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7 CANAAN TAIWANESE CHRISTIAN CHURCH, a California non-profit religious corporation

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **COUNTY OF SANTA CLARA**

10 CANAAN TAIWANESE CHRISTIAN
11 CHURCH, a California non-profit religious
corporation,

12 Plaintiff,

13 v.

14
15 ALL WORLD MISSION MINISTRIES, D/B/A
WORLD MISSION PRAYER CENTERS, a
16 California non-profit religious corporation, and
DOES 1 through 20, inclusive,

17 Defendants.
18

No. 1-11-CV-197542

Unlimited Civil Case

Amount demanded exceeds \$25,000

PLAINTIFF'S TRIAL BRIEF

Trial Date: May 18, 2011

Time: 9:00 a.m.

Department: 2

Judge: Hon. Patricia M. Lucas

1 Plaintiff, Canaan Taiwanese Christian Church, a California non-profit religious corporation,
2 hereby submits the following Trial Brief in connection with the trial of the above-referenced matter:

3 **INTRODUCTION**

4 This is an unlawful detainer action. Plaintiff, Canaan Taiwanese Christian Church, a
5 California non-profit religious corporation, is the sole owner and landlord (hereinafter "Plaintiff"
6 and/or "Plaintiff Landlord") of a church and two adjacent residential properties located at 1904
7 Silverwood (the church), 184 Farley (residence) and 196 Farley (residence), in Mountain View,
8 California (collectively, the "Premises"). Defendant, All World Mission Ministries, a California
9 non-profit religious corporation D/B/A World Mission Prayer Center, is the current tenant
10 ("Defendant and/or "Defendant Tenant") occupying the Premises pursuant to a three (3) year Lease
11 Agreement (the "Lease Agreement" or "Lease") that commenced on January 1, 2009, and would
12 have expired on January 1, 2012, had it not been terminated earlier due to Defendant Tenant's
13 breach of the Lease Agreement.

14 Having been served with a Notice to Pay or Quit the Premises on March 10, 2011,
15 Defendant Tenant failed to cure its default and has refused to vacate the Premises. This Unlawful
16 Detainer was filed to evict Defendant from church property for the failure to pay rent or leave upon
17 notice. Plaintiff seeks possession of the Premises and rent recoverable in accord with California
18 law. In the event Plaintiff prevails in this action, it will seek its costs including attorneys' fees
19 incurred to enforce the terms of the Lease Agreement and evict Defendant Tenant.

20 By and through their counsel of record, Defendant Tenant purposefully attempted to
21 mislead this Court by arguing, falsely, that the Lease Agreement pursuant to which Defendant
22 Tenant leased the Premises, was in fact a "financing agreement for the purchase of real property and
23 not a traditional lease falling within the parameters of Civil Code section 1161". (Defendant
24 Tenant's Memo of P's & A's in Support of Motion to Dismiss, p. 4:17 – 19). On those grounds,
25 Defendant brought a Motion to Dismiss which was heard by this Court on April 27, 2011 and denied
26 in all respects by this Court pursuant to its Order dated May 13, 2011.

27 The Lease is what it purports to be: a writing under which owner "Landlord" allowed
28 defendant "Tenant" to occupy the premises on certain terms in exchange for certain rent for a time

1 certain. That Lease governed Tenant's right to possess the premises and governs Landlord's right to
2 evict Tenant based on Tenant's breach and default under the terms of the Lease.

3 Defendant's claimed right to purchase the premises is a completely separate matter which is
4 not at issue here. As stated by counsel for Defendant during the deposition of his witness, Mr. Lee,
5 "[we] are talking about an unlawful detainer action.....Any allegations of breach of performance of
6 the purchase agreement is beyond the subject matter jurisdiction of this court, and on the foregoing
7 basis, I would advise my client not to answer". (Deposition of Tai Koan Lee, 20:18 – 25; 21: 1-2,
8 14 – 21).

9 As reflected above, all agree that the various Purchase and Sale Agreements entered into
10 over time in August, 2008, January, 2009 and October, 2010 gave Defendant no separate right to
11 possess the premises at any time until and unless escrow closed on the Premises. Escrow never
12 closed, as Defendant failed to put up the necessary money. (Complaint ¶¶ 5-9, Deposition of Tai
13 Koan Lee, 20:18). Thus, Defendant's rights, if any, to possess the Premises before a close of escrow
14 depend entirely on the Lease. Based on Defendant's failure to pay rent, which default was not
15 timely cured, Landlord has the right to possession of the Premises, and seeks to recover that
16 possession by this unlawful detainer action.

17 STATEMENT OF FACTS

18 Plaintiff, a California non-profit religious corporation in good standing, is the sole and
19 exclusive owner of the Premises. On January 1, 2009, Plaintiff, as Landlord, and Defendant, as
20 Tenant, entered into a Lease Agreement (the "Lease Agreement") for a "non-renewable period of
21 three (3) years, unless terminated earlier in accord with lease provisions." (Lease Agreement, Page
22 1) A copy of the Lease is Exhibit "B" to the complaint on file herein.

