaintiff will seek a leave of Court to amend this Complaint to reflect

1 when such other sums can be reasonably ascertained or at the time of trial.

2 27. As a result of Defendant's deficient work, evident in the City of Fresno's stopping  
3 of payments due to an unsatisfactory upper cradle, Plaintiff was obligated to correct the error. Not  
4 only did Plaintiff spend an amount exceeding \$97,168.34 in order to remedy the problem, including  
5 liquidated damages as a result of the Project not being completed by the Contract Time. Had  
6 Defendant completed the Upper Cradle sufficiently as required by the terms of the subcontract, the  
7 Project would have been completed by the Contract Time and Plaintiff would not have endured  
8 \$97,168.34 in damages. Plaintiff has offset \$64,845.00 from said Defendants contract leaving  
9 \$32,323.34 still due and owing. Said amount is subject to increase based on attorneys' fees incurred  
10 and recoverable in accordance with the contract.  
11

#### 12 FOURTH CAUSE OF ACTION

13 (Equitable Indemnity Against Defendants SKATEPARKS, and DOES 41 Through 50)

14 28. Plaintiff hereby incorporates by reference each and every allegation contained in  
15 paragraphs 1 through 27 of this Complaint as though set forth fully herein.  
16

17 29. Defendants SKATEPARKS, and DOES 41 through 50, and each of them, engaged  
18 in conduct which resulted in, inter alia, defective and/or non-conforming work as well as damage  
19 to their work, the work of other contractors, loss of use of the Project, damage to the furnishings,  
20 fixtures and/or equipment in and around the Project, costs to investigate, mitigate, and repair and/or  
21 remedy such damages. As a result of Defendant's deficient work, evident in the City of Fresno's  
22 stopping of payments due to an unsatisfactory Upper Cradle, Plaintiff was obligated to correct the  
23 error. Not only did Plaintiff spend an amount exceeding \$97,168.34 in order to remedy the problem.  
24 Had Defendant completed the upper cradle sufficiently as required by the terms of the subcontract,  
25 the Project would have been completed by the Contract Time and Plaintiff would not have endured  
26 liquidated damages. Plaintiff has offset \$64,845.00 from said Defendants contract leaving  
27  
28

1 \$32,323.34 still due and owing. Said amount is subject to increase based on attorneys' fees incurred  
2 and recoverable in accordance with the contract.

3  
4 30. Plaintiff alleges upon information and belief that the losses referenced in the  
5 preceding paragraph, if any, were solely and/or substantially caused by the negligence, breach of  
6 express or implied warranties, and/or other conduct of SKATEPARKS, and DOES 41 through 50,  
7 and each of them, where as the acts of Plaintiff, if any, were secondary, passive, or derivative in  
8 nature.

9  
10 31. Equity requires Defendants SKATEPARKS, and DOES 41 through 50, to defend,  
11 indemnify, release and hold harmless Plaintiff for any claims or sums paid to any person, if any, by  
12 way of settlement, judgment or otherwise as a result of the foregoing to the extent said Defendants  
13 are responsible for same.

#### 14 FIFTH CAUSE OF ACTION

15 (Contribution Against Defendants SKATEPARKS and DOES 51 Through 60)

16  
17 32. Plaintiff hereby incorporates by reference each and every allegation contained in  
18 paragraphs 1 through 31 of this Complaint as though set forth fully herein.

19  
20 33. GEOCON alleges it is entitled to equitable contribution from Defendants,  
21 SKATEPARKS, and Does 51 through 60, and each of them, for costs to investigate, mitigate, repair  
22 and/or remedy such damages and costs to defend claims of the third parties for which GEOCON is  
23 financially responsible for in an amount to be determined according to proof at trial and for which  
24 Plaintiff will seek leave of Court to amend this Complaint to reflect when such sums can be  
25 reasonably ascertained or at the time of trial.

26  
27 34. As a result of Defendant's deficient work, evident in the City of Fresno's stopping  
28 of payments due to an unsatisfactory upper cradle, Plaintiff was obligated to correct the error. Not  
only did Plaintiff spend an amount exceeding \$97,168.34 in order to remedy the problem, which

1 includes liquidated damages as a result of the Project not being completed by the Contract Time. Had  
2 Defendant completed the Upper Cradle sufficiently as required by the terms of the subcontract, the  
3 Project would have been completed by the Contract Time and Plaintiff would not have endured the  
4 above stated damages. Plaintiff has offset \$64,845.00 from said Defendants contract leaving  
5 \$32,323.34 still due and owing. Said amount is subject to increase based on attorneys' fees incurred  
6 and recoverable in accordance with the contract.  
7

8 35. To the extent GEOCON is entitled to equitable contribution from Defendants  
9 SKATEPARK, and Does 51 through 60, and each of them, in proportion to said Defendants' share  
10 of liability for said damages so that GEOCON may avoid payment of any sum in excess of  
11 GEOCON's proportionate share of liability for such damages.  
12

### 13 SIXTH CAUSE OF ACTION

#### 14 (Breach of Performance Bond Against Defendants ICW and DOES 61 through 70)

15 36. GEOCON hereby incorporates by reference each and every allegation contained in  
16 paragraphs 1 through 35 of this Complaint as though set forth fully herein.  
17

18 37. On or about March 17, 2008, Defendants ICW issued Performance Bond # 227 47  
19 45 guaranteeing the full and faithful performance by SKATEPARKS of their duties under their  
20 subcontract with GEOCON. A copy of the foregoing Performance Bond is attached hereto as  
21 Exhibit "B" and is incorporated herein by this reference.  
22

23 38. GEOCON has duly performed all conditions, covenants, and promises required of it  
24 under the subcontract and the Performance Bond, except for those which have been excused due to  
25 the failure of performance by Defendants SKATEPARKS, and each of them, or are not yet due.  
26

27 39. Upon receiving notice of SKATEPARKS' failure to perform pursuant to the terms  
28 and conditions of the subcontract, ICW became legally responsible pursuant to the terms of the  
Performance Bond for all costs and damages incurred by GEOCON as a result of SKATEPARKS'

1 failure of performance under the subcontract.

2 40. By virtue of the acts and conduct alleged herein, Defendants ICW materially breached  
3 their obligations under the Performance Bond by failing to ensure full, proper and/or timely  
4 performance of the subcontract by SKATEPARKS. Moreover, Defendant ICW is responsible for  
5 the damages incurred by GEOCON as a result of SKATEPARKS' failure to perform pursuant to the  
6 terms and conditions of the subcontract as alleged herein and as proven at trial.

7  
8 41. As a result of SKATEPARKS's deficient work, evident in the City of Fresno's  
9 stopping of payments due to an unsatisfactory Upper Cradle, Plaintiff was obligated to correct the  
10 error. Not only did Plaintiff spend an amount exceeding \$97,168.34 in order to remedy the problem,  
11 which includes liquidated damages. Had SKATEPARKS completed the upper cradle sufficiently as  
12 required by the terms of the subcontract, the Project would have been completed by the Contract  
13 Time and Plaintiff would not have endured damages, including liquidated damages. Plaintiff has  
14 offset \$64,845.00 from said Defendants contract leaving \$32,323.34 still due and owing. Said  
15 amount is subject to increase based on attorneys' fees incurred and recoverable in accordance with  
16 the contract.

17  
18 42. As a direct and proximate result of ICW's material breach of their obligations under  
19 the subcontract and Performance Bond, GEOCON has been damaged as set forth above, and such  
20 damages are continuing.

21  
22 **SEVENTH CAUSE OF ACTION**

23  
24 **(Breach Of Contract Against Defendants VOI, and DOES 71 Through 80)**

25 43. Plaintiff hereby incorporated by reference each and every allegation contained in  
26 paragraphs 1 through 42 of this Complaint as though set forth fully herein.

27 44. Plaintiff is informed and believes and there on alleges that Defendants VOI, and  
28 DOES 71 through 80, and each of them, entered into a written subcontract with GEOCON relative

1 to the PROJECT wherein they agreed to perform their scope of work pursuant to the terms and  
2 conditions of the subcontract according to the Project plans, specifications, applicable laws and in  
3 accordance with the highest trade practices. A true and correct copy of the subcontract is attached  
4 hereto as Exhibit "C" and incorporated herein by this reference.  
5

6 45. GEOCON has fully performed all conditions, covenants, and promises required by  
7 them to be performed in accordance with the terms and conditions of said written subcontract with  
8 Defendants VOI, and DOES 71 through 80, and each of them.

9 46. Plaintiff is informed and believes and based thereon alleges that Defendants VOI, and  
10 DOES 71 through 80, and each of them, have breached said written subcontract by, inter alia, failing  
11 to perform their work in accordance with the subcontract Documents, failing to comply with all  
12 laws, rules, ordinances and/or regulations relating to their work, failing to perform their work in a  
13 workmanlike manner, failing to uncover, correct and/or replace their work which was  
14 nonconforming, defective and/or improperly installed, failing to reimburse and/or indemnify  
15 GEOCON for any and all losses, claims, actions, demands, damages, liabilities and expenses arising  
16 from or relating to the foregoing and said Defendants' work on the Project.  
17

18 47. As a direct and consequential result of the breach of contracts by Defendants VOI,  
19 and DOES 71 through 80, and each of them, GEOCON has been damaged in a sum in an amount  
20 to be determined according to proof at trial, plus interest, attorneys' fees and any costs related to this  
21 action. Plaintiff will seek leave of Court to amend this complete when such sums can be reasonably  
22 ascertained to or at the time of trial.  
23

24  
25 **EIGHTH CAUSE OF ACTION**

26 (Negligence Against Defendants VOI, and DOES 81 Through 90)

27 48. Plaintiff hereby incorporated by reference each and every allegation contained in  
28 paragraphs 1 through 47 of this Complaint as though set forth fully herein.

