

ORIGINAL

SEP 27 2017

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

SEP 27 2017

D. Rosenbloom

SEP 29 2017

XAVIER BECERRA
Attorney General of California
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Attorneys for the People of the State of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

In the Matter of:

Carol's Kitchen, Inc., Richard Asman, Edward Barba, Mark Hodnick, Onoalyse Lyons, John Russo, and James Smith,

Respondents.

Case No.

RC 1718456

ASSURANCE OF VOLUNTARY
COMPLIANCE AND [PROPOSED]
ORDER

(Gov. Code, § 12591.2)

Dept: 12

Judge: Hearing 11/1/17

Action Filed: Time 8:30am

Pursuant to the authority granted in Government Code section 12591.2, Attorney General Xavier Becerra accepts the following Assurance of Voluntary Compliance (also referred to herein as the "Assurance" or "AVC") from Richard Asman, Edward Barba, Mark Hodnick, Onoalyse Lyons, John Russo, and James Smith (also referred to herein, collectively, as "the Former Directors"). The Attorney General, and the Former Directors (also referred to herein, collectively, as "the parties") agree that it is in their best interest and consistent with the best interest of the People of the State of California to resolve the issues between them in the manner set forth herein.

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FACTS

1. Carol's Kitchen, Inc. ("Carol's Kitchen") is a nonprofit public benefit corporation located in Riverside County, incorporated in 1998 to provide food, clothing and shelter and other basic necessities for the homeless. It was founded by James and Arlene Ragan in honor of their daughter, Carol, who was tragically killed in an automobile accident. Through the efforts of the Ragans and others, Carol's Kitchen's charitable programs have grown substantially and now extend to three cities in Riverside County. All of Carol's Kitchen's assets are impressed with a charitable trust by virtue of the express declaration of Carol's Kitchen's charitable purposes in its articles of incorporation. (*Pacific Home v. County of Los Angeles* (1953) 41 Cal.2d 844, 852.) None of its assets can be diverted to any purpose other than the corporation's charitable purposes. (*Ibid.*)

2. Former Directors Asman, Barba, Russo and Gene Wood served as directors on Carol's Kitchen's Board of Directors, including during the period of August 3, 2010 through May 18, 2011. Former Director James McConnell served on Carol's Kitchen's Board of Directors from 2006 through May 18, 2011. Former Director Lyons served on the Board from October 20, 2010, to May 18, 2011, and Former Director Hodnick served on the Board from January 26, 2011, to May 18, 2011. Former Director Smith served on the Board of Directors from May 30, 2008, until sometime in 2009. Former Directors McConnell and Wood are deceased. Given the facts and circumstances, the Attorney General does not seek recovery from their estates.

3. Attorney General Xavier Becerra is charged with the general supervision of all charitable organizations within this State and with the enforcement and supervision over trustees and fiduciaries who hold or control property in trust for charitable purposes. The Attorney General is authorized to enforce, in the name of the People, the provisions of the Supervision of Trustees and Fundraisers for Charitable Purposes Act (Gov. Code, § 12580 et seq.) and the Nonprofit Corporation Law (Corp. Code, § 5000 et seq.). As a California nonprofit public benefit corporation, Carol's Kitchen and its current and former fiduciaries are subject to the supervisory jurisdiction of the Attorney General.

ATTORNEY GENERAL FINDINGS

4. In the course of discharging its duties, the Attorney General's Office caused an investigation to be made into the business and affairs of Carol's Kitchen. Carol's Kitchen, through its Board of Directors, provided books, records, documents, and information requested. The Attorney General's Office also conducted eight oral examinations under oath.