23 **1. The Relevant Lease Terms:**

24 The Lease Agreement is neither confusing nor complicated. Section 2(a) of the Lease
25 Agreement states that "subject to the terms of this Lease, Landlord *leases to Tenant and Tenant*
26 *leases from Landlord*, the Premises and the Land. Section 3(a) provides that "*during the Term,*
27 *Tenant shall pay to Landlord, Rent* without notice, demand, deduction, set-off or abatement by
28 good and sufficient check."

1 Pursuant to Section 13 (a) of the Lease Agreement, events of default include “Tenant’s
2 failure to pay Rent within seven (7) days after the date Rent is due (each, a “Payment Default”),
3 provided that Landlord shall not have the right to terminate this Lease as a result of such failure
4 unless and until Tenant has suffered six Payment Defaults in total, regardless of whether such
5 Payment Defaults relate to Rent covering consecutive months or non-consecutive months”.

6 In the event of a default, Section 14 defines Landlord’s remedies to include the right to
7 terminate the lease, and without prejudice to any other remedy which it may have for possession or
8 arrearages in rent, the right to enter upon and take possession of the Premises and expel or remove
9 Tenant and any other person who may be occupying the Premises. Additional remedies include
10 Landlord’s right to recover from Tenant unpaid back rent and future rent through the term of the
11 lease. Id.

12 Section 16 of the Lease Agreement, entitled “Surrender of Premises”, provides that “[a]t the
13 expiration or termination of this Lease, Tenant *shall deliver to Landlord the Premises* with all
14 improvements located therein in good repair and condition”. Section 17 provides that “if Tenant
15 fails to vacate the Premises at the end of the Term, then Tenant shall be a tenant at sufferance and, in
16 addition to all other damages and remedies to which Landlord may be entitled for such holding over,
17 Tenant shall pay to Landlord, as an occupancy charge, an amount equal to one hundred and fifty
18 percent (150%) of the then current fair market rental value for the premises on a per diem basis and
19 (b) Tenant shall otherwise continue to be subject to all of Tenant’s obligations under this Lease”.

20 “Term” is defined as Three (3) years, unless earlier terminated in accordance with the terms of this
21 Lease.” (“Lease, Page 1, Base Lease Information”)

22 The Lease expressly provides that no merger of the leasehold estate with the fee estate in
23 the Premises or Land or any part thereof is created by way of the Lease. The Lease Agreement
24 provides that the lease constitutes the entire agreement between Landlord and Tenant regarding the
25 subject matter of the lease and cannot be amended except by instrument in writing signed by
26 Landlord and Tenant”. (Lease Agreement, Paragraph 19 Sections (j), (k) and (g)). No written
27 modifications or amendments to the Lease have taken place. No document permitted Tenant to
28 avoid paying Rent under the terms of the Lease.

1 Finally, Section 19(n) of the Lease states that if “either Landlord or Tenant should bring suit
2 for possession of the Premises, for the recovery of any sum due under this Lease, or because of the
3 breach of any provision of this Lease or for any other relief against the other, then all costs and
4 expenses, including reasonable attorneys’ fees, incurred by the prevailing party therein, shall be paid
5 by the other party, which obligation on the part of the other party shall be deemed to have accrued
6 on the date of the commencement of such action and shall be enforceable whether or not the action
7 is prosecuted to judgment.”

8 The Lease Agreement, which Defendant admits was signed by and through Pastor Lee,
9 governs these proceedings. Any argument by Defendant Tenant to the contrary is disingenuous at
10 best.

11 **2. Defendant’s Default:**

12 On March 10, 2011, Plaintiff Landlord issued a Three Day Notice to Pay or Quit the
13 Premises demanding payment of \$130,671.56 within three (3) days of service of the notice, which
14 was served on March 10, 2011. Defendant admits to personal service of the Three Day Notice to
15 Pay Rent or Quit the Premises. (Deposition of Tai Koan Lee, 95: 20 – 25; 96: 1- 10). At the time of
16 issuance, Defendant was in default having failed to pay in excess of six Payment Defaults as defined
17 in the Lease. Because the last day to cure fell on a weekend, in accord with California law, the last
18 day for Defendant Tenant to have cured its default was March 15, 2011. Defendant Tenant failed
19 to do so.

20 Well after expiration of the cure period, Defendant Tenant tendered a post-dated check
21 dated April 1, 2011, in the amount of \$130,671.56 for “Rent”. However, there were insufficient
22 funds in the bank to satisfy the amount of the check it wrote; at his deposition, Mr. Lee admitted that
23 the funds were never transferred into the account on which the check was written. (Deposition of
24 Tai Koan Lee, 59: 21 – 24). The uncashed check was returned to the Defendant Tenant.