1 49. By statute, contract, professional/industry standards, assumption and/or otherwise  
2 Defendants VOI, and DOES 81 through 90, and each of them, owed a duty of care to GEOCON  
3 to perform the scope of work on the Project in a complete, timely, reasonable and workmanlike  
4 manner, in compliance with applicable codes, regulations and/or statutes.  
5

6 50. At various times throughout the life of the Project, Defendants VOI, and DOES  
7 81 through 90, and each of them, were negligent in that they breached their duty of care owed to  
8 GEOCON to properly and completely investigate, design, administer, and/or perform their work  
9 relative to the Project.  
10

11 51. The foregoing negligence of Defendant's VOI, and DOES 81 through 90, and  
12 each of them, resulted in physical damage to the property of others including but not limited to  
13 GEOCON.

14 52. The foregoing breach of their duty of care to GEOCON by Defendants VOI, and  
15 DOES 81 through 90, and each of them, was a proximate cause of damages suffered by  
16 GEOCON relative to the Project.  
17

18 53. The full damages suffered by GEOCON as a result of the foregoing negligence of  
19 Defendants VOI, and DOES 81 through 90, and each of them, are not yet certain, but capable of  
20 being made certain according to proof at the time of trial.  
21

#### 22 NINTH CAUSE OF ACTION

#### 23 (Breach of Implied Warranties Against Defendants VOI, and DOES 91 Through 100)

24 54. Plaintiff hereby incorporates by reference each and every allegation contained in  
25 paragraphs 1 through 53 of this Complaint as though set forth fully herein.

26 55. Plaintiff is informed and believes and thereon alleges that Defendants VOI and DOES  
27 91 through 100, and each of them, entered into a written subcontract with GEOCON, wherein said  
28 Defendants were to comply with each and every term and condition of the subcontract.

1 56. Plaintiff is informed and believes, and based thereon alleges, that said Defendants  
2 pursuant to their subcontracts, impliedly warranted that their work on the Project would be fit for  
3 its intended purpose, namely that all material furnished, labor performed and services provided  
4 would be in a good, conforming, workmanlike and substantial manner.

5  
6 57. Plaintiff further alleges that it relied on such warranties and believed that the work  
7 would be performed in a first-class workmanlike manner. Plaintiff also believed the materials  
8 provided, labor performed and services rendered would be properly provided/performed by  
9 Defendants VOI and DOES 91 through 100, and each of them, and said Defendants' agents or  
10 employees, and thus said materials, labor and services would be fit for its intended uses and  
11 purposes.  
12

13 58. Plaintiff is informed and believes, and based thereon alleges, that said Defendants,  
14 and each of them, breached said warranties in that Defendants VOI and DOES 91 through 100,  
15 and each of them, engaged in conduct which resulted in, inter alia, defective and/or non-  
16 conforming work as well as damage to their work, the work of other contractors, loss of use of  
17 the Project, damage to the furnishings, fixtures and/or equipment in and around the Project, costs  
18 to investigate, mitigate, repair and/or remedy such damages and costs to defend claims of the  
19 third parties for which Plaintiff has been or will be financially responsible for.  
20

21 59. As a proximate result of the breach of the express and implied warranties by said  
22 Defendants, and each of them, Plaintiff has been damaged a sum in an amount to be determined  
23 according to proof at trial, plus interest, attorney's fees, and any costs related to the suit herein.  
24 Plaintiff will seek leave of Court to amend this Complaint when such sums can be reasonably  
25 ascertained or at the time of trial.  
26

27 ///

28 ///

TENTH CAUSE OF ACTION

(Equitable Indemnity Against Defendants VOI, and DOES 101 Through 110)

60. Plaintiff hereby incorporates by reference each and every allegation contained in paragraphs 1 through 59 of this Complaint as though set forth fully herein.

61. Defendants VOI, and DOES 101 through 110, and each of them, engaged in conduct which resulted in, inter alia, defective and/or non-conforming work as well as damage to their work, the work of other contractors, loss of use of the Project, damage to the furnishings, fixtures and/or equipment in and around the Project, costs to investigate, mitigate, repair and/or remedy such damages and costs to defend claims of the third parties for which Plaintiff has been or will be financially responsible for in an amount to be determined according to proof at trial and for which Plaintiff will seek a leave of Court to amend this Complaint to reflect when such sums can be reasonably ascertained or at the time of trial.

62. Plaintiff alleges upon information and belief that the losses referenced in the preceding paragraph, if any, were solely and/or substantially caused by the negligence, breach of express or implied warranties, and/or other conduct of Defendants VOI, and DOES 101 through 110, and each of them, where as the acts of Plaintiff, if any, were secondary, passive, or derivative in nature.

63. Equity requires Defendants VOI, and DOES 101 through 110, to defend, indemnify, release and hold harmless Plaintiff for any claims or sums paid to any person, if any, by way of settlement, judgment or otherwise as a result of the foregoing to the extent said Defendants are responsible for same.

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1 **ELEVENTH CAUSE OF ACTION**

2 **(Contribution Against Defendants VOI and DOES 111 Through 120)**

3 64. Plaintiff hereby incorporates by reference each and every allegation contained in  
4 paragraphs 1 through 63 of this Complaint as though set forth fully herein.

5  
6 65. GEOCON alleges it is entitled to equitable contribution from Defendants, VOI, and  
7 Does 111 through 120, and each of them, for costs to investigate, mitigate, repair and/or remedy such  
8 damages and costs to defend claims of the third parties for which GEOCON has been or will be  
9 financially responsible for in an amount to be determined according to proof at trial and for which  
10 Plaintiff will seek a leave of Court to amend this Complaint to reflect when such sums can be  
11 reasonably ascertained or at the time of trial.

12  
13 66. To the extent GEOCON is assessed or held liable for any part of the damages sought  
14 by the third parties as a result of the actions or inactions of Defendants VOI, and Does 111 through  
15 120, and each of them, as alleged herein, GEOCON is entitled to equitable contribution from  
16 Defendants VOI, and Does 111 through 120, and each of them, in proportion to said Defendants'  
17 share of liability for said damages so that GEOCON may avoid payment of any sum in excess of  
18 GEOCON's proportionate share of liability for such damages.

19  
20 **PRAYER FOR RELIEF**

21 **WHEREFORE**, based upon the foregoing, Plaintiff prays for judgment against  
22 Defendants, and each of them, as follows:

23 **ON THE FIRST CAUSE OF ACTION:**

- 24  
25 1. For the principal sum in excess of \$32,323.34 according to proof at trial;  
26 2. For interest thereon at the maximum legally permissible rate; and  
27 3. For such other and further relief as the Court deems just and proper.

28 ///

1 **ON THE SECOND CAUSES OF ACTION:**

- 2 1. For the principal sum in excess of \$32,323.34 according to proof at trial;
- 3 2. For interest thereon at the maximum legally permissible rate; and
- 4 3. For such other and further relief as the Court deems just and proper.
- 5

6 **ON THE THIRD CAUSE OF ACTION**

- 7 1. That Plaintiff be entitled to implied indemnity, from the named Defendants, and
- 8 each of them, in accordance with their respective fault, which plaintiff alleges is a sum in excess
- 9 of \$32,323.34 according to proof at trial;
- 10 2. For interest thereon at the maximum legally permissible rate; and
- 11 3. For such other and further relief as the Court deems just and proper.
- 12

13 **ON THE FOURTH CAUSE OF ACTION:**

- 14 1. That Plaintiff be entitled to equitable indemnity, apportionment, and contribution
- 15 from the named Defendants, and each of them, in accordance with their respective fault, which
- 16 plaintiff alleges is a sum in excess of \$32,323.34 according to proof at trial;
- 17 2. For interest thereon at the maximum legally permissible rate; and
- 18 3. For such other and further relief as the Court deems just and proper.
- 19

20 **ON THE FIFTH CAUSE OF ACTION**

- 21 1. That Plaintiff be entitled to contribution from the named Defendants, and each of
- 22 them, in accordance with their respective fault, which plaintiff alleges is a sum in excess of
- 23 \$32,323.34 according to proof at trial;
- 24 2. For interest thereon at the maximum legally permissible rate; and
- 25 3. For such other and further relief as the Court deems just and proper.
- 26

27 **ON THE SIXTH CAUSE OF ACTION**

- 28 1. For the principal sum in excess of \$32,323.34 according to proof at trial;

2. For interest thereon at the maximum legally permissible rate; and

3. For such other and further relief as the Court deems just and proper.

**ON THE SEVENTH, EIGHTH, AND NINTH CAUSES OF ACTION:**

1. For the principal sum which is not yet certain but which is capable of being made certain, according to proof at trial;

2. For interest thereon at the maximum legally permissible rate; and

3. For such other and further relief as the Court deems just and proper.

**ON THE TENTH CAUSE OF ACTION:**

1. That Plaintiff be entitled to equitable indemnity, apportionment, and contribution from the named Defendants, and each of them, in accordance with their respective fault.

2. For interest thereon at the maximum legally permissible rate; and

3. For such other and further relief as the Court deems just and proper.

**ON THE ELEVENTH CAUSE OF ACTION**

1. That Plaintiff be entitled to contribution from the named Defendants, and each of them, in accordance with their respective fault.

2. For interest thereon at the maximum legally permissible rate; and

3. For such other and further relief as the Court deems just and proper.

Dated: 6/29/09

CARLIN LAW GROUP, APC

By: 

Kevin R. Carlin  
Attorney for Plaintiff  
GEOCON ENGINEERING, INC.

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9 Attorneys for Plaintiffs,  
10 **CONRAD CHAVIS and**  
11 **MICHELLE BROUSSARD-CHAVIS**

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

MAY 06 2011

John A. Clarke/Executive Officer/Clerk  
By Amber Lafleur-Clayton Deputy  
AMBER LAFLEUR-CLAYTON

8 SUPERIOR COURT OF CALIFORNIA  
9 COUNTY OF LOS ANGELES

10 CONRAD CHAVIS and MICHELLE  
11 CHAVIS,

12 Plaintiffs,

13 vs.

