

1 H. Mark Mersel, California Bar No. 130382
mark.mersel@bclplaw.com
2 Olivia J. Scott, California Bar No. 329725
olivia.scott3@bclplaw.com
3 **BRYAN CAVE LEIGHTON PAISNER LLP**
1920 Main Street, Suite 1000
4 Irvine, California 92614-7276
Telephone: (949) 223-7000
5 Facsimile: (949) 223-7100

6 Attorneys for Plaintiff
RIC (SAN LEANDRO) LLC
7

8 **UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10

11 RIC (SAN LEANDRO) LLC, a
California limited liability company

12 Plaintiff,
13

14 v.

15 BRUCE DOUGLAS MILLER, an
individual and Wyoming resident,
16 PATRICK JOHN KOENTGES, an
individual and Colorado resident,
17 KENNETH EDWARD GREER, an
individual and Colorado resident,
18 GREEN SAGE, LLC, a Colorado
limited liability company,

19 Defendants.
20

Case No.

**COMPLAINT FOR BREACH OF
WRITTEN GUARANTY
AGREEMENTS**

BRYAN CAVE LEIGHTON PAISNER LLP
1920 MAIN STREET, SUITE 1000
IRVINE, CA 92614-7276

1 Plaintiff RIC (San Leandro) LLC, (“**Plaintiff**”) as assignee of Romspen
2 California Mortgage Limited Partnership (“**Original Lender**”) hereby alleges as
3 follows:

4 **PARTIES**

5 1. Plaintiff is and at all times mentioned herein was a California limited
6 liability company. Plaintiff’s principal place of business is located in Ontario,
7 Canada.

8 2. Plaintiff’s manager and sole member is a Delaware corporation with a
9 principal place of business in Ontario, Canada.

10 3. Plaintiff alleges that Guarantor Bruce Douglas Miller (“**Miller**”) is and
11 at all times mentioned herein was an individual residing in Wyoming. Plaintiff is
12 informed and believes that Miller is a member and manager of Green Sage, LLC
13 (“**GS**”) and a member of KBP Strategic Capital, LLC (“**KBP**”), the managing
14 partner of borrower 5601 SLOCA, LLC.

15 4. Plaintiff alleges that Guarantor Patrick John Koentges (“**Koentges**”) is
16 and at all times mentioned herein was an individual residing in Colorado. Plaintiff is
17 informed and believes that Koentges is a member of KBP, the managing partner of
18 borrower 5601 SLOCA, LLC.

19 5. Plaintiff alleges that Guarantor Kenneth Edward Greer (“**Greer**”) is
20 and at all times mentioned herein was an individual residing in Colorado. Plaintiff is
21 informed and believes that Greer is a manager of GS and a member of KBP, the
22 managing partner of borrower 5601 SLOCA, LLC.

23 6. Plaintiff alleges that Guarantor GS is a limited liability company, with
24 its principal place of business located at 1137 Bannock Street, Denver, Colorado
25 80204. Upon information and belief, all of GS’ members are individuals who reside
26 in Colorado or Wyoming, and are thus, Colorado or Wyoming citizens.

27 7. Miller, Koentges, Greer, and GS are collectively hereinafter referred to
28 in this Complaint as the “**Guarantors**”.

BRYAN CAVE LEIGHTON PAISNER LLP
1920 MAIN STREET, SUITE 1000
IRVINE, CA 92614-7276

1 **JURISDICTION AND VENUE**

2 8. Jurisdiction and venue are proper in this Court based on diversity
3 jurisdiction. The monetary amount in dispute is greater than \$75,000, and there is
4 diversity of citizenship between Plaintiff and Guarantors. Moreover, the governing
5 law provision in Section 13 of the parties' Guaranty Agreements, defined below,
6 makes clear that any action relating to the loan documents may be brought in state or
7 federal court in California. Finally, the loan documents also concern property located
8 in Alameda County in California.

9 **NATURE OF ACTION**

10 9. Guarantors absolutely and unconditionally guaranteed the obligations
11 owed to Plaintiff by Oakland Cannery Real Estate, LLC, 5733 SLOCA Partnership
12 and 5601 SLOCA, LLC (collectively, "**Borrower**"), pursuant to the Loan
13 documents described below.

14 10. Borrower defaulted under the Loan Documents by, among other things,
15 failing to pay all obligations due and owing to Plaintiff when due. Accordingly, on
16 September 14, 2022, Plaintiff foreclosed on the collateral securing the Loans for a
17 credit bid of \$25 million.

18 11. Guarantors are liable to Plaintiff for the deficiency amounts due under
19 the Loans, and, pursuant to the Guaranty Agreements, they waived any and all
20 defenses to any claims by Plaintiff against them that arise from Borrower's default
21 and foreclosure on the collateral.

22 12. The Guarantors' above-referenced waiver of rights and defenses is
23 unconditional and irrevocable, and includes any limitations, defenses,
24 counterclaims, and rights that are or may become available to Guarantors.