5. During Mr. McConnell's service on the Board of Directors, he had unfettered access to all of Carol's Kitchen's financial accounts, was the sole signatory on checks drawn on those accounts, and had exclusive use of the organization's debit cards. As early as 2006, he started diverting Carol's Kitchen's assets to pay his personal expenses. Mr. McConnell had no authority from the Board of Directors to pay his personal expenses from charitable assets with the exception of one-half of the rent for his personal residence starting in 2008. From 2006 through August 2, 2010, Carol's Kitchen paid Mr. McConnell's personal expenses, including the following: furniture and appliances for his residence, house repairs, all utilities for his residence, Direct TV bills; excessive meals and gasoline expense, firewood, toiletries, a \$2,845.00 payment to his step-daughter, auto repairs for family members, cell phones for family members, and fees for a vacation club timeshare.

6. The Former Directors other than Mr. Smith were on notice, at least by the August 2, 2010 board meeting, that Mr. McConnell was diverting charitable assets to pay his personal expenses. During the weekend prior to that meeting, Deborah St. Martin met with Messrs. Wood and Asman to discuss a letter she received dated August 1, 2010, signed by former board members (and founders) James and Arlene Ragan. Addressed to the Board of Directors, the letter makes numerous allegations regarding Mr. McConnell's and Mr. Smith's diversion of Carol's Kitchen's assets. During those discussions, the parties agreed that Mr. McConnell would be asked to resign as executive director at least temporarily while the board reviewed and investigated the allegations, and to suspend his access to Carol's Kitchen's financial accounts until the allegations were resolved in his favor.

7. On August 2, 2010, the board held an emergency meeting attended by directors McConnell, Wood, Asman, Barba, Russo and the Rev. Scott Mason. At the meeting, the board

1 members were made aware of the allegations set forth in the Ragans' letter. Without any
2 evidence that the allegations were false, the board determined it would leave Mr. McConnell in
3 charge of the organization, that his access to Carol's Kitchen's financial accounts would continue,
4 and the board would, instead, "fight" the Ragans' allegations of wrongdoing. This decision was
5 strongly opposed by Rev. Mason who stated the board needed to conduct an investigation.

6 8. As a result of the board's failure to place Carol's Kitchen's funds in the hands of
7 someone other than Mr. McConnell and to closely monitor disbursements, Mr. McConnell
8 continued to improperly and unlawfully pay numerous personal expenses with charity funds. For
9 example, he paid his wife's and step-daughter's Auto Club membership, his home improvement
10 expenses, Direct TV bills, all of his utility expenses, his substantial car repair and gasoline
11 expenses, his excessive meal expenses, firewood, plumbing repairs, home appliances, and
12 telephone bills for at least three cell phones. He also made child support payments for a Carol's
13 Kitchen worker. Carol's Kitchen loss from August 3, 2010 through May 18, 2011, as a result of
14 Mr. McConnell's improper diversion of charitable assets, exceeds \$37,400.00.

15 9. This Court has personal and subject matter jurisdiction to enter an Assurance of
16 Voluntary Compliance pursuant to Government Code section 12591.2.

17 ASSURANCE

18 10. In consideration of resolving a matter of disputed liability, and without admitting any
19 wrongdoing or violations of law, the parties, Carol's Kitchen, and Philadelphia Insurance
20 Company agree as follows:

21 11. Within 30 days' notice of the court's execution of the Order on this AVC,
22 Philadelphia Insurance Company will deliver a check to Carol's Kitchen in the amount of
23 \$25,000.00, made payable to Carol's Kitchen, in settlement of the liability of Directors Asman,
24 Barba, Hodnick, Lyons, and Russo.

25 12. Within 30 days' notice of the court's execution of the Order on this AVC, Philadelphia
26 Insurance Company will deliver a check in the amount of \$15,000.00 to the Attorney General's
27 Office located at 300 S. Spring Street, Suite 1702, Los Angeles, California, addressed to the
28 attention of Deputy Attorney General Sonja K. Berndt for attorney's fees and costs incurred by

1 the Charitable Trusts Section in pursuing the investigation of the matters discussed herein,
2 pursuant to Government Code sections 12598 and 12586.2. The check shall be made payable to
3 the California Attorney General. This \$15,000.00 shall be used exclusively by the Charitable
4 Trusts Section for the administration of the Attorney General's charitable trust enforcement
5 responsibilities.