14 CALIFORNIA LANDSCAPE AND  
15 DESIGN, INC., a California corporation;  
16 CALIFORNIA SKATEPARKS, a California  
17 corporation; JOSEPH M. CIAGLIA; THE  
18 BERRICS, LLC, a California LLC;  
19 STEVEN E. BERRA; ERIK KOSTON;  
20 ANONYMOUS CONTENT, LLC, a  
21 Delaware LLC; PALMETTO  
22 PROPERTIES, LLC, a California LLC;  
23 THE RADER COMPANY, INC., a  
24 California corporation; and DOES 1 through  
25 100, inclusive,

26 Defendants.

) CASE No.: BC 454172  
) JUDGE: ZAVEN V. SINANIAN  
) DEPARTMENT: 23  
) COMPLAINT DATE: JANUARY 31, 2011

) **FIRST AMENDED COMPLAINT**

- ) 1. NEGLIGENCE AND  
) NEGLIGENCE PER SE  
) 2. INTENTIONAL INFLICTION  
) OF EMOTIONAL DISTRESS  
) 3. NEGLIGENT INFLICTION OF  
) EMOTIONAL DISTRESS  
) 4. LOSS OF CONSORTIUM  
) 5. UNFAIR BUSINESS  
) PRACTICES

) **JURY DEMAND**

27 **PRELIMINARY STATEMENT**

28 1. Conrad Chavis and his wife, Michelle Broussard-Chavis, seek damages arising from injuries he sustained while attempting to deliver concrete on August 14, 2010. In addition, Plaintiffs seek injunctive relief to preclude certain defendants from engaging in further unlawful, unfair and anti-competitive business conduct.

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**JURISDICTION**

2. The Superior Court of the State of California has subject matter jurisdiction over the claims raised in this action, because the California Constitution Article VI, Section 10, grants to the Superior Court "original jurisdiction in all cases except those given by statute to other trial courts" and because the claims raised in this complaint are not subject to original jurisdiction of other trial courts.

3. The Superior Court of the State of California has subject matter jurisdiction over the claims raised in this action, because California *Code of Civil Procedure* Section 410.10 grants jurisdiction to the courts of the state of California on any basis not inconsistent with the Constitution of this State or of the United States of America and because the claims raised in this complaint are not inconsistent with said Constitutions.

4. The Superior Court of the State of California has personal jurisdiction over all defendants, because each defendant has such minimum contacts with the state of California such that exercise of said jurisdiction will be consistent with traditional notions of fair play and substantial justice.

**VENUE**

5. Venue is proper in the Superior Court of Los Angeles County, pursuant to California *Code of Civil Procedure* section 395(a), because the injuries alleged in this complaint occurred within the County of Los Angeles, State of California.

**PARTIES**

***Plaintiffs***

- 6. Conrad Chavis is above the age of 18 and a resident of California.
- 7. Michelle Broussard-Chavis is above the age of 18 and a resident of California.
- 8. At all times herein relevant, Conrad Chavis and Michelle Chavis (collectively "Plaintiffs") lived together as husband and wife in the State of California.

11/68/58

1            *Defendants*

2            9.        CALIFORNIA LANDSCAPE AND DESIGN, INC., and CALIFORNIA  
3 SKATEPARKS are California corporations (sometimes collectively "SKATEPARKS")  
4 that are owned and operated by JOSEPH M. CIAGLIA, ("Ciaglia"), their president, CEO  
5 and managing agent. Ciaglia represents to the public that he is a licensed contractor in 13  
6 states, that he has "expert knowledge of city code requirements state wide," and that he is  
7 an expert in municipal building codes. In addition, Ciaglia represents to the public that  
8 he is the most respected and sought after actions sports facility builder in the world. The  
9 two entities comprising SKATEPARKS are alter egos, joint ventures, and/or common  
10 enterprises with respect to each other and function as alter ego entities of Ciaglia.

11           10.       THE BERRICS, LLC, is a California LLC with the address of 3532  
12 Hayden Avenue, Culver City, California. THE BERRICS, LLC, is owned and operated  
13 by STEVEN E. BERRA ("Berra") and ERIK KOSTON ("Koston"), both of whom serve  
14 as its principals and managing agents. ANONYMOUS CONTENT, LLC, ("Anonymous  
15 Content"), a motion picture and video production company, is the third principal of THE  
16 BERRICS, LLC, and is also headquartered at 3532 Hayden Avenue, Culver City,  
17 California. These three principals and the entity they own and manage, THE BERRICS,  
18 LLC, are sometimes collectively referred to herein as "Berrics." THE BERRICS, LLC,  
19 is licensed by the State of California for the business of "women's apparel." In reality,  
20 THE BERRICS, LLC, is a skateboard and accessories retailer, a skatepark design and  
21 construction enterprise, and a creator and distributor of skateboard movies and videos.  
22 Said defendants operate a skatepark at 1248 Palmetto Street in the City and County of  
23 Los Angeles – the site of the incident giving rise to the injuries and damages asserted  
24 herein. Berrics has had an ongoing common enterprise business relationship with Ciaglia  
25 and SKATEPARKS, having constructed a number of skateparks together, including the  
26 skatepark structure at the focus of the instant complaint. On information and belief,  
27 Plaintiffs allege that Berra and Koston utilize THE BERRICS, LLC, as an alter ego of  
28 themselves and that said entity is inadequately insured and inadequately capitalized such

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1 that it would be unjust to extend the doctrine of limited liability and corporate  
2 separateness to avoid personal liability of its principals. THE BERRICS, LLC, Berra and  
3 Koston market themselves and their products and services through their skateboard  
4 competitions and their videos – some of which videos have been produced by  
5 Anonymous Content – and all of which defendants share in the profits and losses arising  
6 from their joint venture and common enterprise. Berra describes himself as creative,  
7 persistent and lawless. Berra has published to the public his developed belief that there is  
8 nothing special about death. Berra has published publicly his philosophy of conscious  
9 disregard of the rights and safety of others, including conscious trespass and intentional  
10 alteration of the property of others for the sole purpose to further his pursuit of  
11 skateboarding.

12 “Well, by our very nature we’re a creative group, a persistent group and a  
13 somewhat lawless one. If we’ve been told not to skate, we leave and come back  
14 only in the middle of the night with lights and generators. If a rail’s been  
15 knobbed, we de-knob. If a ledge has been skate-proofed, we unskate-proof it. If  
16 there are cracks in the concrete, we bondo them. If there’s a kink on the end of an  
17 otherwise perfect rail, we cut it off. It’s what we have to do.”

18 (<http://www.theberrics.com/unitdirective.php>)

19 Berra, Koston and THE BERRICS, LLC, have ratified, endorsed and, together,  
20 have published the aforesaid statements. THE BERRICS, LLC; California Landscape  
21 and Design, Inc.; and California Skateparks are liable for the injuries and damages to  
22 Conrad Chavis and Michelle Chavis under theories of *respondeat superior*, alter ego,  
23 joint venture and common enterprise among other theories.

24 11. PALMETTO PROPERTIES, LLC, (hereinafter “Palmetto”) is a California  
25 LLC that owns and has the right to control the commercial property located at 1248  
26 Palmetto Street in the City and County of Los Angeles. Hereinafter, this location is  
27 sometimes referred to as the “Property.” The Property is the site of the skatepark  
28 construction at issue in this complaint and the injuries alleged by Plaintiffs. Palmetto

1 contracted with THE RADER COMPANY, INC., for management services relating to  
2 the Property.

3 12. THE RADER COMPANY, INC., ("Rader") is a California corporation that  
4 at all times herein relevant was under contract with Palmetto for the management of the  
5 Property. RADER contracted with Palmetto and agreed to manage the Property and to  
6 perform services exercising at all times reasonable care to maintain the safety of the  
7 Property for persons entering onto the Property, among other duties and terms. An  
8 intended beneficiary of such contract was Conrad Chavis, who was invited onto the  
9 Property by persons appearing as agents of the owners and managers with authority under  
10 the circumstances to grant such an invitation.

11 13. DOES 1 - 100 are persons unknown to the Plaintiffs. Each Doe defendant  
12 was and is in some way responsible for, participated in, or contributed to the matters and  
13 things of which Plaintiff herein complains and, in some form and under some theory, is  
14 subject to liability therefore. When the exact nature and identity of such fictitious  
15 defendants are ascertained by Plaintiffs, Plaintiffs will seek leave of the Court to amend  
16 this Complaint setting forth their charging allegations.

#### 17 GENERAL ALLEGATIONS

18 14. At some time prior to August 2010, Berra, Koston and one or more agents  
19 of Anonymous Content, together agreed and determined on behalf of themselves and  
20 THE BERRICS, LLC, to create a movie the subject of which was extreme skateboarding.  
21 They chose a portion of the Property to be the location for filming the action.

- 22 a. Pursuant to their intent to demonstrate extreme skateboarding, they  
23 agreed and determined to create a concrete structure on the roof of  
24 the Property, adjacent to Berrics' main skatepark located at that  
25 same address.
- 26 b. They consulted with Ciaglia in his capacity as owner and managing  
27 agent of SKATEPARKS. Ciaglia, who has represented his having  
28 extensive credentials and experience, designed the project with both

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Berra and Koston and one or more Doe defendants as active participants.

c. Plaintiffs are informed and believe that Berra informed Palmetto of the intent to produce a commercial on the roof of the building and that he received permission from Palmetto to shoot the commercial on the roof of the building. As such, Palmetto knew that there would be commercial activity on the roof and knew or should have known that there would be construction of a set for the filming of the commercial highlighting extreme skateboarding. At minimum, Palmetto knew or should have known that the production of a commercial was likely to require trucks to drive up the ramp – such trucks as would contain movie equipment – cameras, sound and lighting equipment – and trucks intended for construction of the scene. The production of a professional commercial implicates obvious insurance issues for possible injuries sustained on the property – particularly on the ramp-way up to the roof and the roof, itself – thereby putting Palmetto and Rader on inquiry notice, at the very minimum, to determine the nature, extent and manner of activities for the set construction, filming and structural changes imposed on the existing property. As such, Palmetto and its agent the Rader Company, knew or should have known the extent of construction to take place on the roof and the risk of injury posed in the course of construction and filming of an extreme skateboarding commercial. Palmetto and Rader knew or should have known of the possibility of someone getting injured during the course of the production and filming of an extreme skateboarding stunt and, in the course of evaluating risk, should have considered the insurance implications in order to assess liability and assure the existence of

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1 adequate insurance under the circumstances. As it turned out, the  
2 construction indeed took place on Palmetto's property, in open view  
3 from the street and with such a degree of noise arising from the  
4 construction of scaffolds and concrete forms that persons working in  
5 the vicinity or even just passing by should have known of the  
6 existence of construction activity taking place on the property. A  
7 reasonable inspection would have disclosed the existence of the  
8 construction project, including the concrete forms and scaffolding.