25 13. Despite Plaintiff's demands, Guarantors have refused to pay as they
26 agreed.

27 14. Accordingly, Plaintiff by this Complaint seeks judgment against the
28 Guarantors, under the Guaranty Agreements, for all proximately caused damages,

BRYAN CAVE LEIGHTON PAISNER LLP
1920 MAIN STREET, SUITE 1000
IRVINE, CA 92614-7276

1 including any unpaid principal amounts under the documents memorializing the
 2 Loans, plus any and all applicable interest, fees (including reasonable attorneys'
 3 fees), and other costs and damages recoverable thereunder, and at law or in equity,
 4 in an amount to be proven at the trial of this action.

5 15. The current outstanding balance due and owing to Plaintiff with respect
 6 to the Loans as of March 23, 2023 was no less than \$51,507,018.29, after
 7 application of the foreclosure credit bid amount of \$25,000,000.00. Interest at the
 8 default rate, attorneys' fees, and other expenses incurred which are due and owing
 9 under the Loan Documents, as defined below, are continuing to accrue.

10 GENERAL ALLEGATIONS

11 The Loans and the Guaranty Agreements

12 16. On or about August 20, 2019, Original Lender provided financing to
 13 Borrower in the original principal amount of \$54,465,000.00 ("**Loan**").

14 17. The Loan is evidenced by the following documents, among others
 15 (collectively, the "**Loan Documents**"):

16 a. The Loan Agreement, dated August 20, 2019, made between and
 17 executed by Borrower and Original Lender ("**Loan**
 18 **Agreement**"). A true and correct copy of the Loan Agreement is
 19 attached hereto as **Exhibit A** and incorporated herein as though
 20 fully set forth.

21 b. The Promissory Note, dated as of August 21, 2019, given by
 22 Borrower in favor of Original Lender, in the principal amount of
 23 the Loan ("**Note**"). A true and correct copy of the Note is
 24 attached hereto as **Exhibit B** and incorporated herein as though
 25 fully set forth.

26 18. Borrower granted Plaintiff a security interest in all of Borrower's right,
 27 title and interest in and to that certain real property located in Alameda County,
 28 California, the legal description of which is defined in Exhibit A to the Deed of

1 Trust (the “**Property**”) to secure Borrower’s payment and performance obligations
2 under the Loan Documents as more specifically described in the Deed of Trust,
3 Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of
4 August 20, 2019, given by Borrower that is recorded in the real property records of
5 Alameda County, California, at Instrument No. 2019162692 (“**Deed of Trust**”). A
6 true and correct copy of the Deed of Trust is attached hereto as **Exhibit C** and is
7 incorporated herein as though fully set forth.

8 19. In connection with the Loan, each of the Guarantors executed and
9 delivered the Guaranty Agreements in favor of Original Lender as follows:

- 10 a. Miller, in his individual capacity, executed and delivered to
11 Original Lender a Guaranty dated August 21, 2019 (“**Miller**
12 **Guaranty**”), a true and correct copy of which is attached hereto
13 as **Exhibit D** and is incorporated herein by reference, as though
14 fully set forth;
- 15 b. Koentges, in his individual capacity, executed and delivered to
16 Original Lender a Guaranty dated August 21, 2019 (“**Koentges**
17 **Guaranty**”), a true and correct copy of which is attached hereto
18 as **Exhibit E** and is incorporated herein by reference, as though
19 fully set forth;
- 20 c. Greer, in his individual capacity, executed and delivered to
21 Original Lender a Guaranty dated August 21, 2019 (“**Greer**
22 **Guaranty**”), a true and correct copy of which is attached hereto
23 as **Exhibit F** and is incorporated herein by reference, as though
24 fully set forth; and
- 25 d. Greer and Miller, in their capacity as managers of GS, executed
26 and delivered to Original Lender a Guaranty dated August 21,
27 2019 (“**GS Guaranty**” together with the Miller, Koentges and
28 Greer Guaranties, the “**Guaranty Agreements**”), a true and

1 correct copy of which is attached hereto as **Exhibit G** and is
2 incorporated herein by reference as though fully set forth.

3 20. Pursuant to the Guaranty Agreements, each of the Guarantors
4 unconditionally and absolutely guaranteed the full and prompt payment of all
5 obligations owed by Borrower to Original Lender under the Loan Documents.

6 21. Pursuant to the Guaranty Agreements, each of the Guarantors promised
7 to pay, and was obligated to pay, all costs, expenses and attorneys' fees paid or
8 incurred by Original Lender, or any assignee thereof, in endeavoring to collect and
9 enforce the obligations arising under the Loan Documents and in enforcing the
10 Guaranty Agreement.

11 22. Pursuant to the Guaranty Agreements, each of the Guarantors waived
12 and agreed not to assert, plead or enforce against Original Lender or its assignees,
13 any and all defenses, claims, setoffs and discharges that Borrower may have against
14 Original Lender or its assignees.

