

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

BALBOA CAPITAL CORPORATION

Plaintiff,

v.

WCS LENDING LLC,

Defendant.

§  
§  
§  
§  
§  
§  
§  
§  
§

Civil Action No.: 3:14-cv-00108-B

**DECLARATION OF JACLYN MUNOZ**

I, JACLYN MUNOZ, declare as follows:

1. I am the Contract Maturity Manager and Custodian of Records for BALBOA CAPITAL CORPORATION (hereinafter "BALBOA") and I am authorized to execute this Declaration on its behalf. I have personal and firsthand knowledge of the facts contained within this Declaration, unless otherwise noted, and, if called as a witness, I could and would competently testify to them.

2. As the Contract Maturity Manager and Custodian of Records, among other things, I supervise delinquent accounts and accounts which are the subject of pending litigation and authorize collection efforts. I am personally familiar with the record keeping procedures used by BALBOA and with the records and files maintained by BALBOA in the ordinary course of its operations. All of the books, records and documents relating to the account which is the subject of this litigation are kept and maintained in the ordinary course of business under my supervision and control. All of the entries reflected in these writings are made on or about the date indicated.

3. On or about January 31, 2013, Defendant WCS LENDING, LLC (hereinafter "Defendant WCS LENDING") entered into that certain written Lease Agreement No. 1179100-000 (hereinafter the "Lease"), under the terms of which Defendant WCS LENDING leased from

BALBOA, as the assignee of VAR Resources, certain equipment (hereinafter the "Leased Equipment"), which is more particularly described in the Lease. The Lease required Defendant WCS LENDING to make thirty-six monthly rental payments of \$2,154.21 beginning March 15, 2013 and continuing monthly thereafter. A true and correct copy of the Lease, including a description of the Leased Equipment, is attached hereto, marked collectively as Exhibit "1" and incorporated herein by reference.

4. On or about February 27, 2013, Defendant executed a Certificate of Acknowledgment and Acceptance of Leased Equipment representing that it was accepting the Leased Equipment, making its obligations under the Lease absolute and noncancellable. A true and correct copy of the Certificate of Acknowledgment and Acceptance of Leased Equipment is attached hereto, marked as Exhibit "2" and incorporated herein by reference.

5. Under the terms of the Lease, ownership of the Leased Equipment was to remain with BALBOA, provided that, as long as payments were timely made, Defendant WCS LENDING could retain possession of the Leased Equipment. I am informed and believe that the Leased Equipment remains in the possession of Defendant WCS LENDING.

6. On or about August 15, 2013, Defendant WCS LENDING breached the Lease by failing to make the monthly payment due on that date and, therefore, is due for the August 15, 2013 through October 15, 2014 lease payments, in the total amount of \$32,313.15. The failure to make the monthly payments as those payments come due is an event of default under the terms of the Lease.

7. In accordance with the terms of the Lease and, as a proximate result of Defendant WCS LENDING's default thereunder, BALBOA exercised its right to declare the entire remaining balance due and owing under the Lease. The Lease provides that BALBOA is

entitled to recover the sum of all unpaid rents and other payments due under the Lease then accrued, together with all accelerated payments due under the Lease, discounted to their present value at the discount rate of six percent (6%) in the event of a default. Therefore, there became due the sum of \$31,211.72, plus sales tax on that amount in the sum of \$1,872.70. This amount is exclusive of prejudgment interest, attorneys' fees and costs, no portion of which has been paid by Defendant WCS LENDING.

8. The terms of the Lease further provide that Defendant WCS LENDING is liable to BALBOA for late charges on all payments not made in a timely manner. Late charges in the sum of \$430.84 are now due and owing.

9. The terms of the Lease further provide that Defendant WCS LENDING is liable to BALBOA for any insurance required on the personal property. Property Insurance fees in the sum of \$785.20 are now due and owing.

10. BALBOA determines fair market value for its leased equipment by starting with the purchase price BALBOA paid for the equipment. BALBOA then updates this information utilizing internet market research through various websites that specialize in the sale of used commercial equipment. Additionally, BALBOA employs a third party asset management company, Nassau Asset Management, to assist in determine the fair market value of more specialized equipment.

11. The terms of the Lease further provide that BALBOA is entitled to return of its Leased Equipment or, in the alternative, the fair market value of the Leased Equipment. Based upon the process set forth in Paragraph 10, above, BALBOA has determined that the fair market value of the leased equipment is \$12,000.00, plus sales tax on that amount in the sum of \$720.00, and said sums are now due and owing to BALBOA from Defendant WCS LENDING.

12. BALBOA has performed all of the terms, conditions, and covenants required to be performed by BALBOA under the terms of the Lease, except as excused or prevented by the conduct of Defendant WCS LENDING.

13. Although demands have been made, the sums due under the Lease and Lease Guaranty have not been paid. The following sums are now past due, owing and unpaid from Defendant WCS LENDING under the Lease:

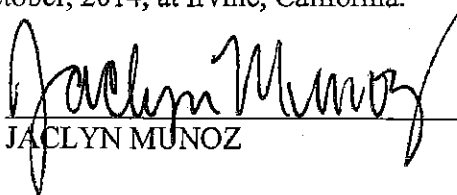
Past Due Lease Payments (15 months x \$2,154.21/month)	\$32,313.15
Present value of remaining Lease payments (15 payments of \$2,154.21 discounted to Present value at a per annum rate of 6%)	31,211.72
Sales tax on discounted Lease Payments	1,872.70
Late Charges	430.84
Property Insurance	785.20
Fair Market Value of Equipment	12,000.00
Sales Tax on Fair Market Value of Equipment	<u>720.00</u>
<b>Subtotal</b>	<b>\$79,333.61</b>
Interest from 8/15/13 through 10/15/14 ( $\$79,333.61 \times 10\% = \$7,933.36 \div 365$ = \$21.74 per day) 426 days x \$21/84 per day)	<u>9,259.21</u>
<b>TOTAL</b>	<b>\$88,592.82</b>

14. As the Contract Maturity Manager and Custodian of Records for BALBOA, had any additional payments been received by BALBOA on account of the Lease, I would have been informed thereof in the ordinary course of business by employees of BALBOA whose job duties include informing me of such facts. I have not been informed of the receipt of any such

payments. Further, it was and remains the custom and practice of BALBOA to record in its books and records the receipt of any such payments at or closely following the time any such payment was received by an employee of BALBOA whose job duties include accurately recording the receipt of such payment. I know these procedures and records to be accurate and there is no record of the receipt of any additional payments. The absence of any such entries indicates that no such payment was received and the amounts set forth above in Paragraph 13 are due and owing to BALBOA.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 14 day of October, 2014, at Irvine, California.

  
\_\_\_\_\_  
JACLYN MUNOZ