9 15. Ciaglia, utilizing his firms and employees, constructed scaffolding and  
10 walls on the roof of the Property. Even though there were substantial changes to the  
11 structure, including the pouring of a full ten cubic yards of concrete atop one of the  
12 supporting walls for the building below, Ciaglia did not obtain permits for the  
13 construction, all in violation of Los Angeles City Code and giving rise, ultimately, to  
14 allegations of code violation and the opening of File No. 389518 by the City of Los  
15 Angeles Code Enforcement Bureau on August 31, 2010. Ciaglia knew that he did not  
16 have consent of the owners and managers of the Property to conduct the structural and  
17 other changes and construction to the Property, but he did it anyway. Ciaglia knew that  
18 he was not a licensed engineer or structural architect and that he was adding substantial  
19 load to both the structure by the concrete and the ramp by bring the concrete truck onto it,  
20 but he did it anyway. Ciaglia acted with reckless indifference to the rights and safety of  
21 those who foreseeably would be affected by his conduct.

22 16. On August 14, 2010, Conrad Chavis was dispatched by his employer,  
23 pursuant to an order for concrete placed by Ciaglia and SKATEPARKS and with the  
24 knowledge and consent of Berra, Koston, Anonymous Content and THE BERRICS,  
25 LLC. Conrad Chavis was to deliver a full ten cubic yards of concrete in his employer's  
26 truck. Upon arrival at the worksite at the Property, Conrad Chavis was invited onto the  
27 property and ordered by agents and/or employees of Ciaglia, SKATEPARKS and Berrics  
28 to drive the truck up a ramp to the rooftop area where he was further ordered by such

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1 persons that he was to deliver and unload the concrete at their direction and command.  
2 Gates onto the property were opened and impediments to passage were removed by the  
3 agents and/or employees of Ciaglia, SKATEPARKS and Berricks. As ordered, Conrad  
4 Chavis backed his truck up the ramp toward the site where he was to unload the concrete.  
5 When he approached the top of the ramp, the ramp gave way, and the truck with Conrad  
6 Chavis in it fell crashing through the ramp an entire story to the surface of the floor  
7 below.

8 17. As the result of the truck crashing through the ramp and falling to the  
9 surface below, Conrad Chavis was thrown from his seat and into the ceiling of the truck.  
10 He was turned upside down in the truck, suffered trauma to his head, neck, spine, spinal  
11 cord and nerve roots, lacerations to his arms, and a dislocated finger among other injuries  
12 including pain, suffering and severe emotional distress. When the truck came to what he  
13 perceived to be a pause in the falling, he suddenly smelled gas and feared the truck was  
14 about to explode. Reasonably believing he was about to die, he struggled to extricate  
15 himself to save his life before the truck fell further or exploded.

16 **FIRST CAUSE OF ACTION**

17 **FOR NEGLIGENCE AND NEGLIGENCE *PER SE***

18 **(By Plaintiff Conrad Chavis against**

19 **Steven Berra; Erik Koston; Anonymous Content, LLC; The Berricks, LLC;**  
20 **Joseph M. Ciaglia; California Skateparks; California Landscape and Design, Inc.,**  
21 **Palmetto Properties, LLC; The Rader Company, Inc., and Does 1-100)**

22 18. Plaintiff Conrad Chavis hereby restates, realleges and incorporates by  
23 reference herein the paragraphs stated above as though fully set forth herein.

24 19. Berra, Koston, Ciaglia and one or more of the Doe Defendants failed to  
25 exercise reasonable care in the course of formulating and executing a plan that had the  
26 foreseeable result of requiring a driver to drive a concrete truck up a ramp that was not  
27 designed or intended to support the weight of the fully load concrete truck. Said  
28 Defendants were further negligent in directing and ordering Conrad Chavis to drive the

1 concrete truck up the ramp. Said defendants further violated one or more statutes,  
2 ordinances or regulations of a public entity. Said defendants' violation of statutes,  
3 ordinance or regulations proximately caused the personal injuries to Conrad Chavis and  
4 the injuries and damages sustained by Conrad Chavis and his wife, Michelle Chavis. The  
5 injuries and damages sustained by Conrad Chavis and Michelle Chavis resulted from an  
6 occurrence the nature of which the statutes, ordinances or regulations were designed to  
7 prevent. Plaintiffs were of the class of persons for whose protection the statutes,  
8 ordinances or regulations were adopted.

9       20. The Rader Company, Inc., breached duties of care by failing to properly  
10 maintain and supervise the Property and by failing to protect against and/or warn of an  
11 unsafe condition of the Property. Palmetto Properties, LLC, breached duties of care by  
12 failing to properly maintain and protect against and/or warn of an unsafe condition of the  
13 Property.

14       21. As the proximate result of the negligence herein alleged, Conrad Chavis  
15 suffered personal injuries, including but not limited to multi-system blunt trauma and  
16 sharp trauma. As the further result of the negligence herein alleged, Conrad Chavis was  
17 hurt and injured in his health, strength and activity, sustaining injury to his person and  
18 nervous system, all of which have caused, and continue to cause Conrad Chavis great  
19 mental, physical and nervous pain, suffering and anguish, and severe emotional distress.  
20 As the further result of the negligence herein alleged, Conrad Chavis sustained general  
21 damages and special damages, including property damages, past and future medical  
22 expenses, rehabilitation expenses, therapy expenses, lifestyle expenses, past and future  
23 loss of earnings and loss of earning capacity.

24       22. The wrongful conduct perpetrated by Berra, Koston, Ciaglia, THE  
25 BERRICS, LLC, SKATEPARKS and Doe defendants was extreme and outrageous and  
26 was committed with the intention of causing, or with reckless disregard of the probability  
27 of causing personal injuries and severe emotional distress. These defendants knew or  
28 reasonably should have known that, by failing to seek structural analysis, avoiding the

1 permitting process, refusing to obtain permission of the Property owners or managers,  
2 trespassing onto the property of others and altering it without permission and without  
3 regard to structural integrity or the consequences of their construction process that they  
4 were proceeding dangerously, unlawfully, and with knowing disregard of the rights and  
5 safety of others. Indeed, this plan was consistent with Berra's prior published philosophy  
6 to do the essence of the very acts perpetrated here and with no care whatsoever that  
7 someone could die as the result. Berra's philosophy on this issue was ratified by Koston  
8 and THE BERRICS, LLC, and was known to Ciaglia. That Berra, Koston, THE  
9 BERRICS, LLC, Ciaglia and the SKATEPARKS defendants conspired to cause the  
10 injuries and damages alleged herein evidences their danger to society. Berra's published  
11 expression of arrogance, adopted by said defendants, indicates that he does not care about  
12 harm caused to others and that said defendants are in agreement. Indeed, such conscious  
13 disregard of the rights and safety of others was intended with the foreseeable result that a  
14 human being such as Conrad Chavis would be subjected to tragic injuries, severe  
15 anguish, anger, grief, humiliation and embarrassment and even the risk of death. These  
16 defendants gave little or no thought to the personal tragedy arising from the severe  
17 injuries and emotional distress to be suffered by one such as Conrad Chavis and his  
18 family.

19       23. The acts set forth herein were fraudulent, cruel, oppressive and so extreme  
20 and outrageous as to cause such pain that no person in a civilized society should have to  
21 endure. The conduct of Berra, Koston, Ciaglia and some as yet unidentified Doe  
22 defendants was malicious, despicable and oppressive – being so vile, base or  
23 contemptible as to be looked down upon and despised by reasonable people. These  
24 defendants actually intended that someone in the position of Conrad Chavis would suffer.  
25 These defendants actually intended that Conrad Chavis and his family would be subjected  
26 to and experience severe and painful hardship – economic as well as personal and  
27 emotional. Conrad Chavis seeks punitive damages for the sake of example and by way of  
28 punishing Berra and Koston, personally, and THE BERRICS, LLC, for which they are

1 managing agents; and Ciaglia, personally, and California Landscape and Design, Inc.,  
2 and California Skateparks, for which Ciaglia is a managing agent.

3 **SECOND CAUSE OF ACTION**

4 **FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

5 **(By Plaintiff Conrad Chavis against**

6 **Steven Berra; Erik Koston; The Berricks, LLC; and**

7 **Joseph M. Ciaglia; California Skateparks; California Landscape and Design, Inc.,**

8 **and some or all of Does 1-100)**

9 24. Plaintiff Conrad Chavis hereby restates, realleges and incorporates by  
10 reference herein the paragraphs stated above as though fully set forth herein.

11 25. Berra, Koston, Ciaglia and one or more of the Doe Defendants failed to  
12 exercise reasonable care in the course of formulating and executing a plan that had the

13 26. The wrongful conduct perpetrated by Berra, Koston, Ciaglia, THE  
14 BERRICS, LLC, SKATEPARKS and Doe defendants was extreme and outrageous and  
15 was committed with the intention of causing, or with reckless disregard of the probability  
16 of causing personal injuries and severe emotional distress. These defendants knew or  
17 reasonably should have known that, by failing to seek structural analysis, avoiding the  
18 permitting process, refusing to obtain permission of the Property owners or managers,  
19 trespassing onto the property of others and altering it without permission and without  
20 regard to structural integrity or the consequences of their construction process that they  
21 were proceeding dangerously, unlawfully, and with knowing disregard of the rights and  
22 safety of others. Indeed, this plan was consistent with Berra's prior published philosophy  
23 to do the essence of the very acts perpetrated here and with no care whatsoever that  
24 someone could die as the result. Berra's philosophy on this issue was ratified by Koston  
25 and THE BERRICS, LLC, and was known to Ciaglia. That Berra, Koston, THE  
26 BERRICS, LLC, Ciaglia and the SKATEPARKS defendants conspired to cause the  
27 injuries and damages alleged herein evidences their danger to society. Berra's published  
28 expression of arrogance, adopted by said defendants, indicates that he does not care about

1 harm caused to others and that said defendants are in agreement. Indeed, such conscious  
2 disregard of the rights and safety of others was intended with the foreseeable result that a  
3 human being such as Conrad Chavis would be subjected to tragic injuries, severe  
4 anguish, anger, grief, humiliation and embarrassment and even the risk of death. These  
5 defendants gave little or no thought to the personal tragedy arising from the severe  
6 injuries and emotional distress to be suffered by one such as Conrad Chavis and his  
7 family.