25 **3. The Pending Action:**

26 As a result of Defendant Tenant’s breach and failure to cure its breach, this action was filed
27 on March 28, 2011.

28 ///

1 Day Notice to Pay Rent or Quit the Premises served on March 10, 2011 in the amount of
2 \$130,671.56 from September 1, 2010 to March 1, 2011, and ;

3 2. Damages in the amount of \$562.50 per day, (base rent) for each day Defendant
4 remains in possession after expiration of the Three Day Notice to Pay or Quit the Premises up
5 through judgment, to wit, from March 15, 2011 through judgment; and

6 3. Costs of suit to be timely submitted upon issuance of a judgment in Plaintiff's favor
7 in this action.

8 The terms of the Lease, agreed upon by the parties, including the Rent provisions,
9 are evidence of fair market rent. The parties agreed to a set Rent calculation. Defendant cannot
10 now seek to avoid the plain terms of the Lease and its obligations thereunder by claiming the terms
11 are unfair or unreasonable or by attempting to introduce alternative examples of "fair" rent which
12 are not comparable in the lease. The "alternative rent" suggested by Defendant is the subject of a
13 motion in limine filed concurrently herewith; for the reasons set forth in Plaintiff's motion in
14 limine on this topic, Plaintiff respectfully requests the court decline to consider Defendant's
15 alternative fair market rental evidence.

16 In addition, the per diem amount of rent sought from the date of expiration of the period to
17 cure Defendant's its default (March 15, 2011) through judgment is both fair and reasonable. The
18 reasonableness of the per diem rental rate is not at issue, and was agreed upon by contract in the
19 Lease. As to the Per Diem amount, Rent agreed upon in the Lease provides evidence of the
20 reasonable rental value of the Premises from the time of termination of the tenancy through
21 judgment. *See* Evid. Code § 817.

22 It should be noted that the per diem figure used by Plaintiff is for Base Rent although Rent
23 is more broadly defined under the terms of the Lease Agreement. Moreover, pursuant to the Lease,
24 holdover tenants are to pay Rent calculated at 150% of the Rent of the then current fair market
25 rental value for the premises on a per diem basis. Nonetheless, Plaintiff has in good faith, used a
26 per diem monthly rate calculated pursuant to the base Rent only, divided by 30 days per month. In
27 short, Plaintiff is not claiming 150% of the Rent despite its right to do so which is further evidence
28 of Plaintiff's use of a fair market rental value in making its claim.

1 **C. Defendant Has No Viable Defenses To This Action.**

2 Although it raises a myriad of affirmative defenses, Defendant has provided no evidence to
3 support these defenses. Plaintiff leased the Premises to Defendant Tenant pursuant to a separate
4 written lease signed by Defendant. (Deposition of Tai Koan Lee, 68: 23 – 25). It was explained to
5 Mr. Lee that he was going to lease the properties. (Deposition of Tai Koan Lee, 69: 7- 10). The
6 Lease has never been modified or altered in a writing signed by the Parties. Escrow never closed
7 on any of the Premises pursuant to the separate and distinct Purchase and Sale Agreements of 2008,
8 the separate and distinct Option Agreement of 2009, or the separate and distinct Purchase and Sale
9 Agreements of 2010. (Deposition of Tai Koan Lee, 92: 11- 19).

10 The basis for the numerous affirmative defenses raised by Defendant Tenant is premised on
11 the assertion that the Lease was not a lease but a financing agreement. The Court has already
12 considered, ruled upon and rejected, Defendant Tenant’s Motion to Dismiss based on the assertion
13 that the Lease was really a “financing agreement”.

14 Finally, Defendant has failed to provide timely responses to discovery and has failed to
15 produce witnesses for deposition such that evidence, if any there is, outside of that set forth in the
16 Answer and the deposition of Tai Koan Lee, which fails to support its affirmative defenses, should
17 be barred in accord with Plaintiff’s motion in limine on this subject.

18 The facts of this case remain uncontroverted: Defendant signed the Lease Agreement which
19 governs this proceeding. Defendant is in default under the terms of the Lease Agreement.
20 Defendant failed to cure the default and improperly remains in the Premises as a holdover tenant
21 refusing to vacate the premises despite Landlord’s demand that it do so.

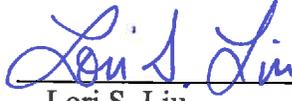
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CONCLUSION

Plaintiff has complied with the terms of the Lease Agreement and the eviction laws of the State of California. The Premises belong to Plaintiff, and repossession should take place without further delay.

Dated: May 17, 2011

SSL LAW FIRM LLP



Lori S. Liu

Attorneys for Plaintiff
CANAAN TAIWANESE CHRISTIAN CHURCH