6 13. Within 30 days of its receipt of the insurance payment set forth in paragraph 11
7 above, Carol's Kitchen will reimburse Messrs. Asman and Barba \$3,805.00 each for payments
8 they made in connection with the forensic review obtained by the Carol's Kitchen Board of
9 Directors, including Messrs. Asman and Barba, after Mr. McConnell resigned.

10 14. Mr. Smith agrees to pay Carol's Kitchen \$12,150.00 in satisfaction of the debt he still
11 owes Carol's Kitchen under the following terms: \$1,000.00 within 30 days from receiving notice
12 that the court has executed this AVC and \$100.00 per month until March 1, 2018, at which time
13 the payments will increase to \$500.00 per month until the \$12,150.00 balance is paid in full.

14 15. The Former Directors agree that they will fully cooperate with the Attorney General
15 in effectuating the terms of this AVC.

16 16. The Former Directors understand and agree that if this Assurance of Voluntary
17 Compliance is executed by the parties, it will be submitted to the Riverside County Superior
18 Court for approval and, if approved, will be filed with the Clerk of the Court.

19 17. The Parties agree that the court may execute this Assurance of Voluntary Compliance
20 without a hearing on the matter.

21 18. The Parties acknowledge receipt of a copy of this Assurance of Voluntary
22 Compliance prior to filing, and further agree to accept service of a conformed copy of the Court's
23 signed and filed Order on the AVC by prepaid first class mail sent to the following addresses and
24 expressly waive personal service of a conformed copy after it has been filed:

25 Richard Asman – 9308 Bear Lake Way NW, Albuquerque, New Mexico 87120;

26 Edward Barba – 918 Vista del Sol, Santa Maria, California 93458;

27 Mark Hodnick – 36304 Dunes Drive, Beaumont, California 92223;

28 Onoalyse Lyons – P.O. Box 543, Banning, California 92220;

1 John Russo – 4373 Gilman Street, Banning, California 92220;
2 James Smith – 40836 Oregon Trail, Beaumont, California 92223;
3 Carol's Kitchen – Carol's Kitchen, Inc. P.O. Box 364, Calimesa, California 92320; and
4 Philadelphia Indemnity Insurance Company – Claims Department, One Bala Plaza, Suite
5 100 Bala Cynwyd, PA 19004 (Claim File #1045620).

6 19. The parties agree that this AVC constitutes a resolution of all matters known to, or
7 which should have been known to, the Attorney General at the time of execution of this
8 Assurance. The parties further acknowledge and agree that this Assurance or any portion thereof
9 may be reopened at a subsequent time by the Attorney General for further proceedings in the
10 public interest based upon violation of the terms of this Assurance. In the event that the Attorney
11 General determines that an alleged violation of the terms of this Assurance of Voluntary
12 Compliance has occurred, the Attorney General may, at his or her discretion, either initiate
13 contempt proceedings or other appropriate legal action against the party in violation of the AVC,
14 including the right to seek recovery of attorneys fees, auditors fees, and costs. The parties further
15 agree that Carol's Kitchen may initiate appropriate legal action against James Smith if he fails to
16 comply with the terms of paragraph 14, above.

17 20. The parties agree that the 10-year limitations period set forth in Government Code
18 section 12596 applies to this matter. The parties further agree that the 10-year limitations period
19 is tolled from the date this Assurance is fully executed to the date all parties have fully complied
20 with the terms of this Assurance, or until staff members of the Attorney General's Charitable
21 Trusts Section receive actual knowledge that one or more parties has violated the terms of this
22 Assurance, whichever occurs first.

23 21. The parties acknowledge and agree that it is in their mutual best interest to resolve the
24 Attorney General's concerns by way of this Assurance. Nothing in this Assurance will be
25 deemed to be an admission by the Former Directors of any wrongdoing of any kind or nature.