8 27. As the proximate result of the aforesaid wrongful conduct, Conrad Chavis  
9 suffered and continue to suffer long-lasting extreme embarrassment, humiliation, shock,  
10 anguish, grief, anger and sorrow, and he has sustained general and special damages  
11 thereby.

12 28. The acts set forth herein were fraudulent, cruel, oppressive and so extreme  
13 and outrageous as to cause such pain that no person in a civilized society should have to  
14 endure. The conduct of Berra, Koston, Ciaglia and some as yet unidentified Doe  
15 defendants was malicious, despicable and oppressive – being so vile, base or  
16 contemptible as to be looked down upon and despised by reasonable people. These  
17 defendants actually intended that someone in the position of Conrad Chavis would suffer.  
18 These defendants actually intended that Conrad Chavis and his family would be subjected  
19 to and experience severe and painful hardship – economic as well as personal and  
20 emotional. Conrad Chavis seeks punitive damages for the sake of example and by way of  
21 punishing Berra and Koston, personally, and THE BERRICS, LLC, for which they are  
22 managing agents; and Ciaglia, personally, and California Landscape and Design, Inc.,  
23 and California Skateparks, for which Ciaglia is a managing agent.

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1 **THIRD CAUSE OF ACTION**

2 **FOR NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

3 **(By Plaintiff Conrad Chavis against**

4 **Steven Berra; Erik Koston; The Berricks, LLC; and**

5 **Joseph M. Ciaglia; California Skateparks; California Landscape and Design, Inc.,**

6 **and some or all of Does 1-100)**

7 29. Plaintiff Conrad Chavis hereby restates, realleges and incorporates by  
8 reference herein the paragraphs stated above as though fully set forth herein.

9 30. Berra, Koston, THE BERRICS, LLC, Ciaglia and SKATEPARKS owed  
10 duties to exercise reasonable care in the conduct of their business that Conrad Chavis and  
11 persons such as Conrad Chavis would not be injured by their negligence.

12 31. The negligence of said defendants was a substantial factor cause of serious  
13 emotional distress. Conrad Chavis suffered and continues to suffer serious emotional  
14 distress consisting of pain, suffering, anguish, fright, horror, grief, anxiety, worry, shock,  
15 humiliation and shame. In addition, Conrad Chavis suffered general and special damages  
16 arising therefrom and including lost earnings and earning capacity.

17 32. The acts set forth herein were fraudulent, cruel, oppressive and so extreme  
18 and outrageous as to cause such pain that no person in a civilized society should have to  
19 endure. The conduct of Berra, Koston, Ciaglia and some as yet unidentified Doe  
20 defendants was malicious, despicable and oppressive – being so vile, base or  
21 contemptible as to be looked down upon and despised by reasonable people. These  
22 defendants actually intended that someone in the position of Conrad Chavis would suffer.  
23 These defendants actually intended that Conrad Chavis and his family would be subjected  
24 to and experience severe and painful hardship – economic as well as personal and  
25 emotional. Conrad Chavis seeks punitive damages for the sake of example and by way of  
26 punishing Berra and Koston, personally, and THE BERRICS, LLC, for which they are  
27 managing agents; and Ciaglia, personally, and California Landscape and Design, Inc.,  
28 and California Skateparks, for which Ciaglia is a managing agent.

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**FOURTH CAUSE OF ACTION**

**FOR LOSS OF CONSORTIUM**

**(By Plaintiff Michelle Broussard-Chavis against**

**Steven Berra; Erik Koston; Anonymous Content, LLC; The Berricks, LLC;  
Joseph M. Ciaglia; California Skateparks; California Landscape and Design, Inc.,  
Palmetto Properties, LLC; The Rader Company, Inc., and Does 1-100)**

33. Plaintiff Michelle Broussard-Chavis hereby restates, realleges and incorporates by reference herein the paragraphs stated above as though fully set forth herein.

34. The acts and omissions alleged herein above resulted in past and ongoing deprivation to Plaintiff Michelle Broussard-Chavis of the society, comfort, affection, and companionship from her husband, Conrad Chavis, to whom she was, is, and will be entitled to enjoy.

**FIFTH CAUSE OF ACTION**

**FOR UNFAIR BUSINESS PRACTICES**

**IN VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE §§ 17200 *ET SEQ.***

**(By Plaintiff Conrad Chavis against Steven Berra; Erik Koston; The Berricks, LLC;  
and Joseph M. Ciaglia; California Skateparks; California Landscape and Design,  
Inc., and some or all of Does 1-100)**

35. Plaintiff Conrad Chavis hereby restates, realleges and incorporates by reference herein the paragraphs stated above as though fully set forth herein.

36. Berra, Koston, THE BERRICS, LLC, Ciaglia, and the SKATEPARKS defendants, and each of them, were and are persons within the meaning set forth in *California Business and Professions Code* §17201.

37. Said defendants' business practices, as alleged herein, have been criminal, unlawful, unfair, anti-competitive and/or fraudulent within the meaning of *California Business and Professions Code* §§ 17200 *et seq.*

38. As a result of the criminal, unlawful, unfair, anti-competitive and/or

11/08/08

1 fraudulent conduct of said defendants, Conrad Chavis has been injured, damaged and/or  
2 deprived of property.

3 39. Conrad Chavis seeks an order for injunctive relief that said defendants be  
4 ordered to abstain from constructing skateparks without having first obtained the  
5 necessary permits.

6 **PRAYER FOR RELIEF**

- 7 1. For compensatory damages, including general and special damages, in  
8 amounts in excess of the jurisdictional minimum of this Court;  
9 2. For punitive damages;  
10 3. For injunctive relief;  
11 4. For pre-judgment and post-judgment interest;  
12 5. For costs of suit and attorneys' fees as applicable under California Code of  
13 Civil Procedure section 1021.5; and  
14 6. For such other and further relief as may be just and proper.

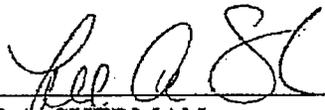
15 **JURY DEMAND**

16 Plaintiffs demand a trial by jury for all issues so triable.

17  
18 Respectfully submitted,

19 Dated: May 6, 2011

**CALLAHAN, THOMPSON, SHERMAN  
& CAUDILL, LLP**

20  
21  
22 By: 

LEE A. SHERMAN

Attorneys for Plaintiffs,

CONRAD CHAVIS AND

MICHELLE BROUSSARD-CHAVIS

11/62/58



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VIK NAGPAL<sup>1</sup>  
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MONIQUE R. DONAVAN<sup>1</sup>  
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AMBER B. DERHAM<sup>1</sup>  
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- 8 Admitted in Wyoming
- 9 Admitted in Washington
- 10 Admitted in New Jersey
- 11 Admitted in New York
- 12 Admitted in Illinois
- \* Certified Family Law Specialist  
The State Bar of California Board of  
Legal Specialization

January 17, 2012

## VIA U.S. MAIL

Russell Strazzella  
Division Manager  
LA Bureau of Contract Administration, Special Projects  
1149 S. Broadway Suite #300  
Los Angeles, CA 90015

Mary E. Alvarez  
Commission Executive Assistant  
Board of Recreation and Park Commissioners  
221 N. Figueroa St., Suite 1510  
Los Angeles, CA 90012

BOARD OF RECREATION  
AND PARK COMMISSIONERS  
2012 JAN 20 AM 9:25

**Re: In Re: California Skateparks, Inc.**

BWB&O Client: California Skateparks, Inc.

BWB&O File No.: 3781.001

**Subject: Southeast Valley Roller and Skateboard Rink**

Dear Mr. Strazzella:

Please be advised that our office has been retained by California Skateparks, Inc. ("CSP") with regards to the issues on the Southeast Valley Roller and Skateboard rink project. It is our understanding that CSP competitor and fellow bidder, Spohn Ranch ("Spohn"), has set forth a number of inflammatory allegations regarding CSP. A copy of Spohn's original September 8, 2011 correspondence is attached as **Exhibit A**. This letter serves as CSP's formal response to the allegations set forth in Spohn's correspondence.

As an initial matter, please be advised that Spohn (by and through its attorney Jeffrey Dermer) has been engaged in a systematic letter writing campaign to public agencies and municipalities wherein they have alleged a large number of false, misleading and defamatory

Newport Beach	Woodland Hills	San Diego	Riverside	Northern California	Nevada	Arizona	Denver
(949) 221-1000	(818) /12-9800	(619) 236-0048	(951) 928-7791	(510) 540-4881	(702) 258-6665	(602) 274-1204	(303) 256-6327

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Russell Strazzella  
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BWB&O File No.: 3781.001  
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statements concerning CSP. These letters were written with the intent to interfere with CSP's existing business relationships and contracts. At this time, CSP has already transmitted a cease and desist letter to Spohn and will likely need to resort to litigation due to the damages caused by Spohn's efforts.

### *Litigation History*

As an initial matter, CSP would like to apologize for its inadvertent error in completing the City of Los Angeles Responsibility Questionnaire. Specifically, CSP was in error with regards to question 18 of the questionnaire regarding its litigation history. Please note that there was no intent to deceive or otherwise mislead the City of Los Angeles with regards to its response. At the time the questionnaire was completed, CSP noted that question 18 was phrased as "has your firm been the **defendant in court** on a matter related to any of the following issues?" [Emphasis added.] CSP principal, Joseph Ciaglia, (prior to retaining legal counsel to assist in the bid process) mistakenly believed that the fact that CSP had never appeared inside the Courtroom, or had its deposition taken, that he was correct in answering "No" to this question.

In the interests of full disclosure, CSP's complete litigation history for the past five years is set forth below. As you can see, the lawsuits are primarily frivolous claims that involve issues that are tenuously related to CSP's work performed on these projects.

