# EXHIBIT M

E-FILED
11/19/2018 4:19 PM
Clerk of Court
Superior Court of CA,
County of Santa Clara
18CV338308
Reviewed By: Y Pulido

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A Professional Law Corporation
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Attorneys for Plaintiff
SPIEKER COMPANIES, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF SANTA CLARA**

| | |
|---|---|
| SPIEKER COMPANIES, INC., a California Corporation,<br><br>Plaintiff,<br><br>v.<br><br>ROSSWOOD PROPERTIES, LLC, a California Limited Liability Company; CASSIE WILL-DARNALL, an individual; LAURA MENICUCCI, an individual, and DOES 1 through 50, inclusive,<br><br>Defendants. | Case No. 18CV338308<br><br>*[Unlimited - Exceeds $25,000]*<br><br>**COMPLAINT FOR BREACH OF LEASE AND PROMISE WITHOUT INTENT TO PERFORM**<br><br>Action Filed:<br>Trial Date: TBA |

Comes now Plaintiff SPIEKER COMPANIES, INC., and complains as follows:

1. Plaintiff SPIEKER COMPANIES, INC., is and was the management agent for the owners of the real property at issue herein at all times relevant to this matter. Plaintiff is a California corporation, and has fulfilled all applicable requirements to conduct business and does business in the State of California.

2. Plaintiff is informed and believes and thereon alleges that Defendant ROSSWOOD PROPERTIES, LLC, is a California limited liability company with a principal place of business in Santa Clara County, California, and who entered into a contract where all payment and performance was to be made in the County of Santa Clara, State of California.

3. Plaintiff is informed and believes and thereon alleges that Defendant CASSIE WILL-DARNALL is a principal of ROSSWOOD PROPERTIES, LLC who entered into a



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contract where all payment and performance was to be made in the County of Santa Clara, State of California.

4. Plaintiff is informed and believes and thereon alleges that Defendant LAURA MENICUCCI was a principal of ROSSWOOD PROPERTIES, LLC at all times material to the allegations in this Complaint, who entered into a contract where all payment and performance was to be made in the County of Santa Clara, State of California.

5. Plaintiff does not know the true names or capacities, whether individual, corporate, associate, or otherwise of Defendants sued herein as DOES 1 through 50, inclusive. Plaintiff sues said Defendants by such fictitious names and prays leave to amend this Complaint when the true names and capacities of said Defendants have been ascertained. Plaintiff is informed and believes and thereon alleges that said Defendants conducted, participated in, or are responsible for the acts set forth herein, and Plaintiff is further informed and believes and thereon alleges that some or all of the said DOE Defendants are in combination, agency, or joint venture relationships with the named Defendants.

6. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned, each Defendant was the agent, servant, joint venturer, partner, and/or employee of each and every one of the other Defendants, and was acting within the course and scope of his authority, and each Defendant ratified, authorized, and approved of the acts of each other Defendant. Any acts or omissions attributed herein to a corporation or other business entity were authorized acts, performed by an authorized representative of said entity, acting within the course and scope of his agency or authority, and were ratified by reasonable representatives of the entity.

7. The amount in controversy exceeds $25,000 and this matter is thus properly designated as a case of general jurisdiction.

## GENERAL ALLEGATIONS

8. In March 2018, Plaintiff and Defendants entered into negotiations regarding Defendant ROSSWOOD's intention to lease apartment units at various properties in the Bay Area owned and managed by Plaintiff.

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9. During these negotiations, Don Naugle, representative for Plaintiff, spoke with Defendant WILL-DARNALL, President of Defendant ROSSWOOD. Defendant WILL-DARNALL stated to Plaintiff during a telephone call that Defendant ROSSWOOD needed short-term, five-month lease agreements for these units, ending in September 2018. Defendant WILL-DARNALL reiterated in an e-mail correspondence to Mr. Naugle that she would like to rent units from Plaintiff on a "five-month trial basis."

10. Plaintiff responded that such a short lease term was not acceptable, as the fall season generally brings a down-turn in the rental market and Plaintiff did not wish to have to re-rent multiple units at that time. Instead, Plaintiff insisted that each lease must run through February 28, 2019 at the earliest.