26 22. This Assurance may be executed in one or more counterparts and shall be delivered to
27 the Office of the Attorney General, to Deputy Attorney General Sonja K. Berndt, at 300 S. Spring
28

1 St., Suite 1702, Los Angeles, CA 90013.

2 Respectfully Submitted,

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4 DATED: 8/14/17

By: 
Richard Asman

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6 DATED:

By: _____
Edward Barba

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By: _____
Mark Hodnick

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By: _____
Onoalyse Lyons

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By: _____
John Russo

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By: _____
James Smith

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16 DATED:

By: _____
Victoria M. Griffin, Esq., Professional Liability
Claims Supervisor, on behalf of
Philadelphia Insurance Company

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19 DATED:

By: _____
Marty Bauer, President, on Behalf of Carol's
Kitchen, Inc.

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22 DATED:

XAVIER BECERRA
Attorney General of California

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SONJA K. BERNDT
Deputy Attorney General
Attorneys for The People of the State of California

ATTORNEY GENERAL LOS ANGELES

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1 St., Suite 1702, Los Angeles, CA 90013.

2 Respectfully Submitted,

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4 DATED:

By: _____

Richard Asman

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6 DATED: 8/9/2017

By: 

Edward Barba

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By: _____

Mark Hodnick

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Onoalyse Lyons

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John Russo

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By: _____

James Smith

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Claims Supervisor, on behalf of
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By: _____

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XAVIER BECERRA

Attorney General of California

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SONIA K. BERNDT

Deputy Attorney General

Attorneys for The People of the State of California

1 St., Suite 1702, Los Angeles, CA 90013.

2 Respectfully Submitted,

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By: _____
Richard Asman

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By: _____
Edward Barba

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James Smith

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XAVIER BECERRA
Attorney General of California

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SONIA K. BERNDT
Deputy Attorney General
Attorneys for The People of the State of California
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ORDER

1 St., Suite 1702, Los Angeles, CA 90013.

2 Respectfully Submitted,

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4 DATED:

By: _____
Richard Asman

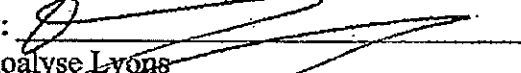
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Edward Barba

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Mark Hodnick

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Onoalyse Lyons

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John Russo

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XAVIER BECERRA
Attorney General of California

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SONJA K. BERNDT
Deputy Attorney General
Attorneys for The People of the State of California

1 St., Suite 1702, Los Angeles, CA 90013.

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By: _____
Richard Asman

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Edward Barba

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Mark Hadnick

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Onoalyse Lyons

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John Russo

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By: _____
James Smith

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By: _____
Victoria M. Griffin, Esq., Professional Liability
Claims Supervisor, on behalf of
Philadelphia Insurance Company

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By: _____
Marty Bauer, President, on Behalf of Carol's
Kitchen, Inc.

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XAVIER BECERRA
Attorney General of California

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SONJA K. BERNDT
Deputy Attorney General
Attorneys for The People of the State of California

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28 ORDER

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ASSURANCE OF VOLUNTARY COMPLIANCE AND [PROPOSED] ORDER

1 St., Suite 1702, Los Angeles, CA 90013.

2 Respectfully Submitted,

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4 DATED:

By: _____
Richard Asman

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Edward Barba

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Mark Hodnick


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Onoalyse Lyons

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John Russo

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James Smith

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By: _____
Victoria M. Griffin, Esq., Professional Liability
Claims Supervisor, on behalf of
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By: _____
Marty Bauer, President, on Behalf of Carol's
Kitchen, Inc.

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XAVIER BECERRA
Attorney General of California

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SONJA K. BERNDT
Deputy Attorney General
Attorneys for The People of the State of California

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ATTORNEY GENERAL LOS ANGELES

Jonathan Cagalewan

1 St., Suite 1702, Los Angeles, CA 90013.

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By: _____
Richard Asman

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By: _____
Edward Barba

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By: _____
Mark Hodnick

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By: _____
Onoalyse Lyons

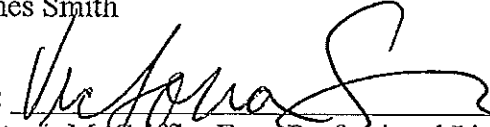
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By: _____
John Russo

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By: _____
James Smith

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16 DATED: 8/24/17

By: 
Victoria M. Griffin, Esq., Professional Liability
Claims Supervisor, on behalf of
Philadelphia Insurance Company
FOR claim # 11045620

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By: _____
Marty Bauer, President, on Behalf of Carol's
Kitchen, Inc.