1) Geocon Engineering, Inc. v. California Skateparks, et al. (case no. 09 CE CG 01156 AMC)- This matter was venued before the Superior Court of Fresno County and involves allegations of breach of contract and negligence as it relates to the Mosqueda BMX Park in the City of Fresno. This frivolous claim was brought by general contractor Geocon against CSP in an attempt to recover alleged expenses and fees incurred by Geocon in allegedly repairing issues at the BMX Park. This lawsuit has been fully settled. As an example of the frivolous nature of this claim, CSP (and its insurers) did not pay any monetary amount towards this settlement and was merely asked to waive its right to sue the other parties.

2) Chavis v. California Landscape & Design, et al. (case no. BC454172)- This matter is venued before the Superior Court of Los Angeles. At its heart, this matter is a personal injury lawsuit brought by Plaintiff Conrad Chavis and his wife brought suit due to injuries sustained on August 14, 2010. On that date, Plaintiff Chavis drove a concrete truck to the project site and on his own volition, elected to drive the truck up the ramp of a concrete structure. The ramp of the structure collapsed causing Plaintiff Chavis bodily injuries. CSP's involvement on this project had to deal with the design and construction of a commercial set structure on the roof of the subject building (for filming). It did not design, build, or otherwise instruct Plaintiff Chavis to deliver concrete via the building's ramp. We believe that this matter is a frivolous claim and on

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behalf of CSP, a Motion for Summary Judgment has been filed and will be heard within the next few months.

3) Settembri, PPA v. City of Bristol, et al.- This is a personal injury matter venued before the Superior Court of New Haven, Connecticut. On or about July 8, 2009, Plaintiff Settembri (a minor) was skateboarding at a skate plaza in Bristol, Connecticut when he allegedly slipped on a puddle of water and mold that had accumulated at the bottom of a curb in the park. Plaintiff Settembri is now suing multiple parties including the City of Bristol, the Bristol Parks and Recreation Department and CSP as a result of his alleged injuries. This matter is currently pending. CSP evaluates this case as a frivolous claim as it is impossible for any contractor to insure against the effects of weather in an outdoor skatepark.

4) Wyrick v. Jurupa Community Service District, et al. (case no. RIC483076)- This case is venued before the Riverside Superior Court and is a personal injury action brought by Plaintiff Wyrick. Plaintiff Wyrick slipped and fell and hurt himself allegedly as a result of a raised drain in a skateboard park. Although initially named as a Cross-Defendant in this matter by the general contractor, subsequent investigations revealed that the drain was outside of CSP's scope of work and that it had no responsibility for the area where Plaintiff was injured. As such, CSP was dismissed from the lawsuit.

#### *Response to Accusations of Bid Rigging*

Additionally, please note that Mr. Ciaglia and CSP has never engaged in any bid rigging or mail fraud as alleged by Spohn. Spohn's fictionalized account of Mr. Ciaglia's interaction with Spohn is patently false and will be the centerpiece of CSP's lawsuit for defamation and trade libel against Spohn.

#### *Response to Street League and SITE Ownership*

Please note that CSP does not own or hold any ownership or partnership interest in Street League with Rob Dyrdek. The fact that Mr. Dyrdek has facilitated the building of numerous public skateparks (**funded entirely by private donations**) with the assistance of CSP has absolutely no bearing upon the instant project. As such, there exists no collusion or conflicts of interests as CSP and Mr. Ciaglia have absolutely no financial or ownership interest in Street League (or any other business ventures of Mr. Dyrdek). Nonetheless, this is yet another example of a false accusation raised by Spohn in the hopes of gaining a competitive advantage in the bidding process for the subject project.

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Further, we are at a loss as to the exact nature of Spohn's allegations regarding SITE Design, Inc. Any alleged relationship between CSP and SITE has no relevance to the instant project. Further, there exists no conflict of interest on any of CSP's projects arising from any purported relationship between Mr. Ciaglia and SITE. Accordingly, this appears to be another instance of mudslinging by Spohn to defame and damage CSP's business and reputation.

*Response to Insurance and Bonding Allegations*

CSP's bond is in good standing and no payment has been made by it with regards to the Moorpark project (or any other project). To the extent that Spohn believes that Mr. Ciaglia is "fighting for his life", they are mistaken. This hearsay allegation is completely false and there is no truth to Spohn's irresponsible accusation.

*Response to Alleged Investigations*

CSP and Mr. Ciaglia is unaware of any investigation of it by the U.S. Department of Justice, the Utah Attorney General and the Internal Revenue Service. To the best of CSP's knowledge, it believes that Spohn's representations regarding these alleged investigations are false. In fact, if these allegations were true (which CSP denies), CSP is highly skeptical that a "interested third party" such as Spohn would have any material knowledge as to the contents of a alleged criminal investigation.

*Response to Sham Bidding*

CSP has not engaged in any sham bidding practices. CSP is the industry leader in skatepark construction due to its extensive experience and expertise in constructing quality skateparks at reasonable prices. To the extent that Spohn is upset that CSP was able to beat its most competitive bid by a wide margin on the Southeast Valley project, it should be looking towards its own internal expenses and costs and not defaming CSP by accusing it of issuing a sham bid.

*Response to Collective Bargaining Issues*

CSP is also at a loss as to the alleged issue with regards to collective bargaining agreements. We do not understand how, if at all, California would be able to avoid paying any alleged dues and payments by allegedly filling out false information in its bid package. This is yet another example of the illogical, false defamatory accusations that Spohn has been systematically spreading about CSP.

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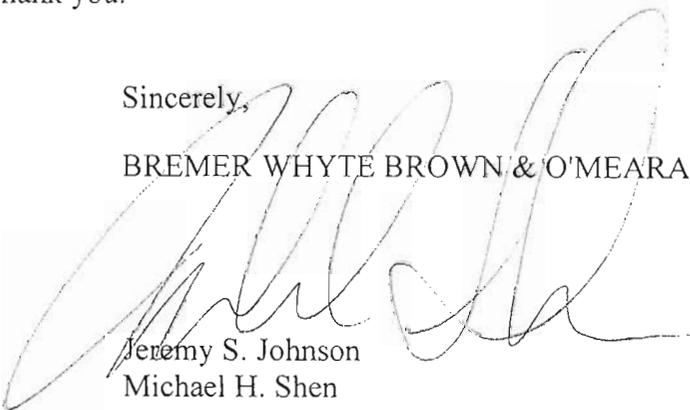
*CSP's Bid and Questionnaire*

At this time, CSP is in receipt of the Los Angeles Department of Recreation and Parks' January 5, 2012 letter wherein it requested an extension of time to hold CSP's bid until March 23, 2012. CSP is agreeable to this extension of time for its bid but requests an opportunity to amend and supplement both its Responsibility Questionnaire and bid package to reflect the most current and accurate facts. In the time since the CSP's bid package was originally submitted, CSP has undergone changes to its corporate structure. We request that the Department of Recreation and Parks inform us at its earliest convenience whether it is agreeable to this request so that CSP may immediately provide the City with the most up-to-date information.

If you should have any additional questions or require any further information, please do not hesitate to contact my office. Thank you.

Sincerely,

BREMER WHYTE BROWN & O'MEARA LLP



Jeremy S. Johnson  
Michael H. Shen

jjohnson@bremerandwhyte.com  
mshen@bremerandwhyte.com  
MHS:ms

cc: Client

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September 8, 2011

VIA PERSONAL DELIVERY

Mr. Russell Strazzella  
Division Manager  
LA Bureau of Contract Administration, Special Projects  
Bureau of Contract Administration  
1149 S. Broadway Suite #300  
Los Angeles, CA 90015

Re: Investigation of On-Call Specialty Contractor California  
Skateparks, Inc. & Joseph Ciaglia, Jr. for Acts of Moral Turpitude

Dear Mr. Strazzella:

I represent Spohn Ranch, Inc. I write to follow up on a voice message that I left for you on Friday, September 2, 2011. I was referred to you by Marcia Gonzalez-Kimbrough of the City Attorney's Office. I had sent her a letter dated August 4, 2011 and an email dated August 24, 2011, which I have attached as Exhibits A and B.

Those emails and my message pertain to my belief that California Skateparks, Inc. ("California"), and Joe Ciaglia, Jr., ("Ciaglia") should be investigated and subsequently debarred by the City of Los Angeles. California is party to two (2) on-call contracts with the City. The first, let in 2008, is for Pre-Qualification for Design-Build Services ("DB Agreement")<sup>1</sup>. The second, let in 2010, is for Specialty Concrete for the provision of skateparks ("Skatepark

<sup>1</sup> SOQ submitted on August 29, 2008 to Department of Recreation and Parks.

Agreement”)<sup>2</sup>. California has been the general contractor or subcontractor on most, if not all, of Los Angeles’ publicly funded skateparks for many years. California also does other significant work under the DB Agreement. The total amount of work paid to California is in the millions. **California is currently representing itself as the “preferred design builder” of skateparks for the City of Los Angeles.** If this is in fact true then the City has a tremendous moral obligation to insist that its “preferred” providers do not systematically lie, cheat, and steal while providing subpar construction work during a time of massive unemployment and limited municipal budgets. **The City must not allow California to continue putting profits over people.**

I base this request and conclusion upon Ciaglia’s and California’s verifiable felonies (attempted bid-rigging, perjury, and fraud) of moral turpitude in City contracting as well as with at least one other local government. I also allege and the City can easily prove (by looking at its own records that it has so far refused my client’s efforts to review) the existence of scores of other examples of perjury, fraud, and violation of the California False Claims Act against the City of Los Angeles. I further base these allegations upon information gathered as part of my representation of Spohn Ranch, Inc., which is also party to similar on-call agreements and has been systematically injured by virtue of Ciaglia’s actions. I am highly confident that every allegation contained in here is proveably true.