11. Defendants WILL-DARNALL and MENICUCCI represented on behalf of Defendant ROSSWOOD that the February 28, 2019 end lease term was acceptable, and on the basis of that representation Plaintiff agreed to enter into written lease agreements with Defendant ROSSWOOD for a total of fifty (50) units, with each lease term expiring on February 28, 2019. A true and correct copy of one of the Lease Agreements is attached hereto as Exhibit A. A chart with the remaining Lease Agreements' property addresses, start dates, and rental rates, is attached as Exhibit B. The material terms of each of the Lease Agreements are other substantially similar and therefore full copies of each of the remaining Lease Agreements have not been attached.

12. Under the terms and conditions of the Lease Agreements, Defendant agreed to undertake obligations including, but not limited to, the payment of monthly installments of rent until the end of the each respective lease term on February 28, 2019, in accordance with the terms of said Lease Agreement

13. Section 48 of each of the Lease Agreements provides, in pertinent part, that if Defendant ROSSWOOD vacates the subject units prior to the expiration of the lease term, ROSSWOOD would continue to be liable for payment of rent through the expiration of the lease term, or until a new tenant is secured for the unit in question.

14. Section 53 of each of the Lease Agreements provides, in pertinent part, that

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Defendant ROSSWOOD would be considered in default of the Lease Agreements if they vacated or abandoned the subject units before the expiration of the lease terms.

15. In violation of the Lease Agreements, on July 31, 2018, Defendant WILL-DARNALL gave notice to Plaintiff that Defendant ROSSWOOD would be vacating each of the subject units by August 31, 2018. Defendants thereafter vacated and abandoned each of the subject units between August 31 and September 28, 2018, well before the end of the lease terms under the applicable Lease Agreements.

16. Pursuant to the terms of the Lease Agreements, Defendants are responsible for payment of rent for the subject units. Plaintiff has demanded from Defendants the payment of damages resulting from Defendant's breach of each of the Lease Agreements, but no payment of any kind has been made by Defendants.

17. Defendant ROSSWOOD has also failed to return possession to Plaintiff of some of the subject units, following the notice that they would be prematurely vacating and abandoning those units on August 31, 2018. As a result, Plaintiff instituted unlawful detainer proceedings against Defendant ROSSWOOD in order to recover possession of these units. Ultimately, Defendant ROSSWOOD relinquished possession during the pendency of these proceedings, Plaintiff recovered possession of all subject units by September 28, 2018, and the unlawful detainer actions were dismissed.

18. As a direct and proximate result of Defendants' breach of the lease agreements, Plaintiff stood to incur damages of no less than $902,500, totaling the amount of rent owed for each unit through the end of each lease term. Plaintiff, however, was able to partially mitigate these damages by recovering possession of the subject units as soon as possible, and advertising the units at a reduced rental rate in order to attract renters during a rental housing market downturn. To date, Plaintiff has been able to re-rent some of the subject units, although Plaintiff was forced to re-rent many of those units at a rental rate much lower than the rate agreed to by Defendants.

19. Plaintiff's total damages resulting from Defendants' breach of the Lease Agreements, less the amount of Plaintiff's mitigation efforts as described above, is no less than

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Four Hundred Seventy-Four Thousand One Hundred Forty-One Dollars and 22/100 ($474,141.22).

**FIRST CAUSE OF ACTION FOR BREACH OF CONTRACT**

**(Against Defendant ROSSWOOD PROPERTIES, LLC, and DOES 1-50)**

20. Plaintiff hereby incorporates and re-alleges each and every foregoing paragraph of this Complaint as though fully set forth herein.

21. Each of the Lease Agreements constitutes a valid, fully executed contract between Plaintiff and Defendant ROSSWOOD.

22. Plaintiff has duly performed all of the terms, covenants and conditions of the Lease Agreement to be performed on its part.

23. Defendant has breached each of the Lease Agreements by prematurely vacating and abandoning each and every one of the units subject to the Lease Agreements, before the expiration of the respective lease terms. Defendant vacated each of the subject units between August 31, 2018 and September 28, 2018.

24. As a proximate result of Defendant's breaches, Plaintiff has been damaged in that rent charges, including additional rent, have accrued and are unpaid on the Premises in accordance with the Lease Agreement. Plaintiff has also incurred further turnover charges and fees to institute unlawful detainer actions against Defendant following their failure to return possession of some of the units. In total, Plaintiff has incurred damages of no less than Four Hundred Seventy-Four Thousand One Hundred Forty-One Dollars and 22/100 ($474,141.22), less any amounts Plaintiff is able to successfully mitigate. Based upon the breaches by Defendant of the Lease Agreements, Plaintiff is entitled to judgment in said amount.