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22 DATED:

XAVIER BECERRA
Attorney General of California

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SONJA K. BERNDT
Deputy Attorney General
Attorneys for The People of the State of California

1 St., Suite 1702, Los Angeles, CA 90013.

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By: _____
Richard Asman

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By: _____
Edward Barba

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Mark Hodnick

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Onoalyse Lyons

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John Russo

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James Smith

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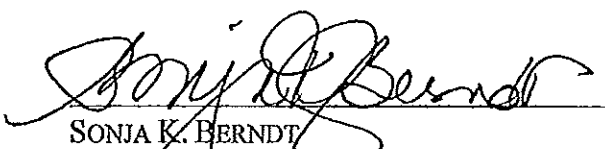
By: _____
Victoria M. Griffin, Esq., Professional Liability
Claims Supervisor, on behalf of
Philadelphia Insurance Company

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19 DATED: 8/14/2017

By: Marty Bauer
Marty Bauer, President, on Behalf of Carol's
Kitchen, Inc.

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22 DATED: 9/11/2017

XAVIER BECERRA
Attorney General of California

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SONJA K. BERNDT
Deputy Attorney General
Attorneys for The People of the State of California
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ORDER

Good cause appearing, IT IS ORDERED that the foregoing Assurance of Voluntary Compliance is approved and shall be accepted and filed with the Court.

DATED: _____

JUDGE OF THE SUPERIOR COURT

SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE

4050 Main Street
Riverside, CA
www.riverside.courts.ca.gov

NOTICE OF DEPARTMENT ASSIGNMENT

IN THE MATTER OF CAROL'S KITCHEN INC

CASE NO. RIC1718456

This case has been assigned to the HONORABLE Assigned Judge in Department 12 for all purposes.

Any disqualification pursuant to CCP section 170.6 shall be filed in accordance with that section.

The court follows California Rules of Court, Rule 3.1308(a) (1) for tentative rulings (see Riverside Superior Court Local Rule 3316). Tentative Rulings for each law and motion matter are posted on the Internet by 3:00 pm on the court day immediately before the hearing at <http://www.riverside.courts.ca.gov/tentativerulings.shtml>. If you do not have internet access, you may obtain the tentative ruling by telephone at (760)904-5722.

To request oral argument, not later than 4:30 pm on the court day before the hearing you must (1) notify the judicial secretary at (760)904-5722 and (2) inform all other parties. If no request for oral argument is made by 4:30 pm, the tentative ruling will become the final ruling on the matter effective the date of the hearing.

The filing party shall serve a copy of this notice on all parties.

Requests for accommodations can be made by submitting Judicial Council form MC-410 no fewer

CERTIFICATE OF MAILING

I certify that I am currently employed by the Superior Court of California, County of Riverside, and that I am not a party to this action or proceeding. In my capacity, I am familiar with the practices and procedures used in connection with the mailing of correspondence. Such correspondence is deposited in the outgoing mail of the Superior Court. Outgoing mail is delivered to and mailed by the United States Postal Service, postage prepaid, the same day in the ordinary course of business. I certify that I served a copy of the foregoing NOTICE on this date, by depositing said copy as stated above.

Court Executive Officer/Clerk

Date: 09/29/17

by:

, DAWN ROSENBLOOM, Deputy Clerk

ORDER

Good cause appearing, IT IS ORDERED that the foregoing Assurance of Voluntary Compliance is approved and shall be accepted and filed with the Court.

DATED: _____

JUDGE OF THE SUPERIOR COURT