15 23. On or around August 21, 2019, the Guarantors each entered into a
16 written security agreement (collectively, the "**Security Agreements**") with Original
17 Lender to secure payment and performance under the Guaranty Agreements. True
18 and correct copies of the Security Agreements are attached hereto as **Exhibits H-K**
19 and are incorporated herein as though fully set forth.

20 24. Under the Security Agreements, the Guarantors pledged and granted to
21 Original Lender, or its assignees, a continuing first priority lien and security interest
22 in and to certain collateral specified therein.

23 25. In addition to the foregoing, the Guarantors each executed and delivered
24 to Original Lender Completion Guaranty Agreements dated August 21, 2019
25 ("**Completion Guaranty Agreements**"), under which the Guarantors guaranteed
26 completion of the construction project contemplated in the Loan Documents. True
27 and correct copies of those Completion Guaranty Agreements are attached hereto as
28 **Exhibits L-O**, respectively, and incorporated herein by reference as though fully set

BRYAN CAVE LEIGHTON PAISNER LLP
1920 MAIN STREET, SUITE 1000
IRVINE, CA 92614-7276

1 forth.

2 26. Pursuant to the Loan Documents, Borrower agreed, among other
3 things, to: (1) make monthly debt service payments pursuant to the Loan
4 Agreement; (2) repay the entire outstanding unpaid balance upon maturity of the
5 Loan on August 31, 2021 (“**Maturity Date**”); (3) make all payments to vendors and
6 contractors to avoid recording of mechanic’s liens and notices against the Property;
7 and (4) to comply with Section 4.2 of the Loan Agreement to avoid violation of
8 Sections 4.1(d) (litigation against Borrowers), Section 4.1(i) and (s)(i)(F) (solvency
9 and unpaid debts); 4.1(m) (regulatory compliance), 4.1(n)(ii) and (r), and 5.4
10 (unpaid real estate taxes); 4.1(s)(i)(K) (adequate capital requirement); 5.17 (electric
11 power issues); and 5.27 (minimum leasing requirements) under the Loan
12 Agreement.

13 27. Pursuant to the Loan Documents, Guarantors are required to pay any
14 attorneys’ fees that Plaintiff incurs in collecting on the Loans or otherwise enforcing
15 the Loan Documents.

16 **The Defaults**

17 28. Borrower failed to repay the Loans upon the Maturity Date.

18 29. On November 22, 2021, Original Lender provided Guarantors with
19 notice of the Maturity Default and demanded repayment of the Loan in full.
20 Guarantors failed to repay the Loan amount as demanded.

21 30. Original Lender assigned to Plaintiff all of Original Lender’s right, title
22 and interest in and to the Loan and Loan Documents, and Plaintiff is now the holder
23 in due course of those documents, and all obligations previously owed to Original
24 Lender are now owed to Plaintiff.

25 31. On September 14, 2022, Plaintiff foreclosed its interests in and to the
26 Property (an certain related personal property), acquiring title thereto for a
27 successful credit bid of \$25 million.

28 32. On or around September 28, 2022, Plaintiff sent Guarantors a Demand

1 for Payment of the remaining amounts immediately due and owing under the Loan
2 Documents. As of March 23, 2023, the amount due and owing by Guarantors was
3 no less than \$51,507,018.29, after application of the foreclosure credit bid amount of
4 \$25,000,000. Interest at the default rate, attorneys' fees, and other expenses
5 incurred which are due and owing under the Loan Documents, are continuing to
6 accrue.

7 33. Despite such notice, the outstanding balance of the Loans remain
8 unpaid as of the date of this Complaint.

9 **FIRST CAUSE OF ACTION**

10 **(Breach of the Guaranty Agreements against the Guarantors)**

11 34. Plaintiff repeats and realleges each of the allegations contained in
12 Paragraphs 1 through 32 above, as if fully set forth herein.

13 35. Plaintiff has performed all conditions and obligations on its part under
14 the Guaranty Agreements that have not been otherwise excused or rendered moot as
15 a result of the foregoing defaults and breaches.

16 36. Among other defaults, as described above, Borrower failed to repay the
17 Loan when it matured.

18 37. Plaintiff made demand that Guarantors comply with the Guaranty
19 Agreements and repay the Loan.

20 38. Despite Plaintiff's demand, the Guarantors are and continue to be in
21 material breach of their obligations under the Guaranty Agreements by, among other
22 breaches, failing and refusing to repay the amounts due and owing to Plaintiff.

23 39. All outstanding indebtedness under the Loan is immediately due and
24 payable in full, and interest continues to accrue, in addition to other recoverable
25 costs and fees under the Loan Documents.

26 40. As a further result of the above-referenced breaches and defaults,
27 Plaintiff has incurred costs and attorneys' fees, and will continue to incur costs and
28

BRYAN CAVE LEIGHTON PAISNER LLP
1920 MAIN STREET, SUITE 1000
IRVINE, CA 92614-7276