WHEREFORE, Plaintiff SPIEKER COMPANIES, INC., prays for judgment against Defendant ROSSWOOD PROPERTIES, LLC, and DOES 1 through 50, inclusive, and each of them, jointly and severally, as stated in the Prayer for Relief below.

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**SECOND CAUSE OF ACTION FOR FRAUD**

**(Against Defendants CASSIE WILL-DARNALL and LAURA MENICUCCI, and DOES 1-50)**

25. Plaintiff hereby incorporates and re-alleges each and every foregoing paragraph of this Complaint as though fully set forth herein.

26. Defendants CASSIE WILL-DARNALL and LAURA MENICUCCI, as agents and representatives of Defendant ROSSWOOD, made promises to Plaintiff before entering into each of the Lease Agreements that Defendant ROSSWOOD would remain in possession of each of the fifty (50) subject units and pay monthly rent and additional rent accordingly through the end of each lease term on February 28, 2019.

27. During the negotiations for the rental of the subject units, Defendants WILL-DARNALL and MENICUCCI had stated to Plaintiff that they wanted the Lease Agreements' end date to be in September 2018.

28. When Plaintiff refused to enter into the Lease Agreements with such a short lease term which would end in a rental market downturn, Defendants agreed to the February 28, 2019 end date. Plaintiff is informed and believes and hereon alleges that Defendants WILL-DARNALL and MENICUCCI, as representatives of Defendant ROSSWOOD, made this representation for the purpose of inducing Plaintiff to enter into the Lease Agreements, despite never intending to perform according to this promise. Plaintiff is informed and believes and theron alleges that Defendants WILL-DARNALL and MENICUCCI always intended to vacate each of the fifty (50) units by September 2018.

29. Plaintiff, when entering into each of the Lease Agreements, reasonably relied upon Defendants WILL-DARNALL and LAURA MENICUCCI's representation that Defendant ROSSWOOD would not vacate the subject units until February 28, 2019.

30. Defendant ROSSWOOD did not perform as promised by Defendants WILL-DARNALL and MENICUCCI, as they breached each of the Lease Agreements when they prematurely vacated and abandoned each of the subject units between August 31 and September 28, 2018, and refused to pay any further rental amounts owed thereafter.

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31. Plaintiff's reliance on the false promises made by Defendants WILL-DARNALL and MENICUCCI was a substantial factor in causing Plaintiff's damages.

32. Plaintiff has been damaged in that Defendants owe no less than Four Hundred Seventy-Four Thousand One Hundred Forty-One Dollars and 22/100 ($474,141.22), less any amounts Plaintiff is able to successfully mitigate.

WHEREFORE, Plaintiff SPIEKER COMPANIES, INC., prays for judgment against Defendants CASSIE WILL-DARNALL and LAURA MENICUCCI, and DOES 1 through 50, inclusive, and each of them, jointly and severally, as stated in the Prayer for Relief below.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff SPIEKER COMPANIES, INC., prays for judgment against Defendants ROSSWOOD PROPERTIES, LLC; CASSIE WILL-DARNALL; LAURA MENICUCCI; and DOES 1 through 50, inclusive, and each of them, jointly and severally, as follows

1. For damages for breach of the Lease Agreements in an amount to be proven at trial, but no less than Four Hundred Seventy-Four Thousand One Hundred Forty-One Dollars and 22/100 ($474,141.22), less any amounts Plaintiff is able to successfully mitigate;

2. For costs of suit incurred herein; and,

3. For such other and further relief as this Court may deem just and proper.

DATED: November 19, 2018

PAHL & McCAY
A Professional Corporation

By: _____
Stephen D. Pahl

By: _____
Eric J. Stephenson

Attorneys for Plaintiff SPIEKER COMPANIES, INC.

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# EXHIBIT A



US-0001676

EJ-100

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, address, and State Bar number):
After recording, return to:
Stephen D. Pahl 95900
PAHL & MCCAY
225 W. Santa Clara Street, Suite 1500
San Jose, CA 95113
TEL NO.: 408-286-5100 FAX NO. (optional): 408-286-5722
E-MAIL ADDRESS (Optional): spahl@pahl-mccay.com
[X] ATTORNEY FOR [X] JUDGMENT CREDITOR [ ] ASSIGNEE OF RECORD

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
STREET ADDRESS: 191 North First Street
MAILING ADDRESS: 191 North First Street
CITY AND ZIP CODE: San Jose, CA 95113
BRANCH NAME: San Jose Civil Branch

FOR RECORDER'S OR SECRETARY OF STATE'S USE ONLY

PLAINTIFF: SPIEKER COMPANIES, INC. a California Corporation
DEFENDANT: ROSSWOOD PROPERTIES, LLC a California limited liability company, et al.