Ciaglia, through California, appears to have committed the following acts of moral turpitude:

- (1) **attempting to collude and bid-rig** the Hansen Dam skatepark project in October, 2010;
- (2) **perjury and fraud** arising against the City of Los Angeles pursuant to the Skatepark Agreement;
- (3) **perjury, fraud, and violations of the California False Claims Act** on the following specific bids and projects: Hansen Dam Skate Plaza, Proposition 40, PRJ #1237A, Bid Date 10/26/10 (“Hansen II”), Hansen Dam Skate Plaza, Proposition 40, PRJ #1237A, Bid Date 6/30/10 (“Hansen I”), Stoner Skate Park (“Stoner”), Jackie Tatum Harvard Recreation Center Skatepark (contract number

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<sup>2</sup> On-Call Specialty Contract subject to RFP dated May 13, 2010 from the City of Los Angeles.

- C-117964) (“Harvard”); and the Southeast Valley Roller and Skateboard Rink – Phase I (Skateboard Rink/Skatepark) (W.O.#E170125F) (“SE Valley”);
- (4) **fraud** in securing a design-build project in Kennesaw, Georgia within the past six months including misrepresenting California as Los Angeles’ “Preferred Skatepark Vendor” in the Kennesaw Proposal
  - (5) **undisclosed conflicts of interest** arising from a series of ‘sole source’ preferred vendor projects funded by the Rob Dyrdek Foundation that would never have been let had the true facts been disclosed (that Dyrdek is his business partner and design consultant)
  - (6) **engaging in sham bidding** as part of an admitted “low-bid and change-order” strategy used to take control and change projects outside the scope of the competitive bidding laws;
  - (7) deliberately failing to disclose collective-bargaining agreements on one or more bids to avoid payment of union dues (Iron Workers, Int’l Cements Masons, Carpenter’s Union);
  - (8) failing to use the listed design team in the DB Agreement in subsequent projects and instead using related parties such as its subsidiary, SITE Design;
  - (9) building concrete skatepark structures **without a Los Angeles building permit** leading to a **major accident** where a concrete truck fell through a ramp; and
  - (10) engaging in unlawful business practices in Utah, leading to an Utah Attorney’s General investigation.

I am certain that there are many more instances -- I have just begun collecting this information and much of it was only discoverable thanks to a former-employee whistleblower. I am informed that there may be IRS and employment-law issues as well. Ciaglia has been known to state that “Los Angeles is his client” and that he is entitled to “all the skatepark work” from the City. His conduct speaks to that. Ciaglia apparently does not feel the need to disclose the most basic facts such as conflicts of interest and routinely commits perjury and fraud to obtain work. I respectfully request a full investigation and that California be precluded from being awarded any further work in the interim given the egregious, systematic, and verifiable nature of his despicable conduct. Failure to do so risks proving that the Department of Recreation and Parks

and/or the City really does hold California as its preferred vendor and is interested in protecting that relationship over the interests of the taxpayer, general public, and most importantly, the children of this City who use these skateparks.

## **I. Factual Background**

California Skateparks, Inc., is one of several entities owned by Joseph M. Ciaglia, Jr. He also owns SITE Design, Inc., California Rampworks, California Landscaping & Design, and is a partner in the 'Street League' business with Rob Dyrdek (for whom Ciaglia also builds skate park equipment at below cost for use on Dyrdek's Television Program on MTV). California once held close to a monopoly position in the 'poured in place' concrete skatepark market. Between celebrity endorsements and a high-quality team led by design-builder Wally Holiday and the project management skills of Nikolai Samarin, California had a well-deserved reputation for excellence.

Due to Ciaglia's business methods, it has lost these key employees and is a shade of its former self. These losses have resulted in the conduct that will be outlined below -- from lesser work product, to taking shortcuts, and finally, to serial non-compliance, fraud, and deceit in obtaining public work. California's work product has been rejected or repaired in Fresno, Ojai, and Moorpark during the past few years.

My client, Spohn Ranch, Inc., has been building skateparks for 19 years. It is a woman-owned business based in Los Angeles County. The principals are all residents of Council District 11. Spohn was the low-bidder (twice) on the Hansen Dam Skatepark Project (currently in process). Spohn listed California as its subcontractor before having any of the knowledge contained in this letter.

Spohn submitted the only responsive bid on the initial SE Valley bid. Spohn protested California's bid on the grounds that it was an admitted sham (by Ciaglia to a former employee) and California's failure to comply with the bid documents, as well as its failure to make proper and material disclosures on its Contractor Responsibility form. Subsequent to that very limited

protest, I conducted an investigation and have discovered the information set forth herein. I continue, on a weekly basis, to find additional examples of moral turpitude and general dishonesty.

## **II. Bid Rigging & Mail Fraud On Hansen Dam**

In October, 2010, Joseph Ciaglia, Jr. attempted to rig a bid against the City of Los Angeles for the Hansen Dam Skatepark project.

On October 26, 2010, the date of the Hansen Dam bid opening, Ciaglia contacted out of state contractors on the Skatepark Agreement and the DB Agreement to determine whether they intended to bid the project. After discovering that they did not, Ciaglia attempted to obtain Spohn Ranch's participation in his scheme. At approximately 1:10 pm, Scott Rice, California's then and now former project manager sent an unsolicited email to Doug Hagen, an employee of Spohn Ranch. The e-mail reads, in relevant part:

**Joe's final number for our bid is \$750,000 total** (\$660,000 design + construction plus the required \$90k for landscape, drainage, etc.) **He's suggesting \$770,000** (\$680,000 + \$90k) **for you guys.**

(Emphasis added). E-mail attached as Exhibit C. Spohn did not receive it until the bid package had left its office and been submitted to the City.

At approximately 4 p.m. that day, after hearing the bid results, Ciaglia drove to and entered Spohn's office without permission and over the objection of employees. He proceeded to locate Hagen. He then demanded to know why Spohn and Hagen had not followed his instructions with respect to the amount to bid. Because Hagen had been out of his office on a conference call, he didn't know about the email. He was shocked and visibly shaken to hear Ciaglia rant and talk about it. Ciaglia then demanded that Hagen go into Hagen's office, accompanied by Ciaglia, view and print the email.

After realizing that Spohn had no interest in colluding, Ciaglia demanded that Hagen delete the email off of his computer. Ciaglia, lacking technological savvy, did not realize that the email remained on the server.

Not satisfied, Ciaglia showed Kirsten Bradford, CEO of Spohn, text messages between him and other potential bidders (purportedly Grindline Skateparks and American Ramp Company). These text messages contained Ciaglia's request and their affirmation that they would not be bidding on the project. He apparently showed these messages to Bradford to illustrate the feasibility of his scheme. He asserted that Bradford did not know how "the game was played" and that Spohn had "left a lot of money on the table." He subsequently demanded to Aaron Spohn, President of Spohn Ranch, Inc., that Spohn rescind its winning bid to be "fair" to Ciaglia. Spohn refused to do so and since that time has been extremely hesitant to even communicate with Ciaglia.

Ciaglia's actions were criminal. They violate the Wire Act as an attempted bid rig through the use of interstate commerce. 18 U.S.C. § 1804. They also violated the bid affidavit and constitute perjury under California Penal Code § 118.<sup>3</sup>

### **III. Civil Fraud/Perjury**

California has entered and continues to be party to the DB Agreement and the Skatepark Agreement. Each independently requires full and continuing disclosure<sup>4</sup> of many items, subject to the penalty of perjury if such omissions were knowingly and intentionally done. California's bidding on the following projects was done upon the City's standard Contractor Responsibility Questionnaire as well:

- (1) Hansen Dam Skate Plaza, Proposition 40, PRJ #1237A, Bid Date 6/30/10 ("Hansen I"),

<sup>3</sup> Perjury is punishable by two, three, or four years in prison.

<sup>4</sup> See PSC-33 that requires notification within 30 days of changes in responses and for knowledge of any investigation such as the Utah AG investigation or the LA City Code Enforcement Investigation.

- (2) Hansen Dam Skate Plaza, Proposition 40, PRJ #1237A, Bid Date 10/26/10  
("Hansen II")
- (3) Stoner Skate Park ("Stoner"),
- (4) Jackie Tatum Harvard Recreation Center Skatepark (contract number C-117964)  
("Harvard");
- (5) Southeast Valley Roller and Skateboard Rink – Phase I (Skateboard  
Rink/Skatepark) (W.O.#E170125F) ("SE Valley")

Thus, for each willful non-disclosure, seven counts of perjury and fraud exist. As set forth below, I believe there are at least seven material non-disclosures.

My client sought and was refused access to the SE Valley Contractor Responsibility Questionnaire. Ms. Gonzalez-Kimbrough stated that it and those pertaining to past projects will be disclosed pursuant to a pending Cal Records Act Request. My statements are thus made based on information and belief -- however, I am *highly* confident that there have been no disclosures made given the representations of fact made in California's Kennesaw proposal and in speaking with California's former employee whistleblower. Further, it would shock me greatly to discover the City would do business with California if it disclosed all material facts.

Assuming that each mandatory disclosure was systematically excluded, which I believe is the case and your office can verify, Ciaglia has committed upwards of 49 counts of perjury (Penal Code Section 118) and 49 counts of civil fraud (Civil Code Sections 1572 *et seq.*) and, where California submitted claims, violation of the California False Claims Act (Government Code Sections 12650 *et seq.*), each, not counting the bid-rigging. Finally, this is not a complete list -- California was "sole sourced" on many other projects based on contingent donations (discussed below). I am unsure whether those projects required any disclosures.

#### **IV. Disclosures Not Made Under On-Call Agreements and Bid-Specific Submissions**

The following is a breakdown of the various areas where I believe Ciaglia, through California, has intentionally misled the City. There are specific references to the relevant City of Los Angeles Contractor Responsibility Questionnaire, which you are no doubt familiar with.

##### **A. Entities (Question C.1.) - (Two Counts)**

Ciaglia owns and should have disclosed his ownership interests in **SITE Design, Inc.** ("SITE"), California Rampworks, Inc., California Landscape and Design, and **Street League** (co-owned with Rob Dyrdek).

SITE, which is a skatepark design firm and which has been awarded design and construction management of California-built skateparks should have been disclosed -- it is clearly related to the existence of a conflict of interest. I believe that Ciaglia has used this firm to select and/or manage California as a builder under the auspices that they are not related, including on the Stoner project.

