

ENDORSED  
FILED  
Superior Court of California  
County of San Francisco

AUG 1 8 2018

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CITY AND COUNTY OF SAN FRANCISCO  
9

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF SAN FRANCISCO  
12 UNLIMITED JURISDICTION

13 CITY AND COUNTY OF SAN  
FRANCISCO,

14 Plaintiff,

15 vs.

16 MICHAEL E. JOHNSON; FILLMORE  
17 DEVELOPMENT COMMERCIAL, LLC; EM  
JOHNSON INTEREST, INC.; URBAN CORE  
18 DEVELOPMENT, LLC; and DOE ONE  
through DOE TWENTY, inclusive,

19 Defendants.  
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Case No.

CGC-18-568954

COMPLAINT FOR BREACH OF CONTRACT

Type of Case: (06) Breach of Contract

DEMAND FOR JURY TRIAL

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22  
23 Plaintiff CITY AND COUNTY OF SAN FRANCISCO ("CITY") complains and alleges as  
24 follows against Defendants MICHAEL E. JOHNSON ("JOHNSON"); FILLMORE DEVELOPMENT  
25 COMMERCIAL, LLC ("FDC"); EM JOHNSON INTEREST, INC. ("EJI"); and URBAN CORE  
26 DEVELOPMENT, LLC ("UCD");

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## INTRODUCTION

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2 1. Plaintiff CITY brings this action against JOHNSON, FDC, EJI, and UCD to recover  
3 more than \$5.5 million that FDC borrowed from CITY, through the San Francisco Mayor's Office of  
4 Community Development ("MOCD"). As part of the loan, EJI, FDC's managing member, executed a  
5 loan agreement and promissory note on behalf of FDC. EJI also executed a guaranty in the amount of  
6 \$5.5 million as a condition precedent to FDC's loan. JOHNSON created UCD to "rebrand" EJI's  
7 activities. JOHNSON is the sole owner and manager of FDC, EJI, and UCD. FDC and EJI failed to  
8 repay the CITY all amounts due under the loan agreement, promissory note, and guaranty, and  
9 continue to fail to repay the CITY. Accordingly, the CITY seeks repayment of the funds loaned to  
10 FDC and guaranteed by EJI, all remedies available under the loan agreement, promissory note, and  
11 guaranty, plus accrued interest and penalties, and all other relief allowed by law.

## PARTIES

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13 2. Plaintiff CITY AND COUNTY OF SAN FRANCISCO is a municipal corporation  
14 organized and existing under and by virtue of the laws of the State of California. The CITY, acting  
15 through MOCD, borrowed \$5.5 million from the U.S. Department of Housing and Urban  
16 Development ("HUD") in the form of a securitized Section 108 loan, which was backed by the CITY's  
17 federal Community Development Block Grant ("CDBG"). MOCD used these funds to loan to FDC.

18 3. Defendant MICHAEL E. JOHNSON is an individual and at all times alleged in this  
19 complaint a resident of Alameda County, California. According to records maintained by the  
20 California Secretary of State's Office, JOHNSON is the sole owner and manager of FDC, EJI, and  
21 UCD.

22 4. Defendant FILLMORE DEVELOPMENT COMMERCIAL, LLC, at all times alleged  
23 in this complaint was a limited liability company organized under the laws of the State of California  
24 with its principal place of business in San Francisco County, California. According to records  
25 maintained by the California Secretary of State's Office, sometime after 2012, FDC's authority to  
26 operate was suspended for the failure to file the required Statement of Information with the Secretary  
27 of State's Office or the failure to meet Franchise Tax Board requirements.

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1           5.       Defendant EM JOHNSON INTEREST, INC., at all times alleged in this complaint was  
2 a California Corporation organized under the laws of the State of California with its principal place of  
3 business in San Francisco County or Alameda County, California.

4           6.       Defendant URBAN CORE DEVELOPMENT, LLC, at all times alleged in this  
5 complaint was a limited liability company organized under the laws of the State of California with its  
6 principal place of business in Alameda County, California.

7           7.       Defendant MICHAEL E. JOHNSON is an individual, at all relevant times alleged in  
8 this complaint, was a shareholder and/or member of and dominated, controlled, managed and operated  
9 Defendant entities including, but not limited to, FDC, EJI, and UCD, to such an extent that, at all times  
10 mentioned in this complaint, there existed a unity of interest and ownership between JOHNSON and  
11 FDC, EJI, and UCD. JOHNSON, therefore, was the alter-ego of FDC, EJI, and UCD, and any  
12 individuality or separateness of FDC, EJI, and UCD and JOHNSON have ceased. At all times  
13 mentioned in this complaint, JOHNSON committed acts establishing his alter ego liability, including,  
14 but not limited to the following: the use of Defendant entities as a mere shell, instrumentality, or  
15 conduit for a single venture or for his individual business; the disregard of legal formalities and the  
16 failure to maintain arms-length relationships with the Defendant entities; and the sole ownership of  
17 each Defendant entity. As the alter ego of the Defendant entities, JOHNSON orchestrated, ratified,  
18 and was otherwise involved in the conduct described in this complaint. Thus, adherence to the fiction  
19 of a separate existence of these Defendants as entities separate and distinct from JOHNSON would  
20 permit an abuse of the LLC and corporate privileges, and would promote injustice by allowing  
21 JOHNSON to evade liability or veil assets that should in equity be used to satisfy the loan agreement,  
22 promissory note, and guaranty, accrued interest, penalties, interest, and attorney's fees and costs.