CASE NUMBER: 18CV338308

# ACKNOWLEDGMENT OF SATISFACTION OF JUDGMENT

[X] FULL [ ] PARTIAL [ ] MATURED INSTALLMENT

FOR COURT USE ONLY
Electronically Filed
by Superior Court of CA,
County of Santa Clara,
on 10/7/2022 12:40 PM
Reviewed By:C. Roman
Case #18CV338308
Env #10165534

1. Satisfaction of the judgment is acknowledged as follows:
   a. [X] Full satisfaction
      (1) [ ] Judgment is satisfied in full.
      (2) [X] The judgment creditor has accepted payment or performance other than that specified in the judgment in full satisfaction of the judgment.
   b. [ ] Partial satisfaction
      The amount received in partial satisfaction of the judgment is $
   c. [ ] Matured installment
      All matured installments under the installment judgment have been satisfied as of *(date):*
2. Full name and address of judgment creditor:*
   Spieker Companies, Inc.
   1020 Corporation Way, Suite 100, Palo Alto, CA 94303
3. Full name and address of assignee of record, if any:
4. Full name and address of judgment debtor being fully or partially released:*
   Cassie Will-Darnall
   111 Belwood Gateway, Los Gatos, CA 95032
   Laura Menicucci
   105 Bluebonnet Lane, #13, Scotts Valley, CA 95066
5. a. Judgment entered on *(date):* April 29, 2022
   b. [ ] Renewal entered on *(date):*
6. [X] An [X] abstract of judgment [ ] certified copy of the judgment has been recorded as follows *(complete all information for each county where recorded)*

| COUNTY | DATE OF RECORDING | INSTRUMENT NUMBER |
|---|---|---|
| Santa Cruz | June 8, 2022 | 2022-0017567 |
| Santa Clara | June 8, 2022 | 25317008 |
| Riverside | June 8, 2022 | 2022-0261355 |

7. [ ] A notice of judgment lien has been filed in the office of the Secretary of State as file number *(specify):*

**NOTICE TO JUDGMENT DEBTOR:** If this is an acknowledgment of full satisfaction of judgment, it will have to be recorded in each county shown in item 6 above, if any, in order to release the judgment lien, and will have to be filed in the office of the Secretary of State to terminate any judgment lien on personal property.

Date: October 7, 2022

▶ _____
*(SIGNATURE OF JUDGMENT CREDITOR OR ASSIGNEE OF CREDITOR OR ATTORNEY**)*

*The names of the judgment creditor and judgment debtor must be stated as shown in any Abstract of Judgment which was recorded and is being released by this satisfaction. ** A separate notary acknowledgment must be attached for each signature.





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**CALIFORNIA ACKNOWLEDGMENT** CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Santa Clara }

On October 7, 2022 (Date) before me, Yvonne M Leon, Notary Public (Here Insert Name and Title of the Officer)

personally appeared Catherine Schlomann Robertson (Name(s) of Signer(s))

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

YVONNE M. LEON
Notary Public - California
Santa Clara County
Commission # 2385565
My Comm. Expires Dec 6, 2025

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Yvonne M. Leon (Signature of Notary Public)

*Place Notary Seal and/or Stamp Above*

**OPTIONAL**

*Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.*

**Description of Attached Document**

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

**Capacity(ies) Claimed by Signer(s)**

| | |
|---|---|
| Signer's Name: _____ | Signer's Name: _____ |
| ☐ Corporate Officer – Title(s): _____ | ☐ Corporate Officer – Title(s): _____ |
| ☐ Partner – ☐ Limited ☐ General | ☐ Partner – ☐ Limited ☐ General |
| ☐ Individual ☐ Attorney in Fact | ☐ Individual ☐ Attorney in Fact |
| ☐ Trustee ☐ Guardian or Conservator | ☐ Trustee ☐ Guardian or Conservator |
| ☐ Other: _____ | ☐ Other: _____ |
| Signer is Representing: _____ | Signer is Representing: _____ |

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