Ciaglia's interest in Street League should have also been disclosed. Because of his and Dyrdek's joint ownership, the City would have wanted to know about this conflict when evaluating whether to agree to "contingent donations" made or facilitated by Dyrdek's foundation when the sole contingency was hiring California and/or SITE.

Because the Rob Dyrdek foundation has made or facilitated numerous "conditional" donations for the building of public skateparks with City money, conditioned upon selection of Ciaglia's firm as the builder, this disclosure becomes very material.

##### **B. Insurance and Bonding (Question 8) - (One Count)**

California has had its bond for the Moorpark skatepark at Poindexter Park attached and payment sought therefrom. Ciaglia has stated to third parties that he is "fighting for his life" on that

project and has hired highly reputed concrete expert Sir Oscar Duckworth at substantial expense. If payment has been made then this should have been disclosed. I have made a public records act request to acquire documentary evidence. I have sufficient hearsay evidence to believe it is true.

**C. Disputes (Question 18b) - (Two Counts)**

California should have disclosed at least two lawsuits to Question 18 b. Both lawsuits are directly related to California's alleged insufficient performance on a contract. **Because Ciaglia was personally served in one suit, there simply could never be a negligence defense -- it is blatant fraud and perjury.**

*Geocon Engineering, Inc. v. California Skateparks, et al*<sup>5</sup>, filed in 2009, is a lawsuit by the general contractor, Geocon, against California, its subcontractor, arising out of rejected shotcrete work on the Mosqueda BMX Park for the City of Fresno. The case has been settled. It unquestionably should have been disclosed as it relates directly to performance on a public skatepark contract. Moreover, the nondisclosure is strategic because it illustrates the quality of workmanship issues that have befallen California after the loss of its key personnel. The complaint is attached as Exhibit D.

*Chavis v. California Landscape & Design, California Skateparks, Inc., Joseph M. Ciaglia et al.*, is pending in Los Angeles Superior Court as of January 31, 2011<sup>6</sup>. The case arises out of California's and Ciaglia's allegedly negligent performance of a contract to build skatepark equipment for a several private entities. The complaint alleges that California attempted to build an unpermitted skatepark on the roof of a building in Los Angeles. The end result was a concrete truck falling through a ramp that was designed for autos, not 60,000 lb concrete trucks.<sup>7</sup> California Skateparks has been sued on several theories. One theory, negligence *per se*, is predicated upon the alleged legal requirement of a permit for the project that was not followed. The City of Los Angeles Code Enforcement has allegedly opened an investigation 389518 for

<sup>5</sup> California Superior Court, Fresno County, Case Number 09 CE CG 01156 AMC.

<sup>6</sup> California Superior Court, Los Angeles County, Case Number BC 454172.

<sup>7</sup> <http://blogdowntown.com/2010/08/5579-cement-truck-upended-by-arts-district-ramp>

violation of the City's Municipal Code. Again, this disclosure should have been made as it undermines California's claims to always follow building codes that is stated in the very beginning of its bid package. The complaint is attached as Exhibit E. The lawsuits are the most blatant nondisclosures. These are easily verifiable and had to have been known because the complaints were personally served upon California.

**D. Compliance (Question 21) (Two Counts Known)**

California has been investigated, to my knowledge, by the U.S. Department of Justice (for the bid rigging), Utah Attorney General (unknown but disclosed to Spohn by former SITE principal with personal knowledge), and Los Angeles City Code Enforcement Division (*see* Chavis complaint, above). I am also informed that the Internal Revenue Service has investigated and settled a dispute with California during the past five years over paying employees under the table. Unquestionably, the Utah and Los Angeles investigations should have been disclosed.

**V. Fraud in Kennesaw, GA (Four Material Misrepresentations - i.e., Fraud)**

The most recent project that I am aware of that California has been awarded is in Kennesaw, Georgia. The recent public records act request I submitted led to the discovery of three acts of civil fraud and perjury.

The City sought each bidder to testify that it had neither been subject of a lawsuit nor had its bond been attached. California said no to each. The relevant pages are attached as Exhibit F.

In addition, California stated as fact to the "The Preferred Skate Park Designer & Builder For The City Of Los Angeles." (*See* Exhibit F). It is my understanding, from conversations with RAP administrators, that Los Angeles does not engage in anything other than low-bidding, outside of the conditional donations arranged for by Ciaglia's business partner, Dyrdek. Therefore, this *could never be true*, or if it were, it would mean the City of Los Angeles was breaking the law, which we know would never be the case.

Accordingly, California and Ciaglia have committed at least three and possibly four counts of civil fraud and perjury in this one proposal. The fact that California has so cavalierly lied suggests that all of the City of Los Angeles disclosures are similarly false.

#### **VI. Undisclosed Conflicts of Interest**

The City's Recreation and Parks Department has engaged in a series of "sole source" awards to California for skatepark work throughout the City<sup>8</sup>. The basis for these sole source determinations were contingent offers of donations made by or facilitated in part by the Rob Dyrdek Foundation. The stated intent of the Dyrdek Foundation is to provide one in every Council District. Dyrdek, the namesake of the foundation, and Ciaglia are business partners in Street League (a series of skateboarding competitions, televised on ESPN). Dyrdek is also listed as a "design consultant" in California's Kennesaw proposal. (See Exhibit F.) Dyrdek seems to be a beneficiary of his own donation -- which appears to have been hidden from the eyes of the Recreation and Parks Commission.

#### **VII. Sham Bidding**

Ciaglia has admitted to former employees that he has engaged in "low bid and change order" strategies commonly understood as "sham bids." He admitted to doing this on the SE Valley project and the facts bear it out. California bid some \$900,000 versus Spohn's \$1.4 million. Spohn's bid was designed to be competitive -- in the ballpark of what streamlined and effective bid would have been. It could have been underbid but not by some 35%. Ciaglia has admitted that his strategy is to get control of the project and then make profit via change orders.

California obtained the Stoner Park job similarly. It low bid all other bidders by a huge percentage. Hundreds of thousands in change orders were issued.

<sup>8</sup>Hollenbeck Skate Spot, Lafayette Skate Spot, Westchester Park Skate Spot, Charnette Bonpua - Rancho Cienega Skate Spot, North Hollywood Skate Plaza. See <http://robdyrdekfoundation.org/safe-spot-skate-spot> for more information.

**VIII. Collective Bargaining Issues**

California is purportedly a member of multiple unions including the Iron Workers, International Cements Masons, and Carpenter's Union. Yet, in the SE Valley bid documents, California stated "N/A" when asked whether any collective bargaining agreements existed. My understanding is that this is deliberately done to avoid paying benefits and/or dues. I expect to find similar misstatements made on the other bids. These omissions raise the possibility of California's putative union employees being disadvantaged as a result.

**IX. Failure to Continue to Use the Design-Build Team in the DB Agreement**

California listed a particular group of contractors in the DB Agreement. It is my understanding that California no longer uses those entities and persons. It stands to reason that this was intentional and, if so, it may constitute fraud.

**X. The Berrics Incident -- Gross Negligence; Deliberate Disregard of Permitting Process**

The Berrics' accident is the subject of the Chavis lawsuit. Ciaglia's alleged conduct there -- seeking to build a concrete structure on the roof of a building, without a permit -- led to allegedly serious injuries and a concrete truck falling through a ramp designed for autos 1/10th of the weight. Conduct such as this is clearly "irresponsible" in the truest sense of the word.

**XI. Unlawful Business Practices in Utah**

I am informed that the Utah Attorney General has and is conducting an investigation into California and/or SITE for improprieties on a job there. This information could be verified by another public agency. If so, this is a serious matter and also should have been disclosed, but, in its own right, suggests irresponsibility.

## **XII. Shoddy Work**

Currently, I am aware of the following public skate or BMX parks where California's work has been questioned, replaced, or repaired in some way:

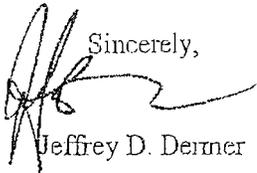
- (1) Ojai Skatepark (Prime)
- (2) Moorpark (Poindexter) Skatepark (Prime)
- (3) Fresno (Mosequeda) BMX Park (Sub)
- (4) Rialto Skatepark (Sub)

These are all relatively recent - suggesting California is no longer the same firm that it was when it gained its reputation. It suggests a reason for resorting to willful obfuscation of its record -- it simply is no longer a responsible firm with which the City of Los Angeles should do business.

## **XIII. Conclusion**

California and Ciaglia have unquestionably engaged in serial violations of California civil and criminal laws. These are not mere technicalities. If California's conduct is similar on the other projects listed then it has committed scores of felonies directly related to the building of skateparks in Los Angeles. I simply cannot fathom how a company or person could be allowed to bid on projects with such a track record. I respectfully request that the City extend my investigation using its broader powers. I also request that California not be allowed to participate in the rebid of the SE Valley project given its prior the sham bid and the substantiated allegations contained herein.

Please contact me with any questions that you may have. I will assist you in any way that I can.

Sincerely,  
  
Jeffrey D. Dermer  
Dermer Behrendt

INTERDEPARTMENTAL CORRESPONDENCE

**Date:** April 19, 2012

**To:** Mary Alvarez, Executive Officer  
Board of Commissioners  
Department of Recreation and Parks

**From:** H.R. Strazzella, Chief Inspector  
Bureau of Contract Administration  
Department of Public Works



**Subject:** **SOUTHWEST VALLEY ROLLER AND SKATEBOARD RINK – Ph. I.**

In Interdepartmental correspondence dated December 16<sup>th</sup>, 2011, this office gave you a determination on the responsiveness of the bid tendered by California Skateparks, Inc. for the abovementioned project.

Our determination was based upon our re-examination of the bidder's Contractor Responsibility Questionnaire in response to a public compliant registered under the Ordinance. Owing to the fact that the bidder had failed to make adequate disclosures to the Awarding Authority in this document, we made a recommendation that the bidder be deemed non-responsive.

Upon further review of recent case law regarding this issue, we have determined that our initial finding will not serve the Board in the manner intended. We recommend, instead that the Board enter into other deliberations to resolve the issue.

M. Gonzalez-Kimbrough, Esq.  
J. Reamer  
W. Bradley