23           8.       CITY is not aware of the true names and capacities of Defendants sued herein as DOES  
24 ONE through TWENTY, inclusive, and therefore sues these defendants by such fictitious names.  
25 Each fictitiously named defendant is responsible in some manner for the unlawful and unfair conduct  
26 alleged. CITY will seek leave of court to amend this complaint to allege their true names and  
27 capacities when that information is ascertained.

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1           16.    On or about August 29, 2005, CITY and FDC entered into a loan agreement ("LOAN  
2 AGREEMENT"). The proceeds from the LOAN AGREEMENT were to be used to construct the  
3 commercial space of the PROJECT. To do this, MOCD borrowed \$5.5 million from HUD in the form  
4 of a securitized Section 108 loan, which was backed by the CITY's federal CDBG. A true and correct  
5 copy of the LOAN AGREEMENT is attached as Exhibit A and incorporated into this complaint.

6           17.    On or about August 29, 2005, CITY and FDC executed a promissory note with future  
7 interest rate adjustment ("PROMISSORY NOTE"). A true and correct copy of the PROMISSORY  
8 NOTE is attached as Exhibit B and incorporated into this complaint.

9           18.    On or about August 29, 2005, CITY and EJI executed a guaranty ("GUARANTY").  
10 Under the GUARANTY, EJI unconditionally guaranteed to CITY the full payment and performance  
11 of all then present and future obligations of FDC under the LOAN AGREEMENT and  
12 PROMISSORY NOTE. A true and correct copy of the GUARANTY is attached as Exhibit C and  
13 incorporated into this complaint.

14           19.    JOHNSON executed the LOAN AGREEMENT, PROMISSORY NOTE, and  
15 GUARANTY on behalf of FDC and EJI.

16           20.    CITY fully performed all conditions, covenants, and promises to be performed on the  
17 part of the CITY under the LOAN AGREEMENT, PROMISSORY NOTE, and GUARANTY.

18           21.    FDC, EJI, and JOHNSON failed to make all payments and perform all obligations  
19 under the LOAN AGREEMENT, PROMISSORY NOTE, and GUARANTY.

20           22.    On December 8, 2010, CITY agreed to a work-out plan, which included amending the  
21 LOAN AGREEMENT. On December 8, 2010, CITY and FDC executed the FIRST AMENDMENT  
22 TO LOAN AGREEMENT and PROMISSORY NOTE. A true and correct copy of the FIRST  
23 AMENDMENT TO LOAN AGREEMENT and PROMISSORY NOTE is attached as Exhibit D and  
24 incorporated into this complaint.

25           23.    JOHNSON executed the FIRST AMENDMENT TO LOAN AGREEMENT AND  
26 PROMISSORY NOTE on behalf of FDC and EJI.

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1 24. CITY fully performed all conditions, covenants, and promises to be performed on the  
2 part of the CITY under the FIRST AMENDMENT TO LOAN AGREEMENT AND PROMISSORY  
3 NOTE.

4 25. FDC, EJI, and JOHNSON failed to make all payments and perform all obligations  
5 under the FIRST AMENDMENT TO LOAN AGREEMENT, PROMISSORY NOTE, and FIRST  
6 AMENDMENT TO LOAN AGREEMENT AND PROMISSORY NOTE.

7 26. On February 20, 2015, the Mayor's Office of Housing and Community Development  
8 ("MOHCD") sent JOHNSON, FDC, and UCD a notice of default of the LOAN AGREEMENT,  
9 PROMISSORY NOTE, GUARANTY, and FIRST AMENDMENT TO LOAN AGREEMENT AND  
10 PROMISSORY NOTE. The February 20, 2015 Notice of Default demanded payment of all  
11 outstanding amounts, accrued interest, and fees. A true and correct copy of the February 20, 2015  
12 Notice of Default is attached as Exhibit E and incorporated into this complaint.

13 27. FDC, EJI, and JOHNSON failed to cure the February 20, 2015 Notice of Default.

14 28. On October 21, 2015, MOHCD sent JOHNSON a letter demanding that EJI, pursuant  
15 to the GUARANTY, pay all outstanding amounts, accrued interest, and fees due under the LOAN  
16 AGREEMENT, PROMISSORY NOTE, and FIRST AMENDMENT TO LOAN AGREEMENT AND  
17 PROMISSORY NOTE. A true and correct copy of the October 21, 2015 Letter is attached as Exhibit  
18 F and incorporated into this complaint.

19 29. FDC, EJI, and JOHNSON failed to pay all outstanding amounts, accrued interest, and  
20 fees due under the LOAN AGREEMENT, PROMISSORY NOTE, GUARANTY and FIRST  
21 AMENDMENT TO LOAN AGREEMENT AND PROMISSORY NOTE.

22 **FIRST CAUSE OF ACTION**  
23 **BREACH OF CONTRACT**  
**AGAINST ALL DEFENDANTS**

24 30. Plaintiff CITY incorporates by reference paragraphs 1 through 29, inclusive, against all  
25 DEFENDANTS and makes them a part of this cause of action, as though fully set forth herein.

26 31. CITY fully performed all conditions, covenants, and promises to be performed on the  
27 part of the CITY under the LOAN AGREEMENT, PROMISSORY NOTE, GUARANTY and FIRST  
28 AMENDMENT TO LOAN AGREEMENT AND PROMISSORY NOTE.



